

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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

ORDER

AND NOW, this ____ day of September 2010, the Court, having received a response from the Defendant to this Court's proposed dismissal of his Post Conviction Relief Act (PCRA) Petition which does not set forth any grounds to delay the disposal of this matter, the Defendant's PCRA petition is hereby **DISMISSED**.

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. The Defendant states in his Objection to Dismissal of his fourth PCRA Petition that the issue of the legality of a sentence imposed by the Court of Common Pleas is never waived and is not controlled by the usual timeliness rules. The Defendant is mistaken in this belief. The timeliness requirements of the PCRA are "jurisdictional time limits [that] go to a court's right or competency to adjudicate a controversy. These limitations are mandatory and interpreted literally; thus, a court has no authority to extend filing periods except as the statute permits." Commonwealth v. Beck, 848 A.2d 987 (Pa.Super.Ct.2004) (citing Commonwealth v. Fahy, 737 A.2d 414, 222 (Pa.1999)). The Beck Court further quoted "although legality of sentence is always subject to review within the PCRA, claims must still

first satisfy the PCRA's time limits or one of the exceptions thereto." Beck at 989. (citing Fahy at 331).

In his Objection to Dismissal of his Fourth PCRA Petition, the Defendant correctly quotes one of the three exceptions to the timeliness requirements of the PCRA as 42 Pa.C.S.A. 9545(b)(1)(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." However, the mere recitation of an exception to the timeliness constraints does not fulfill the requirements for such an exception under the PCRA. 42 Pa.C.S.A.(b)(1) states clearly that the PCRA Petition must plead and **prove** one of the three enumerated exceptions. Presently, the Defendant has not even attempted to allege how 42 Pa.C.S.A. 9545(b)(1)(iii) might apply to his case. As such, the Defendant's PCRA Petition does not meet the requirements for an exception to the timeliness constraints under the PCRA; therefore, the PCRA Petition shall be dismissed.

Defendant is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the county courthouse, with notice to the trial judge, the court reporter and the prosecutor. The Notice of Appeal shall be in the form and contents as set forth in Rule 904 of the Rules of Appellate Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa.R.A.P. 903.

If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, the Defendant may lose forever his right to raise these issues.

A copy of this order shall be mailed to the Defendant by certified mail, return receipt requested.

By the Court,

Nancy L. Butts, President Judge

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