

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**CRAIG JONES,
Defendant**

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**No. 2034-CR-1998; 2044-1998
CRIMINAL DIVISION
PCRA**

OPINION AND ORDER

On July 16, 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 13, 1999, the Defendant pled guilty to two (2) counts of Robbery, felonies of the first degree. On April 13, 1999, pursuant to a plea agreement, this Court sentenced the Defendant to three (3) to seven (7) years on each Robbery count. The aggregate sentence was six (6) to fourteen (14) years.

Based on PCRA counsel's Petition to Withdraw, the Defendant was paroled by the Pennsylvania Board of Probation and Parole (PA Board) on December 7, 2004, after seven (7) years of incarceration. On December 2, 2011, the Defendant was arrested for new criminal charges while out on parole. The Defendant was convicted of Possession with Intent to Deliver and classified as a convicted parole violator. The PA Board recalculated the Defendant's

maximum sentence and pulled seven years, two months, and fourteen days of street time. The Defendant was recommitted and given a new maximum date of September 25, 2019.

The Defendant filed a *pro se* PCRA Petition on July 16, 2013. The Defendant alleged that the Court imposed a sentence outside the recommended sentencing guidelines on April 13, 1999. In addition, the Defendant contends that he was misled and believed that he would have satisfied his sentence after seven (7) years. On March 5, 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 April 13, 1999 and he did not file any subsequent appeals. Thus, his judgment of sentence became final thirty (30) days later on May 13, 1999, 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 January 15, 2013, 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 has alleged that his PCRA Petition is timely because the facts upon which the claim is predicated were unknown and could not have been ascertained by the exercise of due diligence. The issues are whether the sentence was outside the recommended sentencing guidelines and whether the Defendant understood the sentence/plea agreement. The Defendant could have raised these issues with due diligence within a year of being sentenced and not over ten (10) years later.

In addition, the Court agreed with Attorney Gardner and finds that the Defendant’s issues are without merit. The Defendant has alleged that his sentence was outside the recommended

sentencing guidelines. The Defendant pled guilty for two charges of Robbery, which were graded as Felony 1 offenses and had offense gravity scores of ten (10). With a prior record score of zero (0), the Defendant was sentenced within the recommended sentencing guideline range of 22-36 (BC). Also, the Defendant was not sentenced outside the statutory maximum of twenty (20) years.

Finally, the Defendant has argued that he did not understand his sentence. The Defendant was aware of his aggregate sentence of six (6) to fourteen (14) years. The Defendant pled guilty pursuant to a negotiated plea agreement. The Defendant filled out a written guilty plea colloquy and was found by this Court to have made a knowing, intelligent, and voluntary guilty plea after an oral colloquy. The Court finds that the issue of whether the Defendant was aware of his plea agreement and his sentence by the Court 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 August, 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 July 16, 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

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