

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**NIGEL JACKSON,
Defendant**

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**No. 601-CR-2009
CRIMINAL DIVISION
PCRA**

OPINION AND ORDER

On February 5, 2013, Counsel for the Defendant filed a Motion to Withdraw as Counsel along with a Motion to Dismiss 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 May 4, 2009, Nigel Jackson (Defendant) pled guilty to three counts of Delivery of a Controlled Substance, ungraded felonies;¹ one count of Person Not to Possess a Firearm, a felony of the second degree;² and one count of Possession with Intent to Delivery Heroin, an ungraded felony.³ The Defendant pled guilty in exchange for a negotiated plea agreement in which he would receive an eight-seven (87) month minimum to an open max on counts 10 and 12. The Defendant would also plead guilty to counts 2, 5 and 8 in exchange for their sentence to run concurrently to counts 10 and 12. On the same day, the Defendant was sentenced by the Honorable Kenneth D. Brown to an aggregate sentence of eight-seven (87) months to 25 years in

¹ 35 P.S. § 780-113(A)(30).

² 18 Pa.C.S.A. § 6105(A)(1).

³ 35 P.S. § 780-113(A)(30).

a State Correctional Institution, in accordance with his plea agreement.⁴ The Defendant did not file any subsequent appeals.

On July 20, 2012, the Defendant filed a *pro se* Post Conviction Relief Act (PCRA) Petition. The Defendant alleged four issues: 1) that the Defendant's guilty plea was not entered into knowingly, intelligently, or voluntarily; 2) that the police engaged in sentence manipulation by using a confidential informant for three days; 3) that the trial attorney failed to file an appeal after being requested to do so; and 4) that trial counsel was ineffective in the representation of the Defendant. Julian Allatt, Esquire was appointed to represent the Defendant for the PCRA Petition. On February 5, 2013, Attorney Allatt 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 Allatt that Defendant failed to raise any meritorious issues in his PCRA Petition.

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

⁴ Judge Brown retired from active service on December 31, 2008.

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 May 4, 2009 and no appeal was filed to the Superior Court of Pennsylvania. Thus, his judgment of sentence became final thirty (30) days later on June 4, 2009, the expiration of the time for filing a direct appeal to the Superior Court. 42 Pa.C.S. § 9545(b)(3). Defendant filed his PCRA Petition on July 20, 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 specifically alleged any of the exceptions in 42 Pa.C.S. § 9545(b)(1). The Defendant, however, alleges that he discovered the facts and law in this Petition on June 28, 2012 and that he has sixty (60) days to submit the PCRA. “The Timeliness exception set forth in Section 9545(b)(1)(ii) requires a petitioner to demonstrate he did not know the facts upon which he based his petition and could not have learned those facts earlier by the exercise of due diligence.” Commonwealth v. Monaco, 996 A.2d 1076, 1080 (Pa.

Super. 2010). The Defendant is to explain why he could not have obtained the new facts earlier with the exercise of due diligence. Id.

To obtain relief based on after-discovered evidence, [an] appellant must demonstrate that the evidence: (1) could not have been obtained prior to the conclusion of the trial by the exercise of reasonable diligence; (2) is not merely corroborative or cumulative; (3) will not be used solely to impeach the credibility of a witness; and (4) would likely result in a different verdict if a new trial were granted.

Commonwealth v. Foreman, 55 A.3d 532, 537 (Pa. Super. 2012).

Here, the Defendant has not explained why it took almost three (3) years to file his PCRA Petition after he was sentenced. The issues alleged by the Defendant in this PCRA Petition would have been known to him after sentencing and are not new undiscovered facts.⁵ Further, 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.

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.

⁵ The Defendant alleges the following issues in his PCRA Petition: 1) that the Defendant's guilty plea was not entered into knowingly, intelligently, or voluntarily; 2) that the police engaged in sentence manipulation by using a confidential informant for three days; 3) that the trial attorney failed to file an appeal after being requested to do so; and 4) that trial counsel was ineffective in the representation of the Defendant.

ORDER

AND NOW, this _____ day of February, 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 February 5, 2013, is hereby GRANTED and Julian Allatt, Esq. may withdraw his appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

xc: DA (KO)
Julian Allatt, Esq.
Nigel Jackson #JB-0035
SCI Mercer
801 Butler Pike
Mercer, PA 16137