



On December 17, 2012, the Defendant has filed his third PCRA Petition. The Defendant alleges the same issue raised in his second PCRA Petition, that his guilty plea was not voluntary because he was not sentenced according to his plea agreement. As with the last two PCRA Petitions, this Court has assessed the Defendant's current PCRA Petition and finds that it is untimely.

***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, the Defendant was sentenced on December 15, 1994 and did not file a Notice of Appeal to the Superior Court. Thus, his judgment of sentence became final thirty (30) days later on January 15, 1995. Defendant filed his third PCRA Petition on December 17, 2012, which is clearly 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). In the second PCRA Petition, Judge Kieser found that there were no exceptions that applied: "Nicholas's contention that he was unaware of the modification until 2007 is an attempt to assert the after discovered evidence exception. *See*, 42 Pa.C.S.A. § 9545(b)(1)(ii). This exception does not apply because there is no new evidence." As the Defendant alleges the same issue as in his second PCRA Petition and has not raised any reason why it is now timely, this Court finds that the PCRA Petition is untimely.

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 January, 2013, 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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