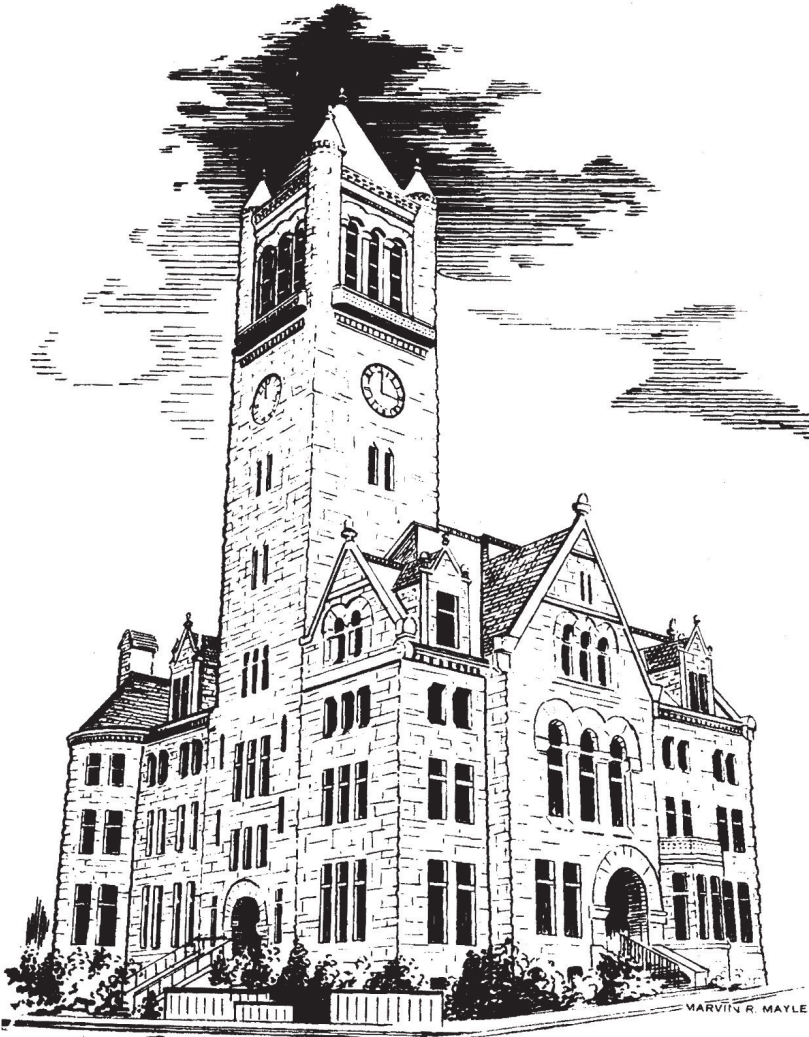


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FAYETTE LEGAL JOURNAL

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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

ROBERT ADLER, A/K/A ROBERT J. ADLER, JR., late of Uniontown, Fayette County, PA (3)

Executrix: Mary Jane Semsey
c/o 45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

GEORGE R. BLOOM, late of Perryopolis Borough, Fayette County, PA (3)

Executor: Brian S. Bloom
111 Jefferson Drive
Clairton, PA 15025
Attorney: Alan Benyak
PO Box 1
401 Sixth Street at Washington Avenue
Charleroi, PA 15022

LOIS A. COSGROVE, A/K/A LOIS ANN COSGROVE, late of North Union Township, Fayette County, PA (3)

Executor: Francis M. Cosgrove
c/o Molinaro Law Offices
P.O. Box 799
Connellsville, PA 15425
Attorney: Carmine V. Molinaro, Jr.
Molinaro Law Offices

ANNE KUBALA, late of Dunbar Township, Fayette County, PA (3)

Personal Representatives:
Joyce K. Tremba and Susan Bucci
c/o Richard A. Husband
Riverfront Professional Center
208 South Arch Street, Suite 2

Connellsville, PA 15425
Attorney: Richard A. Husband

LORETTA LINT, A/K/A LORETTA J. LINT, late of Bullsken Township, Fayette County, PA (3)

Executor: Edward E. Lint, Jr.
c/o David B. Reiss, Esquire
164 West Crawford Avenue
Connellsville, PA 15425
Attorney: David B. Reiss
Reiss and Casini

ESTHER KATHLEEN MCFADDEN, A/K/A ESTHER K. MCFADDEN, late of Fairchance Boro, Fayette County, PA (3)

Executors: Nicci Reid McFadden
c/o Carl E. Micarelli
4 North Beeson Boulevard
Uniontown, PA 15401
Attorney: Carl E. Micarelli

PAIGE NAGY, A/K/A PAIGE M. NAGY, late of Uniontown, Fayette County, PA (3)

Administratrix: Julie Nagy
c/o G.T. George
92 East Main Street
Uniontown, PA 15401
Attorney: G.T. George
George, Port & George

BETTY J. O'NEIL, late of Point Marion, Fayette County, PA (3)

Co-Executors: Ray O'Neil and Randall D. O'Neil
c/o 96 East Main Street
Uniontown, PA 15401
Attorney: Simon B. John

SALLY SIRIANNI, late of Upper Tyrone, Fayette County, PA (3)

Executrix: Rose M. Rausch,
611 Stauffer Street
Scottdale, PA 15683
Attorney: Jennifer M. Casini, Esquire
164 West Crawford Avenue
Connellsville, PA 15425

Second Publication

CLYDE G. COLIGAN, late of South Union Township, Fayette County, PA (2)
Personal Representative: Anna L. Smith
 c/o Gary J. Frankhouser
 107 East Main Street
 Uniontown, PA 15401
Attorney: Gary J. Frankhouser
 Davis & Davis

THOMAS M. JEFFERSON, late of Georges Township, Fayette County, PA (2)
Personal Representative
 c/o 2 West Main Street, Suite 110
 Uniontown, PA 15401
Attorney: Ricardo J. Cicconi

BENJAMIN HEGGY, late of Champion, Fayette County, PA (2)
Administrator: William Heggy
 3921 Harvard Avenue, NW
 Canton, OH 44709
Attorney: Kathleen D. Schneider
 Regent Square Professional Bldg.
 1227 South Braddock Avenue
 Pittsburgh, PA 15218

MAIAH WORLEY, late of Connellsville, Fayette County, PA (2)
Administrator: Jeremiah Worley
 323 East Crawford Avenue
 Connellsville, PA 15425
Attorney: Virginia Shenkan
 2712 Carlisle Street
 New Castle, PA 16105

First Publication

STANLEY W. BOSKOVICH, late of Masontown, Greene County, PA (1)
Executor: Frank J. Boskovich
 230 Linden Creek Road
 Canonsburg, PA 15317
Attorney: Kirk A. King
 77 South Washington Street
 Waynesburg, PA 15370

JOHN E. KRAYNAK, late of Connellsville, Fayette County, PA (1)
Executor: Joseph P. Kraynak
 c/o Molinaro Law Offices
 PO Box 799
 Connellsville, PA 15425
Attorney: Carmine V. Molinaro, Jr.

