

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

| | | |
|-------------------------------------|---|--------------------------|
| COMMONWEALTH OF PENNSYLVANIA | : | |
| | : | |
| v. | : | No. 569-2008 |
| | : | CRIMINAL DIVISION |
| DANIEL CASSIDY, | : | |
| Defendant | : | PCRA |

OPINION AND ORDER

On April 25, 2011, the Defendant, through his attorney, Kirsten A. Gardner, Esquire, filed a Petition for Relief under the Post Conviction Relief Act (PCRA). After an independent review of the record, the Court agrees with Defense Counsel and finds that the Defendant is not eligible for relief pursuant to the PCRA.

Factual Background

Following a non-jury trial on this case held before the Honorable Nancy L. Butts on February 26, 2009, the Defendant was convicted of two counts Burglary, two counts Criminal Trespass, and one count Theft by Unlawful Taking. On March 13, 2009, the Court sentenced the Defendant on several separate case numbers, but on docket No. 569-2008 the Defendant was sentenced to incarceration in the Lycoming County Prison for a minimum of 11 and ½ months to a maximum of 23 months. The Defendant was also given credit for time served from October 12 to December 18, 2007 and March 28 to June 2, 2008, a total of 135 days.

Procedural Background

On February 24, 2010, previous defense counsel Andrea Pulizzi, Esquire, filed a premature PCRA Petition which was dismissed by this Court as the Defendant's case was then pending appeal with the Superior Court. On April 10, 2010, Attorney Pulizzi was granted leave to withdraw from the Defendant's case. Thereafter, Kirsten Gardner, Esquire, of the Lycoming County Public Defender's Office, was appointed to represent the Defendant. Attorney Gardner filed a PCRA Petition on April 25, 2011 followed by an Amended PCRA Petition on July 11, 2011. After a Court Conference on said Petition, the Court determined that an evidentiary hearing was needed to create a record of the contents of trial counsel's, George Lepley's, statement concerning the Defendant's alibi defense, which is the subject of the Petition.

At the time of the hearing on September 27, 2011, the Commonwealth alleged that the Defendant was not eligible for relief pursuant to 42 Pa.C.S. §9543(a)(1), as the Defendant was not currently serving a sentence of imprisonment, probation or parole for the crime for which he was currently requesting relief. In response to the Commonwealth's allegation, Defense Counsel filed the Petition to Withdraw/Turner-Finley letter which is the subject of this Opinion.

Discussion

The Defendant is not eligible for relief under 42 Pa.C.S. §9543(a)(1)

In the Petition to Withdraw as Counsel, Defense Counsel agrees with the Commonwealth and concludes that the Defendant is not eligible for PCRA Relief under 42 Pa.C.S. §9543(a)(1).

The Defendant was sentenced under docket No. 569-2008 to a period of incarceration for 11 and ½ to 23 months. The sentence was effective March 13, 2009 and the Defendant was entitled to 135 days credit for time served; therefore, the Defendant's minimum sentence date was October 15, 2009 and his maximum date was September 30, 2010 and a review of the

Defendant's confinement history establishes that he was released from the prison at the time of his minimum release date on October 14, 2009. As the Defendant's PCRA Petition was not filed until April 25, 2011, several months past his maximum sentence date, the Defendant was no longer serving a sentence of incarceration, probation or parole under docket No. 569-2008 at the time he requested relief. Therefore, the Court agrees with both the Commonwealth and Defense Counsel and finds that the Defendant is not eligible for PCRA relief pursuant to 42 Pa.C.S. §9543(a)(1).

Conclusion

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. As such, no further hearing 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 Defendant's PCRA 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 October, 2011, 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 October 6, 2011, is hereby GRANTED and Kirsten A. Gardner, Esq. may withdraw her appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Kirsten A. Gardner, Esq.