

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:
	:
vs.	: NO. 83-10,480
	:
ROBERT BLACKWELL,	: CRIMINAL ACTION - LAW
	:
Defendant	: PCRA DISMISSAL

**DATE: July 22, 2004**

**OPINION and O R D E R**

Before the Court is the Petition for Writ of Habeas Corpus of Defendant filed June 9, 2004. Argument on the Petition was held on July 19, 2004. Defendant participated in the argument by telephone. After viewing the Petition and weighing the arguments of the Commonwealth and Defendant, the Court concludes that the Petition should be dismissed as untimely.

In the Petition, the Defendant asserts that he was not given credit for time served in Florida while he was awaiting transport back to Pennsylvania on a fugitive warrant relating to this case. A challenge to a trial court's failure to award credit for time served in custody prior to sentence involves the legality of the sentence. *Commonwealth v. Beck*, 848 A.2d 987, 989 (Pa. Super. 2004). "Issues concerning the legality of sentence are cognizable under the PCRA." *Ibid*. While the legality of sentence is always subject to review under the PCRA, the challenge must be brought within the time limits of the PCRA or come within one of the exceptions. *Ibid*.

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)(1); *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).

The Petition is untimely. It was filed more than one year after Defendant's judgment became final. As such, the Petition must set forth how one of the exceptions applies in order to establish this Court's jurisdiction over the Petition. The Petition does not set forth how it comes within any of the enumerated exceptions set forth in §9545(b)(1)(i)-(iii). Therefore, the Court lacks jurisdiction to hear the Petition and cannot address the issues raised therein.

Accordingly, the Court intends to dismiss the Petition. Defendant shall have twenty days (20) from the date of notice of this Opinion and Order to file a response to the proposed dismissal addressing the timeliness issue.

**ORDER**

It is hereby ORDERED that Defendant shall have twenty (20) days to file a response to the proposed dismissal of his Petition for Writ of Habeas Corpus filed June 9, 2004. That response shall address the timeliness issue of his Petition under 42 Pa.C.S.A. §9545(b).

BY THE COURT,

William S. Kieser, Judge

cc: District Attorney  
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Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)