

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 96-10,526
 :
 JEFFREY ALLEN COFFEY, : CRIMINAL ACTION - LAW
 :
 Defendant : PCRA PETITION DISMISSAL

DATE: June 15, 2004

OPINION and ORDER

Before the Court for determination is the Amended Post Conviction Relief Act (PCRA) Petition of the Defendant Jeffrey Allen Coffey filed January 28, 2004. The Court reviewed the Petition and issued an Order on February 24, 2004 notifying the Defendant of the Court's intention to dismiss the Petition as untimely filed and for failing to demonstrate that the Petition fell within one of the exceptions to the one-year limit. The Court also gave the Defendant twenty days to file a response to the proposed dismissal, but stayed the twenty day period until a hearing was held on Defense Counsel Eric Linhardt, Esquire's Motion to Withdraw Appearance.

On April 6, 2004, a hearing was held on the Motion to Withdraw. That same day, the Court issued an Order granting the Motion to Withdraw. In that Order, the Defendant was given twenty days from the date of notice of the Order to file a response to the proposed dismissal. At the time of this Opinion and Order, the Defendant has failed to file such a response.

The Court will dismiss Defendant's PCRA Petition as untimely. The timeliness requirements of the PCRA are jurisdictional in nature. *Commonwealth v. Robinson*, 837 A.2d 1157, 1161 (Pa. 2003); *Commonwealth v. Beck*, 2004 Pa. Super. 133, 10. A trial court does not have jurisdiction to hear a PCRA petition if the petition was not timely filed. *Commonwealth v.*

Hutchinson, 760 A.2d 50, 53 (Pa. Super. 2000). The PCRA requires that any petition, including a second or subsequent one, must be filed within one year of the judgment becoming final. 42 Pa.C.S.A. §9545(b)(3); *Hutchinson*, 760 A.2d at 53. A judgment becomes final “at the conclusion of direct review, including discretionary review to the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.” 42 Pa.C.S.A. §9545(b)(3); *Commonwealth v. Abu-Jamal*, 833 A.2d 719, 724 (Pa. 2003). The time limits prescribed by the PCRA will be strictly enforced because of their jurisdictional significance. *Commonwealth v. Vega*, 754 A.2d 714, 718 (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).

The Second PCRA Petition is untimely. Both the Defendant's First and Second PCRA Petitions were filed after the one-year deadline. The Defendant was sentenced on February 2, 1998. The Defendant's judgment became final thirty days after he was sentenced if no appeal was filed during the interim. The Defendant did not file a direct appeal of his conviction. The Defendant filed his First PCRA Petition on November 15, 1999. This was almost eight months beyond the one-year deadline. On April 18, 2000, the First PCRA Petition was dismissed. The Defendant appealed the dismissal by filing a Notice of Appeal on May 24, 2000. On May 24, 2000, the Superior Court quashed the appeal as being untimely filed.

On January 4, 2002, the Defendant filed a *pro se* PCRA Petition. His counsel then filed the Amended Petition currently before the Court on January 28, 2004. This Second PCRA Petition was filed well beyond the one-year jurisdictional limit. Therefore, it is untimely and the Court is without jurisdiction to hear it.

The Petition does not allege an exception to the timeliness requirement. The Petition only asserts that Defendant's counsel was ineffective for not timely appealing the denial of his First PCRA Petition and for failing to inform him of the Superior Court's dismissal of his appeal concerning his First PCRA Petition. These allegations do not save the Defendant's Second PCRA Petition from dismissal. The ineffectiveness of counsel does not provide an exception to the time limit requirements of 42 Pa.C.S.A. §9545. *Commonwealth v. Breakiron*, 781 A.2d 94, 97 (Pa. 2001); *Commonwealth v. Carr*, 768 A.2d 1164, 1168 (Pa. Super. 2001). 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). Also, a conclusion that prior counsel was ineffective is not a newly discovered fact that would fall within the after-discovered facts exception. *Gamboa-Taylor*, 753 A.2d at 785. Therefore, any ineffectiveness on counsel's part cannot form the basis of an exception to the time limit requirements.

Accordingly, the Second PCRA Petition will be dismissed as untimely.

ORDER

It is hereby ORDERED that Defendant Jeffrey Allen Coffey's Amended Post Conviction Relief Act Petition filed January 28, 2004 is DENIED.

Defendant shall be notified of this Opinion and Order by certified mail, return receipt requested pursuant to Pa.Crim.R.P. 907(4).

Defendant is advised that he has the right to appeal this Court's denial and dismissal of his Amended Post Conviction Relief Act Petition.

Defendant is further advised that he has thirty days in which to file his appeal.

BY THE COURT,

William S. Kieser, Judge

cc: Kenneth A. Osokow, Esquire, ADA
Jeffrey Coffey – DC1286
SCI Cresson; P. O. Box A; Cresson, PA 16699-0001
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)