

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-1995-2009
	:	CR-1996-2009
v.	:	
	:	CRIMINAL DIVISION
RICCHEEM BARKER,	:	
Defendant	:	PCRA

OPINION AND ORDER

I. Background

On September 8, 2010, the Defendant pled guilty to Third Degree Murder,¹ Persons Not to Possess a Firearm,² and Possession with the Intent to Deliver a Controlled Substance.³ On September 8, 2010, the Court imposed an aggregate sentence of twenty (20) to fifty (50) years. The Defendant did not file an appeal to the Superior Court. On June 24, 2014, the Defendant filed a Post-Conviction Relief Act (PCRA) Petition. The petition is postmarked June 23, 2014. The petition is the Defendant's second PCRA petition. In the petition, the Defendant argues that as a result of the decision of the Supreme Court of the United States in Alleyne v. United States,⁴ his rights under the Sixth Amendment to the United States Constitution were violated because the Court utilized a mandatory minimum when fashioning the sentenced imposed.

II. Discussion

A petitioner must file a PCRA petition within one year of the date the judgment becomes final (one year rule). 42 Pa. C.S. § 9545(b)(1). “[A] judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.” 42 Pa.

¹ 18 Pa.C.S. § 2502(c).

² 18 Pa.C.S. § 6105(a)(1).

³ 35 P.S. § 780-113(a)(30).

⁴ 133 S. Ct. 2151 (2013).

C.S. § 9545(b)(3). “In a criminal case in which no post-sentence motion has been filed, the notice of appeal [to the Superior Court] shall be filed within 30 days of the imposition of the judgment of sentence in open court.” Pa. R.A.P. 903(c)(3).

There are exceptions to the one year rule. 42 Pa. C.S. § 9545(b)(1). A petitioner can file a PCRA petition more than one year from the date the judgment becomes final if:

(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 [one year time period] and has been held by that court to apply retroactively.

42 Pa. C.S. § 9545(b)(1).

The Defendant did not file his petition within one year of the date his judgment became final. The Defendant’s judgment became final 30 days after the imposition of his sentence. See Pa. R.A.P. 903(c)(3). The Defendant was sentenced on September 8, 2010. Therefore, the Defendant’s judgment became final on October 8, 2010. The Defendant did not file his petition by October 8, 2011 as is required by the one year rule. Therefore, the Defendant’s argument is untimely unless it falls into one of the exceptions to the one year rule.

The Defendant’s argument does not fall into any of the exceptions to the one year rule. Although the Defendant asserts a constitutional right that was recognized by the Supreme Court of the United States after the one year time period,⁵ the Supreme Court did not hold this right to apply retroactively. See Alleyne, 133 S. Ct. 2151 (2013).

⁵ The Supreme Court decided Alleyne on June 17, 2013.

Even if the Defendant's argument fell into one of the exceptions to the one year rule, the Defendant's petition would still be untimely. A PCRA petition raising an exception to the one year rule "shall be filed within 60 days of the date the claim could have been presented." 42 Pa. C.S. § 9545(b)(2). The Supreme Court decided Alleyne on June 17, 2013. Therefore, the Defendant had to raise his argument by August 17, 2013 for it to be timely. The Defendant raised the argument well after August 17, 2013.

III. Conclusion

The Defendant did not file his petition within one year of the date his judgment became final. The Defendant's argument does not fall into any of the exceptions under 42 Pa. C.S. § 9545(b)(1). Therefore, the Defendant's petition is untimely.

ORDER

AND NOW, this _____ day of July, 2014, the Defendant is notified that this Court intends to dismiss the Defendant's PCRA petition because it is untimely. The Court will dismiss the Defendant's petition unless the Defendant files an objection to that dismissal within twenty (20) days of date of this Order.

By the Court,

Nancy L. Butts, President Judge

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