

counsel to file an amended PCRA Petition or a Turner-Finley letter, Attorney Rymysza filed a Petition to Withdraw along with a Turner-Finley letter on November 22, 2011. In an Opinion and Order dated February 27, 2012, the Court found that Defendant's PCRA Petition was untimely and proposed dismissal of the Petition within twenty (20) days. The Defendant submitted *pro-se* objections to the Court's proposed dismissal, which argued that the Defendant's Petition was timely because he is actually innocent and that his counsel failed to file a Notice of Appeal or a PCRA when he was requested to do so. On March 26, 2012, the Court, considering the objections by the Defendant, dismissed the Defendant's PCRA and notified him of his appellate rights.

On April 12, 2012, the Defendant filed a Notice of Appeal. On April 17, 2012, the Court requested a statement from the Defendant in accordance with Pa.R.A.P. 1925(b), which was fulfilled by the Defendant on May 3, 2012. The Defendant raises two issues on appeal: 1) whether the Court of Common Pleas violated the Defendant's 14th Amendment Due Process rights when it failed to allow equitable tolling of the one year time limit based upon him being actually innocent and/or newly discovered evidence; and 2) whether Martinez v. Ryan, U.S., No. 10-1001 (March 20, 2012) warrants equitable tolling of the one year time limit.

Discussion

A PCRA petition must be filed within one (1) year of the date a judgment becomes final.

42 Pa.C.S.A. § 9545(b)(1) sets forth narrow exceptions:

- (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.

A PCRA Court cannot hear untimely PCRA petitions. Commonwealth v. Robinson, 837 A.2d 1157 (Pa. 2003). “[T]he PCRA confers no authority upon this Court to fashion *ad hoc* equitable exceptions to the PCRA time-bar in addition to those exceptions expressly delineated in the Act.” Id. (citing Commonwealth v. Eller, 807 A.2d 838, 845 (Pa. 2002)).

In Robinson, the Pennsylvania Supreme Court considered whether the language of the PCRA permits a court to innovate a non-textual exception to the PCRA’s time-bar. See id. In that case, the defendant argued that his second PCRA was merely an extension of his previous petition, which was timely filed. See id. The Supreme Court stated that because the defendant’s time-bar exception was neither in the language of the statute nor in the Supreme Court’s decisional law that it was not a valid exception to the PCRA time-bar. See id.

Here, Defendant is arguing that he is entitled to a non-textual timeliness exception because he is actually innocent. This is not one of the exceptions set forth in 42 Pa.C.S.A. § 9545(b)(1). Further, this Court is unable to find any decisional law allowing such an exception. Therefore, the Court will rely on its Opinion and Order dated February 27, 2012 and Order dated March 26, 2012, which determined that the Defendant was not due diligent in bringing his PCRA Petition and was not entitled to any of the timeliness exceptions.

Finally, the Defendant contends that the United States Supreme Court’s Opinion in Martinez v. Ryan grants him a timeliness exception. Martinez v. Ryan, No. 10-1001 (March 30, 2012). In Martinez, the Supreme Court addressed the issue of whether “ineffective assistance in an initial-review collateral proceeding on a claim of ineffective assistance at trial may provide cause for a procedural default in a federal habeas proceeding.” id. at 5-6. The Supreme Court

ruled that where, under state law, ineffective-assistance of trial counsel claims must be raised in an initial review collateral proceeding, a procedural default will not bar a federal habeas court from hearing those claims if, in the initial review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective. Id. at 6. A federal court can hear a defendant's ineffective-assistance claim only if the defendant can establish cause to excuse the procedural default and prejudice from a violation of federal law. A default will not be found if the State finds that the ineffective assistance claim was insubstantial, has no merit, has no factual support, or the attorney did not perform below constitutional standards. Id. at 13.

Here, Defendant's claim is without merit. First, the Defendant never raised an ineffective assistance of counsel claim in his PCRA Petition, which prevents him from raising it now. Defendant contends that his trial counsel did not file a notice of appeal and/or PCRA Petition when requested but this was only raised when the Court notified the Defendant of its intention to dismiss the Defendant's PCRA Petition as untimely. Second, Defendant's PCRA Counsel, which was assigned for his first PCRA Petition, was not ineffective. Defendant did not raise the issue of his guilty plea being unknowing and unintelligent until fourteen (14) years after being sentenced. Defendant's PCRA Counsel was correct to file a Turner-Finley letter and to file a motion to withdraw as counsel.

Third, the Defendant's attempt to get federal court review of his ineffective assistance of counsel claim is still not a timeliness exception in State court. Martinez is a very narrow ruling that prevents a procedural default from barring a federal habeas court from hearing the ineffective assistance claims. Finally, the Martinez case deals exclusively with ineffective assistance of counsel claims, which the Defendant did not raise in his PCRA Petition. Defendant's claim that he did not knowingly and intelligently plead guilty would not fall under

the Supreme Court's decision. Therefore, as none of the Defendant's contentions appear to have merit, it is respectfully suggested that the dismissal of the Defendant's PCRA be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

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