

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR- 14-1989
vs. : (89-10,014)
 : CRIMINAL DIVISION
 :
 :
 :
 :
 JAMES PRINCE, : PCRA
 Defendant

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 finds it is without jurisdiction to hold any proceedings or grant Defendant any relief because his Post Conviction Relief Act (PCRA) petition is untimely.

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 June 21, 1989, a jury convicted Defendant of two counts of rape, two counts of kidnapping, two counts of involuntary deviate sexual intercourse, unlawful restraint, false imprisonment, indecent assault, simple assault, recklessly endangering another person, terroristic threats and possession of an instrument of crime. On November 30, 1989, the Court sentenced Defendant to an aggregate term of incarceration of 16 to 35 years consisting of the following consecutive sentences: 9 to 20 years for rape, 3 to 6 years for

involuntary deviate sexual intercourse (IDSI), 2 to 5 years for kidnapping, 1 to 2 years for indecent assault, 6 months to 12 months for simple assault and 6 months to 12 months for recklessly endangering another person.¹ Defendant filed a motion for reconsideration of sentence, which was denied on December 29, 1989. Defendant filed a timely appeal. Defendant raised two issues on appeal: (1) his sentence was excessive; and (2) trial counsel was ineffective for failing to request inspection of the victim's counseling records. In a decision dated September 20, 1990, the Superior Court rejected the sentencing issue, but remanded the case to the trial court for a hearing on trial counsel's ineffectiveness. The trial court held a hearing on or about November 26, 1990, and, after reviewing the records in camera, found trial counsel was not ineffective. Counsel failed to file an appeal from this Order. Although Defendant filed a pro se appeal, it was untimely, so the Superior Court quashed it. Defendant filed PCRA petitions to get his appeal rights reinstated nunc pro tunc, which were granted. Defendant's direct, nunc pro tunc appeal was decided by the Pennsylvania Superior Court in a memorandum decision dated May 3, 1994. Defendant had 30 days within which to file a petition for allowance of appeal. The Court believes Defendant did not file such a petition because the record was remanded to Lycoming County on June 7, 1994. Therefore, Defendant's judgment became final no later than June 2, 1994.

Defendant filed his current PCRA petition on December 12, 2007.

This is the fourth PCRA petition Defendant has filed since the Superior Court denied his appeal on May 3, 1994. This PCRA petition is more than 12 years untimely.

Defendant claims his PCRA is not untimely because it was filed within

¹ The Court imposed concurrent sentences for terroristic threats and possessing an instrument of crime. The second rape and IDSI counts merged with the rape and IDSI convictions upon which Defendant was sentenced

60 days after the case of Commonwealth v. Bennett, 930 A.2d 1264 (Pa. 2007) was received at SCI-Huntingdon. This Court cannot agree. Bennett stands for the proposition that the exception contained in 42 Pa.C.S.A. §9545(b)(1)(ii) is not limited to ‘after-discovered evidence.’ That section states:

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that: . . . (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;

Bennett’s appeal from his first PCRA was quashed on August 14, 2000. On October 24, 2000, Bennett filed a second PCRA petition in which he sought reinstatement of his appeal rights. In this second petition, Bennett set forth how he attempted to discover the status of his appeal from the PCRA and Superior Courts and alleged he did not know his appeal was quashed until October 4, 2000 when he received a letter from the Superior Court explaining his appeal was quashed due to counsel’s failure to file a brief. The Superior Court found the second PCRA petition was untimely. The Pennsylvania Supreme Court reversed and remanded, finding Bennett had alleged sufficient facts to justify a hearing on whether his petition was timely under subsection (b)(1)(ii).

Bennett has no application to the case at bar. Defendant knew from the date he was sentenced that the Court did not merge most of his convictions and he received consecutive sentences for rape, IDSI, kidnapping, indecent assault, simple assault and recklessly endangering another person. Therefore, Defendant cannot utilize the Bennett decision or the exception contained in subsection (b)(1)(ii). In fact, Defendant has filed two

and the false imprisonment and unlawful restraint convictions merged with the kidnapping conviction.

previous PCRA petitions in which one of his allegations was that his sentence was illegal and the convictions should have merged.² Thus, the record clearly shows the facts upon which Defendant's current claims are predicated were known to him more than 60 days before he filed his current petition.³

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, the Court will enter an order dismissing the petition.

By The Court,

Kenneth D. Brown, P.J.

cc: Kenneth Osokow, Esquire (ADA)
James R. Prince, BD1801
1100 Pike Street, Huntingdon, PA 16654-1112

² These petitions were filed on August 27, 2004 and February 21, 2007.

³ Even if this PCRA petition were timely, the Court would deny it as lacking merit. There was a separate factual basis for each consecutive sentence imposed by the Court. The rape conviction was based on the Defendant penetrating the victim's vagina with his penis by force or forcible compulsion. The factual basis for the IDSI conviction was Defendant putting his penis in the victim's rectum or anus. Defendant also put his fist in the victim's rectum or anus, which formed the basis of the indecent assault. During the course of this incident, Defendant also punched the victim in the face and tried to hit her with his vehicle, which was the factual basis for the simple assault and recklessly endangering convictions, respectively.