

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 89-10,014
:
vs. : CRIMINAL DIVISION
:
:
JAMES R. PRINCE, :
Defendant : PCRA

O R D E R

AND NOW, this ___ day of December 2004, upon review of the record and pursuant to Rule 907(a) of the Pennsylvania Rules of Criminal Procedure, it is the intent of the Court to dismiss the defendant's Post Conviction Relief Act (PCRA) petition filed on August 27, 2004, because it is untimely.

The defendant filed a direct appeal on January 2, 1990. In his appeal, the defendant raised two issues: (1) the trial court abused its discretion when it sentenced the defendant to an aggregate term of 16 to 35 years incarceration in a state correctional institution; and (2) trial counsel was ineffective for failing to request inspection of the victim's counseling records. In a memorandum decision filed on September 20, 1990, the Pennsylvania Superior Court determined the sentencing issue lacked merit and remanded the case to the trial court for an evidentiary hearing on the ineffectiveness issue.

On or about November 26, 1990, the Court conducted a hearing and in camera review of the victim's counseling records. The Court found the records were privileged and contained no material helpful to the defense. Therefore, the

Court found trial counsel was not ineffective and notified the defendant he had a right to appeal.

The defendant filed a pro se appeal from this order, but it was not received in the Prothonotary's Office within the thirty-day appeal period, so the Pennsylvania Superior Court quashed the appeal on or about March 6, 1991. Since the defendant did not file a timely appeal, his conviction became final on or before December 26, 1990.

Any PCRA petition, including second or subsequent petitions, must be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves one of statutory exceptions. 42 Pa.C.S. §9545(b). The timeliness requirements of the PCRA are jurisdictional in nature. Commonwealth v. Howard, 567 Pa. 481, 485, 788 A.2d 351, 353 (Pa. 2002); Commonwealth v. Palmer, 814 A.2d 700, 704-05 (Pa.Super. 2002). "[W]hen a PCRA petition is not filed within one year of the expiration of direct review, or not eligible for one of the three limited exceptions, or entitled to one of the exceptions, but not filed within 60 days of the date that the claim could have been first brought, the trial court has no power to address the substantive merits of a petitioner's PCRA claims." Commonwealth v. Gamboa-Taylor, 562 Pa. 70, 77, 753 A.2d 780, 783 (Pa. 2000).

The defendant's current PCRA petition was filed on August 27, 2004. This is his fourth petition attempting to

obtain collateral relief.¹ The current petition was filed more than thirteen years after his conviction became final. Although there is a proviso in the 1995 amendments that a petition filed within one year following the effective date of the amendments could be deemed timely, the defendant cannot avail himself of that proviso because this is not his first petition and it was not filed by January 16, 1997. See Commonwealth v. Barrett, 761 A.2d 145, 147 (Pa.Super. 2000).

The petition also does not allege any of the statutory exceptions. Although the petition attempts to assert a constitutional claim under the United States Supreme Court's decision in Blakely v. Washington, 124 S.Ct. 2531 (2004), it does not fall within Section 9545(b)(1)(iii) or (2). Since the United States Supreme Court did not hold that the Blakely decision would apply retroactively, the defendant's claims do not fall within Section 9545(b)(1)(iii).²

Furthermore, the defendant did not file his petition within sixty days of the Blakely decision. The United States Supreme Court decided Blakely on June 24, 2004. The defendant filed his petition on August 27, 2004.

Since the defendant's petition is untimely, the Court lacks jurisdiction to hold any hearings in this matter or to grant the defendant any relief.

As no purpose would be served by conducting a

1 The defendant filed his first PCRA petition on May 6, 1991 and his second petition was filed on June 11, 1996. On June 2, 1998 the defendant filed a petition to reinstate his appellate rights nunc pro tunc.

2 The Court also notes that the Pennsylvania Superior Court in Commonwealth v. Bromley, held that the Pennsylvania Sentencing Guidelines do not violate the principles announced in Blakely because Pennsylvania

hearing, none will be scheduled and 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.

By The Court,

Kenneth D. Brown, P.J.

cc: Kenneth Osokow, Esquire (ADA)
James R. Prince, #BD1801
660 St. Rte. 11, Hunlock Creek, PA 18621
Work File
Gary Weber, Esquire (Lycoming Reporter)

has an indeterminate sentencing scheme.