

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

COMMONWEALTH	:	
	:	
v.	:	No.: 01-10,863
	:	
TIMOTHY ALLEN HARMAN,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is the Defendant's PCRA petition filed November 24, 2003. A conference on this petition was originally held on February 2, 2004, at which time Defendant's attorney requested and received a thirty-day continuance so that an amended petition could be filed. A conference on the amended petition was scheduled for March 16, 2004. However, no amended petition was ever filed on Defendant's behalf.

The pertinent facts of Defendant's case show that he entered a guilty plea under this information as well as numerous others at a guilty plea hearing held in November, 2001. The guilty plea was filed on November 16, 2001 and the accompanying written colloquy and Order accepting the plea were filed on November 26, 2001. Defendant was then sentenced on many informations, including this one, on February 5, 2002 to an aggregate sentence of twenty-eight to fifty-six years of state incarceration. Specifically on this information, the Defendant received a sentence of twenty-four to forty-eight months state incarceration, to run consecutively with the other informations upon which he was sentenced at the same hearing. His appeal period expired thirty days later, on March 7, 2002, without any filing of a

Notice of Appeal. Therefore, his case became final on that date. 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 period during which the Defendant could have properly filed a PCRA petition therefore expired on March 7, 2003. Defendant's PCRA petition was filed on November 24, 2003 and is therefore untimely.

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 proven that he falls within an exception to the time for filing requirement, the Court must dismiss his petition for that reason.

The Court notes, however, that even if the Defendant's petition did not fail because it is untimely, it would still fail on the merits.

Defendant raises three issues in his PCRA petition. First, he claims that following his sentencing on February 2, 2002 he was moved from prison to prison and unable to have any communication with his attorney. He claims that this is the reason that no appeal was filed on his behalf. The Court declines to find that in over one year and nine months time the Defendant had no way to send a short letter to his attorney instructing that an appeal be filed on his behalf.

Second, the Defendant claims that his counsel failed to properly prepare for the sentencing hearing and to present mitigating circumstances on his behalf. He does not indicate what those mitigating circumstances might be or explain in any way what information his attorney did not present on his behalf. The Court additionally notes that this Defendant was afforded an opportunity to speak at his sentencing at the conclusion of his attorney's remarks and prior to the statement made by the Assistant District Attorney. The Defendant therefore had an opportunity to present on his own behalf any information that he wanted the Court to consider or, alternatively, to notify the Court that his attorney had failed to present or properly prepare to present information which he believed would be mitigating.

Third, the Defendant asserts that the sentence he received is not the sentence promised to him by his attorney. The Court finds that the pleas entered by the Defendant on November 16, 2001, including this one, were all

open pleas. In other words, the Defendant and the Commonwealth had reached no agreement on the disposition of his cases and no plea agreement bound the Court as to sentencing. Defendant now complains in his PCRA petition that he was coerced into pleading guilty because he was told that his sentence would not exceed that requested by the District Attorney. There is no indication in the Court file that the Defendant's attorney ever gave him such advice. Moreover, the written guilty plea colloquy specifically inquires of the Defendant whether he is being coerced or threatened into entering a plea, or, alternatively, whether he is being promised anything or otherwise induced to enter a plea. Again, there is no indication that Defendant was in any way coerced or induced to enter his plea or that his plea was anything other than knowing, intelligent, and voluntary.

ORDER

AND NOW, this _____ day of April, 2004, the Court hereby notifies the Defendant that for the reasons set forth above, it is the intention of this Court to dismiss his PCRA petition unless he 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
Hon. Nancy L. Butts
Judges
Gary Weber, Esquire
Diane L. Turner, Esquire