

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 :
 v. : **No. 957-2003; 681-2003**
 : **CRIMINAL DIVISION**
 :
 ADRIAN STAFFORD, :
 Defendant : **PCRA**

OPINION AND ORDER

Following the filing of Post Conviction Relief Act (PCRA) Counsel’s Petition to Withdraw, the Court conducted a review of the record and this Opinion addresses the Defendant’s PCRA Petition.

Background

Following a jury trial before the Honorable Kenneth D. Brown¹ on June 9, 2004, the Defendant was found guilty under CR: 681-2003 and CR: 957-2003 of three (3) counts Delivery of a Controlled Substance, three (3) counts Possession with Intent to Deliver, three (3) counts Possession of a Controlled Substance, three (3) counts Possession of Drug Paraphernalia, one (1) count Criminal Use of a Communication Facility, and one (1) count Criminal Conspiracy.² The Defendant was then sentenced on both cases on November 29, 2004 to an aggregate period of state incarceration for four (4) to eight (8) years. The Defendant subsequently filed an appeal to the Superior Court on January 14, 2005 which was later withdrawn by Defense Counsel on October 3, 2005.³ The Defendant filed his first PCRA Petition on October 3, 2006 which Judge

¹ Judge Brown retired from active judicial service on December 31, 2009.

² Although Attorney Martino indicates in his Motion to Withdraw that the Defendant entered into a plea of guilty under CR 957-2003, the Court finds that the above mentioned cases were consolidated for trial and the verdict of the jury was rendered as indicated above.

³ Attorney Martino indicates in his Motion to Withdraw as Counsel that the Defendant prevailed on his appeal in part as case No. CR: 957-2003 was remanded for resentencing and that the Defendant was resentenced on June 2, 2005. While Judge Brown did issue an amended sentencing Order on June 2, 2005, said Order was done to correct a typographical error and was not the result of a remand by the Superior Court. Nonetheless, the appeals were withdrawn on both case numbers on June 14, 2005, making the Defendant’s sentence final in 2005 thereby ending the one year time period for filing a PCRA Petition in 2006.

Brown denied on May 30, 2007. On September 19, 2011, the Defendant filed a pro-se Petition for Relief under the Post Conviction Relief Act (PCRA). The Court appointed Counsel Donald F. Martino, Esquire, on September 23, 2011 and Attorney Martino thereafter filed a Motion to Withdraw as Counsel as he determined that the PCRA Petition lacked merit. After an independent review of the record, the Court agrees with Attorney Martino finds that it is without jurisdiction to determine the Defendant's Petition.

Discussion

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

In his Turner-Finley letter, which Attorney Martino attached to his Petition to Withdraw from Representation, Attorney Martino informed the Defendant that his current PCRA Petition is untimely pursuant to 42 Pa.C.S. 9545(b) which 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). As the Defendant's current Petition was filed in 2011, the Court agrees with Attorney Martino that the Petition is untimely. 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.

Attorney Martino states that the Defendant bases his PCRA Petition on the fact that the arresting officers in his case, Officers Dustin Kreitz and Thomas Ungard, were later charged with and convicted of misappropriating public funds and tampering with public information regarding said funds. It is true that the Defendant could not have known within the time allowed for filing a PCRA Petition that the arresting Officers in his case would later be charged with and convicted of crimes as the Officers were not charged until 2007. However, under 42 Pa.C.S. 9545(b)(2), any petition invoking an exception under section (1) must be filed within 60 days of the date the claim could have been brought. As the Defendant did not bring this claim until 2011 the Court finds he is well past the 60 day deadline. Furthermore, in order to qualify for a timeliness exception under 42 Pa.C.S. §9545(b)(ii), the Defendant must also plead and prove that the new facts constitute “exculpatory evidence....that would have changed the outcome of trial.” 42 Pa.C.S. 9543(a)(2)(vi); Commonwealth v. Palmer, 814 A.2d 700 (Pa. Super. 2002). As the Defendant has not alleged how the Officers arrest was related to his trial at all, the Court cannot find that this evidence would have changed the outcome of the Defendant’s trial. Therefore, the Court finds that the Defendant has failed to plead and prove one of timeliness exceptions under 42 Pa.C.S. §9545 and the Court is therefore 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 ____ 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 October 27, 2011, is hereby GRANTED and Donald F. Martino, Esq. may withdraw his appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

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