

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 94-11,268
:
vs. : CRIMINAL DIVISION
:
:
LEROY BROWN, :
Defendant : PCRA

ORDER

AND NOW, this ____ day of March 2005, upon review of the record and pursuant to Rule 907(a) of the Pennsylvania Rules of Criminal Procedure, it is the finding of this Court that Defendant's Petition for Writ of Habeas Corpus, which the Court has treated as a Post Conviction Relief Act (PCRA) Petition, is untimely. Therefore, the Court does not have jurisdiction to hold an evidentiary hearing or grant relief to Defendant.

On January 20, 1995, a jury found Defendant guilty of conspiracy, delivery of a controlled substance and possession of a controlled substance. On July 6, 1995, the Honorable Clinton W. Smith sentenced Defendant to incarceration in a state correctional institution for a minimum of 4 years and 2 months and a maximum of 10 years. Defendant's counsel filed a notice of appeal on July 14, 1995. Unfortunately, defense counsel failed to file a brief, and the Pennsylvania Superior Court dismissed the appeal on February 20, 1996 due to this failure.

On January 6, 1997, Defendant filed a PCRA petition to get his appeal rights reinstated. Judge Smith granted the petition, but counsel failed to file a timely notice of appeal. As a result, the Pennsylvania Superior Court quashed the appeal as untimely on July 27, 1998.

On March 10, 1999, Defendant again filed a PCRA petition to get his appeal rights reinstated. Judge Smith granted the petition and ordered counsel to file and perfect an appeal to the Pennsylvania Superior Court within 30 days. Counsel complied and raised several issues on appeal, including a challenge to the sufficiency of the evidence. On December 13, 1999, the Pennsylvania Superior Court rejected Defendant's claims and affirmed his judgment of sentence.

On October 26, 2004, Defendant filed a Petition for Writ of Habeas Corpus, which the court treated as a PCRA petition. See Commonwealth v. Bronshtein, 561 Pa. 611, 614 n.3, 752 A.2d 868, 869-70 n.3 (2000)(PCRA is the exclusive vehicle to obtain post conviction, state collateral relief and subsumes all common law remedies, including habeas corpus); Commonwealth v. Peterkin, 554 Pa. 547, 551-52, 722 A.2d 638, 639-40 (1998)(same); Com. ex rel. Shope v. D.A. of Bradford County, 789 A.2d 218, 220 (Pa.Super. 2001)(same). Since Defendant's first two PCRA petitions merely reinstated his direct appeal rights, the court treated Defendant's petition as a first PCRA petition, and counsel was appointed to represent Defendant. See Commonwealth v. O'Bidos, 849 A.2d 243, 252 n.3 (Pa.Super. 2004); Commonwealth v. Karincolas, 836 A.2d 940, 944 (Pa.Super. 2003); Commonwealth v. Lewis, 718 A.2d 1262, 1263 (Pa.Super. 1998). In his petition, Defendant challenges the sufficiency of the evidence presented at trial. The court noted that it appeared the petition was not filed in a timely manner and directed counsel to file an amendment if there were any facts to support one of the exceptions to the one-year filing requirement. At a conference held on March 9, 2005, counsel indicated his client had not provided any information to support one of the exceptions, so he did not file an amendment.

Any PCRA petition must be filed within one year of the date the judgment becomes final, unless the petitioner pleads and proves one of the three limited exceptions contained in the Act. 42 Pa.C.S.A. §9545(b). The time limits of the PCRA are jurisdictional in nature. Commonwealth v. Howard, 567 Pa. 481, 485, 788 A.2d 352, 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 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 Pennsylvania Superior Court ruled on the merits of Defendant’s direct appeal on December 13, 1999. Defendant had 30 days within which to file a petition of allowance of appeal to the Pennsylvania Supreme Court. No such petition was filed. Therefore, Defendant’s judgment became final on or about January 12, 2000. See 42 Pa.C.S.A. §9454(b)(3). Defendant has not pled any facts to support any of the exceptions to the one-year filing period. Therefore, Defendant’s petition is untimely and the court lacks jurisdiction to hold an evidentiary hearing or grant Defendant any relief.¹

As no purpose would be served by conducting any further 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. Any response

¹ The Court also notes the sufficiency of the evidence was litigated in Defendant’s direct appeal. Even if the petition were timely filed, the court would intend to dismiss it because the issues were previously litigated. See

should state facts to support one of the exceptions contained in Section 9545(b)(1) and should explain why Defendant believes his petition is timely and why the issues should not be considered previously litigated.

By The Court,

Kenneth D. Brown, P.J.

cc: Kenneth Osokow, Esquire (ADA)
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Gary Weber, Esquire (Lycoming Reporter)