

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 1651-94; 781-96
	:	CRIMINAL DIVISION
GARY RHINES a/ka	:	
ROBERY CAMBY a/k/a	:	PCRA
DERRICK UPSHAW,	:	
Defendant	:	

OPINION AND ORDER

On November 22, 2011, current Court Appointed Counsel for the Defendant, Edward J. Rymsza, Esquire, filed a Motion to Withdraw along with a Turner-Finley letter in accordance with Commonwealth v. Turner, 544 A.2d 927 (1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa.Super.1988).¹ After an independent review of the record, the Court finds that the Petition was untimely filed under the PCRA.

Background

On March 9, 1995, the Defendant pled guilty on CR: 1651-1994 before the Honorable Kenneth D. Brown to Delivery of a Controlled Substance, Possession with Intent to Deliver, and Simple Assault.² On the same date, the Defendant was sentenced to eleven (11) to twenty-three (23) months incarceration in the Lycoming County Prison followed by a one (1) year period of probation. As the Defendant did not file an appeal on that case, his sentence became final in April of 1995. On January 13, 1997 the Defendant pled guilty on CR: 781-1996 before this Court to Delivery of a Controlled Substance and Possession with Intent to Deliver. The

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² Judge Brown retired from active judicial service on December 31, 2009.

Defendant was then sentenced on February 18, 1997 to state incarceration for twenty-six (26) to forty-six (46) months. As the Defendant did not appeal this sentence either, judgment became final in March of 1997. Attorney Rymsza states in his Turner-Finley letter, which was attached to his Petition to Withdraw, that the Defendant was subsequently paroled and later detained on or about August 23, 2001 based upon a parole violation stemming from an indictment on federal drug distribution charges in the Middle District of Pennsylvania. The Defendant was convicted under the federal case following a trial and was sentenced to a life sentence. On May 13, 2011 the Defendant filed a pro-se Petition for Writ of Error Coram Nobis, which the Court treated as a PCRA Petition and appointed current Counsel on May 20, 2011. Following the Court's granting several extensions of time in which to file an amended PCRA Petition or a Turner-Finley letter, Attorney Rymsza filed a Petition to Withdraw along with a Turner-Finley letter on November 22, 2011.

Discussion

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

In his Petition to Withdraw, Attorney Rymsza contends that the Defendant is not eligible for relief under the PCRA as the Petition is untimely and not subject to any of the timeliness exceptions under the PCRA. Pursuant to 42 Pa.C.S. §9545(b) a PCRA petition must 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 the one year period of time for filing a PCRA Petition on CR: 651-1994 ended in 1996 and on CR: 781-1996 in 1998, the Court agrees with Attorney Rymza and finds that the current Petition filed in 2011 is untimely. As the Court finds that the Defendant has failed to plead and prove one of timeliness exceptions under 42 Pa.C.S. §9545, the Court is without jurisdiction to decide the Petition. See Commonwealth v. Pursell, 749 A.2d 911 (Pa. 2000).

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 27th day of February, 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 November 22, 2011, is hereby GRANTED and Edward J. Rymsza, Esq. may withdraw his appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

xc: DA
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