

**IN THE COURT OF COMMON PLEAS  
LYCOMING COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

<b>COMMONWEALTH</b>	:	<b>No.: 97-11,390</b>
<b>v.</b>	:	
	:	
<b>BRIAN HOY,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

Before the Court is Defendant's Petition under the Pennsylvania Post-Conviction Relief Act (PCRA), filed June 21, 2004. Thereafter, Defendant's current counsel, Eric R. Linhardt, filed an Application for Leave to Withdraw Appearance on August 12, 2004, asserting that he had reviewed Defendant's PCRA petition and found no meritorious issues to present to the Court because the petition was untimely and does not fall within any of the exceptions provided in the Post Conviction Relief Act which would permit his petition to go forward. Mr. Linhardt then indicated that because the petition is untimely, it is frivolous and no analysis of the underlying issue raised by the Defendant is required. Mr. Linhardt further requested that he be allowed to withdraw as Defendant's attorney in this case.

The Court begins by finding that the Defendant's PCRA petition is untimely. The Post-Conviction Relief Act provides under 42 Pa.C.S.A. §9745 that a PCRA petition must be filed within one year of the date that a case becomes final. See also Pennsylvania Rules of Criminal Procedure, Rule 901. This Court sentenced the Defendant on January 24, 2001. He filed a timely appeal to the Superior Court, which was withdrawn on June 22, 2001.

Therefore, his judgment of sentence became effective on the date. The period during which the Defendant could have properly filed a PCRA petition expired one year later on June 22, 2002. However, as noted above, his petition was not filed until June 21, 2004.

The PCRA Act does provide three narrow exceptions to the one-year filing requirement where the petitioner alleges and proves that:

- (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).

Instantly, the Court finds that Defendant's claim does not fall within any of the listed exceptions. Since the Defendant has not claimed or offered any facts to show that he falls within an exception to the time for filing requirement, the Court must dismiss his petition.

Based upon the foregoing, the Court finds that no purpose would be served by conducting any further hearing, and therefore none will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this court's intention to deny the Petition.

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.

The Court additionally shall affirm its prior order of September 3, 2004, which granted Mr. Linhardt's Application for Leave to Withdraw Appearance. The Court would note that Defendant after being provided with notice, failed to appear at this hearing

ORDER

AND NOW, this \_\_\_\_ day of November, 2004, the Court affirms its prior order granting the Application for Leave to Withdraw Appearance filed by Attorney Linhardt on August 12, 2004 and notifies the Defendant that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within (20) twenty days of today's date.

By The Court,

\_\_\_\_\_  
Nancy L. Butts, Judge J.

xc: DA (KO)  
Eric Linhardt, Esquire  
Brian Hoy, Defendant  
2339 West 4<sup>th</sup> Street  
Williamsport, PA 17701  
Hon. Nancy L. Butts  
Judges  
Gary Weber, Esquire  
Law Clerk