

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:
	:
vs.	: NO. 83-10,480
	:
ROBERT BLACKWELL,	: CRIMINAL ACTION - LAW
	: PETITION FOR WRIT
Defendant	: OF HABEAS CORPUS

DATE: May 20, 2004

MEMORANDUM OPINION and ORDER

Before the Court is a document filed by Defendant on May 5, 2004 entitled "Petition for Writ of Habeas Corpus." In the Petition, Defendant asserts that he is being illegally detained. Defendant asserts three theories as to why his continued detention is illegal.

Defendant's initial argument is that the Court erred in dismissing his May 14, 2001 Post Conviction Relief Act (PCRA) Petition without giving him an opportunity to respond to the proposed dismissal and by disregarding the response he did file. On October 21, 2003, the Court issued an Order notifying Defendant of the Court's intention to dismiss the PCRA Petition as untimely. On December 23, 2003, the Court issued an Opinion and Order that denied Defendant's PCRA Petition.

Defendant asserts in his Habeas Corpus Petition that he did not receive this Court's October 21, 2003 Order until January 26, 2004 and that he did not receive the December 23, 2003 Order until January 9, 2004. On February 9, 2004, Defendant filed a Motion for Evidential (sic) Hearing to Have This Case Overturned and Sentence Vacated as Bobby Wayne Blackwell is Being

Illegally Detained as the Allege (sic) Robert Blackwell at the State Prison in Houtzdale Pennsylvania. The Court denied and dismissed the Motion in a February 18, 2004 Order.

Defendant contends that the Court erred in dismissing the PCRA Petition without considering his response. Defendant argues that the February 9, 2004 Motion was a timely response to the Court's October 21, 2003 Order. As such, Defendant contends that his PCRA Petition should be granted for the reasons set forth in the PCRA Petition and his February 9, 2004 Motion. This is essentially a request for the Court to reconsider its December 23, 2003 Order dismissing the PCRA Petition in light of the February 9, 2004 response filed by Defendant.

The Court cannot oblige such a request. A trial court may alter or modify a final order within thirty days after its entry, if no appeal is taken. 42 Pa.C.S.A. §5505; *Commonwealth v. Smith*, 678 A.2d 1206, 1208 (Pa. Super. 1996), overruled in part, *Commonwealth v. Clark*, 746 A.2d 1128 (Pa. Super. 2000) (Overruling any statement in *Smith* which suggested that when a sentencing court imposes no penalty after a conviction the conviction is not appealable as a final order.); *Commonwealth v. DeSilva*, 655 A.2d 568, 571 (Pa. Super. 1995). After that time, a court loses its power to do so. *Smith*, 678 A.2d at 1208. The Court is without jurisdiction to reconsider its December 23, 2003 Order denying Defendant's PCRA Petition. The Habeas Corpus Petition was filed four months after the Order was entered. Any action taken by the Court on the December 23, 2003 Order would be a legal nullity. As such, the Court cannot and will not reconsider the Order.

Assuming *arguendo* that the Court had jurisdiction, the Court would still deny Defendant's PCRA Petition. The Court did view and consider the February 9, 2004 Motion filed

by Defendant. The Motion argues that Defendant is being illegally detained. Defendant asserts that he was denied his right to a preliminary hearing and that all counsel have been incompetent. Defendant also asserts that there were evidentiary issues that should have precluded his conviction, namely that the Commonwealth failed to produce a parole document dropped by the assailant with the name Robert Blackwell on it, that the jury was never told that his name is not Robert, but Bobby Wayne, and the alleged victim failed to identify him at a lineup. As to the timeliness issue of the PCRA Petition, Defendant argues that government officials have interfered with his appeal rights in the form of incompetent counsel.

The February 9, 2004 Motion does nothing to alter the conclusion of this Court's December 23, 2003 Order denying Defendant's PCRA Petition. A good portion of the motion is devoted to reasserting the attack upon his conviction that was advanced in the PCRA Petition. The Motion does little to address the timeliness requirements and how the PCRA Petition met this requirement. The only argument Defendant advanced in this regard was that his counsel's ineffectiveness interfered with his appeal rights.

However, this argument is in error. The ineffectiveness of counsel does not provide an exception to the time limit requirements of Pa. C.S.A. §9545. *Commonwealth v. Breakiron*, 781 A2d 94, 97 (Pa. 2001); *Commonwealth v. Carr*, 768 A.2d 1164, 1168 (Pa. Super. 2001). The PCRA explicitly states that defense counsel, appointed or retained, does not come within the definition of "government official" and his actions cannot be grounds to support a claim premised on the governmental interference exception. 42 Pa.C.S.A. §9545(b)(4); *Commonwealth v. Yarris*,

731 A.2d 581, 588 (Pa. 1999). Therefore, any ineffectiveness on counsel's part cannot form the basis of an exception to the time limit requirements.

The February 9, 2004 Motion does not address the fatal flaws of the May 14, 2001 PCRA Petition. The Motion does not establish how the Petition meets the timeliness requirements, and therefore, how the court has jurisdiction to hear the Petition. As such, the Court would deny the motion to reconsider contained in the Habeas Corpus Petition if the Court had the power to do so.