DAVID B. MARTIN, late of Masontown, Fayette County, PA (1)
Personal Representatives: Frank E. Martin,
 Jeffrey V. Martin & Nancy M. Kelley
Attorney: Charles W. Watson
 Watson Mundorff Brooks & Sepic, LLP
 720 Vanderbilt Road
 Connellsville, PA 15425

DONALD RAY PANZONE, SR., late of Brownsville, Fayette County, PA (1)
Executor: Donald Panzone, Jr.
 2225B Route 88
 Dunlevy, PA 15432
Attorney: Melenzyer & Agrafiotis
 411 Washington Avenue
 Charleroi, PA 15022

RONALD ALVIN SINES, late of Dunbar Township, Fayette County, PA (1)
Personal Representative: Danielle Maharowski
Attorney: Charles W. Watson
 Watson Mundorff Brooks & Sepic, LLP
 720 Vanderbilt Road
 Connellsville, PA 15425

DONALD M. SUMMY, late of Mount Pleasant, Fayette County, PA (1)
Administrator: Douglas M. Summy
 c/o Marvin D. Snyder, Esq.
 17 North Diamond Street
 Mt. Pleasant, PA 15666
Attorney: Marvin D. Snyder

MARY WILSON, late of North Union Township, Fayette County, PA (1)
Executrix: Patricia Faust
 c/o Adams & Adams
 55 East Church Street, Suite 101
Attorney: Jason F. Adams

LEGAL NOTICES

FICTITIOUS NAME ADVERTISEMENT

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Act of December 16, 1982, P.L. 1309, No. 295, as amended, 54 Pa.C.S.A. 311, that on July 10, 2015, an application for the conduct of a business in Fayette County, Pennsylvania, under an assumed or fictitious name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, under the assumed or fictitious name, style or designation of MountainCreek Properties, with its principal place of business at 1165 NATIONAL PIKE ROAD, Uniontown, Fayette County, Pennsylvania, 15401. The name and address of the only entity interested in said business is George Family Limited Partnership, 1165 National Pike, Uniontown, Pennsylvania 15401.

G. T. George, Esq.
92 East Main Street
Suite One
Uniontown, PA 15401

NOTICE

Notice is hereby given that the Articles of Incorporation for John M. Purcell, P.C. were filed on August 5, 2015 with the Pennsylvania Department of State under the provisions of the Business Corporation Law of 1988.

John M. Purcell, Esq.
Attorney at Law
55 East Church Street
Uniontown, PA 15401

NOTICE FOR PUBLICATION

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 1310 of 2015, G. D.

IN RE: CHANGE OF NAME OF BRITANI
ALEXANDRA JENAE McKAY, an adult
individual.

Notice is hereby given that the petition for change of name of BRITANI ALEXANDRA JENAE McKAY, was filed on July 7, 2015, praying for a decree to change her name to BRANSEN ALEXANDER JAMES McKAY. The Court has fixed Tuesday, September 29, 2015, at 3:00 P.M., in Courtroom No. 4, Fayette County Courthouse, Uniontown, Pennsylvania for hearing. All persons interested may appear and show cause, if any that they have, why the prayer of the Petition should not be granted.

ZEBLEY MEHALOV & WHITE, P.C.
Mark M. Mehalov, Esquire
P.O. Box 2123
Uniontown, PA 15401

NOTICE

NOTICE IS HEREBY GIVEN that a Certificate of Organization was filed the with Department of State of the Commonwealth of Pennsylvania for a limited liability company formed under the Limited Liability Company Law of 1994. The name of the company is Rock and Roll, LLC.

Dominic Ciarimboli, Esq.
101 North Main Street
Greensburg, PA 15601

Registers' Notice

Notice by DONALD D. REDMAN, Register of Wills and
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Tuesday, September 8, 2015
at 9:30 A.M.

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on
Monday, September 21, 2015
at 9:30 A.M.

In Court Room No. 1 of the Honorable STEVE P. LESKINEN, or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is also hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Tuesday, September 8, 2015
at 9:30 A.M.

2614-0477	LAWRENCE B. CHEARNEY	VIRGINIA WHITE and DONALD CHEARNEY, Executors
2612-0813	ROBERT G. CROUSHORE	GORDON C. CROUSHORE, Administrator
2614-0081	DOROTHY Q. MOSIER	GARY T. GLISAN, Executor
2612-0165	JACQUELINE MITCHELL	EDWARD P. LADNER, Executor

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on
Monday, September 21, 2015
at 9:30 A.M.

In Court Room No. 2 of the Honorable JOHN F. WAGNER or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

(2) DONALD D. REDMAN
Register of Wills and Ex-Officio Clerk of the Orphans' Court Division

SHERIFF'S SALE

Date of Sale: November 12, 2015

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by Gary D. Brownfield, Sr., Sheriff of Fayette County, Pennsylvania on Thursday, November 12, 2015, at 10:30 a.m. in the Hallway outside the Sheriff's Office at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (1)

Gary D. Brownfield, Sr.
 Sheriff Of Fayette County

Dwaldmanlaw, P.C.

No. 642 of 2015 GD
 No. 302 of 2015 ED

WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE PRIMESTAR-H FUND I TRUST,
Plaintiff,
vs.
ROY ADAMS and CHRISTINA ADAMS,
Defendants.

Owner(s) of the property situate in North Union, Fayette County, Pennsylvania
 Being pin number 25-20-0041
 Property being known as: 16 McKinley Ave., Uniontown, PA 15401
 Improvements thereon: Residential Dwelling

No. 2723 of 2010 GD
 No. 301 of 2015 ED

U.S. BANK NATIONAL ASSOCIATION TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY,
Plaintiff,
vs.
TAMMY L. BERNOT AND MICHAEL BERNOT, III,
Defendant.

ALL those certain lots or pieces of ground situate, lying and being in the Third Ward of the Borough of Brownsville, formerly South Brownsville, County of Fayette and Commonwealth of Pennsylvania, being part of Lot No. 2 and all of Lots Nos. 3 and 4 in the Plan of Lots laid out by Sarr, Sedgwick and Watkins, Fayette County Plan Book No. 1, Page 94 1/2, HAVING thereon erected a dwelling known as 416 Hummell Street, Brownsville, PA 15417.

TAX ID#: 02-10-0020.

See Fayette County Record Book 2815 Page 1326.

