

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-892-2004 (04-10,892)
: vs. : CRIMINAL DIVISION
: :
: :
ROBERT E. JOHNSON, III, :
Defendant : PCRA

ORDER

AND NOW, this ____ day of January 2008, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the Court intends to dismiss the Post Conviction Relief Act (PCRA) petition filed on January 9, 2008, because it is untimely and lacks merit.

Any PCRA petition, including second or subsequent petitions such as this, must be filed within one year of the date the judgment of sentence becomes final, unless the petitioner pleads and proves one of the three limited statutory exceptions. 42 Pa.C.S.A. §9545(b)(1). A judgment becomes final “at the conclusion of direct review, including discretionary review in 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). On October 11, 2004, Defendant pled nolo contendere to attempted homicide and possession of an instrument of crime in exchange for a sentence of 12 ½ to 28 years incarceration. On October 25, 2004, the Court sentenced Defendant in accordance with the plea agreement. No appeal was filed. Therefore, Defendant’s judgment became final on or about November 24, 2004. Defendant’s current PCRA petition was not filed until January 8, 2008, more than three years after the expiration of the one year time period.

Defendant claims the police criminal complaint, the affidavit of probable cause and the district attorney's information were not signed and he could not have discovered this defect by due diligence. The Court finds that the petition has not pled sufficient facts for Defendant to avail himself of any of the exceptions. The petition does not state the date when Defendant allegedly discovered this information; it only states that he attempted to obtain copies of these documents in December 2007, but was unsuccessful.¹ Thus, it appears from the petition that Defendant was not diligent, since he did not even seek this information until well beyond November 24, 2005.

In the alternative, even if the petition were timely, it is without merit. The affidavit, criminal complaint and district attorney's information contained in the court file are signed. The police affiant, Agent Stephen Sorage, signed the affidavit of probable cause and the criminal complaint, and the first assistant district attorney, Kenneth Osokow, signed the information. Copies of these documents are attached to this Order for Defendant's benefit. Even if these documents were not signed, Defendant would not be entitled to relief. Defendant relies on Commonwealth v. Belcher, 258 Pa.Super. 153, 392 A.2d 730 (Pa.Super. 1978). However, this case was overruled in Commonwealth v. Veneri, 306 Pa.Super. 396, 404, 452 A.2d 784, 788 (Pa.Super. 1982).

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 dismiss the petition. Defendant may respond to this proposed dismissal within twenty (20) days. If

¹ Defendant wrote to the Prothonotary seeking these documents. The Prothonotary wrote a note back to Defendant explaining that he needed to file a petition and the institution in which he was incarcerated should have a form for him to use. Although Defendant asserted in his writing that he served the Court and the District Attorney, the Court never received such a document.

no response is received within that time period, the Court will enter an order dismissing the petition.

By The Court,

Kenneth D. Brown, P.J.

cc: Kenneth Osokow, Esquire (ADA)
Robert E. Johnson, III, #GA2017
1000 Follies Rd, Dallas, PA 18612
Work file