

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : **No. 55-2001; 284-2001; 285-2001**
: **286-2001; 586-2001; 681-2001**
v. : **825-2001; 828-2001; 862-2001**
: **863-2001; 1017-2001; 1160-**
: **2001; 1079-2001; 1478-2001**
:
: **CRIMINAL DIVISION**
TIMOTHY HARMAN, :
Defendant : **PCRA**

OPINION AND ORDER

On April 20, 2012, the Defendant filed a *Pro Se* Post Conviction Relief Act (PCRA) Petition. For the following reasons, the Court finds that the Defendant does not raise a genuine issue concerning any material fact and therefore no purpose would be served by holding any further proceedings.

Background

On November 15, 2001, Timothy Harman (Defendant) pled guilty to fourteen (14) counts of Burglary, felonies of the second degree. The plea agreement that the Defendant accepted was that he was plead guilty to the fourteen (14) Burglary counts and the District Attorney's Office would dismiss all the remaining charges. The plea agreement did not have an agreement towards the sentence and was to be decided by the Judge. On February 5, 2001, this Court sentenced the Defendant to twenty-eight (28) to fifty-six (56) years in a State Correctional Institution. On February 20, 2001, this Court denied the Defendant's Motion to Reconsider Sentence.

On November 24, 2003, the Defendant filed his first PCRA Petition. The Defendant raised three (3) issues: 1) that his PCRA Petition was not untimely because he was moved from prison to prison and unable to communicate with his attorney; 2) counsel failed to properly

prepare for the sentencing hearing and to present mitigating circumstances; 3) counsel told the Defendant that he would receive a sentence that was different than the one he actually received. In an Opinion and Order dated April 28, 2004, this Court proposed dismissal of the Defendant's PCRA Petition for being untimely and also addressed each issue raised. On June 2, 2008, the Defendant filed a *pro se* Common Law Writ of Habeas Corpus Ad Subjiciendum. This Court treated the Writ as a second PCRA Petition and dismissed it as untimely. Subsequently, the Defendant appealed to the Superior Court of Pennsylvania and this Court's Order dismissing his PCRA Petition was affirmed on May 19, 2009.

On April 20, 2012, Defendant filed his third PCRA Petition. In accordance with Pa.R.Crim.P. 904(D), this Court did not appoint counsel and scheduled a court conference. The Defendant's video PCRA Conference was held on October 4, 2012. Defendant alleges that the United States Supreme Court decisions in Lafler and Frye entitles him to relief and allows him to file an untimely PCRA Petition. Lafler v. Cooper, 132 S. Ct. 1376 (U.S. 2012); Missouri v. Frye, 132 S. Ct. 1399 (U.S. 2012). In addition, the Defendant raises four (4) issues: 1) counsel coerced the Defendant to plead guilty; 2) Counsel told the Defendant to take a deal that was no in place; 3) counsel told the Defendant that he had to plead guilty because he did not know how to defend him; and 4) counsel threatened to abandon the Defendant if he did not plead guilty.

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

The Defendant alleges that his third PCRA Petition is not 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.

As previously stated by the Superior Court of Pennsylvania:

According to section 9545(b)(3), Appellant's judgment of sentence became final at the conclusion of direct review or the expiration of the period for seeking such review. Thus, because Appellant did not file a petition for allowance of appeal to this Court, Appellant's judgment of sentence became final, as before stated, thirty days after the trial court entered sentence on February 5, 2002. Pa.R.A.P. 903. Therefore, Appellant's judgment of sentence became final on March 7, 2002, over six years and two months before this petition was filed.

Commonwealth v. Harman, No. 1201 MDA 2008 (Pa. Super. Filed May 19, 2009).

Defendant now alleges that he falls within the exception in 42 Pa.C.S. § 9545(b)(1)(iii), which is a retroactive constitutional right recognized by the Supreme Court of the United States or Pennsylvania. Defendant believes that the United States Supreme Court's decision in Lefler asserted a new constitutional right. In Lefler, the Supreme Court stated that "a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.* that the defendant would have accepted the plea and the prosecution would not have withheld it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact was imposed." Lefler, 132 S. Ct. at 1385. This holding, however, has been recognized by

Pennsylvania Courts for many years. See Commonwealth ex rel. Dadario v. Goldberg, 773 A.2d 126 (Pa. 2000) (finding that ineffective assistance of counsel claims in connection with plea offers is a valid PCRA claim); Commonwealth v. Martinez, 777 A.2d 1121 (Pa. Super. 2001) (“Counsel has a duty . . . to explain the advantages and disadvantages of the offer.”); Commonwealth v. Boyd, 688 A.2d 1172 (Pa. 1997); Commonwealth v. Korb, 617 A.2d 715 (Pa. Super. 1992).

Moreover, the facts and law in Lefler do not apply in this case. In Lefler, the Defendant was advised not to take a plea offer and instead go to trial based of an attorney’s incorrect understanding of the law. See Lefler, 132 S. Ct. at 1383. As a result, the Defendant received a sentence that was nearly three times the length the of plea offer. Here, the Defendant was advised to enter an open plea, which he did accept. Defendant is arguing that his guilty plea was not tendered knowingly, voluntarily, and intelligently. Commonwealth v. Yager, 685 A.2d 1000, 1004 (Pa. Super. 1996). This argument does not fall within any of the timeliness exceptions in 42 Pa.C.S. § 9545.

In addition, the Defendant cites to another United States Supreme Court case named Frye. Missouri v. Frye, 132 S. Ct. 1399 (U.S. 2012). The Court held there that “defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” This case is also not applicable to the Defendant because he is not alleging that his counsel did not communicate a plea offer to him. In fact, the Defendant is alleging that counsel coerced him to take a deal that never even existed.

Finally, the issues that the Defendant has raised in his third PCRA Petition are the same as the ones raised in the previous one. Defendant is alleging in all his issues that his counsel coerced him to plead guilty. He does not, however, point to facts in the record which support his

claim. In this Court's Opinion and Order dated April 28, 2004 in docket number 863-2001, it was found that "there is no indication that Defendant was in any way coerced or induced to enter his plea or that his plea was anything other than knowing, intelligent, and voluntary." Therefore, even though the Defendant's third PCRA Petition is untimely, it also has no merit.

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 November, 2012, the Defendant and his attorney are notified that it is the intention of the Court to dismiss the Defendant's PCRA petition because it does not raise a genuine issue concerning any material fact. The Court will dismiss Defendant's claim unless Defendant files an objection to that dismissal within twenty days (20) of today's date.

By the Court,

Nancy L. Butts, President Judge

xc: Ken Osokow, Esq.
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