

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

COMMONWEALTH	:	No.: 02-10,207; 02-10,728
	:	00-11,471; 01-11,756
v.	:	01-11,757; 01-11,804
	:	01-11,714; 01-11,718
ANNIE FRANKHOUSER,	:	01-11,758; 02-10,727
Defendant	:	02-11,011; 01-10,208

OPINION AND ORDER

Before the Court is Defendant's Petition under the Pennsylvania Post-Conviction Relief Act (PCRA), filed December 29, 2003. Thereafter, Defendant's current counsel, Eric R. Linhardt, filed an Application for Leave to Withdraw Appearance on March 15, 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 her 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. The above-captioned case became final at the expiration of the appeal period following Defendant's sentencing. Defendant was sentenced in this

case on October 31, 2002. Her appeal period therefore expired thirty days later on November 30, 2002. No appeal was filed in any of these cases. The period during which the Defendant could have properly filed a PCRA petition expired one year later on November 30, 2003, but as noted above, her petition was not filed until December 29, 2003.

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 she falls within an exception to the time for filing requirement, the Court must dismiss her 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 grant Mr. Linhardt's Application for Leave to Withdraw Appearance.

ORDER

AND NOW, this ____ day of May, 2004, the Court GRANTS the Application for Leave to Withdraw Appearance filed by Attorney Linhardt on March 15, 2004 and notifies the Defendant that it is the intention of the Court to dismiss her PCRA petition unless she files an objection to that dismissal within twenty days of today's date.

By The Court,

Nancy L. Butts, Judge J.

xc: DA (KO)
Eric Linhardt, Esquire
Annie Frankhouser – OG 8596
State Correctional Institution
P.O. Box 180
Muncy, PA 17756
Hon. Nancy L. Butts
Judges
Gary Weber, Esquire
Diane L. Turner, Esquire