

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-940-1999 (99-10,940)
: CR-917-1999 (99-10,917)
vs. : CRIMINAL DIVISION
:
:
ROBERT W. WELLS, :
Defendant : PCRA

ORDER

AND NOW, this ____ day of February 2006, 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 Post Conviction Relief Act (PCRA) Petition filed in the above-captioned matter is untimely and Petitioner is not entitled to post conviction collateral relief.

Following a jury trial, Petitioner was found guilty of two counts each of rape, aggravated indecent assault, sexual assault, terroristic threats and unlawful restraint, as well as one count each of involuntary deviate sexual intercourse, aggravated assault, simple assault, theft and robbery. On July 25, 2000, the Court sentenced Petitioner to an aggregate term of incarceration in a state correctional institution of 28 years to 56 years. Petitioner appealed.

In a memorandum decision filed September 17, 2001, the Pennsylvania Superior Court affirmed the judgment of sentence. Petitioner had 30 days within which to file a petition for allowance of appeal to the Pennsylvania Supreme Court but, to this Court's knowledge, no such petition was filed. Therefore, the judgment became final on October 17, 2001.

Any PCRA petition, including a second or subsequent petition, must be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves one of the three statutory exceptions. 42 Pa.C.S. §9545 (b). Petitioner's judgment became final on October 17, 2001. The current PCRA petition was filed on January 17, 2006. The current PCRA petition does not allege facts to support any of the statutory exceptions to the one-year filing requirement. Therefore, the petition is untimely and the Court lacks jurisdiction to hold an evidentiary hearing or grant Petitioner any relief. Commonwealth v. Howard, 567 Pa. 481, 489, 788 A.2d 351, 356 (Pa. 2002)(timeliness requirements are jurisdictional and court may not disregard or alter timeliness requirements of PCRA to reach merits of claims raised in a petition that is untimely filed).

In the alternative, the Court believes the claims raised in the current petition are waived. This is Petitioner's second PCRA petition. Petitioner had different counsel for his first PCRA petition than he had for trial and direct appeal. The issues raised in the current PCRA petition relate to the sufficiency of the evidence and evidence or witnesses that were not presented at trial that Petitioner believes should have been presented. These claims could have been raised in the first PCRA petition, but were not. Therefore, these claims are waived. See 42 Pa.C.S. §9544(b)(“For purposes of this subchapter, an issue is waived if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal or in a prior state postconviction proceeding.”).¹

¹ The Court notes Petitioner has not pleaded or even attempted to plead a properly layered ineffective assistance claim.

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. If no response is received within that time period or if the response does not allege facts that would rectify the timeliness and waiver problems, the Court will enter an order dismissing the petition.

By The Court,

Kenneth D. Brown, P.J.

cc: Kenneth Osokow, Esquire (ADA)
Robert Wells, EJ4830
1600 Walters Mill Rd., Somerset PA 15510
Gary Weber, Esquire (Lycoming Reporter)
Work file