Phelan Hallinan Diamond & Jones, LLP

No. 3029 of 2005 GD
No. 267 of 2015 ED

**Wells Fargo Bank, N.A., s/b/m to Wells Fargo Home Mortgage, Inc.,
Plaintiff,
vs.
Matthew Blackstone a/k/a Matt Blackstone
Stacie L. Smith a/k/a Stacie L. Blackstone
a/k/a Stacie L. Ambrosini,
Defendant(s).**

Owner(s) of property situate in BULLSKIN TOWNSHIP, Fayette County, Pennsylvania, being 328 Tanyard Hollow Road, Connellsville, PA 15425-1844
Parcel No. : 04-36-0193-05
Improvements thereon: RESIDENTIAL DWELLING

No. 797 of 2015 GD
No. 275 of 2015 ED

**DOLLAR BANK, FEDERAL SAVINGS BANK,
Plaintiff,
vs.
MARK DIALESANDRO and RHONDA JO LINT-DIALESANDRO,
Defendants.**

ALL THE RIGHT, TITLE, INTEREST AND CLAIM OF MARK DIALESANDRO AND RHONDA JO LINT-DIALESANDRO, OF, IN AND TO THE FOLLOWING DESCRIBED PROPERTY:

ALL THAT CERTAIN REAL ESTATE SITUATED IN DUNBAR TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA. HAVING ERECTED THEREON A DWELLING KNOWN AS 226 DAWSON ROAD, VANDERBILT, PA 15486. DEED BOOK VOLUME 2376, PAGE 208 AND PARCEL NUMBER 09-04-0009.

No. 970 of 2015 GD
No. 293 of 2015 ED

**U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY,
Plaintiff,
vs.
SAMUEL W. FANI,
Defendant.**

ALL those certain lots of land situate in North Union Township, Fayette County, Pennsylvania, known as Lots Nos. 77, 78, 79, 80 and 81, in Homewood Terrace Plan of Lots, Fayette County Plan Book 4, page 208, and HAVING THEREON ERECTED DWELLING KNOWN AS 565 CRAIG LANE HOPWOOD, PA 15445.

Tax Parcel # 25-47-0161.
See Deed Book 3114, Page 1054.

McCABE, WEISBERG & CONWAY, P.C.
123 South Broad Street, Suite 1400
Philadelphia, Pennsylvania 19109
(215) 790-1010

No. 2289 of 2013 GD
No. 287 of 2015 ED

**Federal National Mortgage Association (FNMA),
Plaintiff,
vs.
Beatrice Fesh, Administratrix of the Estate of John Fesh, Deceased Mortgagor
Defendants.**

All that certain piece or parcel or Tract of land situate Township of Upper Tyrone, Fayette County, Pennsylvania, and being known as 601 Stauffer Street, Scottsdale, Pennsylvania 15683.

Being known as: 601 Stauffer Street, Scottdale, Pennsylvania 15683

Title vesting in John A. Fesh by deed from Michael L. Jordan dated December 4, 1998 and recorded December 4, 1998 in Deed Book 2226, Page 0343 . The said John A. Fesh died on July 9, 2012 thereby vesting title in Beatrice Fesh, Administratrix of the Estate of John Fesh.

Tax Parcel Number: 39-04-0036

STERN AND EISENBERG, PC
ANDREW J. MARLEY, ESQ.

No. 891 of 2015 GD
No. 300 of 2015 ED

**HSBC Bank USA, N.A., as Indenture Trustee
for the registered Noteholders of Renaissance
Home Equity Loan Trust 2005-3, Renaissance
Home Equity Loan Asset-Backed Notes,
Series 2005-3, c/o Ocwen Loan Servicing,
LLC,**

**Plaintiff,
v.**

**The Unknown Heirs, Executors, and Devises
of the Estate of Debra M. Johnson a/k/a
Debra Johnson,
Defendant(s).**

SITUATE IN THE THIRD WARD OF
THE BOROUGH OF FAIRCHANCE,
FAYETTE COUNTY, PENNSYLVANIA,
BEING KNOWN AS 98 MOUNTAIN ROAD,
UNIONTOWN, PA 15401-8617

PARCEL NO. 14-30-0002/11100091
IMPROVEMENTS - RESIDENTIAL
REAL ESTATE

SOLD AS THE PROPERTY OF- THE
UNKNOWN HEIRS, EXECUTORS, AND
DEVISEES OF THE ESTATE OF DEBRA M.
JOHNSON A/K/A DEBRA JOHNSON

KML Law Group, P.C.
SUITE 5000 BNY Independence Center
701 MARKET STREET
Philadelphia, PA 19106-1532

No. 633 of 2013 GD
No. 269 of 2015 ED

**BANK OF AMERICA, N.A., SUCCESSOR
BY MERGER TO BAC HOME LOANS
SERVICING, LP FKA COUNTRYWIDE
HOME LOANS SERVICING, LP,**

**Plaintiff,
vs.**

**MARTIN J. KLINK, JR.
578 Filbert Orient Road
Fairbank, PA 15435,
Defendant.**

ALL THAT CERTAIN TRACT OR
PARCEL OF LAND, situate in the Township of
Redstone, County of Fayette and
Commonwealth of Pennsylvania.

TAX PARCEL #30-39-0008

PROPERTY ADDRESS: 578 Filbert
Orient Road Fairbank, PA 15435 578 Filbert
Orient Road FAIRBANK, PA 15435-0000

IMPROVEMENTS: A residential
dwelling.

SOLD AS THE PROPERTY OF:
MARTIN J. KLINK JR.

UDREN LAW OFFICES, P.C.
WOODCREST CORPORATE CENTER
111 WOODCREST ROAD, SUITE 200
CHERRY HILL, NJ 08003-3620
856-669-5400

No. 1118 of 2015 GD
No. 288 of 2015 ED

**US Bank National Association, as Trustee,
under Pooling and Servicing Agreement
dated as of May 1, 2005 Asset-Backed Pass-
Through Certificates, Series 2005-Hel,**

**Plaintiff,
v.**

**STACIE L METZGER
HOWARD W METZGER, SR.
Defendant(s).**

ALL THAT CERTAIN LOT OF LAND
SITUATE IN FIRST WARD OF THE CITY OF
CONNELLSVILLE, FAYETTE COUNTY,
PENNSYLVANIA:

BEING KNOWN AS 203 West
Washington Avenue, Connellsville, PA 15425
PARCEL NUMBER: 05-15-0107
IMPROVEMENTS: Residential Property

ANNE N. JOHN, ESQ.
ATTORNEY AT LAW

No. 1039 of 2015 GD
No. 305 of 2015 ED

**FIRST FEDERAL SAVINGS AND LOAN
ASSOCIATION OF GREENE COUNTY, a
corporation,
Plaintiff,
vs.
RYAN R. MARTIN and JENIFER L.
BIGAM,
Defendants.**

ALL that certain lot of ground situate in North Union Township, Fayette County, Pennsylvania, and known as Lot No. 88 in the Homewood Terrace Plan of Lots as laid out by Areford Brothers and recorded in the Recorder of Deeds Office of Fayette County, Pennsylvania, in Plan Book Volume 4, page 208.

