

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

COMMONWEALTH

v.

**CORNELL SMITH,
Defendant**

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**No.: 99-10,573
99-11,043**

OPINION AND ORDER

Before the Court is the Application for Leave to Withdraw Appearance filed by Donald F. Martino, counsel for Defendant, on November 3, 2004. The Application follows Defendant's petition under the Pennsylvania Post-Conviction Relief Act (PCRA), filed August 11, 2003. The Application asserts that upon review of Defendant's PCRA petition, Mr. Martino 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 PCRA that would permit his petition to go forward. Mr. Martino further asserted that the underlying issue was without merit even if the Petition were timely. Mr. Martino further requested that he be allowed to withdraw as Defendant's attorney in this case.

The Court finds that the Defendant's PCRA petition is untimely. The PCRA provides that a petition must be filed within one year of the date that a case becomes final. 42 Pa.C.S.A. § 9545; see *also* Pa.R.Crim.P. 901. This Court

sentenced Defendant on July 10, 2000. He filed a Notice of Appeal to the Superior Court on July 11, 2000. On May 9, 2002, Defendant's appeal was dismissed, at which point his judgment of sentence become effective. 42 Pa.C.S.A. § 9545(b)(3). The period during which the Defendant could have properly filed a PCRA petition expired one year later on May 9, 2003. However, as noted above, his petition was not filed until August 11, 2003.

The PCRA provides three exceptions to the one-year filing requirement. For an exception to apply, the petitioner must allege and prove 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).

The Court finds that Defendant's claim does not fall within any of the listed exceptions and so remains untimely. Since Defendant has not claimed or offered any facts to show that any of the above exceptions apply, the Court must dismiss his 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 herewith shall affirm Mr. Martino's Application for Leave to Withdraw Appearance.

ORDER

AND NOW, this ____ day of January, 2005, the Application for Leave to Withdraw Appearance filed by Attorney Martino on November 3, 2004 is GRANTED. The Court hereby notifies Defendant that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.

By The Court,

Nancy L. Butts, Judge

cc: D. Martino, Esquire
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E. Linhardt, Esquire
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