

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 v. : No. 2027-1997
 :
 : CRIMINAL DIVISION
 HILTON MINCY, :
 Defendant : PCRA

OPINION AND ORDER

On May 22, 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

Hilton Mincy (Defendant) has filed multiple PCRA Petitions and has an extensive procedural history. The Superior Court of Pennsylvania summarized it in his last PCRA Petition:

The pertinent facts and procedural history may be summarized as follows: On May 14, 1998, a jury convicted Appellant of attempted murder and related charges. The trial court sentenced him to an aggregate term of seventeen to forty years of imprisonment. In an unpublished memorandum filed on February 27, 2001, this Court affirmed Appellant's judgment of sentence. *Commonwealth v. Mincy*, [sic] 776 A.2d 1007 (Pa. Super. 2001). Appellant did not file a petition for allowance of appeal with our Supreme Court.

Appellant filed a timely *pro se* PCRA Petition on October 22, 2001. Counsel was appointed and filed an amended petition. On December 12, 2002, the PCRA court entered an order dismissing Appellant's petition. In an unpublished memorandum filed on January 9, 2004, this Court affirmed the PCRA court's dismissal, and on September 16, 2004, our Supreme Court denied Appellant's petition for allowance of appeal. *Commonwealth v. Mincy*, 847 A.2d 759 (Pa. Super. 2004), *appeal denied*, 859 A.2d 768 (Pa. 2004).

On February 21, 2007, Appellant filed a second, counseled PCRA petition, in which he asserted that after-discovered evidence rendered his petition timely. By order dated February 22, 2007, the PCRA court stayed consideration of the petition until a

federal appellate ruling was made regarding Appellant's pending motion for writ of habeas corpus. On June 20, 2007, PCRA counsel filed a supplemental PCRA petition that the PCRA court again stayed pending a ruling from the United States Supreme Court on Appellant's petition for *certiorari*.

On April 18, 2008, the PCRA court issued its notice of intent to dismiss Appellant's PCRA petition, pursuant to PA.R.Crim.P. 907, because it was untimely and the issues raised therein were either previously litigated, waived, or lacked merit. PCRA counsel filed a response to this notice on May 6, 2008. By order dated July 1, 2008, the PCRA court dismissed Appellant's petition. Appellant timely appealed to this Court. In an unpublished memorandum filed on June 9, 2009, this Court affirmed the PCRA court's order denying post-conviction relief. *Commonwealth v. Mincy*, 981 A.2d 317 (Pa. Super. 2009).

On July 27, 2009, Appellant filed a *pro se* petition for habeas corpus in which he raised myriad claims regarding his trial, sentence, and continued incarceration. On August 19, 2009, Appellant filed an amended petition for writ of habeas corpus. By order dated August 24, 2009, the PCRA court denied Appellant's petition without prejudice to Appellant's ability to re-file a petition under the PCRA. In addition, the PCRA court noted that, because his counsel had filed a petition for allowance of appeal with regard to the dismissal of Appellant's second PCRA petition, Appellant's petition was premature. On September 9, 2009, the PCRA court denied Appellant's motion for reconsideration. Appellant filed an appeal from this order which was quashed by order of this Court dated December 16, 2009, as not being from a final order.

On December 28, 2009, Appellant filed another petition for writ of habeas corpus in which he claimed he was being "illegally detained." By opinion and order dated September 22, 2010, the PCRA court issued its Rule 907 notice of intent to dismiss Appellant's petition. Treating the habeas corpus petition as a PCRA petition, the PCRA court found it to be untimely. Appellant filed his response on October 18, 2010. By order dated October 25, 2010, the PCRA court dismissed Appellant's petition. This timely *pro se* appeal followed. Both Appellant and the PCRA court have complied with Pa.R.A.P. 1925.

Commonwealth v. Mincy, No. 1933 MDA 2010 (Pa. Super. July 27, 2011).

The Pennsylvania Superior Court subsequently upheld the dismissal of Defendant's last PCRA Petition. On May 22, 2012, the Defendant filed another PCRA Petition, which is the subject of this Opinion. Counsel was not appointed in accordance with Pa.R.Crim.P. 904(D).¹ This Court had a video PCRA conference with the Defendant on October 4, 2012. The Defendant alleged that his trial counsel ineffectively advised him not to take a plea offer of five (5) to ten (10) years and that he then received a sentence of seventeen (17) to forty (40) years.

