

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. 02-11,832
	:	
vs.	:	CRIMINAL DIVISION
	:	
JAMES FRANCIS McKEE, III,	:	
Defendant	:	

OPINION IN SUPPORT OF ORDER OF JANUARY 14, 2005
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

On November 4, 2002, Defendant pled guilty to one count each of terroristic threats and disorderly conduct, and was sentenced in accordance with a plea agreement to a two-year term of supervision in the Lycoming County Intermediate Punishment Program, the first six months to be served at the Pre-Release Center. By Order dated April 16, 2003, Defendant was found in violation of the Program, and re-sentenced to a term of incarceration in a State Correctional Institution of two to five years. No appeal was taken.

On September 9, 2004, Defendant filed a Motion for Post Conviction Collateral Relief in which he alleges ineffective assistance of counsel and claims he was tricked by his counsel into pleading guilty. Counsel was appointed to represent Defendant and an initial conference was held. Defendant's counsel submitted a letter to the Court indicating counsel reviewed the record and corresponded with Defendant but was unable to satisfy any of the exceptions which would allow consideration of the petition inasmuch as it had been filed beyond the one-year filing deadline. The Court conducted its own review of the record and agreed with counsel that the petition was untimely and there was no evidence to support a finding that any of the exceptions applied. The Court therefore indicated its intention to deny the petition without hearing, in an Order dated December 17, 2004. Defense counsel's request to withdraw his representation was granted in that same Order. On January 11, 2005, Defendant filed a response to the proposed dismissal, stating that "all of the Correctional Officers and County officials against Defendant are not telling truth and Ms. Djuaya C. Fountain DOB – 10/28/64

SS#--- -- ---- is a liar who filed P.F.A. against me because she was caught stealing my money and I lost everything I owned and am sitting in prison for another five years.” The Court did not believe this statement provided any additional basis for relief and therefore denied the petition by Order dated January 14, 2005. Defendant then filed the instant appeal.

Since the Sentencing Order of April 16, 2003, became final when no appeal therefrom was taken, the one-year period in which Defendant could have filed a timely PCRA petition expired on May 16, 2004. The petition filed on September 9, 2004, is untimely unless one of the three exceptions enumerated in Section 9545 of the Post Conviction Relief Act applies. The pro se petition filed by Defendant did not allege that any of the exceptions applied, indeed did not address the timeliness issue at all, and counsel’s review indicated to him that there was no evidence which could be offered to support application of any of the exceptions. Therefore, rather than filing an amended petition, counsel filed a letter in compliance with Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988), indicating there was no merit to the petition. On that basis, and its own review of the record, the Court denied the petition.

It is respectfully suggested the instant appeal has no merit, and the Order of January 14, 2005, should be affirmed.

Dated: February 8, 2005

By The Court,

Dudley N. Anderson, Judge

cc: District Attorney
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Gary L. Weber, Esq.
Hon. Dudley N. Anderson