FOR prior title see Record Book 3040 at page 1091.

UPON which is erected a single family dwelling known locally as 42 Rose Boulevard, Uniontown, PA 15401.

Fayette County Assessment Map No.: 25-47-0217.

BUCHANAN INGERSOLL & ROONEY PC
Mark Pfeiffer, Esquire
Two Liberty Place
50 S. 161 St., Suite 3200
Philadelphia, PA 19102-2555
Tel: (215) 665-8800
Fax: (215) 665-8760

No. 608 of 2013 GD
No. 294 of 2015 ED

**COMM 2006-C8 RV PARK MASTER SPE,
LLC,
Plaintiff
vs.
MOUNTAIN PINES RV RESORT, LLC,
Defendants.**

PROPERTY OF: MOUNTAIN PINES
RV RESORT, LLC,
EXECUTION NO: 608 of 2013
JUDGMENT AMT: \$90,197,117.36

ATTY: Mark Pfeiffer, Esquire
ALL the right, title, interest and claim of:
Mountain Pines RV Resort, LLC
MUNICIPALITY: Saltlick Township
ADDRESS: 1662 Indian Creek Valley
Road, Champion, PA 15622
INSTRUMENT NO. 200600011671,
Mortgage Book 2995, Page 2304
TAX REFERENCE: 31-12-0078

McCABE, WEISBERG & CONWAY, P.C.
123 South Broad Street, Suite 1400
Philadelphia, Pennsylvania 19109
(215) 790-1010

No. 891 of 2013 GD
No. 274 of 2015 ED

**THE BANK OF NEW YORK MELLON
FKA THE BANK OF NEW YORK AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWABS,
INC., ASSET BACKED NOTES, SERIES
2004-SD4,
Plaintiff,
vs.
Cyril J. Rechichar, Jr. and Mary Ruth
Rechichar,
Defendants.**

ALL that certain piece or parcel of property situate in Redstone Township, Fayette County, Pennsylvania, being designated as Lot No.2 in the Rechichar Plan, which Plan is recorded in the Recorder of Deeds Office of Fayette County, Pennsylvania, in Plan Book Volume 47, page 100; Said Lot No.2 being more particularly bounded and described as follows:

BEGINNING at a point along the dedicated right-of-way for Township Road 781, which said point is corner common to Lot No. 1 in the above referenced Plan; thence along said Lot No. 1, South 12 degrees 04' 04" West, 163.44 feet to a mine bolt; thence by a curve to the right, the radius of which is 1,367.39 feet. an arc distance of 278.66 feet, the chord of which is North 80 degrees 32' 59" West, 278.18 feet to a point, being corner common to property no or formerly of Gadd; thence by said Gadd property, North 08 degrees 13' 30" East, 121.45 feet to a point along said Township Road 781; thence by a curve to the left, the radius of which is 351.81 feet, an arc distance of 275.40 feet, the chord of

which is South 86" 56' 28" East, 268.42 feet to a point; thence North 70 degrees 20' 23" East, 24.60 feet to the place of beginning.

CONTAINING an area of 0.82 of an acre as per the survey of Defino and Sons, Land Surveyors, dated October, 1995, which is of record at the above referred to Plan Book Volume and page.

All that certain piece or parcel or Tract of land situate Redstone Township, Fayette County, Pennsylvania, and being known as 615 Filbert Heights Road, New Salem, Pennsylvania 15468.

Being known as: 615 Filbert Heights Road, New Salem, Pennsylvania 15468

Title vesting in Cyril J. Rechichar, Jr. and Mary Ruth Rechichar by deed from Cyril J. Rechichar, Jr. and Mary Ruth Rechichar dated March 10, 2006 and recorded July 18, 2006 in Deed Book 2993, Page 2025.

Tax Parcel Number : 30-33-0041-03

No.929 of 2015 GD
No. 266 of 2015 ED

Deutsche Bank .National Trust Company, as Trustee for Soundview Home Loan Trust 2006-WFI Asset-Backed Certificates, Series 2006-WFI

Plaintiff,

vs.

Cecelia L. Rihel and Kimberly S. Berish
Defendants.

ALL THAT RIGHT, TITLE, INTEREST AND CLAIMS OF CECELIA L. RIHEL AND KIMBERLY S. BERISH, OF, IN AND TO THE FOLLOWING DESCRIBED PROPERTY:

ALL THAT CERTAIN LOT OR PARCEL OF LAND SITUATE IN EVERSON BOROUGH, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA, BEING MORE FULLY DESCRIBED AT DBV 3204, PAGE 1189.

BEING KNOWN AS 218 GRAFF STREET, EVERSON, PA 15631

TAX MAP NO. 10-01-0019

Phelan Hallinan Diamond & Jones, LLP
No. 1094 of 2015 GD
No. 265 of 2015 ED

Lsf8 Master Participation Trust,
Plaintiff,

v.

Annie M. Ross
Defendant(s).

Owner(s) of property situate in the Fayette County, Pennsylvania, being 2 Laurel Street, Uniontown, PA 15401-4412

Parcel No.: 38-14-0038

Improvements thereon: RESIDENTIAL DWELLING

McCABE, WEISBERG & CONWAY, P.C.
123 South Broad Street, Suite 1400
Philadelphia, Pennsylvania 19109
(215) 790-1010

No. 786 of 2015 GD
No. 290 of 2015 ED

LSF8 Master Participation Trust
Plaintiff,

v.

Gary A. Rowland and Karen A. Rowland,
Defendants.

All that certain lot or piece of ground situate in the Township of Washington, County of Fayette and Commonwealth of Pennsylvania, being more fully bounded and described as follows, to-wit:

Beginning at a point common to Washington Road (Route 201), the Northwesterly corner of property described hereafter and the Southwesterly corner of property now or formerly of G. Lyons; thence from said point, North 74 degrees 15' East, 249.38 feet to a point at the center line of Amelia Street, formerly the Webster, Monessen, Belle Vernon, Fayette City Street Railway; thence along said center line, South 34 degrees, 15' East, 63.22 feet to a point; thence South 74 degrees 15' West, running along line of property now or formerly of Kovach, 287.24 feet to a point; thence from said point, North 0 degrees 47' East, and along the Easterly right-of-way line of Washington Road (Route 201) 62.54 feet

to the point at the place of beginning.
All that certain piece or parcel or Tract of land situate Township of Washington, Fayette County, Pennsylvania, and being known as 807 Washington Road, Belle Vernon, Pennsylvania 15012.

