

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1728-2011
 :
 JEREMIAH STYERS, : Notice of Intent to Dismiss PCRA Petition
 Defendant : Without Holding an Evidentiary Hearing

OPINION AND ORDER

This matter came before the court on March 6, 2018, for a conference on Defendant’s Petition for Post-Conviction Relief (hereinafter “PCRA petition”).

By way of background, on November 2, 2011, Trooper Matthew Sweet of the Pennsylvania State Police filed a criminal complaint against Defendant, charging him with statutory sexual assault,¹ corruption of minors,² and indecent assault of a person less than 16 years of age.³ The crimes allegedly occurred between late August 2011 and the end of September 2011, and related to Defendant having a sexual relationship with a fourteen year old female child.

On January 3, 2012, Defendant pled guilty to corruption of minors (sexual offenses), a felony of the third degree. The court sentenced Defendant to incarceration in a state correctional institution for one to two years, followed by two years of probation under the supervision of the Pennsylvania Board of Probation and Parole.

On December 20, 2011, Pennsylvania’s Sexual Offender Registration and

¹ 18 Pa. C.S. §3122.1.

² 18 Pa. C.S. §6301(a)(1)(ii).

³ 18 Pa. C.S. §3126(a)(8).

Notification Act (SORNA) was enacted, but it did not become effective until December 20, 2012. Pursuant to SORNA, individuals who were convicted of corruption of minors before December 20, 2012, but were still serving a sentence of incarceration, parole, probation or intermediate punishment on or after December 20, 2012, were required to register with the Pennsylvania State Police (PSP) for a period of 15 years. 42 Pa. C.S. §§ 9799.13(2), 9799.14(b)(8), 9799.15(a)(1). Prior to the passage of SORNA, Pennsylvania law did not impose sexual offender registration requirements upon an individual convicted of corruption of minors.

On July 19, 2017, the Pennsylvania Supreme Court issued its decision in *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017). In *Muniz*, the Court held that SORNA's registration requirements constituted punishment, and retroactive application of those registration requirements violated the *ex post facto* clauses of the United States and Pennsylvania Constitutions. *Id.* at 1218.

On November 14, 2017, the Pennsylvania Superior Court issued its decision in *Commonwealth v. Rivera-Figueroa*, 174 A.3d 674 (Pa. Super. 2017). In *Rivera-Figueroa*, which involved a timely PCRA petition, the Superior Court held that “*Muniz* created a substantive rule that retroactively applies in the collateral context.” *Id.* at 678.

On January 25, 2018, Defendant filed a PCRA petition seeking removal of any sexual offender registration requirements.

The court finds that it lacks jurisdiction to grant any relief to Defendant in this case, as Defendant's PCRA petition is untimely.

Section 9545(b) of the Judicial Code, which contains the time limits for filing a PCRA petition, states:

(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.A. §9545(b). The time limits of the PCRA are jurisdictional in nature.

Commonwealth v. Howard, 567 Pa. 481, 485, 788 A.2d 351, 353 (Pa. 2002); *Commonwealth v. Brensinger*, 2018 PA Super 48 (March 5, 2018); *Commonwealth v. Palmer*, 814 A.2d 700, 704-05 (Pa.Super. 2002). “[W]hen a PCRA petition is not filed within one year of the expiration of direct review, or not eligible for one of the three limited exceptions, or entitled to one of the exceptions, but not filed within 60 days of the date that the claim could have been first brought, the trial court has no power to address the substantive merits of a

petitioner's PCRA claims." *Commonwealth v Gamboa-Taylor*, 562 Pa. 70, 77, 753 A.2d 780, 783 (Pa. 2000).

The court sentenced Defendant on January 3, 2012. Defendant did not file any post-sentence motions. Defendant had thirty days within which to file an appeal. Pa. R. App. R. 903. Defendant, however, did not file any appeal. Therefore, Defendant's judgment of sentence became final on February 2, 2013.

