

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:
	:
vs.	: NO. 83-10,480
	:
ROBERT BLACKWELL,	: CRIMINAL ACTION - LAW
	:
Defendant	:
	: PCRA/HABEAS CORPUS PETITION
	: DISMISSAL

DATE: February 6, 2006

OPINION and O R D E R

Before the court for determination is the Writ of Habeas Corpus Petition of Defendant Robert Blackwell (hereafter “Blackwell”) filed February 1, 2006. In the petition, Blackwell challenges his conviction, the legality of his sentence, and an alleged decision by the Pennsylvania Board of Probation & Parole (hereafter “Parole Board”) that he will be required to serve the entire length of his sentence. After reviewing the petition and the claims raised therein, the court concludes that the petition should be denied and intends to dismiss it. The petition should be denied and dismissed because it does not comply with the requirements of the Post Conviction Relief Act (hereafter “PCRA”), 42 Pa.C.S.A. §§ 9541 - 9546, and because Blackwell is not entitled to appellate review of the Parole Board’s decision to deny him parole.

Blackwell’s challenge to his conviction and legality of sentence are governed by the PCRA. Blackwell is seeking collateral relief by challenging his conviction and the legality of his sentence. The PCRA is the sole means of obtaining post conviction collateral relief. 42 Pa.C.S.A. § 9542; *Commonwealth v. Bennett*, 842 A.2d 953, 957 (Pa. Super. 2004); *Commonwealth v. Johnson*, 803 A.2d 1291, 1293 (Pa. Super. 2002). The PCRA encompasses all other common law and

statutory remedies for obtaining post conviction collateral relief, including habeas corpus and coram nobis. 42 Pa.C.S.A. § 9542. The PCRA subsumed the writ of habeas corpus, and habeas corpus provides relief only in cases where no remedy under the PCRA exists. *Commonwealth v. Morris*, 822 A.2d 684, 692-93 (Pa. 2003). The PCRA governs petitions seeking post conviction collateral relief no matter how the petition is titled. *Commonwealth v. Kutnyak*, 781 A.2d 1259, 1261 (Pa. Super. 2001).

Since the petition is governed by the PCRA, it must meet its requirements. Most importantly, the petition must comply with the jurisdictional timeliness requirements of the PCRA. Any PCRA petition, including a second or subsequent one, must be filed within one year of the date the judgment became final. 42 Pa.C.S.A. § 9545(b)(1); *Commonwealth v. Hutchinson*, 760 A.2d 50, 53 (Pa. Super. 2000). The preclusive effect of the one-year time limit may only be overcome if the petitioner pleads and proves that one of the exceptions applies. *Commonwealth v. Beasley*, 741 A.2d 1258, 1261 (Pa. 1999); *Commonwealth v. Davis*, 816 A.2d 1129, 1133 (Pa. Super. 2003). Those exceptions are:

- (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 to apply retroactively.

42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). If one of these exceptions applies, then the petition must be filed within sixty days of the date that the claim could have been presented. 42 Pa.C.S.A. § 9545(b)(2); *Commonwealth v. Gamboa-Taylor*, 753 A.2d 780 (Pa. 2000). If the petition is filed beyond the one-year time limit and none of the exceptions apply, then a court is prohibited from hearing the petition. *See, Commonwealth v. Robinson*, 837 A.2d 1157, 1161 (Pa. 2003).

The petition is untimely. On October 27, 1983, Blackwell was sentenced. On July 22, 1987, the Pennsylvania Superior Court affirmed Blackwell's sentence and denied his appeal. A judgment becomes final at the conclusion of direct review, including discretionary review with the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of the time for seeking such review. 42 Pa.C.S.A. § 9545(b)(3); *Commonwealth v. Mazzarone*, 856 A.2d 1208, 1211 (Pa. Super. 2004), *app. denied*, 872 A.2d 1198 (Pa. 2005). Blackwell had thirty days within which to challenge the Superior Court's denial of his appeal. *See*, Pa.R.A.P. 1113(a). Blackwell did not file a petition for allowance of appeal to the Pennsylvania Supreme Court. As such, Blackwell's sentence became final on August 24, 1987. The petition was filed well beyond the one year time limit, being filed almost nineteen years after Blackwell's sentence became final. Furthermore, the petition fails to allege any exception that would apply and save the petition from the jurisdictional time bar of the PCRA. As such, the petition should be denied and dismissed.

Blackwell's assertion that the Parole Board's alleged decision that he will have to serve the entire length of his sentence is not a matter reviewable by this court. Direct appellate review of the denial of parole does not exist because the decision to deny parole is not an adjudication subject to appeal under the Administrative Agency Law, 2 Pa.C.S.A. § 101 et seq., and does not implicate a constitutionally protected interest. *Coady v. Vaughn*, 770 A.2d 287, 289 (Pa. 2001); *Rogers v.*

Pennsylvania Bd. of Probation & Parole, 724 A.2d 319, 323 (Pa. 1999). Furthermore, "... a claim of denial of parole is not cognizable under the PCRA." *Commonwealth v. Walters*, 814 A.2d 253, 257 (Pa. Super. 2002), *app. denied*, 831 A.2d 599 (Pa. 2003). As such, Blackwell is not entitled to review of the Parole Board's decision in this court.

Accordingly, the court intends to deny and dismiss the petition. Blackwell shall have twenty days from the date of notice of this Opinion and Order to file a response to the proposed dismissal.

ORDER

It is hereby ORDERED that defendant Robert Blackwell shall have twenty (20) days to file a response to the proposed dismissal of his Writ of Habeas Corpus Petition filed February 1, 2006.

BY THE COURT,

William S. Kieser, Judge

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