

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 95-11,246; 95-11,247
:
:
vs. : CRIMINAL DIVISION
:
MICHAEL W. FARMER, :
M. W. FARMER COMPANY, :
Defendants/Appellants : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's order docketed January 6, 2005, which dismissed the appellants' filing of June 24, 2004 as untimely. The relevant facts follow.

On or about October 30, 1998, the court found the appellants guilty of various offenses under the Solid Waste Management Act. The court sentenced Mr. Farmer to probation for an aggregate of five years and sentenced both appellants to pay numerous fines and costs. The appellants filed an appeal. The Commonwealth Court affirmed the appellants' convictions on or about April 6, 2000. The appellants filed a petition for allowance of appeal with the Pennsylvania Supreme Court, which denied the petition in an order dated August 31, 2000. The appellants had 90 days within which to seek certiorari from the United States Supreme Court, but they did not do so.

On February 13, 2003, the appellants filed a petition for writ of habeas corpus, which the court treated as a first Post Conviction Relief Act (PCRA) petition. In an order docketed September 2, 2003, the court gave the appellants notice of its intent to deny their

petition as untimely. Since trial counsel filed the petition, however, the court gave the appellants 60 days to respond instead of the normal 20 days, so that the appellants could consult with a different attorney if they so desired.

The appellants consulted with the law firm of Campana, Lovecchio and Morrone. New counsel requested an additional 90 days to review the file and respond to the proposed dismissal. The court granted an extension to February 6, 2004. Counsel filed timely responses. The court reviewed the responses, including a pro se document that was attached to counsel's response, but determined that the appellants had not alleged sufficient facts to assert one of the exceptions to the one-year time limit for filing PCRA petitions. Therefore, the court dismissed the petition as untimely and notified the appellants of the time limits to file an appeal in an order docketed March 8, 2004.

The appellants did not appeal this order. Instead, on June 24, 2004, they filed a pro se document entitled "Response to Proposed Dismissal" that was substantially similar to the pro attachment to counsel's response filed on February 5 or 6. The Prothonotary docketed this document as a motion for reconsideration.

In an order docketed December 7, 2004, the court indicated that regardless of how the document could be considered, it was untimely. Any response to the court's proposed dismissal of appellants' first PCRA was due on or before February 6, 2004. Any motion for reconsideration of the court's March 8, 2004 order dismissing the appellants' first PCRA petition had to be filed before April 8, 2004. Any PCRA petition had to be filed on or before November 28, 2001 or allege facts to support one of the three limited exceptions to the one-year time limit. In the event that the filing of June 24, 2004 would be considered a second PCRA petition, the court notified the appellants of its intent to dismiss it as untimely

and gave the appellants 20 days to respond.

The appellants' response was due on or before December 27, 2004. On January 5, 2005, the appellants filed a response,¹ but it did not allege any facts to support one of the exceptions. Instead, the appellants complain that the court doesn't care about justice, just about time frames. What the appellants fail to comprehend, despite being informed several times, is that if the petition is not timely filed the court does not have power or authority to hear their petition or grant them any relief.

In an order docketed January 6, 2005, the court denied as untimely the appellants' filing on June 24, 2004. On February 2, 2005, the appellants filed a notice of appeal.

The PCRA is the sole means of obtaining collateral relief in state courts and encompasses all other common law and statutory remedies, including habeas corpus and coram nobis. See 42 Pa.C.S.A. §9542. Any PCRA petition, including a second or subsequent petition, must be filed within one year of the date the judgment becomes final, unless the petitioner can plead and prove one of the three statutory exceptions. 42 Pa.C.S.A. §9545(b)(1). “[A] judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.” 42 Pa.C.S.A.

¹ Although the body of the document states a date of December 26, 2004, it wasn't received until January 4 or 5, 2005. The copy sent to the court wasn't postmarked until January 3, 2005.

§9545(b)(3).

The Pennsylvania Supreme Court denied the appellants' petition for allowance of appeal in an order dated August 31, 2000. The appellants had 90 days within which to file a petition for writ of certiorari with the United States Supreme Court. See U.S. Supreme Court Rule 13; Commonwealth v. Palmer, 814 A.2d 700, 705 (Pa.Super. 2002). The appellants did not seek a writ of certiorari. Therefore, their convictions became final on November 29, 2000.

The timeliness requirements 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).

To be considered a timely second PCRA petition, the appellants had to file on or before November 28, 2001 or allege facts to support one of the exceptions to the one-year filing requirement. The appellants did not file their document until June 24, 2004. They also did not state any facts to support one of the three statutory exceptions. Thus, the appellants’ “Response to Proposed Dismissal” is untimely, and the court properly denied it.

DATE: _____

By The Court,

Kenneth D. Brown, P. J.

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