

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. 765-1999
	:	CRIMINAL DIVISION
RICHARD RANDALL,	:	
Defendant	:	PCRA

OPINION AND ORDER

On April 7, 2010, the Defendant filed a *Pro Se* Post Conviction Relief Act (PCRA) Petition, his fourth PCRA Petition to date.¹ On April 12, 2010, the Court appointed Edward J. Rymysza, Esq., as counsel for the Defendant. On April 16, 2010, the Honorable Marc F. Lovecchio vacated the appointment of Edward J. Rymysza, Esq., as a conflict existed with said appointment, and as an alternative appointed Joel McDermott, Esq. to serve as the Defendant's counsel. A Court Conference was held on the Defendant's PCRA Petition on June 29, 2010. Following the Court Conference, the Court entered an Order dated June 30, 2010, which stated that pursuant to Pa. R. Crim. P. 904(c), the Defendant was not entitled to counsel to represent him for the present proceeding. The June 30, 2010 Order vacated Joel M. McDermott's appointment to serve as counsel to the Defendant and directed the Defendant to file a petition within thirty (30) days which set forth with specificity why the Court should have jurisdiction over his case and why his case is not barred from consideration for being untimely.

¹ The Court notes that the June 30, 2010 Order of the Court referred to the present PCRA Petition as the Defendant's third PCRA Petition filed to date. After a thorough review of the record it appears that the present Petition is in fact the Defendant's fourth PCRA Petition. This fact gives even more credence to the decision to deny the Defendant representation of counsel pursuant to Pa. R. Crim. P. 904(c).

Discussion

Following the Court's Order of June 30, 2010, the Defendant filed an amended PCRA Petition on July 19, 2010. In his amended Petition, the Defendant argues that his fourth PCRA Petition is timely as Judge Lovecchio's Order of April 16, 2010 was not final until May 16, 2010. 42 Pa.C.S. 9545(b)(1) requires that any PCRA Petition, including a second or subsequent Petition, must be filed within one year of the date the judgment becomes final. Judge Lovecchio's Order of April 16, 2010 was merely an Order vacating the appointment of Edward J. Rymsza, Esq. and appointing Joel M. McDermott, Esq. as the Defendant's Counsel. Judge Lovecchio's Order was not the final judgment of this case. The Defendant's sentence became final April 12, 2000, 30 days after his post-sentence motion was denied and the time for filing a direct appeal expired. See 42 Pa.C.S.A. §9545(b)(3). Therefore, the Defendant had until April 12, 2001 to file a timely PCRA Petition. The present Petition was filed April 7, 2010. As the Defendant's amended Petition of July 19, 2010 fails to reveal how the clearly untimely Petition meets one of the exceptions for timeliness set forth in 42 Pa.C.S.A. §9545(b)(1)(i-iii), the Petition shall be dismissed.

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant's PCRA petition. Additionally, as 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 the Court's intention to deny the Petition. The 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 August, 2010, the Defendant is notified that it is the intention of the Court to dismiss the Defendant's PCRA petition unless he files an objection to that dismissal within twenty days (20) of today's date. This decision will be served on the Defendant as set forth in Pa.R.Crim.P. 907(1).

By the Court,

Nancy L. Butts, President Judge

xc: DA
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