

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 :  
**v.** : **No. 1480-2007; 1558-2007**  
 : **2125-CR-2007**  
 : **CRIMINAL DIVISION**  
**JAMIE JOHNSON,** :  
**Defendant** : **PCRA**

**OPINION AND ORDER**

On April 30, 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 timely file his PCRA Petition, and that his petition should be dismissed.

***Background***

On February 14, 2008, at Docket Number 2125-2007, Defendant pled guilty to Simple assault, a misdemeanor of the second degree, which has an Offense Gravity Score (OGS) of three (3). On February 27, 2008, pursuant to Docket Number 1480-2007, Jamie Johnson (Defendant) pled guilty to charges that include Theft by Unlawful Taking, a felony of the second degree [OGS 8], Theft from a Motor Vehicle, a misdemeanor of the first degree [OGS 3]; Receiving Stolen Property, a misdemeanor of the second degree [OGS 2]; Theft by Unlawful Taking, a misdemeanor of the third degree [OGS 1]; and Loitering and Prowling, a misdemeanor of the third degree [OGS 1]. On the same day, at Docket Number 1558-2007, Defendant pled guilty to False Reports, a misdemeanor of the second degree, which has an OGS of two (2). All three guilty pleas were “open” as to the plea agreement.

On April 18, 2008, Defendant received a sentence of twenty-seven (27) to fifty-four (54) months incarceration on Docket Number 1480-2007. With a Prior Record Score of five (5),

Defendant was properly sentenced under the guideline range of 27-33 BC. The Sentencing Order stated that “[t]his sentence shall run entirely consecutive to the sentence imposed this date under no. 2125-2007.” On Docket Number 2125-2007, Defendant received a sentence of one (1) to two (2) years incarceration. Again, this is in accordance with the sentencing guideline range of 6-12 BC. Defendant’s sentence on all three (3) matters was an aggregate sentence of thirty-nine (39) months to seventy-eight (78) months incarceration.

Defendant did not file Post-sentence Motions or an appeal to the Superior Court of Pennsylvania under any of these matters. Defendant filed with the Court a document entitled “Petitioner for Writ of Habeas Corpus/Petition for Review” on February 13, 2012. The document has attached a Certificate of Service stating it was sent for filing on April 6, 2011.

Defendant filed a Post Conviction Relief Act (PCRA) Petition on February 22, 2012. Defendant alleges that his sentences on his three (3) cases should have run concurrently to one another. Donald F. Martino, Esquire, was appointed to represent Defendant on his PCRA Petition. On April 30, 2012, Attorney Martino filed a Motion to Withdraw as Counsel as he determined that the PCRA Petition lacked merit. 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.

### *Discussion*

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

In his Turner-Finley letter, which Attorney Martino attached to his Petition to Withdraw from Representation, Attorney Martino 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.

Here, Defendant was sentenced to all three of his cases on April 18, 2008. On February 13, 2012, the Defendant's document named "Petitioner for Writ of Habeas Corpus/Petition for Review" was filed with the Court. This is clearly beyond one (1) year of the date the judgment became final. Even if the Court used the date on the Certificate of Service for Defendant's Writ, which was April 6, 2011, it would still be untimely.

Further, Defendant does not fall within any of the exceptions listed in 42 Pa.C.S. § 9545(b)(1). Defendant does not make any allegations of government interference or violations of a constitutional right. Further, the facts upon which the claim is predicated were not unknown to the Defendant and could have been ascertained by the exercise of due diligence. Defendant alleges that the sentence on his three (3) cases should have run concurrent and were not. The sentencing orders make clear that Defendant's sentences are to run so that some are consecutive and some are concurrent. The Court also informed the Defendant of this at his sentencing hearing. Further, the Defendant entered into "open" plea agreements. The Defendant does not meet any of the timeliness exceptions under 42 Pa.C.S. § 9545(b)(1) and therefore his PCRA Petition is untimely.

***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 May, 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. The application for leave to withdraw appearance filed April 30, 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  
      Donald F. Martino, Esq.  
      Jamie Johnson #HN4233  
      SCI Forest  
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