

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 90-11, 504
 :
 JEFFREY HOWLETT, : CRIMINAL ACTION - LAW
 :
 Defendant : PCRA

Date: August 11, 2008

OPINION and ORDER

Before the court for determination is Defendant Jeffrey Howlett’s “Petition for Relief Under Article Six, Section Three of the Constitution of this Commonwealth,” filed June 11, 2008. In the petition, Defendant challenges his conviction on the basis that court appointed council, Jay Stillman, Esquire, provided him with ineffective assistance of counsel, and as a result Defendant is entitled to relief because his right to counsel was violated. After reviewing the petition and the claims raised therein, the court concludes that the petition is denied. The petition is denied and dismissed because it should have been brought under the Post Conviction Relief Act (hereafter “PCRA”).

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. 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). The PCRA requires that any petition, including a second or subsequent one, must be filed within one year of the judgment becoming final. 42 Pa.C.S.A. §9545(b)(3); *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 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. Defendant was found guilty on July 15, 1991 and was sentenced on March 26, 1992. Subsequently, Defendant filed numerous appeals and petitions under the PCRA. On January 6, 1992, Defendant filed his first petition under the PCRA. On April 20, 1992, Defendant filed a notice of appeal to the superior court. On June 9, 1992, Judge Smith issued an Opinion and Order pursuant to Defendant's first petition under the PCRA. On December 22, 1992, the appellate court filed its judgment. Then, February 24, 1994, Defendant filed another notice of appeal to the superior court. On July 5, 1994, Defendant filed a second petition under the PCRA. On August 24, 1994, the appellate court filed a dismissal of Defendant's second appeal. Again, on January 3, 1995, Defendant filed a notice of appeal to the superior court. On June 16, 1995, Defendant filed a third petition under the PCRA. On June 27, 1995, the appellate court filed a dismissal of Defendant's third appeal. On August 29, 1995, Judge Smith filed another Opinion and Order pursuant to Defendant's

petitions under the PCRA. Again, on September 28, 1995, Defendant filed a notice of appeal to the superior court. On October 3, 1995, Judge Smith filed an Opinion in support of the Order of August 28, 1995, filed August 29, 1995. April 9, 1997, judgment was filed by the appellate court, an Order of the appellate court denying a motion for reconsideration was filed, and a notice of denial of petition for allowance of appeal to supreme court was filed. On November 6, 2002, the Defendant filed objections to dismissal of his petition under the PCRA. Then, on November 18, 2008 Judge Anderson filed an Order pursuant to Defendants objections. The Defendant again, filed a notice of appeal to the superior court on December 17, 2002. On February 5, 2003, Judge Smith filed an Opinion in support of the October 10, 2002 Order, filed on October 11, 2002. On May 8, 2003, the appellate court issued an Order dismissing Defendant's appeal for Defendant's failure to file a brief. Defendant is definitely time barred from filing a petition under the PCRA for it has been over a year since Defendant's conviction became final, since Defendant's case has been under direct review.

Furthermore, Defendant's petition under the PCRA cannot be heard under any exception to the timeliness requirement for review under the PCRA. Attorney Stillman's involvement as appointed counsel cannot be grounds for an exception to the one-year time limit. The ineffectiveness of counsel does not provide an exception to the time limit requirements of 42 Pa.C.S.A. §9545. *Commonwealth v. Breakiron*, 781 A.2d 94, 97 (Pa. 2001); *Commonwealth v. Carr*, 768 A.2d 1164, 1168 (Pa. Super. 2001). Defense counsel, appointed or retained, does not come within the definition of "government official" and his actions cannot be the grounds to support a claim premised on the governmental interference exception. 42 Pa.C.S.A. §9545(b)(4); *Commonwealth v. Yarris*, 731 A.2d 581, 588 (Pa. 1999).

Also, a conclusion that prior counsel was ineffective is not a newly discovered fact that would fall within the after-discovered facts exception. *Commonwealth v. Gamboa-Taylor*, 753 A.2d 780, 785 (Pa. 2000). Therefore, any ineffectiveness on counsel's part cannot form the basis of an exception to the time limit requirements. Furthermore, there has been no right to counsel case law recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania since Defendant's case was tried that has been held to apply retroactively that is pertinent to Defendant's case.

Accordingly, the PCRA Petition will be dismissed as untimely because it was filed more than one year after Defendant's judgment became final and Defendant has failed to establish an exception to the one-year time limit. Therefore, the Court lacks jurisdiction to hear the Petition and cannot address the issues raised therein.

ORDER

It is hereby ORDERED that Defendant Jeffrey Howlett's Petition filed June 11, 2008 is denied.

Defendant shall be notified of this Opinion and Order by certified mail, return receipt requested pursuant to Pa.Crim.R.P. 907(4).

Defendant is advised that he has the right to appeal this Court's denial and dismissal of his Post Conviction Relief Act Petition.

Defendant is further advised that he has thirty days in which to file his appeal.

BY THE COURT,

Clinton Smith, Judge

cc: District Attorney
Jeffrey Howlett -- #BU4830
SCI at Huntingdon, 1100 Pike Street, Huntingdon, PA 16654-1112
Judges
Gary L. Weber, Esquire (Lycoming Reporter)