

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 :
 v. : **No. 29-CR-2011**
 : **CRIMINAL DIVISION**
 :
 DANIEL SNYDER, :
 Defendant : **PCRA**

OPINION AND ORDER

On March 5, 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 May 16, 2011, Daniel Snyder (Defendant) plead guilty in docket number 29-2011 to Escape, a felony of the third degree;¹ Flight to Avoid Apprehension, Trial or Punishment, a felony of the third degree;² and Possession of a Controlled Substance, an ungraded misdemeanor.³ In docket number 89-2011, the Defendant pled guilty to Possession with Intent to Deliver a Controlled Substance, an ungraded felony.⁴ The Defendant had a plea agreement under 89-2011 but pled open under 29-2011. On the same day, under 29-2011, the Defendant was sentenced to two consecutive sentences of twelve (12) to twenty-four (24) months in a State Correctional Institution for each Escape and Flight to Avoid Apprehension. Under 89-2011, the

¹ 18 Pa.C.S. § 5121(a).

² 18 Pa.C.S. § 5126(a).

³ 35 P.S. § 780-113(a)(31)(i).

⁴ 35 P.S. § 780-113(a)(30).

Defendant received a consecutive sentence of eighteen (18) to thirty-six (36) months in a State Correctional Institution, which was in accordance to his plea agreement. No subsequent appeals were filed.

The Defendant filed a *pro se* PCRA Petition on July 20, 2012. The Defendant alleged that his trial counsel was ineffective because he advised him to not take a plea agreement of six (6) to twelve (12) months under 29-2011 and to instead plead open. Kathryn Bellfy, Esquire was appointed to represent the Defendant for the PCRA Petition. On March 5, 2013, Attorney Bellfy 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 Bellfy 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 May 16, 2011 and he did not file any subsequent appeals. Thus, his judgment of sentence became final thirty (30) days later on June 16, 2011, 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 did not state a specific reason for the delay in filing his PCRA Petition. Further, the Court is unaware of any exception that would warrant the delay based on the facts placed in the PCRA Petition.⁵ Without a justification or an argument that one of the timeliness

⁵ Many defendants have argued that there is a new retroactive constitutional right based on Lafler v. Cooper, 132 S.Ct. 1376 (2012); Missouri v. Frye, 132 S.Ct. 1399 (2012). These rights, however, have been already applied in Pennsylvania. See Commonwealth ex rel. Dadario v. Goldberg, 773 A.2d 126 (Pa. 2000) (finding that ineffective assistance of counsel claims in connection with plea offers is a valid PCRA claim); Commonwealth v. Martinez, 777 A.2d 1121 (Pa. Super. 2001) (“Counsel has a duty . . . to explain the advantages and disadvantages of the offer.”); Commonwealth v. Boyd, 688 A.2d 1172 (Pa. 1997); Commonwealth v. Korb, 617 A.2d 715 (Pa. Super. 1992).

exceptions under 42 Pa.C.S. § 9545(b)(1) should be applied, this Court must find that the PCRA Petition is untimely.

In addition, the Court finds that the Defendant's issue is without merit. The Defendant alleged that his attorney ineffectively advised him to plead open under 29-2011 instead of pleading guilty to a negotiated plea agreement of six (6) to twelve (12) months. Attached to Attorney Bellfy's Petition to Withdraw as Counsel is a statement from the Defendant's trial counsel stating that the plea offer under 29-2011 was taken away by the Commonwealth on the day of the guilty plea. Trial counsel stated that he informed the Defendant that he could either plead open or to take the matter to trial. As the plea offer was no longer available, the Defendant's allegation that he was advised to not take the offer 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 March 5, 2013, is hereby GRANTED and Kathryn Bellfy, Esq. may withdraw her appearance in the above captioned matter.

By the Court,

Nancy L. Butts, President Judge

xc: DA (KO)
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