

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 1498-CR-2001
	:	CRIMINAL DIVISION
SHAKUR DARNELL,	:	
a/k/a SHACOY MCNISH	:	
Defendant	:	PCRA

OPINION AND ORDER

On January 24, 2013, Counsel for the Defendant filed a Petition to Withdraw from Representation of Post-Conviction Collateral Relief pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super.1988). After an independent review of the entire record, the Court agrees with PCRA Counsel and finds that the Defendant has failed to raise any meritorious issues in his PCRA Petition, and his petition should be dismissed.

Background

On March 8, 2002, after a non-jury trial, Shakur Darnell (Defendant) was found guilty by this Court of two counts of Possession with Intent to Deliver, ungraded felonies;¹ one count of Delivery of a Controlled Substance, an ungraded felony;² one count of Possession of a Controlled Substance, an ungraded misdemeanor;³ one count of Possession of Drug Paraphernalia, an ungraded misdemeanor;⁴ and one count of Criminal Conspiracy, an ungraded felony.⁵ On August 2, 2002, the Defendant filed a Motion for a New Trial, alleging that his waiver of a jury trial in front of the Honorable Dudley N. Anderson was not given knowingly,

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(30).

³ 35 P.S. § 780-113(a)(16).

⁴ 35 P.S. § 780-113(a)(32).

⁵ 35 C.S. § 903(a)(1).

intelligently, and voluntarily. On January 22, 2003, Judge Anderson denied the Defendant's Post-Verdict Motion regarding his waiver of his jury trial rights.

On February 11, 2003, the Defendant was sentenced by this Court to an aggregate sentence of twenty-four (24) to sixty (60) months in a State Correctional Institution. On March 14, 2003, the Defendant filed a Notice of Appeal to the Superior Court of Pennsylvania. On May 18, 2004, the Superior Court affirmed the Defendant's sentence and no subsequent appeal was filed.

On September 27, 2012, the Defendant filed a Request for Hearing. The Defendant alleged in the Motion that he was unaware that by pleading guilty that he would be subject to enhanced federal sentences. The Defendant requested that his felony drug convictions be reduced to misdemeanors. On October 2, 2012, the Court issued an Order stating that the Defendant's Motion would be treated as a PCRA Petition. Kirsten Gardner, Esquire was appointed to represent the Defendant for the PCRA Petition. On January 24, 2013, Attorney Gardner filed a Petition to Withdraw from Representation of PCRA and a Memorandum Pursuant to Turner/Finley. After an independent review of the record and an additional PCRA conference, the Court agrees with Attorney Gardner that Defendant's PCRA Petition is untimely and that he also failed to raise any meritorious issues.

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

Defendant's 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 was sentenced on February 14, 2003 and his appeal was denied by the Superior Court of Pennsylvania on May 18, 2004. Thus, his judgment of sentence became final thirty (30) days later on June 18, 2004, the expiration of the time for filing an allowance of appeal to the Supreme Court of Pennsylvania. 42 Pa.C.S. § 9545(b)(3). Defendant filed his PCRA Petition on September 27, 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 did not state a specific reason for the delay in filing his PCRA Petition. The Defendant stated that he is currently serving a federal sentence for Aggravated Identity Theft and based on this it is likely that he became aware of the enhancement during his sentencing. However, the discovery of preexisting case law does not qualify under the timeliness exception. Commonwealth v. Perry, 716 A.2d 1259, 1262 (Pa. Super. 1998). Therefore, the Court finds that the Defendant's PCRA Petition is untimely.

In addition, the Court finds that the Defendant's issue is without merit. The Defendant alleges that his attorney did not advise him of any federal enhancements on sentencing when he decided to plead guilty. The Defendant, however, did not plead guilty but was found guilty after a non-jury trial. As the Defendant did not plead guilty, the issue of what his attorney advised him of prior to pleading is without merit.

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 March, 2013, 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 January 24, 2013, is hereby **GRANTED** and Kirsten Gardner, Esq. may withdraw her appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

xc: DA (KO)
Kirsten Gardner, Esq.
Shakur Darnell, Jr, a/k/a Shacoy McNish #66200-066
FCI-Otisville
P.O. Box 1000
Otisville, NY 10963