

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**PAUL EUGENE WHITEMAN,
Defendant**

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CP-41-CR-0000297-2012

PCRA

OPINION AND ORDER

Background

On June 11, 2015, Defendant's sentence of State Intermediate Punishment for the above captioned docket number was revoked and Defendant was resentenced to a State Correctional Institution for an indeterminate period of time, the minimum of which shall be fifteen (15) months, the maximum of which shall be five (5) years. Sentence-State, 6/11/2015, at 1.

The Defendant was given credit for time served from June 11, 2013, through September 26, 2013; May 25, 2012, through June 18, 2012; March 4, 2013, through June 10, 2013; September 27, 2013 through March 3, 2014; January 22, 2015, through May 4, 2015, and May 5, 2015, through June 10, 2015. Id. at 1-2.

Defendant did not file post sentence motions nor take a direct appeal, therefore his Judgment of Sentence became final on July 13, 2015. A timely PCRA petition would have been filed on or before July 13, 2016.

On July 21, 2017, Defendant filed a "Motion to Correct an Illegal Sentence" and "Motion to Proceed *Pro Se*". In accordance with Commonwealth v. Johnson, 803 A.2d 1291, 1293 (Pa. Super. 2002), the Court treated the filing as a Petition for Post

Conviction Relief. The Court appointed counsel¹ and scheduled a court conference for November 16, 2017. At the court conference, PCRA was granted a thirty-day extension to determine whether Defendant is entitled to credit on his sentence and to file an Amended Petition or a Turner/Finley Letter with a Petition to Withdraw as Counsel. At the next court conference on January 2, 2018, it was the intention of the Court to grant Defendant's request unless the Commonwealth had further objection.

The Commonwealth does object based on the issue of timeliness of the petition and submits that the Court cannot grant Defendant credit for time served from March 3, 2014, through January 22, 2015, because the Court lacks the jurisdiction to do so. The Court agrees with the Commonwealth that the petition is untimely and that the Court does not have jurisdiction to consider it and it must be denied.

Defendant's PCRA Petition is untimely pursuant to 42 Pa.C.S. § 9545(b)

Defendant's PCRA Petition is untimely. Section 9545(b) of the Post Conviction Relief Act requires that a PCRA petition be filed within one (1) year of the date the judgment in a case becomes final, or else meet one of the timeliness exceptions under 42 Pa.C.S. § 9545(b)(1). Defendant has pled no exception to the timeliness requirement but in the alternative argues to the Court that a challenge to the legality of a sentence is nonwaivable and may be corrected *sua sponte* by the Court.

Although the Court agrees with Petitioner that it is the inherent authority to correct patent and illegal errors with a sentence past the thirty day period of time when

¹ "when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, the judge shall appoint counsel to represent the defendant on the defendant's first petition for post-conviction collateral relief." Pa.R.Crim.P. 904.

an Order becomes final, under 42 Pa.C.S. § 5505, it believes the PCRA, 42 Pa.C.S. § 9541, *et seq.* does not allow such correction.

[Supreme Court of Pennsylvania]...has... upheld the inherent authority of trial courts to correct patent mistakes in sentences despite the absence of statutory jurisdiction. See Commonwealth v. Cole, 437 Pa. 288, 263 A.2d 339, 341 (Pa. 1970) (citing Gagnon v. United States, 193 U.S. 451, 456, 24 S. Ct. 510, 48 L. Ed. 745, 39 Ct. Cl. 548 (1904) (power to amend mistakes in record is inherent in courts of justice)). Inherent jurisdiction has been recognized in cases where the trial court lacked statutory authority to correct orders under 42 Pa.C.S.A. § 5505 and its predecessor statute. See *id.* However, we have found no authority wherein the appellate courts of this Commonwealth have recognized a PCRA court's inherent jurisdiction to consider a claim filed after the expiration of the PCRA filing period.

Commonwealth v. Jackson, 30 A.3d 516, 519 (Pa. Super. 2011).

While acknowledging that challenges to the legality of a sentence cannot be waived and that a court may raise sentence illegality *sua sponte*, the Superior Court cautioned that a trial court must first have jurisdiction to address the illegality.

Commonwealth v. Holmes, 933 A.2d 57, 60 (Pa. 2007). Based on reasoning in Jackson *supra* the Court finds that it is without jurisdiction to consider Defendant's claim and cannot grant relief.

Conclusion

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant's PCRA petition. Additionally, the Court finds that no purpose would be served by conducting any further hearing. As such, no further hearing will be scheduled. Pursuant to Pa.R.Crim.P. 907(1), the parties are hereby notified of this Court's intention to deny the Defendant's PCRA Petition. The 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.

ORDER

AND NOW, this 6th day of February, 2018, it is hereby ORDERED and DIRECTED as follows:

Defendant is hereby notified pursuant to Pa.R.Crim.P. 907(1), that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.

By the Court,

Nancy L. Butts, President Judge

cc: DA (KO)
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