Being known as: 807 Washington Road, Belle Vernon, Pennsylvania 15012

Title vesting in Gary A. Rowland and Karen A. Rowland, husband and wife, by deed from William F. Trisoline, Unmarried dated June 3, 1989 and recorded June 5, 1989 in Deed Book 261, Page 260.

Tax Parcel Number : 41-6-2

McCABE, WEISBERG & CONWAY, P.C.
123 South Broad Street, Suite 1400
Philadelphia, Pennsylvania 19109
(215) 790-1010

No. 979 of 2015 GD
No. 291 of 2015 ED

**OneWest Bank N.A.,
Plaintiff,
v.**

**Sharon Chaney, Executrix of the Estate of
June N. Scott, Deceased Mortgagor and Real
Owner,
Defendant.**

All those certain lots or pieces of ground situate in the Township of Luzerne, County of Fayette and Commonwealth of Pennsylvania, being known as Lot Nos. 511, 512, and 513 in the Hiller Plan of Lots, recorded in the Recorder's Office of Fayette County, Pennsylvania in Plan Book Volume 2, Page 21.

EXCEPTING AND RESERVING all Exceptions, Reservations, Conditions, Coal and Mineral Rights, Liberties, and Privileges as may be shown in Deeds of Prior record.

BEING designated as Tax Parcel No. 19-07-0125 in the Deed Registry Office of Fayette County, Pennsylvania.

BEING the same premises which Ivory D. Scott and June N. Scott, husband and wife, by deed dated July 22, 1974 and recorded July 22, 1974 in the Recorder's Office of Fayette County, Pennsylvania in Deed Book Volume 1166, Page 1107, granted and conveyed unto Ivory D. Scott and June N. Scott, husband and wife.

All that certain piece or parcel or Tract of

land situate Luzerne Township, Fayette County, Pennsylvania, and being known as 1003 6th Street, Hiller, Pennsylvania 15444.

Being known as: 1003 6Th Street, Hiller, Pennsylvania 15444

Title vesting in Ivory D. Scott and June N. Scott, husband and wife by deed from Ivory D. Scott and June N. Scott, husband and wife, dated July 22, 1974 and recorded July 22, 1974 in Deed Book 1166, Page 1107. The said Ivory D. Scott died on January 14, 1995 thereby vesting title in June N. Scott by operation of law. June N. Scott died on December 24, 2014 thereby vesting title in Sharon Chaney, Executrix of the Estate of June N. Scott, Deceased Mortgagor and Real Owner by operation of law.

Tax Parcel Number: 19-07-0125

No. 1119 of 2015 GD
No. 264 of 2015 ED

**JPMorgan Chase Bank, National Association,
Plaintiff,
vs.
Michelle L. Swickey,
Defendant.**

ALL those two lots of land situate in the Borough of Vanderbilt, County of Fayette and State of Pennsylvania, bounded and described as follows:

BEGINNING at the corner of Bank Street and First Avenue; thence by First Avenue, North 70' 23' East, 120.00 feet to land now or formerly of W. J. Reed; thence by the same, North 19' 37' West, 120.00 feet to Second Street; thence by the same, South 70' 23' West 120.00 feet to Bank Street; thence by the same, South 19' 37' East, 120.00 feet to the place of beginning.

CONTAINING 14,400 square feet and numbered 60 and 61.

COMMONLY KNOWN AS: 318 1st Street, Vanderbilt, PA 15486

TAX PARCEL NO. 40-01-0028

Phelan Hallinan Diamond & Jones, LLP

No. 1655 of 2012 GD
No. 289 of 2015 ED

**Sovereign Bank N.A., Formerly Known as
Sovereign Bank,
Plaintiff,
vs.
Shelley L. Verbosky a/k/a Shelly Verbosky
Barry T. Verbosky,
Defendant(s)**

Owner(s) of property situate in the SOUTH
UNION TOWNSHIP, Fayette County,
Pennsylvania, being 222 Kimberly Drive, a/k/a
1048 Kimberly Drive, Uniontown, PA 15401.

Parcel No.: 3412013455

Improvements thereon: RESIDENTIAL
DWELLING

KML Law Group, P.C.
SUITE 5000 BNY Independence Center
701 MARKET STREET
Philadelphia, PA 19106-1532

No. 1022 of 2015 GD
No. 270 of 2015 ED

**JPMORGAN CHASE BANK, N.A.,
Plaintiff,
vs.
ERIC R. WEAVER
Mortgagor(s) and Record Owner(s)
Defendant(s).**

ALL THAT CERTAIN piece , parcel or lot
of ground situate in the Township of Bullskin,
County of Fayette and Commonwealth of
Pennsylvania.

TAX PARCEL #04-14-0198

PROPERTY ADDRESS: 170 Horseshoe
Bend Road Acme, PA 15610

IMPROVEMENTS: A residential
dwelling.

SOLD AS THE PROPERTY OF: ERIC R.
WEAVER

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : CRIMINAL DIVISION
v. :
ANTHONY HESS, :
Defendant. : No. 707 of 2005

ATTORNEYS AND LAW FIRMS
Jack Heneks, Esq., District Attorney
James Natale, Esq., for the Defendant

OPINION AND ORDER

LESKINEN, J.

Before the Court is a “Third Amended Post-Conviction Relief Act Petition” (hereinafter “PCRA”) filed on behalf of Defendant Anthony Hess (hereinafter “Defendant”) {1}. After a jury trial, the Defendant was found guilty of Statutory Sexual Assault, Aggravated Indecent Assault on a Person Less Than 13 Years of Age, Indecent Assault of a Person Less Than 13 Years of Age, and Simple Assault. He was sentenced on March 17, 2006 to a period of not less than sixty (60) months nor more than two hundred forty (240) months on the Aggravated Indecent Assault, and a period of not less than twenty-four (24) months nor more than one hundred twenty (120) months on the Statutory Sexual Assault, with these sentences to run consecutive. This sentence structure gives Defendant an aggregate term of incarceration of seven (7) years to thirty (30) years.

On May 5, 2015, Defendant’s counsel filed the Third Amended PCRA on his behalf. In the PCRA, the Defendant alleges three grounds for relief: 1) recently discovered exculpatory evidence; 2) ineffectiveness of counsel; and 3) illegal sentence. This Court held hearings on May 18, 2015 and June 16, 2015, and heard arguments on the merits of the PCRA. After a full review of the record, the Court finds that the Defendant has not proven any of his claims for PCRA relief. Accordingly, the PCRA must be denied for the reasons discussed below.

