

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA,</b>	:	
	:	
<b>v.</b>	:	<b>No. 157-2009</b>
	:	<b>CRIMINAL DIVISION</b>
<b>DARSEAN MOSLEY,</b>	:	
<b>Defendant</b>	:	<b>PCRA</b>

**OPINION AND ORDER**

On December 21, 2011, the Defendant filed a *Pro Se* Post Conviction Relief Act (PCRA) Petition, which appears to be the Defendant's second PCRA Petition to date<sup>1</sup>. As this is the Defendant's second Petition, he is not entitled to the appointment of counsel and none shall be appointed. See Commonwealth v. Vega, 754 A.2d 714 (Pa. Super. 2000).

Pursuant to 42 Pa.C.S. §9545(b)(1), a PCRA Petition must be filed within one year of the date the judgment becomes final, or fall into one of the enumerated exceptions. On March 2, 2009, the Defendant pled guilty to counts 1 and 2 Robbery, both felonies of the 1<sup>st</sup> degree, and on the same date, was sentenced to stated prison for a minimum of forty (40) months, with a consecutive ten (10) year period of supervision under the Pennsylvania Board of Probation and Parole. No appeal was filed from this sentence; therefore, the Defendant's sentence became final in April of 2010. Therefore, in order for the Defendant's Petition to be timely, one of the

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<sup>1</sup> Although the Defendant alleges that his current Petition is a supplemental PCRA Petition, which the Court assumes is a supplement to his first PCRA Petition filed November 10, 2009, the Defendant was notified of the Court's intention to dismiss his first PCRA Petition by way of an Opinion and Order dated January 3, 2010 unless the Defendant filed an objection to that dismissal within 20 days. As the current Petition was filed on December 21, 2011, the Court finds this is well beyond the 20 day period and will treat the current filing as the Defendant's second PCRA Petition.

exceptions under 42 Pa.C.S. §9545(b)(1) must apply to the facts of the Defendant's case. The exceptions set forth in 42 Pa.C.S. §9545(b)(1) are as follows:

- (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.

Although the Defendant is raising the issue of the legality of his sentence, which is always subject to review under the PCRA, such issues must first meet the timeliness requirements of the PCRA before they are considered. See Vega at 719. (See also Commonwealth v. Fahy, 737 A.2d 214, 223 (Pa. 1999). The Defendant attempts to raise the exception under Pa.C.S. §9545(b)(1)(ii), as he states that his cell mate pointed out the legality issue to him two weeks prior to his filing this Petition; however, the Court believes that the Defendant could have raised this issue previously by the exercise of due diligence. Therefore, the Court finds that the Defendant's Petition is untimely and the Court is without jurisdiction to decide this matter.

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 December, 2011, 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

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