

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:
	:
vs.	: NO. 91-10, 935
	:
JERARD BRADLEY,	: CRIMINAL ACTION - LAW
	:
Defendant	: PCRA

**OPINION and ORDER**

**AND NOW**, this 9<sup>th</sup> day of **January, 2009**, before the court for determination is Defendant Jerard Bradley's Motion for Post Conviction Collateral Relief, filed October 11, 2008. In his petition, Defendant challenges his conviction on the basis that court appointed council, Marc Lovecchio, Esquire, provided him with ineffective assistance of counsel and as a result Defendant is entitled to relief. After reviewing the petition and the claims raised therein, this Court concludes that the petition is denied. The petition is denied and dismissed because it the petition must comply with the jurisdictional timeliness requirements of the Post Conviction Relief Act (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.

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 plead guilty in this matter on May 18, 1992, and was sentenced on April 17, 1996. Almost four years had past between Defendant's plea and when he was sentenced because sentencing was deferred until after Defendant's pending murder charge in another case was resolved. In any event, no appeal was filed to the sentence imposed on April 17, 1996. Thus, for the purposes of the PCRA, Defendant's judgment became final thirty days after his sentence was imposed by this Court.

Subsequently, on February 16, 1999, thirty-four months later, Defendant filed a Motion to Appeal *Nunc Pro Tunc* which was denied on September 9, 1999. On September 5, 2000, Defendant filed a petition under the PCRA, restating those claims previously raised in the Motion to Appeal *Nunc Pro Tunc*. In addressing the petition, a May 4, 2001 order by this Court vacated its prior September 9, 1999 order denying Defendant's Motion to Appeal *Nunc Pro Tunc* and reconsidered that motion, and thus finding the PCRA Petition moot, concluded that Defendant had not justified the nearly three-year delay after imposition of a sentence in filing his motion, and the court denied the Motion to Appeal *Nunc Pro Tunc*.

On June 4, 2001, Defendant filed a notice of appeal to the superior court regarding both his PCRA Petition and Motion to Appeal *Nunc Pro Tunc*. On October 17, 2002, the appellate court filed its judgment affirming this Court's order. The Superior Court concluded that Defendant's "petition for appeal *nunc pro tunc* was untimely under the PCRA and was properly dismissed by the trial court and his auxiliary PCRA petition was properly dismissed as moot." Memorandum, PA Superior Court, October 17, 2002, p. 4-5.

The claims that Defendant now raises are analogous to the claims that he rose in Motion to Appeal *Nunc Pro Tunc* and his auxiliary PCRA Petition. In the PCRA Petition *sub judice* Defendant asserted that he received ineffective assistance of counsel, there was a violation of his due process rights, his sentence was not in compliance of his plea agreement, and he received an unlawful aggregate of his sentence. Specifically, he alleged that his court appointed attorney at sentencing, Marc Lovecchio, Esquire, was ineffective for failing to object to the sentencing and request that the plea agreement be withdrawn in that the sentence was not in compliance with the plea agreement.

Defendant's claims, along with the relief he requests, are subject to the same pitfalls as were his previous petitions and relief under the PCRA is blocked by the same considerations already considered. Namely, Defendant is 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 Lovecchio'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.

As is discussed in the Superior Court's October 17, 2002 Memorandum, Defendant cannot rely upon the exception allowing a later-filed petition where the facts upon which the claim is predicated were unknown and could not have been ascertained with due-diligence within the one-year deadline. The Superior Court explained, as did this Court, that Defendant waited too long to assert that due-diligence would not have discovered the counsel's ineffectiveness. Memorandum, PA Superior Court, October 17, 2002, p. 3-4; *citing Commonwealth v. Carr*, 786 A.2d 1164 (Pa. Super. 2001); *Commonwealth v. Hall*, 771 A.2d 1232 (2001). Last, 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 and DIRECTED that notice is hereby given to the Defendant and the Commonwealth of the Court's intention to dismiss the Defendant Jerard Bradley's Petition filed October 10, 2008 for the reasons noted above. The Defendant is hereby advised that he may respond to this proposed dismissal within twenty-days of the date of receiving notice of the entry of this Order.

It is further ORDERED and DIRECTED that the Defendant is hereby notified that if he fails to file any response or if a response does not raise issues that are reviewable and meritorious under the Post Conviction Relief proceedings that the petition will be DISMISSED.

The Prothonotary shall ensure that the 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  
Jerard Bradley – BQ6128  
1600 Walters Mill Road, Somerset, PA 15501  
Judges  
Gary L. Weber, Esquire (Lycoming Reporter)