



On January 10, 2011, the Defendant filed his second timely PCRA Petition. The Defendant alleged three (3) issues: 1) whether the police improperly seized the rifle from his apartment without a warrant; 2) that the Defendant never received a copy of the criminal complaint, Bill of Particulars, or discovery; and 3) the seized rifle did not contained a serial number, resulting in the police's inability to confirm it was the same rifle stolen form the victim. On January 24, 2011, James Protasio, Esquire, was appointed to represent the Defendant. On March 18, 2011, the Court received a letter from Mr. Protasio stating that the PCRA Petition is without merit. After a review of the Petition, the Court agreed with Counsel and the Petition was denied on May 3, 2011. On May 13, 2011, the Defendant filed a notice of appeal to the Superior Court. This Court's denial of the PCRA Petition was affirmed on February 21, 2012. On March 21, 2012, the Defendant filed a Petition for allowance of Appeal to the Pennsylvania Supreme Court, which was denied on October 29, 2012.

On November 14, 2012, the Defendant filed his third PCRA Petition. The Defendant alleges that he was illegally evicted from his apartment and that he was not in possession of the firearm that was located within it. In addition, the Defendant alleges that his PCRA Counsel was ineffective because they filed Turner/Finley letters requesting to withdraw as counsel.

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

Defendant's third 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.

A PCRA petition raising one of these exceptions “shall be filed within [sixty] days of the date the claim could have been presented.” 42 Pa.C.S. § 9545(b)(2). A petitioner must “affirmatively plead and prove” the exception. Commonwealth v. Taylor, 933 A.2d 1035, 1039 (Pa. Super. 2007).

As such, when a PCRA is not filed within one year of the expiration of direct review, or not eligible for one of the exceptions, or entitled to one of the exceptions, but not filed within [sixty] days of the date that the claim could have been first brought, the trial court has no power to address the substantive merits of a petitioner’s PCRA claims.

Id. at 1039.

Here, Defendant’s direct appeal to the Superior Court was decided on March 4, 2010, and no appeal was filed to the Supreme Court. Thus, his judgment of sentence became final thirty (30) days later on April 4, 2010, the expiration of the time for filing a direct appeal to the Supreme Court of Pennsylvania. 42 Pa.C.S. § 9545(b)(3); Pa.R.A.P. 903. Defendant filed his PCRA Petition on November 14, 2012, which is beyond one (1) year of the date the judgment became final. Therefore, the Defendant must fall within one of the exceptions listed in 42

Pa.C.S. § 9545(b)(1) for his PCRA Petition to be deemed timely and for this Court to address the merits of the PCRA Petition.

The Defendant's PCRA Petition has not alleged any of the exceptions in 42 Pa.C.S. § 9545(b)(1). The Defendant does argue that his PCRA Counsel was ineffective because they filed a Turner/Finley letter. The Defendant's PCRA Counsel, however, was not ineffective as the record shows that they complied with Commonwealth v. Turner, 544 A.2d 927 (1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa.Super.1988).

In addition, the claims that the Defendant raises in his third PCRA Petition could have been raised in his first PCRA Petition and are therefore waived. As directed by 42 Pa.C.S.A. § 9544(b), an issue is waived "if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal, or in a prior state post-conviction proceeding."

As the Court finds there are no meritorious issues with Defendant's PCRA Petition, it intends to dismiss the Petition unless the Defendant files an objection within twenty (20) days. "[A] PCRA petitioner is not entitled to an evidentiary hearing as a matter of right, but only where the petition presents genuine issues of material fact. . . . A PCRA court's decision denying a claim without a hearing may only be reversed upon a finding of an abuse of discretion."

Commonwealth v. McLaurin, 45 A.3d 1131, 1135-1136 (Pa. Super. 2012) (citations omitted).

Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the Defendant is hereby notified of this Court's intention to deny the Defendant's PCRA Petition.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of December, 2012, the Defendant is 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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