

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 929-2005
 :
 RONALD SANDER, :
 :
 Defendant : SCHEDULE PCRA

Date: December 7, 2007

OPINION and ORDER

This Opinion and Order is in response to an Amended Post Conviction Relief Act (hereafter “PCRA”) Petition Defendant Ronald Sander filed with this court on September 17, 2007. On November 8, 2007, this court held a conference and entered an Order indicating its intent to dismiss the Petition as untimely. The court gave Defendant twenty days upon receipt of the order to file a response to the proposed dismissal and set forth why any of the exceptions set in 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii) apply so as to overcome the one year time limit. Defendant has filed no such response.

The Court now finds *sua sponte* that it must reconsider its decision to dismiss Defendant’s PCRA Petition as untimely. A trial court does not have jurisdiction to hear a PCRA petition if the petition was untimely filed. *Commonwealth v. Hutchinson*, 760 A.2d 50, 53 (Pa. Super. 2000). A PCRA petition, including a second or subsequent petition, must be filed within one year of the date the judgment of sentence becomes final. 42 Pa. C.S.A. § 9545(b)(1); *Commonwealth v. Lambert*, 884 A.2d 848, 851 (Pa. 2005), *cert. denied*, 126 S.Ct. 1431 (U.S. 2006); *Hutchinson*, 760 A.2d at 53. A judgment becomes final “at the conclusion of direct review, including discretionary review to 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. § 9545(b)(3); *Commonwealth v. Abu-Jamal*, 833 A.2d 719, 724 (Pa. 2003). The time limits prescribed by the PCRA will be strictly enforced because of their jurisdictional significance. *Commonwealth v. Vega*, 754 A.2d 714, 718 (Pa. Super. 2000).

The preclusive effect of the one-year time limit can 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 by that court to apply retroactively.

42 Pa.C.S.A. §9545(b)(1)(i)-(iii). If the case falls within one of these exceptions, then the petition must be filed within sixty days of the date the claim could have been presented. 42 Pa.C.S.A. §9545(b)(2); *Commonwealth v. Gamboa-Taylor*, 753 A.2d 780 (Pa. 2000).

Defendant pled guilty and was sentenced on February 22, 2006, to serve a total sentence having a minimum of 15 years and a maximum of 30 years, in accordance with a plea agreement. At the time of the Defendant's plea and sentence hearing it had been explained to the court that the Defendant was deaf and he had been provided the assistance of an interpreter arraigned for by his counsel. Defendant did not file a direct appeal of that sentence, so it became final on

March 24, 2006. As such, Defendant had until March 24, 2007 to file a PCRA Petition. *See* 42 Pa. C.S.A. § 9545(b)(1).

In February 2007, the Defendant sent this court a letter which we received on March 1, in which he raised a question about the 15 year term of his sentence stating, “Well, my question before you told me that.(sic) You could 15 years prison and you say if I be good until 15 years prison and I can’t wait get out 15 years. I will not doing again talk about crime. I will be good there until 15 years. Before you told me that I could get out until 15 years. Please answer any question...”

In response, this court entered an order March 1, 2007 directing the letter be placed in the court file and a copy forwarded to Defendant’s counsel. In that order, which was filed March 2, 2007, we indicated that we treated the letter as a request for the court to modify the minimum sentence which we stated would be denied as being untimely under 42 Pa.C.S. § 5505 and Pa.R.Crim.P. 720(A)(1).

Sometime after that, and to the best of the court’s recollection, immediately prior to July 16, 2007, this court received a Post Conviction Relief Act Petition, mailed to this judge’s office. The court dictated an order on that date, which was filed July 17, 2007, directing the Prothonotary to file and docket the petition. We further noted in that order it appeared the petition was untimely but as it was the first PCRA petition, we appointed counsel and provided that an amended petition could be filed until September 17, 2007. That order suggested to counsel the timeliness issue should be reviewed with the Defendant.

