

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 95-11,246; 95-11,247
:
vs. : CRIMINAL DIVISION
:
:
M.W. FARMER COMPANY and :
MICHAEL FARMER, :
Defendants : PCRA

O R D E R

AND NOW, this ___ day of September 2003, upon review of Defendants' Post Conviction Relief Act (PCRA) Petition and the record, the Court finds that Defendants are not entitled to post conviction collateral relief for several reasons.

First, the Petition is untimely. Section 9545 states that any PCRA petition must be filed within one year of the date the judgment becomes final unless petitioner can plead and prove one of the exceptions to this time bar. 42 Pa.C.S.A. §9545(b). If a petition is filed beyond the one-year time limit and none of the exceptions applies, the Court lacks jurisdiction to grant relief. Commonwealth v. Howard, 567 Pa. 481, 489, 788 A.2d 351, 356 (2002); Commonwealth v. Murray, 562 Pa. 1, 5, 753 A.2d 201, 202-03 (2000); Commonwealth v. Palmer, 814 A.2d 700, 705 (Pa.Super. 2002); Commonwealth v. Fairiror, 809 A.2d 396, 398 (Pa.Super. 2002).

On or about October 30, 1998, the Court found Defendants guilty of various offenses under the Solid Waste Management Act. The Court sentenced both Defendants to pay

numerous fines and sentenced Mr. Farmer to probation for an aggregate of five years. The Court's sentence was docketed on January 14, 1999. Defendants filed a timely appeal. The Commonwealth Court affirmed the Court's Judgment of Sentence on or about April 6, 2000. Defendants sought allowance of appeal from the Pennsylvania Supreme Court, which denied Defendants' request in an Order dated August 31, 2000. From that date, Defendants had 90 days within which to seek certiorari from the United States Supreme Court, but they did not do so. Therefore, Defendants' convictions became final on November 29, 2000. 42 Pa.C.S.A. §9545(b)(3); see also Commonwealth v. Beasley, 559 Pa. 604, 607-08, 741 A.2d 1258, 1260 (1999); Palmer, supra; Fairiror, supra. Defendants filed a Petition for Writ of Habeas Corpus on February 13, 2003, which the Court treated as a PCRA petition.¹ Since Defendants' convictions were final as of November 29, 2000, their petition had to be filed on or before November 28, 2001 to be considered timely.

Defendants argued that they have pleaded sufficient facts to fall within the exceptions to the one-year requirement found at subsection (b)(1)(ii). The basis for this contention is an inspection report dated December 19, 2000, which found Defendants were low quantity generators and conditionally exempt from the permit requirements for the

¹ As the PCRA is the exclusive method of obtaining post conviction relief, the Court treated this filing as a PCRA petition and gave defense counsel the opportunity to amend the petition to conform to the requirements of the

operation of a hazardous waste facility. The Court does not believe this information satisfies the exception. In order to satisfy this exception, Defendants must plead and prove that "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." Although the inspection report was not issued until December of 2000, the Court believes Defendants knew or could have ascertained whether they were low quantity generators at the time of their trial in October 1998 because the quantity of waste generated by Defendants would be contained in their own records.

Even if Defendants did not know and could not have discovered that they were low quantity generators prior to the inspection report dated December 19, 2000, Defendants' petition is still untimely. Section 9545(b)(2) states: "Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented." Even assuming Defendants did not receive a copy of this report until January 9, 2001 (the fax date on Exhibit B), the 60-day period would have expired on or about March 10, 2001. Since the one-year period did not expire until November 29, 2001, the exception does not grant Defendants any additional time and the petition is still untimely.

Defendants also attempted to argue interference by government officials. However, the alleged interference

PCRA, 42 Pa.C.S.A. §9541, et seq.

was testimony by Department officials and employees at Defendants' trial in October 1998, contrary to the inspection report. This alleged "interference," however, did not affect Defendants' ability to file a timely PCRA petition. Defendants read and signed the inspection report on December 20, 2000. Defendants received a copy of the report by January 9, 2001, at the very latest. Defendants' Petition, Exhibit B. Nothing prohibited them from filing a PCRA petition on or before November 29, 2001.

Second, Defendants are not eligible for relief. To be eligible for relief, Defendants must be able to plead and prove that at the time relief is granted they are either: "(i) currently serving a sentence of imprisonment, probation or parole for the crime; (ii) awaiting execution of a sentence of death for the crime; or (iii) serving a sentence which must expire before the person may commence serving the disputed sentence." 42 Pa.C.S.A. §9543(a)(1). The Court sentenced the M.W. Farmer Company (hereinafter "the Company") to only pay fines. Therefore, the Company clearly is not eligible for relief under the PCRA.

It also appears Mr. Farmer would not be eligible for relief. Although Mr. Farmer was ordered to serve a total of five years probation, the inspection report would only affect his conviction for operating a hazardous waste facility without a permit (Count 3). It would not appear to have any bearing on his convictions for transporting hazardous

waste without a license and in violation of compliance orders issued by the Department (Counts 10-13) as the report clearly indicates Defendants had hired a licensed company (Trans Enviro) to transport their hazardous waste. See Defendants' Petition, Exhibit B, para. 2. The Court sentenced Mr. Farmer to two years probation on Count 3, a consecutive 2-years of probation on Count 10, and a consecutive 1 year of probation for depositing solid waste from steam cleaning (Count 7). Since Mr. Farmer's convictions became final on November 29, 2000, he completed his probationary sentence on Count 3 no later than November 29, 2002. Therefore, when his petition was filed on February 13, 2003, Mr. Farmer was neither serving a sentence of probation nor serving a sentence that must expire before he could commence serving the sentence of probation for Count 3, operating a hazardous waste facility without a permit.

As no purpose would be served by conducting any further hearing, none will be scheduled and the parties are hereby notified of this Court's intention to deny the Petition pursuant to Rule 907(1). Defendant may respond to this proposed dismissal within 60 days. Since trial counsel filed Defendants' PCRA petition and he cannot raise his own ineffectiveness, the Court has extended the time period from 20 days to 60 days to give Defendants the opportunity to consult with other counsel, if they so desire. If no response is received within that time period, the Court will

enter an order dismissing the petition.

By The Court,

Kenneth D. Brown, Judge

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