{1} This PCRA is the Defendant’s third overall PCRA. Defendant timely filed his first PCRA on January 9, 2009, which was dismissed on September 25, 2012 by the Honorable Ralph C. Warman, Senior Judge. Defendant filed his second PCRA on June 30, 2014, which Judge Warman dismissed on August 27, 2014. The Defendant then filed this, his third PCRA, on September 18, 2014. Defendant’s counsel has since filed amended petitions on November 7, 2014, March 13, 2015, and May 5, 2015.

BACKGROUND

By way of background, we would first note that Judge Warman has previously drafted two PCRA opinions in this matter. (See Op. and Order 1-38, Sept. 25, 2012; Op. and Order 1-4, Aug. 27, 2014). These opinions provide a comprehensive background on the procedural history and facts of this case through Defendant's filing of his second PCRA on June 30, 2014. In lieu of reiterating what has already been adequately explained by Judge Warman, the Court hereby incorporates those opinions herein.

On September 18, 2014, the Defendant filed pro se his third PCRA. Because of the retirement of Judge Warman, this PCRA was assigned to the Honorable Nancy D. Vernon. Judge Vernon then appointed Defendant's current counsel, James Natale, to represent the Defendant on the PCRA. Judge Vernon held a hearing on December 17, 2014 {2}. During the hearing, Judge Vernon heard testimony from the victim in this matter, K.H. However, during the hearing, Judge Vernon recalled that she was District Attorney in 2005 when charges were filed in this case. Therefore, Judge Vernon recused herself and the PCRA was then delegated to the undersigned.

This Court then scheduled a hearing for May 18, 2015, but the Defendant was not transported from the State Correctional Institution at Laurel Highlands for the hearing. The hearing was then rescheduled for June 16, 2015. At the hearing, the Court heard testimony from the victim, K.H. {3}, as well as testimony from the Defendant and from his attorney, James Natale.

DISCUSSION

After-Discovered Evidence

Pursuant to the Pennsylvania Post-Conviction Relief Act:

(a) To be eligible for relief...the petitioner must plead and prove by a preponderance of the evidence all of the following:

(1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:

(i) currently serving a sentence of imprisonment, probation or parole for the crime;

(2) That the conviction or sentence resulted from one or more of the following:

(i) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.

{2}At the December 2014 hearing, defense counsel withdrew his claim of ineffectiveness of counsel. (PCRA Hr'g Tr. 3, Dec. 17, 2014). Even though counsel has included the ineffective claim in his Third Amended PCRA, this Court confirmed that counsel did indeed intend to withdraw the claim. (PCRA Hr'g Tr. 8, May 18, 2015). As such, we will not address it in this Opinion.

{3} K.H. was six years old at the time of the incident. She was sixteen at the time of the June 16, 2015 PCRA hearing.

- (ii) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- (iii) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
- (iv) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.

- (vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.
- (vii) The imposition of a sentence greater than the lawful maximum.
- (viii) A proceeding in a tribunal without jurisdiction.

(3) That the allegation of error has not been previously litigated or waived.

42 Pa.C.S.A. § 9543.

In addition to the general requirements, there is a one-year time limitation to file for relief and three exceptions to that limitation, expressly set forth as follows:

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

- (i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;
- (ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or
- (iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

42 Pa.C.S.A. § 9545(b).

This Court has no jurisdiction to consider an untimely petition for relief under the Post Conviction Relief Act, as the statutory time limit for bringing a post-conviction relief petition is jurisdictional. *Commonwealth v. Fahy*, 737 A.2d 214, 222 (Pa. 1999). As his first claim, Defendant argues that the victim, K.H., has recently made statements to the Defendant's mother, Anna Halloran, that she was never sexually assaulted, and that any touching of her genitals and anus by the Defendant was for hygienic or medical purposes. (Def.'s 3rd Am. PCRA ¶ 20, May 5, 2014). The Defendant contends these alleged exculpatory statements are after-discovered evidence.

As stated *supra*, Judge Warman sentenced the Defendant on March 17, 2006. He filed a Notice of Appeal on April 13, 2006. The Superior Court affirmed his sentence

on February 19, 2008. The Defendant did not file a Petition for Allowance of Appeal with the Pennsylvania Supreme Court, so his sentence became final on May 19, 2008. Thus, this PCRA is well past the one-year time requirement of § 9545(b). Defendant therefore must adequately plead and prove the after-discovered evidence exception to overcome his untimely PCRA.

In order to prevail on an untimely PCRA under the after-discovered evidence exception, a petitioner must demonstrate that the evidence: “(1) has been discovered after the trial and could not have been obtained prior to the conclusion of the trial by the exercise of reasonable diligence; (2) is not merely corroborative or cumulative; (3) will not be used solely for impeachment purposes; and (4) is of such a nature and character that a different verdict will likely result if a new trial is granted.” *Commonwealth v. Johnson*, 841 A.2d 136, 140-41 (Pa. Super. 2003). The test is conjunctive and the petitioner must show by a preponderance of the evidence that each factor has been satisfied in order for the court to grant a new trial. *Commonwealth v. Foreman*, 55 A.3d 532, 537 (Pa. Super. 2012). Even though Defendant has invoked the after-discovered evidence exception, he still must prove, in accordance with § 9545(b)(2), that he filed his PCRA within sixty (60) days of the date his claim could have first been presented. *Commonwealth v. Bretz*, 830 A.2d 1273, 1275-76 (Pa. Super. 2003).

On its face, we must question the timeliness of Defendant’s PCRA. First, defense counsel pleads no dates in any of the amended PCRA’s regarding when the new statements from K.H. came about. At the June 16, 2015 hearing, the Defendant and his counsel gave conflicting testimony regarding the exact date they became aware of K.H.’s statements. The Defendant first testified he did not know the exact date of the alleged exculpatory statements. (PCRA Hr’g Tr. 29, June 16, 2015). He then stated he became aware of the statements when his mother wrote him a letter in March of 2014. *Id.* at 30. The letter is not attached to either his September 18, 2014 PCRA or the already dismissed June 30, 2014 PCRA, despite Defendant’s contention that he included the letter with one of his PCRA’s. *Id.* at 30-31. The Defendant also did not present this letter as evidence at the June 16th PCRA hearing.

