

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	CP-41-CR-0001477-1994
vs.	:	
	:	
CHARLES SATTERFIELD,	:	PCRA FIFTH
Defendant	:	

**OPINION AND ORDER**

On August 21, 2017, Defendant filed a “Motion to Modify Sentence Pursuant to 557 U.S. \_\_\_\_ & 774 A.2 1280”. The Court treats the Motion as a Petition for Post-Conviction Relief. Commonwealth v. Johnson, 803 A.2d 1291, 1293 (Pa. Super. 2002) (“We have repeatedly held that the PCRA provides the sole means for obtaining collateral review, and that any petition filed after the judgment of sentence becomes final will be treated as a PCRA petition.”)

***Background***

After a jury trial, Defendant was found guilty of two counts of Rape<sup>1</sup>, both felonies of the first degree; one count of Aggravated Assault<sup>2</sup>, a felony of the first degree; one count of Simple Assault<sup>3</sup>, a misdemeanor of the second degree; one count of Terroristic threats<sup>4</sup>, a misdemeanor of the first degree; one count of Unlawful Restraint<sup>5</sup>, a misdemeanor of the first degree; one count of Possessing Instruments of Crime<sup>6</sup>, a misdemeanor of the first degree; and two counts of Kidnapping<sup>7</sup>, both felonies of the first degree. The offense date was September 10, 1994.

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1 18 Pa.C.S. § 3121(a)(1) and 18 Pa.C.S. § 3121(a)(2).

2 18 Pa.C.S. § 2702(a)(2).

3 18 Pa.C.S. § 2701(a)(1).

4 18 Pa.C.S. § 2706.

5 18 Pa.C.S. § 902(1).

6 18 Pa.C.S. § 907(a).

7 18 Pa.C.S. § 2901(a)(2) and 18 Pa.C.S. § 2901(a)(3).

The Honorable Clinton W. Smith sentenced Defendant to a State Correctional Institution for a minimum of a ten (10) years and a maximum of thirty (30) years. Defendant filed a direct appeal and the Judgment of Sentence was affirmed by the Superior Court of Pennsylvania. At the time of Defendant's sentence, Defendant had no registration requirements as no law had been enacted in the Commonwealth of Pennsylvania that would have required him to register. Pennsylvania's Sex Offender Registration and Notification Act (SORNA)<sup>8</sup> (2011, Dec. 20, P.L. 446, No. 111, § 12, effective in one year [Dec. 20, 2012]) has a retroactivity provision that applies to Defendant. SORNA requires individuals to register with the Pennsylvania State Police (PSP) and includes Defendant, who is serving a sentence in a state correctional institution for a sexually violent offense specified in section 9799.14 (relating to sexual offenses and tier system) after the effective date of SORNA. 42 Pa.C.S. § 9799.13(2) (applicability). Rape is a Tier III sexual offense. 42 Pa.C.S. § 9799.14 (sexual offenses and tier system).

Defendant filed his first Petition for Post-Conviction Relief on May 4, 1998. After an evidentiary hearing, the Petition was denied. Subsequent petitions were filed on November 2, 1999, March 16, 2004, May 4, 2011, and all were denied. The current petition was filed August 21, 2017.

### ***Discussion***

The first determination the PCRA Court must make in considering a Petition for Post-Conviction Relief is whether the Court has jurisdiction to consider the petition.

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<sup>8</sup> 42 Pa.C.S. §§9799.10-9799.41.

Defendants have one year from the date their judgment of sentence became final in order to file a petition for post-conviction relief. 42 Pa.C.S. § 9545(b)(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”). The judgment of the Superior Court affirming the Defendant’s sentence was docketed in this Court on October 7, 1996 and there is no record of a petition for allowance of appeal being filed with the Supreme Court, such that Defendant’s Judgment of Sentence became final on November 6, 1997. Defendant’s current petition filed August 21, 2017, almost twenty years after his Judgment of Sentence became final is patently untimely. Defendant must plead and prove one of the exceptions to the timeliness requirement in order for the Court to have jurisdiction to consider his request:

***(b) Time for filing petition.***

(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.

(3) For purposes of this subchapter, a judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.

(4) For purposes of this subchapter, “government officials” shall not include defense counsel, whether appointed or retained.

42 Pa.C.S. § 9545 (Jurisdiction and proceedings).

The Court finds that the Defendant does not meet any of the exceptions to the timeliness requirement because the constitutional right Defendant’s asserts was not held by the Supreme Court of Pennsylvania to be applied retroactively. Though Defendant did file Motion to Modify Sentence within 60 days of the date of the Commonwealth v. Muniz, 164 A.3d 1189, 1223 (Pa. July 19, 2017), which held that the registration provisions of SORNA are punitive in nature and a retroactive application violates the federal *ex post facto* clause, U.S. Const. art. I, §10, and the *ex post facto* clause of the Pennsylvania Constitution, Pa. Const. art. I, §17, the Muniz opinion did not hold that its decision would apply retroactively. Therefore, the Court finds that the Defendant’s Petition is untimely and the Court has no jurisdiction to consider it within the confines of the Post Conviction Relief Act.

Defendant argues that the sentence he is servicing is illegal and that the Court never relinquishes jurisdiction to correct an illegal sentence citing Commonwealth v. Vasquez, 744 A.2d. 1280, 1284 (Pa. 2000). In Commonwealth v. Holmes, 933 A.2d 57, 65 (Pa. 2007) the question presented was regarding the power of courts to correct allegedly illegal sentencing orders absent jurisdiction pursuant to 42 Pa.C.S. 5505 or the PCRA. The Holmes Court held that the limits of jurisdiction enshrined in Section 5505 do not impinge on that time-honored inherent power of courts; however, if the error is not a patent error, the Court cannot correct it without first having jurisdiction (“Although the defendants before this court warrant relief under the inherent power of courts to correct patent errors, we must also emphasize the limits of this power. This

exception to the general rule of Section 5505 cannot expand to swallow the rule. In applying the exception to the cases at bar, we note that it is the obviousness of the illegality, the illegality itself, that triggers the court's inherent power. Not all illegal sentences will be amenable to correction as patent errors.”) Holmes at 67.

The Court does not find that there is a patent error in Defendant’s Judgment of Sentence that would allow the Court’s to modify the sentence where the Court does not have jurisdiction. The Court does not believe that the Defendant’s request is amenable to PCRA relief because the Supreme Court of Pennsylvania did not explicitly say its decision in Muniz was to be applied retroactively.

This ruling is limited to the timeliness of this PCRA petition and is without prejudice to other types of actions or proceeding for relief from SORNA registration requirements, if any.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of October, 2017, it hereby ORDERED and DIRECTED as follows:

1. The Defendant is notified that this Court intends to dismiss the Defendant's PCRA petition styled as "Motion to Modify Sentence Pursuant to 557 U.S. \_\_\_\_\_ 2016 & 774 A.2d 1280". The Court will dismiss the Defendant's petitions unless the Defendant files an objection to that dismissal within twenty (20) days of date of this Order.
2. This Order is limited to the timeliness of this PCRA petition and is without prejudice to other types of actions or proceeding for relief from SORNA registration requirements, if any.

By the Court,

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Nancy L. Butts, President Judge

cc: Kenneth Osokow, Esquire (First ADA)  
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