¹ Defendant has filed two (2) or more PCRA Petitions.

The Defendant argues that he may litigate this untimely PCRA Petition for two (2) reasons. First, the Defendant argues that the recent United Supreme Court Decisions in Lafler and Frye have created new constitutional rights that apply retroactively. Lafler v. Cooper, 132 S.Ct. 1376 (2012); Missouri v. Frye, 132 S.Ct. 1399 (2012). Second, the Defendant alleges government interference because he tried to raise this issue at sentencing and with counsel but it was never filed with the courts.

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

The Defendant alleges that his current 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.

Here, the Defendant's Supreme Court appeal was denied in February 2001. He had ninety (90) days to file an appeal with the United States Supreme Court, which he did not do, making his sentence final in May 2001. Therefore, the PCRA Petition needed to be filed by May 2002 for it to be timely. Here, the Defendant filed his petition on May 29, 2012 and thus it is untimely.

Importantly, a PCRA Petition invoking one of the timeliness exceptions must “be filed within 60 days of the date the claim could have been presented.” 42 Pa.C.S.A. § 9545(b)(2); Commonwealth v. Gamboa-Taylor, 753 A.2d 780, 783 (Pa. 2000). Here, the Defendant claims he tried to raise, at sentencing, the issue of his counsel giving ineffective assistance in regards to his plea offer. The Defendant’s PCRA Petition states: “I attempted to submit a pro-se Post-Trial Sentencing Motion; one of the issues I challenged was Mr. Protasio’s ineffective assistance during the plea bargaining phase in that he advised me to go to trial and not to take the plea.” As the Defendant has not raised this issue within sixty (60) days of the date the claim could have been presented, the issue is untimely. Further, the Defendant never raised the issue in any of his previous PCRA Petitions even though he admits he was aware of the issue at sentencing.

In addition to the Petition being untimely, the issue raised has been recognized by Pennsylvania Courts. Defendant believes that the United States Supreme Court’s decisions in Lafler and Frye asserted a new constitutional right, which he did not have previously. The Defendant believes this “new retroactive constitutional right” allows him to file an untimely PCRA Petition under 42 Pa.C.S. § 9545(b)(1)(iii). In Lafler, 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.” Lafler, 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). This Court finds that ineffective assistance of counsel claims, regarding plea offers, have been valid PCRA issues prior to the United States Supreme Court’s decisions in Lafler and Frye. The Defendant makes various arguments against this finding, all of which have no merit.² Therefore, the Defendant’s PCRA Petition is not timely due to a retroactive constitutional right recognized by the Supreme Court of the United States

In addition, the Defendant argues that he may file his PCRA Petition untimely because of governmental interference. The Defendant states, for the first time in this current PCRA Petition, that he tried to raise the issue of ineffective advice from his attorney at sentencing but the Court did not recognize it. He also states that he told his attorney to file the motion and it was never filed. Further, he states that he wrote into the Court directly requesting the motion and it was also never filed. This alleged government interference would have taken place around his sentencing on October 6, 1998. The current PCRA Petition was filed well beyond six (6) months from the time he was aware of this interference. The Defendant never raised this issue in any of his numerous PCRA Petitions, even though he admits in his Petition he was aware of it at sentencing. Further, the actions of his attorneys would not be considered “interference of government officials.” Therefore, this Court finds that the Defendant’s PCRA Petition is without merit and should be dismissed.

² The Defendant argues that the Pennsylvania Supreme Court’s decision in Pierce dictates this matter. Commonwealth v. Pierce, 527 A.2d 973 (Pa. 1987). The Defendant states that Dadario only states that claims, such as his own, may be reviewed by a PCRA and that it does not specifically say whether relief is entitled for such a claim. The Court does not find that this argument has merit since Dadario specifically stated that ineffective assistance of counsel could be found in connection to plea offers, which would entitle a defendant to relief. The Defendant’s argument that Dadario relies on court decisions that pre-date Pierce also has no merit. Dadario is in fact a more recent decision than Pierce.

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 October, 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

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