

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 335-2004
	:	CRIMINAL DIVISION
BARCAR FELDER,	:	APPEAL
Defendant	:	

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)
OF THE RULES OF APPELLATE PROCEDURE

The Defendant appeals the Court’s Order of February 17, 2010, which dismissed the Defendant’s PCRA Petition. The Defendant’s Notice of Appeal was received by the Court on March 3, 2010, and on April 9, 2010, the Court directed the Defendant, in accordance with Pa.R.A.P. No. 1925(b), to file within thirty (30) days a concise statement of matters complained of on appeal. The Defendant’s concise statement of matters complained of on appeal was received by the Court on April 23, 2010.

The Defendant raises one issue on appeal: 1) The factual predicate for appellant’s claim was unknown until on or about December 20, 2009, when he was informed by his case manager at FCI Fairton that a two hundred and sixteen (216) month detainer was still lodged on him despite completion of the total sixty (60) month sentence in which the court ordered that the sentence was to run concurrent with his federal sentence.

42. Pa.C.S. 9545(b)(1) requires that any PCRA Petition be filed within one year of the date the judgment becomes final. 42. Pa.C.S. 9545(b)(1)i-iii allows for the filing of a PCRA Petition after one year of the date the judgment becomes final in the following circumstances

(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 by that court to apply retroactively.

The Defendant asserts that he was aware of the detainer against him prior to meeting with his case manager on or about December 20, 2009, as Assistant District Attorney Kenneth A. Osokow sent a letter dated February 27, 2006, to the Defendant's then place of confinement, suggesting that the sentencing order be lodged as a detainer. The Defendant contends that he believed that the detainer was only for precautions in the event that he appealed his sentence and/or conviction. The Defendant also contends that he only inquired about the detainer on or about December 20, 2009, as he believed that the minimum duration of all four of the sentences imposed against him were complete and he had yet to hear from a representative of the Board of Parole.

The Defendant was sentenced in this case on January 13, 2006 and did not file his PCRA Petition until February 16, 2010. The Defendant's PCRA Petition was denied pursuant to Pa. R. Crim. P. 901 (A) as the Defendant filed for PCRA more than one (1) year after judgment was final. The Defendant's argument that he was not aware of the nature of the detainer against him until December 20, 2009, does not qualify as an exception to the one year filing requirement under 42. Pa.C.S. 9545(b)(1)i-iii.

The Court notes that the Defendant, in his concise statement of matters complained of on appeal, references Pa.R.Crim.P. 904, and quotes that rule as stating "counsel be appointed in

[e]very case in which a defendant has filed a petition for post-conviction collateral relief for the [f]irst time.” The Court observes that the Defendant did not quote Pa.R.Crim.P. 904 correctly, and that the rule actually says “Except as provided in paragraph (H), when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, the judge shall appoint counsel to represent the defendant on the defendant's first petition for post-conviction collateral relief. Pa.R.Crim.P. 904(C). As the Defendant’s PCRA Petition was properly dismissed as untimely, the Defendant did not need counsel to represent him on his first PCRA Petition and the Court therefore did not violate Pa.R.Crim.P. 904 when it did not appoint the Defendant counsel.

The Court requests that the Order of February 17, 2010, be affirmed as the Defendant’s PCRA Petition was properly dismissed as untimely.

DATE: _____

Respectfully Submitted,

Nancy L. Butts, President Judge

xc: DA
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