

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
<b>v.</b>	:	<b>No. 74-CR-2009</b>
	:	<b>CRIMINAL DIVISION</b>
<b>FREDERICO DACENZO, JR.,</b>	:	
<b>Defendant</b>	:	<b>PCRA</b>

**OPINION AND ORDER**

On October 3, 2012, current Counsel for the Defendant filed a Motion to Withdraw as Counsel along with a Motion to Dismiss pursuant to Commonwealth v. Turner, 544 A.2d 927 (1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa.Super.1988). After an independent review of the entire record, the Court agrees with PCRA Counsel and finds that the Defendant has failed to raise any meritorious issues in his PCRA Petition, and that his petition should be dismissed.

***Background***

On December 12, 2008, Federico Dacenzo (Defendant) was charged with ten (10) counts of Sexual Abuse of Children<sup>1</sup>, felonies of the third degree and one (1) count of Criminal Use of a Communication Facility<sup>2</sup>, a felony of the third degree. The Defendant pled guilty pursuant to a negotiated plea agreement, whereby he would receive a minimum sentence of ten (10) years incarceration. In accordance with the plea agreement, the Defendant was sentenced by this Court to ten (10) to twenty (20) years in a state correctional institution with a consecutive twenty (20) years probation under the supervision of the Pennsylvania Board of Probation and Parole. The Defendant did not file a post sentence motion or a direct appeal.

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<sup>1</sup> 18 Pa.C.S. § 6312(d).

<sup>2</sup> 18 Pa.C.S. § 7512.

On August 13, 2012, the Defendant filed a PCRA Petition. The Defendant alleges that his counsel was ineffective because they failed to file a Motion to Suppress because the Pennsylvania State Police failed to file a delay of notification with two court orders and neglected to inform him of government access to his private account information. Donald F. Martino, Esquire, was appointed to represent Defendant on his PCRA Petition. On October 3, 2012, Attorney Martino filed a Motion to Withdraw as Counsel as he determined that the PCRA Petition lacked merit. On October 24, 2012, the Defendant filed a Motion to Dismiss, which requested that this Court deny Attorney Martino's Motion to Withdraw as Counsel. After an independent review of the record, the Court agrees with Attorney Martino and finds that Defendant fails to raise any meritorious issues in his PCRA Petition.

***The Defendant's PCRA Petition is untimely pursuant to 42 Pa.C.S. § 9545(b)***

Attorney Martino's Turner-Finley letter informed the Defendant that his current PCRA Petition is untimely. 42 Pa.C.S. 9545(b) requires that a PCRA petition be filed within one (1) year of the date the judgment in a case becomes final, or else meet one of the timeliness exceptions under 42 Pa.C.S. § 9545(b)(1). 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.

A PCRA petition raising one of these exceptions “shall be filed within [sixty] days of the date the claim could have been presented.” 42 Pa.C.S. § 9545(b)(2). A petitioner must “affirmatively plead and prove” the exception. Commonwealth v. Taylor, 933 A.2d 1035, 1039 (Pa. Super. 2007).

As such, when a PCRA is not filed within one year of the expiration of direct review, or not eligible for one of the exceptions, or entitled to one of the exceptions, but not filed within [sixty] days of the date that the claim could have been first brought, the trial court has *no power to address the substantive merits of a petitioner’s PCRA claims*.

Id. at 1039 (emphasis added).

Here, Defendant was sentenced on January 15, 2010 and he did not file a direct appeal. Thus, his judgment of sentence became final thirty (30) days later on February 15, 2010, the expiration of the time for filing a direct appeal to the Superior Court of Pennsylvania. 42 Pa.C.S. § 9545(b)(3). Defendant filed his PCRA Petition on August 13, 2012, which is beyond one (1) year of the date the judgment became final. Therefore, the Defendant must fall within one of the exceptions listed in 42 Pa.C.S. § 9545(b)(1) for his PCRA Petition to be deemed timely and for this Court to address the merits of the PCRA Petition.

Defendant alleges that he falls within the exception in 42 Pa.C.S. § 9545(b)(1)(i), which is failure to raise a claim due to interference by government officials. In Defendant’s Motion to Dismiss, he stated that he was moved eight (8) times while he was at SCI Camp Hill and was unable to use a law library. In addition, the Defendant states that he was transferred to Green Rock Correctional Center in Chatham, Virginia and did not have access to a law library. The Defendant, however, was transferred to SCI Retreat on February 28, 2012. The Defendant would have had sixty (60) days from this time to file his PCRA Petition, however, it was only filed on August 13, 2012.

Further, the Defendant argues that 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 under 42 Pa.C.S. § 9545(b)(1)(ii). The Defendant states that because he had no access to legal resources he was unaware of his legal claims. As stated above, the Defendant still did not file his PCRA Petition within sixty (60) days of allegedly accessing legal resources. In addition, discovery of preexisting case law does not qualify under this timeliness exception.

Commonwealth v. Perry, 716 A.2d 1259, 1262 (Pa. Super. 1998). Therefore, as the PCRA Petition is untimely, this Court is unable to address the merits of Defendant's claim. Taylor, 993 A.2d at 1039.

### ***Conclusion***

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant's PCRA petition or his Motion to Dismiss. 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 December, 2012, 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. Defendant's Motion to Dismiss is **DENIED**.
3. The application for leave to withdraw appearance filed October 3, 2012, is hereby **GRANTED** and Donald F. Martino, Esq. may withdraw his appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

xc: DA  
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