To be considered timely, Defendant had to file his PCRA petition on or before February 2, 2013, or allege facts in his petition to demonstrate one of the statutory exceptions. Defendant did not file his petition until January 25, 2018.

Defendant recognizes that his petition is facially untimely, but he asserts that he is not time barred because he requested assistance from counsel to file a PCRA petition within sixty days of the Superior Court's decision in *Rivera-Figueroa*, which recognized the retroactive application of *Muniz* in the PCRA context. The court cannot agree.

Defendant's reliance on *Muniz* and *Rivera-Figueroa* cannot satisfy the "new retroactive right" exception of section 9545(b)(1)(iii) for several reasons. First, the Pennsylvania Supreme Court has not held that *Muniz* applies retroactively. As the Pennsylvania Superior Court recently stated in *Commonwealth v. Murphy*:

[B]ecause Appellant's PCRA petition is untimely (unlike the petition at issue in *Rivera-Figueroa*), he must demonstrate that the **Pennsylvania Supreme Court** has held that *Muniz* applies retroactively in order to satisfy section 9545(b)(1)(iii). Because at this time, no such holding has been issued by our Supreme Court, Appellant cannot rely on *Muniz* to meet that timeliness exception.

2018 PA Super 35, 2018 Pa. Super. LEXIS 142, *7 (Feb. 20, 2018)(emphasis

original)(citation omitted).

Second, Defendant did not file his petition within 60 days of the *Muniz* decision. Any petition invoking one of the exceptions in section 9545(b)(1) must be filed within 60 days of the date the claim could have been presented. 42 Pa. C.S. §9545(b)(2). *Muniz* was decided on July 19, 2017. To be considered timely under section 9545(b)(1)(iii), Defendant's petition would have had to have been filed by September 18, 2017.⁴ Defendant's petition was filed on January 25, 2018, more than 60 days thereafter.

Third, although *Rivera-Figueroa* held *Muniz* to apply retroactively, it was not a decision by the Pennsylvania Supreme Court.

Fourth, *Rivera-Figueroa* is distinguishable in that the PCRA petition in that case was timely filed. Instead, the court is bound to follow the Pennsylvania Superior Court's recent decision in *Murphy*, supra.

Fifth, even assuming for the sake of argument, that the *Rivera-Figueroa* decision applied to this case and satisfied the exception in section 9545(b)(1)(iii), Defendant did not file his petition within 60 days of the date this claim could have been presented. *Rivera-Figueroa* was decided on November 14, 2017. Any petition relying on that decision

⁴ The sixtieth day would have been Sunday, September 17, 2017. However, when the last day falls on a Saturday, a Sunday, or a legal holiday, it is omitted from the computation. 1 Pa. C.S. §1908. Therefore, if our Supreme Court had held *Muniz* to apply retroactively, the final day for Defendant to file a timely petition based on *Muniz* would have been Monday, September 18, 2017.

would have had to have been filed by Tuesday, January 16, 2018.⁵ Contrary to Defendant's assertions in his petition, the controlling date is the date the petition is filed, not the date that Defendant sought assistance from the Lycoming County Public Defender's Office.

For the foregoing reasons, the court finds that Defendant's PCRA petition is untimely. Therefore, the court lacks jurisdiction to grant him any relief.

ORDER

AND NOW, this ___ day of March 2018, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that no purpose would be served by holding an evidentiary hearing. The parties are hereby notified of this court's intention to dismiss Defendant's PCRA petition without holding an evidentiary hearing. Defendant may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the court will enter an order dismissing the petition.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
William Miele, Esquire (PD)
Jeremiah Styers, c/o Lycoming County Prison
Work File
Gary Weber, Esquire, Lycoming Reporter

⁵The sixtieth day would have been Saturday, January 13, 2018. That date, as well as Sunday, January 14, 2018, and Monday, January 15, 2018, which was the Martin Luther King, Jr. legal holiday, would be omitted from the calculation.