

IN THE COURT OF COMMON PLEAS LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	
	:	
v.	:	No.: 765-1999
	:	CRIMINAL DIVISION
RICHARD J. RANDALL, JR.	:	
Defendant	:	PCRA

OPINION AND ORDER

Before this Honorable Court, is the Defendant’s December 20, 2007, Petition for Relief under the Post Conviction Relief Act (PCRA) and Defendant’s Motion for Assignment of PCRA/Appellate Counsel. On February 6, 2008, this Court granted Defendant thirty days to file an amended PCRA petition or a Turner-Finley letter indicating no meritorious issues were raised in Defendant’s Petition. A “no merit” letter has been submitted to the Court by PCRA counsel for the Defendant, Andrea Pulizzi, Esq., in compliance with the requirements of Commonwealth v. Turner, 544 A.2d 927 (1988). After an independent review of the entire record, the Court finds it is without jurisdiction to hold any proceedings or grant Defendant any relief because his PCRA Petition is untimely.

Under 42 Pa.C.S. § 9545(b)(1), any PCRA Petition, “including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final,” unless the petitioner pleads and proves that one of the three statutory exceptions apply. “[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.” § 9545(b)(3).

On October 26, 1999, Defendant entered a plea of guilty to Sexual Abuse of Children (photographing a child involved in sexual activity), Sexual Abuse of Children (possessing

photographs of a child involved in sexual activity) and Corruption of Minors. Defendant was sentenced on that same date to serve an aggregate period of incarceration of six years and two months to fifteen years. On November 1, 1999, Defendant filed a motion to withdraw the guilty plea and to modify sentence. An amended Post Sentence Motion was filed on December 13, 1999, and a hearing was held on March 13, 2000. At the hearing, the Commonwealth requested new counsel be appointed due to a conflict. The Court also denied the Post Sentence Motions because a period of nearly one-hundred and fifty days had passed since the motion was filed.

On April 5, 2000, this Court appointed J. Michael Wiley, Esq., to represent Defendant. No direct appeal was filed between April 5, 2000 and April 12, 2000, therefore, the judgment became final. The period during which the Defendant could have properly filed a PCRA petition expired one year later on April 12, 2001. On October 26, 2001, Eric Linhardt, Esq., was appointed to represent Defendant. On June 18, 2002, Mr. Linhardt filed the PCRA Petition, requesting that Defendant be granted leave to file post-sentence motions and a direct appeal *nunc pro tunc*. On October 10, 2002, the Honorable Judge William S. Kieser gave Defendant ten days to file post-sentence motions. Defendant's Post-Sentence Motion was filed on October 28, 2002. On February 10, 2003, this Court denied Defendant's PCRA Petition finding it to be untimely. On February 28, 2003, Mr. Linhardt filed a Notice of Appeal with the Superior Court. On April 14, 2004, the Superior Court affirmed this Court's decision. Mr. Linhardt filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court, which was denied on September 21, 2004.

On May 18, 2005, Defendant filed a *pro se* PCRA Petition and subsequently filed a second petition on June 7, 2005, raising the same issues. On September 16, 2005, Conflicts Counsel Donald F. Martino, Esq., was appointed to represent Defendant on his petition. Mr.

Martino filed a “no merit” letter on September 25, 2005, stating that Defendant’s PCRA Petitions were untimely. On October December 8, 2005, this Court dismissed Defendant’s PCRA Petition.

Defendant filed the instant Petition on December 20, 2007. Ms. Pulizzi was appointed on January 7, 2008 to represent Defendant. Subsequently, Ms. Pulizzi filed a “no merit” letter stating that the Defendant’s Petition was untimely. The Court agrees. As the Defendant’s Petition is untimely, the Court does not have jurisdiction to reach the merits of the Petition. The Court also finds that Defendant’s Motion for Assignment of PCRA/Appellate Counsel shall also be denied as Defendant is not entitled to Counsel when current counsel has stated that there are no meritorious issues.

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant’s PCRA petition. Additionally, the Court finds that no purpose would be served by conducting any further hearing. None will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), 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.

ORDER

AND NOW, this _____ day of May 2008, it is hereby ORDERED and DIRECTED as follows:

1. Defendant is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 907(1), that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.
2. The application for leave to withdraw appearance filed March 5, 2008, is hereby GRANTED and Andrea Pulizzi, Esq. may withdraw her appearance in the above captioned matter.
3. Defendant's Motion for Assignment of PCRA/Appellate Counsel is hereby DENIED.

By The Court,

Nancy L. Butts, Judge

xc: DA (KO)
Andrea Pulizzi, Esq.
Richard J. Randall, Jr.
SCI-Fayette
P.O. Box 9999
LaBelle, PA 15450s
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)