In the Habeas Corpus Petition, Defendant contends that the Court dismissed his PCRA Petition and other documents he filed without addressing the issues raised therein or the case law. The issues and case law Defendant is referring to address why his conviction should be overturned. In essence, Defendant is contending that the Court is not addressing the merits of his argument. What Defendant fails to understand is that the Court is not allowed to address the merits of his argument without jurisdiction over the PCRA Petition

A determination of the timeliness of a PCRA petition is a threshold matter. *Commonwealth v. Palmer*, 814 A.2d 700, 705 (Pa. 2002). The time requirements of 42 Pa. C.S.A. §9545(b) are jurisdictional in nature. *Commonwealth v. Gallman*, 838 A.2d 768, 774-75 (Pa. 2003). A court cannot disregard the timeliness requirements in order to reach the merits, "regardless of the nature of the individual claim raised therein." *Commonwealth v. Murray*, 753 A.2d 201, 202 (Pa. 2000).

To obtain the relief he seeks, Defendant must overcome two hurdles. First and foremost, Defendant must establish that the Court has the jurisdiction to entertain the PCRA

Petition. Then Defendant must establish the elements of his substantive claims. Defendant must unlock the jurisdictional gate in order for the Court to pass through and reach his case on the merits. Any decision on the merits reached by the Court without jurisdiction would have no legal effect. Therefore, Defendant must establish jurisdiction to obtain the relief he seeks.

Defendant's failure to establish jurisdiction under the PCRA also necessitates that the Habeas Corpus Petition be denied. Defendant continues to challenge his conviction and sentence without meeting the requirements of the PCRA. By challenging his conviction and legality of sentence, the defendant is seeking post conviction collateral relief and brings the Habeas Corpus Petition within the auspices of the PCRA. The PCRA is the sole means of obtaining post conviction collateral relief. 42 Pa. C.S.A. §9542; *Commonwealth v. Bennett*, 842 A.2d 953, 957 (Pa. Super. 2004); *Commonwealth v. Johnson*, 803 A.2d 1291, 1293 (Pa. Super. 2002). The PCRA encompasses all other common law and statutory remedies for obtaining post conviction collateral relief, including habeas corpus and coram nobis. 42 Pa.C.S.A. §9542. The PCRA subsumed the writ of habeas corpus and habeas corpus provides relief only in cases where no remedy under the PCRA exists. *Commonwealth v. Morris*, 822 A.2d 684, 692-93 (Pa. 2003). The PCRA governs petitions seeking post conviction collateral relief no matter how the petition is titled. *Commonwealth v. Kutnyak*, 781 A.2d 1259, 1261 (Pa. Super. 2001).

The timeliness requirements of the PCRA are jurisdictional in nature and a PCRA court cannot here an untimely petition. *Commonwealth v. Robinson*, 837 A.2d 1157, 1161 (Pa. 2003). Any PCRA petition, including a second or subsequent one, must be filed within one year of the date the judgment became final. 42 Pa.C.S.A. §9545(b)(3); *Commonwealth v. Hutchinson*,

760 A.2d 50, 53 (Pa. Super. 2000). The preclusive effect of the one-year time limit can only be overcome if the petitioner pleads and proves that one of the exceptions applies. *Commonwealth v. Beasley*, 741 A.2d 1258, 1261 (Pa. 1999); *Commonwealth v. Davis*, 816 A.2d 1129, 1133 (Pa. Super. 2003). Those exceptions are:

- (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.

42 Pa.C.S.A. §9545(b)(1)(i)-(iii). If the case falls within one of these exceptions, then the petition must be filed within sixty days of the date the claim could have been presented. 42 Pa.C.S.A. §9545(b)(2); *Commonwealth v. Gamboa-Taylor*, 753 A.2d 780 (Pa. 2000).

As with the May 11, 2001 PCRA Petition, the Habeas Corpus Petition is untimely. The Habeas Corpus Petition was filed well beyond the one-year deadline as Defendant's judgment became final in 1985. The Habeas Corpus Petition does not allege any exception that would apply and save the Petition from the jurisdictional time bar of the PCRA. The Habeas Corpus Petition only asserts the merits of Defendant's argument regarding his conviction and sentence. To repeat, the Court cannot reach the merits of Defendant's argument

until he establishes that the Court has jurisdiction. Defendant cannot obtain the collateral relief he seeks until he establishes jurisdiction under the PCRA.

Accordingly, the Defendant's Habeas Corpus Petition shall be denied and dismissed for the foregoing reasons.

ORDER

It is hereby ORDERED that Defendant's Petition for Writ of Habeas Corpus filed May 5, 2004 is DENIED and DISMISSED.

BY THE COURT,

William S. Kieser, Judge

cc: District Attorney
Bobby Wayne Blackwell AT-1022
SCI Houtzdale; P. O. Box 1000; Houtzdale, PA 16698-1000
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)