For some unknown reason the Defendant’s PCRA petition was not docketed until August 7, 2007. When it was docketed, a letter signed by the Defendant dated August 1, 2007 accompanied it. This letter appeared to set forth some additional allegations concerning the

Defendant being forced to plead guilty by a sister and his mother. The letter also requested the appointment of an interpreter to assist the Defendant because of him being unable to clearly understand the proceedings and what was being said.

By letter dated August 26, 2007, the Defendant again wrote to the Prothonotary/Clerk of Courts asking for the name and address of his interpreter because he was deaf and he needed to contact the woman that was the interpreter for him on February 26, 2007. The Prothonotary's notation dated 9/11/07 to that letter indicates that the letter was forwarded to the Public Defender's Office.

Appointed counsel filed an amended PCRA petition on September 17, 2007. At a conference held November 8, 2007 it was determined that Defendant had not set forth any allegations which entitles him to relief under the after discovered exception 42 Pa. C.S.A § 9545(b)(1)(ii). The court announced at the conclusion of the November 8, 2007 hearing that it intended to dismiss the Defendant's PCRA petition and entered an order that date directing that the PCRA petition would be dismissed unless an objection was filed by the Defendant within 20 days of that date. The order was filed November 15, 2007.

Defendant has failed to file a response to the Court's November 8, 2007 Order indicating its intent to dismiss the PCRA Petition. In preparing to file this opinion and order, the court again reviewed the amended petition filed by appointed counsel on September 17, 2007. In particular, our attention has been drawn to paragraph 10 of that petition which states as follows, "The timeliness of Petitioner's petition was affected by his deafness which interfered with his ability to ascertain and understand information pertaining to his sentence." This was followed by allegation #11 as follows, "Petitioner filed the petition once he learned of his misunderstanding of the sentencing guidelines."

Based upon these allegations, this court can not now, in good conscience, dismiss the PCRA petition without a hearing. The court now believes upon further review of the filings in this case that the Defendant has alleged an exception under 42 Pa.C.S. § 945(b)(1)(ii) essentially asserting that facts were unknown to him concerning this sentence and that his deafness prevented him from earlier making an understanding as to the full effect of his sentence as well as the role of his counsel, mother, and sister in it. The amended petition also asserts that the Defendant has not understood the meaning of the difference of concurrent and consecutive sentences due to his deafness and his difficulty in learning and processing information and that as a result his guilty plea was unlawfully induced as it was not knowing, voluntary, and intelligent.

Based upon these allegations, this court will grant the Defendant a hearing under the Post Conviction Relief Act Petition and enter as the following order.

ORDER

It is hereby ORDERED and DIRECTED that a hearing on the Defendant's Post Conviction Relief Act Petition filed August 7, 2007 as amended by the filing of September 17, 2007 will be held on **FEBRUARY 11, 2008 AT 9:00 A.M.** in Courtroom 5, Lycoming County Courthouse, Williamsport, Pennsylvania.

Appointed counsel is hereby authorized to hire an appropriate interpreter for the deaf to assist the Defendant in communicating with counsel and the court in connection with preparing for and the conduct of this hearing. Arrangements for such hiring shall be made through the Court Administrator's Office of Lycoming County. An interpreter different than the one previously utilized should be hired in as much as the prior interpreter may be a witness in the future proceeding.

The Sheriff of Lycoming County shall timely transport the Defendant, captioned above, to the Lycoming County Prison from SCI Graterford, and/or any other institution where he may be found.

The Defendant shall be detained in the Lycoming County Prison for purposes of a hearing/trial which is scheduled to be held as stated above.

On completion of the proceedings, the Sheriff shall return the Defendant to the prior place of incarceration.

At this time, pending further conference with counsel, this court believes that the first evidentiary issue to be addressed is whether or not the Defendant has in fact filed a timely Post Conviction Relief Act Petition and, if so, this court will then proceed to determine to hear evidence as to the merits of the petition.

BY THE COURT,

William S. Kieser, Judge

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