Next, Defendant’s testimony regarding the date of discovery was contrary to that of his own counsel. Attorney Natale first proffered to the Court, “We would have received [K.H.’s statements] originally in 2013. I was trying to investigate it so that I could determine that there was merit to it. As soon as I discovered it had merit, I filed my petition.” *Id.* at 23. Mr. Natale then repeated this assertion when he testified as a witness at the hearing, stating, “At that time in October 2013, it was the first message that he...that I received in regards to the potential of these statements made by [K.H.]” *Id.* at 39. If the Court is to believe Mr. Natale, a 2013 discovery date certainly puts the Defendant well outside the 60 days required to bring an after-discovered evidence claim. If the Defendant discovered the statements in March 2014, as he claims, his timing is problematic because he did not file this PCRA until September 2014, which again is beyond the 60-day requirement. Giving the Defendant the benefit of the doubt, if he discovered this new evidence on March 31, 2014, even his already dismissed June 30, 2014 PCRA would be untimely, as it would not have been filed until ninety-one days after the discovery date. Thus, the Court finds the Defendant’s current PCRA is indeed untimely.

Even if we were to consider Defendant's after-discovered evidence claim as timely, it still is not persuasive after-discovered evidence because it fails the four-part test. See Johnson, *supra*. At the December 17, 2014 hearing before Judge Vernon, K.H. gave the following testimony:

"Because it was like doctor's orders because I remember like about my constipation that doctors wanted to do surgery or something on me but they said that I was too small, and [they] said that they would have to do something else to help me. And they said that...like [the Defendant] had to like help me clean myself or whatever. He asked one of the other people in the house but they didn't want to do it... because they didn't want to do it, but no one else would so we just did it, and it got...and I thought that he was like hurting me because I was like screaming and everything, and they came in and called the cops on him. I know he was just trying to help me. I was only like six, so I didn't really understand then."

(PCRA Hr'g Tr., 28-29, Dec. 17, 2014).

At the June 15, 2015 hearing, the defense questioned K.H. further on her medical condition at the time of the incident:

Q. "Was there any reason why your dad was helping you?"

A. Yes, because I was constipated.

Q. You were constipated.

A. Nothing else, no medicine...the medicine wasn't helping me, and I was in a lot of pain.

Q. And why did he stick his finger up your butt?"

A. The doctors told him to. They were supposed to put something up my butt, but they didn't have anything. He asked like the girls in the house, but they wouldn't do it."

(PCRA Hr'g Tr. 14, June 16, 2015).

The Defendant now contends that this testimony is proof he was only providing medical assistance to K.H., and that the testimony would have changed the outcome of the trial. However, the Defendant presented this very same defense at trial. At trial, the Defendant's mother, Anna Halloran, testified on his behalf. She explained that K.H. had constipation, and that the Defendant was the one who would insert suppositories into her anus. (Trial Tr. 213-215, Oct. 7, 2005). At the outset, we fail to see how the new K.H. testimony is "not merely corroborative or cumulative" of the defense already presented at trial, given the very same defense is again being presented to this Court as was presented at trial. Johnson, 841 A.2d at 141. The jury did not believe this defense, given they found Defendant guilty of Statutory Sexual Assault, Aggravated Indecent Assault, Indecent Assault, and Simple Assault. This fact presents a problem for the Defendant, as we are not easily persuaded that the very same defense would bring about a new trial verdict. See *id.* Therefore, the Defendant's claim is suspect under the cumulative testimony and different verdict prongs of the four-part conjunctive test.

The Court does recognize that instead of the Defendant's mother offering the exculpatory testimony, the victim, K.H., is now testifying to a medical defense. However, we must still evaluate whether recanted victim testimony would compel a different verdict. The Pennsylvania Supreme Court has held that it is the PCRA court's duty in after-discovered evidence cases "to make credibility determinations on the recantation testimony with an eye to the relevant prejudice standard." *Commonwealth v. (Raymond) Johnson*, 966 A.2d 523, 541 (Pa. 2009). The Supreme Court has outlined the standard of review more specifically as follows:

In assessing credibility on remand...the question for the PCRA court is not whether the jury in fact would have credited appellee's new evidence and his recast alibi evidence. Instead, the question is whether the nature and quality of the evidence is such that there is a reasonable probability that the jury would have credited it and rendered a more favorable verdict. That assessment must include a recognition of the impeachability of the witnesses, and not merely a viewing of their testimony in a most favorable light. Some witnesses may display a demeanor, or be subject to such strong impeachment...that the court is convinced that no reasonable jury would believe them. On the other hand, some witnesses may conduct themselves, or be of such repute, that the PCRA judge has substantial confidence that a jury would credit them.

Id. at 542 (citations omitted).

In this case, K.H. was diagnosed as being developmentally delayed and suffering from a form of autism. (Trial Tr. 194). At the December 17th PCRA hearing, counsel struggled at times to get her to comprehend and answer questions directly. She did not initially understand questions asked of her by defense counsel. (PCRA Hr'g Tr. 15-16, Dec. 17, 2014). Judge Vernon then elicited some testimony to ascertain K.H.'s competence to testify, and found her competent. *Id.* at 16-23. When then questioned about how the Defendant touched her, she said several times, "I don't want to answer this question." *Id.* at 26-27. When the Assistant District Attorney asked K.H. about conversations with her grandmother, Anna Halloran, the following exchange took place:

Q. "You lived with your grandmother?"

A. Yeah, until they were done with the investigation.

Q. And do you remember if she asked you questions?

A. A little...my grandma?

Q. Yes.

A. Yeah, she asked me some questions like, what did he do and everything.

Q. I'm talking about after he was convicted?

A. Oh yeah, a few things.

Q. What did she ask you?

A. She asked me like what did he do to me, and like how he did it.

Q. Did she tell you that he was just helping you?

A. Yeah...that and the doctor.”

Id. at 30.

At the June 16th PCRA hearing, although still competent to testify, K.H. herself acknowledged that she has developmental delays. (PCRA Hr’g Tr. 20, June 16, 2015). Significantly, K.H. testified that she did not remember the Defendant licking her, but understood she did testify to that fact before the jury at trial. Id. at 13. The District Attorney then asked her, “And you don’t have any reason to believe that it didn’t happen at this point, do you?” and K.H. responded, “No.” Id.

In reviewing the testimony from both PCRA hearings, the Court is not convinced that K.H.’s recent statements would cause a jury to render a more favorable verdict for Defendant. Primarily, we are not convinced the testimony even qualifies as recanted testimony. As already noted, K.H. has developmental learning issues. She is still a minor, and demonstrated at times during the PCRA hearings, an unwillingness to testify again in this matter or to answer certain questions. Therefore, by the Court’s observation, her demeanor was not that of a witness who resolutely denounced her trial testimony and wanted to now tell an entirely different story. In fact, K.H. did not recant important trial testimony at all. She stated that she had no reason to believe that what she testified to at trial did not happen. Id. Moreover, as a minor with a learning disability, the Court cannot disregard that K.H.’s new testimony appears to be predicated upon at least some outside influence from her grandmother, who is also Defendant’s mother and was a defense witness at trial. At the December 17th hearing, K.H. confirmed that her grandmother told her that the Defendant was purportedly helping her with suppositories. (PCRA Hr’g Tr. 30, Dec. 17, 2014). We cannot find K.H.’s new statements entirely credible, given she testified to sexual abuse by the Defendant at trial in 2005, eight to nine years later spoke to her grandmother about her recollection of events, and now testifies to the same exact defense testimony her grandmother gave at trial, a defense the jury already rejected. In giving consideration to K.H.’s minor status, her learning disability, the very noticeable differences between her trial testimony and her testimony at the PCRA hearings, and her demeanor during the PCRA hearings as a fairly hesitant recanting witness, the Court is not convinced a reasonable jury would find her testimony compelling enough to render a different verdict. Thus, the Defendant’s after-discovered evidence claim must fail.

