

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CP-41-CR-0000924-1997</b>
<b>v.</b>	:	<b>CP-41-CR-0000970-1997</b>
	:	
<b>BARRY KOCH,</b>	:	<b>PCRA SECOND</b>
<b>Defendant</b>	:	
	:	

**OPINION AND ORDER**

On December 7, 2016, Defendant filed a petition for relief under the Post-Conviction Relief Act (PCRA).<sup>1</sup> Counsel was not appointed as this is Defendant's second PCRA petition. The Court finds that an evidentiary hearing is not required.<sup>2</sup> In the petition, Defendant contends that he is entitled to relief because

1. His attorney failed to advise him of all of his rights and talked him into a plea of no contest.
2. Psychologist Sharon Silberman did not interview him.
3. His 14th Amendment rights were violated.
4. DNA was not taken from himself or the victim.
5. He was not checked for bite marks or scratches.
6. His 4th Amendment rights and Article 1 Section 8 rights were violated.

**Procedural History**

Defendant's First Petition for Post Conviction Relief was denied by The Honorable Kenneth Brown. The Superior Court of Pennsylvania in an unpublished

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<sup>1</sup> 42 Pa.C.S. § 9541 *et seq.*

<sup>2</sup> (D) On a second or subsequent petition, when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, and an evidentiary hearing is required as provided in Rule 908, the judge shall appoint counsel to represent the defendant. Pa. R. Crim. P. 904 (entry of appearance and appointment of counsel; *in forma pauperis*).

memorandum opinion filed November 18, 2004, affirmed Judge Brown's decision.<sup>3</sup>

## Discussion

"[T]he timeliness of a PCRA petition is a jurisdictional requisite." COMMONWEALTH V. BROWN, 111 A.3D 171, 175 (PA. SUPER. 2015). Any petition under [the PCRA] . . . 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.

42 Pa.C.S. § 9545(b)(1).

Moreover, to qualify under the time bar exception, Petitioner must file within sixty (60) days of when the claim could be presented (Id.) and it is the Petitioner's duty to plead in the petition and prove that one of the exceptions applies. COMMONWEALTH V. BEASLEY, 741 A.2D 1258, 1261 (PA. 1999).

Defendant initially appealed his sentence to the Superior Court and was successful; the Superior Court having found Megan Law's I unconstitutional. He was re-sentenced on November 29, 1999; but a clerical error was found in the sentencing order, and an amended sentencing order was issued on December 7, 2000. Defendant did appeal the amended sentencing order; however, his appeal was

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<sup>3</sup> No. 1556 MDA 2003.

quashed by the Superior Court on November 30, 2001, due to late filing<sup>4</sup>. No appeal was taken from this action of the Superior Court and as such at the very latest, Defendant's order of sentence became final on December 31, 2001. In the current PCRA petition, he has failed to acknowledge the untimeliness of his request nor do any of his allegations appear to be new in nature or meet the requirements of the time bar exception and as such the Court has no jurisdiction to hear this Petition and must deny it.

### **Conclusion**

After conducting an independent review, this Court finds that the Defendant's petition is untimely. In addition, he has not proven an exception to the PCRA time-bar. Therefore, this Court does not have jurisdiction over the petition.

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<sup>4</sup> No. 423 MDA 2001.

**ORDER**

**AND NOW**, this 28th day of February 2017, it hereby ORDERED and DIRECTED as follows:

The Defendant is notified that this Court intends to dismiss the Defendant's PCRA petition because it is untimely. The Court will dismiss the Defendant's petition unless the Defendant files an objection to that dismissal within twenty (20) days of date of this Order.

BY THE COURT,

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Nancy L. Butts, P.J.

cc: District Attorney  
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