

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	DOCKET NO. 97-2006
	:	CRIMINAL DIVISION
ELTON D. RUPERT, JR.,	:	
Defendant	:	PCRA

**ORDER**

AND NOW, this 13<sup>th</sup> day of October 2011, upon receipt of Defendant's Response to and Objection to the Dismissal of Defendant's PCRA Petition, which does not set forth any grounds to delay the disposal of this matter, it is hereby ORDERED and DIRECTED that Defendant's PCRA petition is DISMISSED.

Defendant's sentence became final on April 20, 2007; the time period for filing a timely PCRA petition ended on April 20, 2008. *See* 42 Pa.C.S.A. § 9545(b)(3). On May 2, 2008, Defendant filed an untimely PCRA Petition. Following a preliminary PCRA conference on this matter, this Court directed Defendant to file an amended petition to clarify the reasons for untimely filing. Additionally, this Court ordered that the amended petition set forth each of Defendant's intended witnesses and contain signed certifications, assuming that Defendant would request an evidentiary hearing. *See* 42 Pa.C.S.A. § 9545(d). On September 14, 2011, Defendant filed a Petition for an Evidentiary Hearing under the Post-Conviction Relief Act. On September 16, 2011, this Court entered an order proposing the dismissal of Defendant's PCRA petition because Defendant's petition failed to include an exception to the timeliness requirements for filing a PCRA petition, as set forth in 42 Pa.C.S.A. § 9545(b); this Court granted Defendant twenty (20) days to respond to that order.

On October 10, 2011, Defendant filed a Response to and Objection to the Dismissal of Defendant's PCRA Petition. Initially, this Court notes that this Response was filed outside of the twenty (20) day deadline imposed by this Court's September 16, 2011 Order. Defendant alleged in his response that he could not ascertain the addresses of two of his potential evidentiary hearing witnesses until July 2011. Defendant claims that he is now entitled to an evidentiary hearing on his PCRA petition because he has provided this Court with the names and addresses of his these witnesses. 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, 989 (Pa. Super. Ct. 2004) (citing *Commonwealth v. Fahy*, 737 A.2d 414, 222 (Pa. 1999)). The Superior 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." 848 A.2d at 989. (citing 737 A.2d at 331).

In his Response to and Objection to the Dismissal of Defendant's PCRA Petition, Defendant fails to comply with any of the three exceptions to the timeliness requirements of the PCRA. The PCRA provides three exceptions to the one-year filing period requirement; these exceptions include:

- (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.

42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). Even if this Court could construe Defendant's response to include a valid exception under the PCRA, Defendant does not fulfill the requirements for such an exception under the PCRA. 42 Pa.C.S.A. § 9545(b)(1) states clearly that the PCRA Petition must plead and prove one of the three enumerated exceptions. In this matter, Defendant has not even attempted to allege how any of the 42 Pa.C.S.A. § 9545(b)(1) exceptions might apply to his case. As such, Defendant's petition and response do not meet the requirements for an exception to the timeliness constraints under the PCRA; therefore, Defendant's 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, Defendant may lose forever his right to raise these issues. **A copy of this order shall be mailed to Defendant by certified mail, return receipt requested.**

By the Court,

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Richard A. Gray, J.

RAG/abn

cc: Ken Osokow, Esquire  
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