Mandatory Minimum Sentence

Next, the Defendant claims that since *Commonwealth v. Wolfe*, 106 A.3d 800 (Pa. Super. 2014) held mandatory sentencing under 42 Pa.C.S.A. § 9718 to be unconstitutional, this Court should find that the Defendant received an illegal mandatory minimum and resentence him. (Def.’s 3rd Am. PCRA ¶¶ 30-36). In this case, the Defendant’s

sentence for Aggravated Indecent Assault of a Person Less Than 13 Years of Age {4} was, “not less than sixty (60) months nor more than two hundred forty (240) months,” which equates to a minimum of five (5) years on this count. (Sentence Order ¶ 4, Mar. 17, 2006). The applicable sentencing requirements of § 9718 are as follows:

(a) Mandatory sentence.--

(2) A person convicted of the following offenses when the victim is less than 13 years of age shall be sentenced to a mandatory term of imprisonment as follows:

18 Pa.C.S. § 3125(a)(7)--not less than five years.

42 Pa.C.S.A. § 9718, held unconstitutional by *Commonwealth v. Wolfe*, 106 A.3d 800 (Pa. Super. 2014).

Here, Defendant was found guilty of the offense in § 3125(a)(7) and sentenced to at least five years on that count by Judge Warman{5}. As with Defendant’s after-discovered evidence issue, the fact that he filed an untimely PCRA also renders his mandatory minimum claim invalid. A “well-established” exception on appeal is that “challenges to the legality of the sentence are never waived.” *Commonwealth v. Berry*, 877 A.2d 479, 482 (Pa. Super. 2005). A court may consider a challenge of an illegal sentence as long that court has jurisdiction to hear the claim. *Id.* In terms of a PCRA, jurisdiction means the filing of a timely PCRA. See *Commonwealth v. Voss*, 838 A.2d 795, 800 (Pa. Super. 2003) (holding appellant’s PCRA must be denied because it was both untimely and failed to allege that any of the exceptions to the timeliness requirement applied) {6}. Thus, even though the Court may give consideration to Defendant’s illegal sentence claim, we have no jurisdiction to rule upon the claim where the PCRA is untimely filed.

{4} 18 Pa.C.S.A. § 3125(a)(7).

{5} In reviewing the record, there is no indication that Judge Warman imposed a mandatory minimum sentence. Judge Warman did not specify he was sentencing as a mandatory. In fact, he stated his reasoning for the departure of the sentence in the aggravated range. (*Megan’s Law and Sentence Tr.* 25-26, Mar. 17, 2006). Additionally, we are not aware of any notice of intention to seek a mandatory sentence filed by the Commonwealth in this case, as it was never discussed at sentencing. A challenge to the discretionary aspects of sentencing must be raised in a post-sentence motion or by presenting the claim to the trial court at sentencing; if not so raised, an objection to a discretionary aspect of sentence is waived. *Commonwealth v. Shugars*, 895 A.2d 1270, 1273-74 (Pa. Super. 2006). The Defendant did not do either here, and therefore, his sentencing claim should be considered waived for purposes of his PCRA pursuant to 42 Pa.C.S.A. § 9543(a)(3).

{6} Voss adopted the reasoning of the PA Supreme Court that while “legality of sentence is always subject to review within the PCRA, claims must still satisfy the PCRA’s time limits or one of the exceptions thereto.” 838 A.2d at 800 (emphasis added) (quoting *Commonwealth v. Fahy*, 737 A.2d 214, 223 (Pa. 1999)).

As the Court has addressed in the aforementioned discussion, the Defendant has not adequately proven the after-discovered evidence exception to save his untimely PCRA, which he filed long after the one-year requisite from when the judgment of sentence became final on May 19, 2008. Similarly, we are without authority to find a retroactive new constitutional right exception under 42 Pa.C.S.A. § 9545(b)(1)(iii) in order to re-sentence the Defendant. In deciding Wolfe, the Superior Court based its findings predominantly upon the U.S. Supreme Court’s decision in Alleyne v. United States, 133 S. Ct. 2151 (2013), which held that because mandatory minimum sentences increase criminal penalties, any fact that increases the mandatory minimum is an “element” that must be submitted to the jury. Alleyne, 133 S. Ct. at 2153. A new constitutional right under § 9545(b)(1)(iii) is applied retroactively to cases on collateral review only if the U.S. Supreme Court or the Pennsylvania Supreme Court specifically holds it to be retroactively applicable. Commonwealth v. Miller, 102 A.3d 988, 995 (Pa. Super. 2014). Presently, neither Supreme Court has held that Alleyne, and by extension its Pennsylvania progeny such as Wolfe, applies retroactively to cases in which the judgment of sentence has become final. Miller, 102 A.3d at 995. Because the Defendant does not raise a proper exception to the PCRA statute, his claim is time-barred.

For the aforementioned reasons, the Court cannot find that the Defendant is entitled to any PCRA relief on the claims he has presented.

WHEREFORE, the Court enters the following ORDER:

ORDER

AND NOW, this 12th day of August, 2015, upon consideration of Defendant’s PCRA, it is hereby ORDERED and DECREED that said Petition is DENIED and DISMISSED WITH PREJUDICE.

BY THE COURT:
STEVE P. LESKINEN, JUDGE

ATTEST:
CLERK OF COURTS

CONTINUING LEGAL EDUCATION**"Truancy Summit"
September 22, 2015**

Judge Nancy D. Vernon and Judge Linda R. Cordaro are hosting a TRUANCY SUMMIT on Tuesday, September 22, 2015 at Mallard's Landing at Duck Hollow 374 Duck Hollow Road, Uniontown, PA 9:00 a.m. to 12:30 p.m.

They welcome you to attend this presentation by Cynthia K. Stoltz, Esquire, Administrator of the Children's Court for the Fifth Judicial District of Pennsylvania, and a panel discussion among local judicial officers and service providers who are involved in addressing the issue of truancy and our local youth.

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