

SUPERIOR COURT OF PENNSYLVANIA

Commonwealth v. Davey

2025 Pa. Super. 220 · No. 49 EDA 2025 · Decided September 29, 2025

SUMMARY

The Pennsylvania Superior Court affirmed the denial of Allen Lee Davey’s amended PCRA petition. The court held that the petition presented cognizable legality-of-sentence claims, rather than merely discretionary sentencing claims, but concluded that the sentence was lawful because Davey admitted the victim’s age by pleading guilty to involuntary deviate sexual intercourse with a child. The court also held that the statutory maximum of 40 years under 18 Pa.C.S. § 3123(d) could be imposed following the guilty plea.

CASE DETAILS

COURT	Superior Court of Pennsylvania
WRITING FOR THE COURT	Dubow, J.; Panella, P.J.E.; Bender, P.J.E.
JURISDICTION	Pennsylvania Superior Court
DECIDED	September 29, 2025
DOCKET	49 EDA 2025
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the order of the Monroe County Court of Common Pleas denying Davey's amended petition under the Post Conviction Relief Act.
STANDARD OF REVIEW	The Superior Court reviews an order denying or dismissing a PCRA petition to determine whether the PCRA court's findings are supported by the record and free from legal error, and reviews the PCRA court's legal conclusions de novo.
PRECEDENTIAL VALUE	Published and precedential opinion of the Superior Court of Pennsylvania.
PARTIES	Allen Lee Davey v. Commonwealth of Pennsylvania

TOPICS

- state post-conviction relief
- post-conviction relief
- sentencing
- ineffective assistance
- due process

PRACTICE AREAS

Pennsylvania post-conviction relief

criminal sentencing

criminal procedure

constitutional criminal law

QUESTIONS PRESENTED

1. Whether Davey waived his claim that PCRA counsel was ineffective by failing to raise that claim in the PCRA court when he had an opportunity to assert it in an amended petition.
2. Whether the PCRA court erred in treating Davey's claims as challenges to the discretionary aspects of his sentence rather than challenges to the legality of his sentence.
3. Whether the victim's age under 18 Pa.C.S. § 3123(b) had to be found by a jury beyond a reasonable doubt before the court could impose the forty-year statutory maximum under § 3123(d)(1), despite Davey's guilty plea.
4. Whether the trial court had authority to impose a maximum sentence of forty years under § 3123(d)(1) after Davey pleaded guilty to violating § 3123(b).

HOLDINGS

1. Davey waived his claim of ineffective assistance of PCRA counsel because, after counsel filed the Turner/Finley letter, the PCRA court gave him an opportunity to file an amended petition, but he did not assert PCRA counsel's ineffectiveness there.
2. Davey's claims challenged the legality of his sentence and therefore were cognizable under the PCRA; the PCRA court erred as a matter of law by characterizing them as challenges to the discretionary aspects of sentencing.
3. The trial court had authority to impose a statutory maximum sentence of forty years after Davey pleaded guilty to IDSI with a complainant under thirteen because the guilty plea admitted the victim's age, and no authority required a jury to find that fact before the court could impose the statutory maximum.

KEY QUOTATIONS

“Following our review of the issues raised by Appellant in his pro se PCRA petition and amended petition, we find, that contrary to the representations of PCRA counsel and the findings of the PCRA court, Appellant’s claims, as set forth in detail above, raise challenges to the legality of his sentence.” (at 10)

“Accordingly, we conclude that the trial court had the authority to impose the Section 3123(d) statutory maximum sentence of 40 years of incarceration following Appellant’s guilty plea to IDSI—Complainant Less than 13 Years of Age.” (at 13)

FACTUAL BACKGROUND

Davey pleaded guilty to one count of involuntary deviate sexual intercourse with a child under thirteen, based on conduct occurring between August 8, 2011, and August 6, 2016. The plea colloquy stated that the victim was under thirteen and that the offense carried a possible maximum sentence of forty years. The trial court imposed a standard-range sentence of 15 to 40 years and designated Davey a sexually violent predator.

PROCEDURAL HISTORY

Davey pleaded guilty to involuntary deviate sexual intercourse with a child under thirteen and received a sentence of 15 to 40 years' incarceration. After the Superior Court affirmed his judgment of sentence and the Pennsylvania Supreme Court denied allowance of appeal, Davey filed a pro se PCRA petition. PCRA counsel sought withdrawal under Turner/Finley, and the PCRA court initially denied relief; after granting Davey's request to reinstate his Rule 907 rights, the court permitted an amended petition and again denied relief on December 9, 2024. The Superior Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Davey, 299 A.3d 933 (Pa. Super. 2023) (non-precedential decision)
- Commonwealth v. Davey, 306 A.3d 248 (Pa. 2023)
- Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988)
- Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988) (en banc)
- Commonwealth v. Miller, 80 A.3d 806, 811 (Pa. Super. 2013)
- Commonwealth v. Bradley, 261 A.3d 381, 401 (Pa. 2021)
- Commonwealth v. Parrish, 273 A.3d 989, 1003 (Pa. 2022)
- Commonwealth v. Howard, 285 A.3d 652, 657 (Pa. Super. 2022)
- Commonwealth v. Wholaver, 177 A.3d 136, 144-45 (Pa. Super. 2018)
- Commonwealth v. Foster, 17 A.3d 332, 336 (Pa. Super. 2011)
- Commonwealth v. Beck, 848 A.2d 987, 989 (Pa. Super. 2004)
- Commonwealth v. Fennell, 105 A.3d 13 (Pa. Super. 2014)
- Commonwealth v. Kearns, 907 A.2d 649, 655 (Pa. Super. 2006)
- Apprendi v. New Jersey, 530 U.S. 466 (2000)
- In re Jacobs, 15 A.3d 509 n.1 (Pa. Super. 2011)

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