

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. 157-2009
	:	CRIMINAL DIVISION
DARSEAN MOSLEY,	:	
Defendant	:	PCRA

ORDER

Due to the nature of the procedural history surrounding the Defendant's Post Conviction Relief Act (PCRA) Petitions, the Court will address the history of both Petitions filed to date before dismissing the Second Petition. On November 5, 2009, the Defendant filed a pro-se PCRA Petition for which the Court appointed as Counsel Donald F. Martino, Esquire. In an Opinion and Order dated January 3, 2011, the Court granted Attorney Martino leave to withdraw following consideration of his Motion to Withdraw as Counsel, and notified the Defendant of its intention to dismiss the Petition within 20 days as the Court found that the issues raised were without merit. On December 14, 2011, the Defendant filed his Second PCRA Petition for which Counsel was not appointed as the Defendant was not entitled to such. See Commonwealth v. Vega, 754 A.2d 714 (Pa. Super. 2000). At that time, the Court became aware that an Order dismissing the first Petition was not yet filed, and subsequently issued the Order dismissing the first PCRA Petition on December 23, 2011. Following a review of the Second PCRA Petition, the Court determined that it was without jurisdiction to decide the matter and on December 23, 2011, notified the Defendant of its intention to dismiss the Petition within 20 days.¹ Although

¹ At the time the Court filed its December 23, 2011 notification of dismissal, the Court was only in receipt of the Defendant's Supplement to his PCRA Petition, filed December 21, 2011, rather than the Second Petition itself, filed December 14, 2011. However, following a review of both, the Court finds that the Defendant failed to plead and prove one of the exceptions to the timeliness requirements of 42 Pa.C.S. §9545(b)(1) in both the Second Petition itself and the Supplement thereto. The Court relies on the analysis in its Opinion and Order of December 23, 2011 to address the allegations raised in the Second Petition and the Supplement to said Petition.

the Defendant recently filed a notice of appeal with the Superior Court from this Court's Order of December 23, 2011, as said Order was not a dismissal of the Defendant's Post Conviction Relief Act (PCRA) Petition, the Court believes it retains the authority to dismiss the PCRA Petition in this Order pursuant to Pa.R.A.P. 1701(b)(6).²

² Although the Defendant indicates in his Notice of Appeal filed January 9, 2012, that he is appealing his first PCRA Petition and supplement thereto, the Court notes that the Petition is actually the Second PCRA Petition filed to date.

ORDER

AND NOW, this _____ day of January, 2012, the Court not having received a response from the Defendant to this Court's proposed dismissal of his Post Conviction Relief Act (PCRA) Petition, the Defendant's Second PCRA petition is hereby **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, the Defendant may lose forever his right to raise these issues.

A copy of this order shall be mailed to the Defendant by certified mail, return receipt requested.

By the Court,

Nancy L. Butts, President Judge

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