

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 98-11,905

VS :

LYNDA BROWN :

OPINION AND ORDER

Before the Court is Defendant's Motion for Post Conviction Collateral Relief filed December 7, 2000. The matter was initially set for a conference on January 30, 2001. At the time of the conference, the Commonwealth argued that the Court could not entertain the petition, since it was not timely filed within one year of the date that the sentence became final.¹ Defense counsel was granted additional time in which to file an amendment to the motion. On February 29, 2001, Defendant's Counsel filed an amended petition. A conference on the petition was held March 23, 2001. In the petition, Defendant alleges: that her guilty plea was inappropriately taken, in that she was brought to court on a date that she was not scheduled to be there; her assigned counsel was ineffective for failing to be present at the time of the plea; the sentence was excessive; and that her attorney failed to file an appeal.

After reviewing the petition, the Court finds that the Petition still does not allege a basis for relief under the Post Conviction Relief Act, 42 Pa.C.S.A. § 9545(b). The Act does afford three narrow exceptions to the one-year filing requirement where 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

¹ This Court's Sentencing Order is dated April 13, 1999. Defendant filed a Motion for Reconsideration of Sentence on April 19, 1999, which was denied by this Court on July 26, 1999. The Defendant's Petition for Post Conviction Collateral Relief was filed December 7, 2000.

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.

Instantly, none of Defendant's claims fall within one of the exceptions. All of Defendant's claims center around her counsel's ineffectiveness. Under subsection (i) of the statute, "government officials" does not include defense counsel, whether appointed or retained. 42 Pa.C.S.A. § 9545(b)(4). Since the Defendant has not proven that she falls within an exception to the time for filing requirement, the Court must Dismiss her petition.

ORDER

AND NOW, this ____ day of April, 2001 the Court, having no jurisdiction to entertain Defendant's Petition for Post Conviction Collateral Relief, DISMISSES said petition.

By The Court,

Nancy L. Butts, Judge

cc: DA

Matthew Zeigler, Esquire
Honorable Nancy L. Butts
Law Clerk