

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1370-2010  
:   
vs. : CRIMINAL DIVISION  
:   
: Notice of Intent to Dismiss PCRA Without  
WILLIAM BLACKWELL, : Holding an Evidentiary Hearing and Order  
Defendant : Granting Motion to Withdraw as Counsel

**OPINION AND ORDER**

This matter came before the court on William Blackwell's Post Conviction Relief Act (PCRA) petition. The relevant facts follow.

Blackwell was charged with four counts of criminal use of a communication facility, three counts of delivery of a controlled substance, three counts of possession with intent to deliver a controlled substance, three counts of possession of a controlled substance, three counts of possession of drug paraphernalia, and one count of intimidation of victims or witnesses. On December 27, 2010, Blackwell entered a guilty plea to three counts of delivery of a controlled substance, and the court sentenced him to three concurrent sentences of three to ten years of incarceration in a state correctional institution. The weight of the controlled substance in each delivery was more than one gram but less than two grams of heroin. Blackwell did not file a post sentence motion or an appeal.

On June 4, 2014, Blackwell filed a pro se PCRA petition in which he alleged a constitutional violation and the imposition of a sentence greater than the lawful maximum based on Alleyne v. United States, 133 S.Ct. 2151 (2013) and Commonwealth v. Munday, 78 A.3d 661 (Pa. Super. 2013). The court appointed counsel to represent Blackwell and gave counsel the opportunity to file either an amended PCRA petition or a no merit letter pursuant

to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super. 1988). Counsel obtained and reviewed the transcript of Blackwell's guilty plea and sentencing hearing. He then filed a no merit letter because Blackwell's petition was untimely and the court did not impose any mandatory minimum sentence.

After an independent review of the record in this case, the court also finds that Blackwell's petition is untimely; therefore, the court lacks jurisdiction to address the merits of Blackwell's claims.

Section 9545(b) of the Judicial Code, which contains the time limits for filing a PCRA petition, states:

(b) Time for filing petition

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(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.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

(3) For purposes of this subchapter, 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.

(4) For purposes of this subchapter, "government officials" shall not include defense counsel, whether appointed or retained.

42 Pa.C.S.A. §9545(b).

Blackwell pled guilty and was sentenced on December 27, 2010; therefore his conviction became final on or about January 26, 2011. To be considered timely, Blackwell had to file his PCRA petition on or before January 26, 2012 or allege facts in his petition to demonstrate one of the statutory exceptions. To avail himself of one of these exceptions, Blackwell had to allege facts in his petition to show that one of these exceptions apply, including the dates the events occurred, the dates he became aware of the information or event and why he could not have discovered the information earlier. See Commonwealth v. Breakiron, 566 Pa. 323, 330-31, 781 A.2d 94, 98 (Pa. 2001); Commonwealth v. Yarris, 57 Pa. 12, 731 A.2d 581, 590 (Pa. 1999).

The time limits of the PCRA are jurisdictional in nature. Commonwealth v. Howard, 567 Pa. 481, 485, 788 A.2d 351, 353 (Pa. 2002); Commonwealth v. Palmer, 814 A.2d 700, 704-05 (Pa.Super. 2002). “[W]hen a PCRA petition is not filed within one year of the expiration of direct review, or not eligible for one of the three limited exceptions, or entitled to one of the exceptions, but not filed within 60 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.” Commonwealth v Gamboa-Taylor, 562 Pa. 70, 77, 753 A.2d 780, 783 (Pa. 2000).

Blackwell’s petition was not filed until June 4, 2014 and he did not allege facts to support any of the exceptions.

Although Alleyne and Munday were decided more than a year after Blackwell’s judgment of sentence became final, Blackwell nevertheless cannot avail himself of these cases. Alleyne did not announce a new constitutional right and neither the United

States Supreme Court nor the Pennsylvania Supreme Court has held that Alleyne is to be applied retroactively to cases in which the judgment of sentence had become final. Commonwealth v. Miller, 2014 PA Super 214, 2014 Pa. Super. LEXIS 3410 (September 26, 2014). Even assuming that Alleyne announced a new constitutional right that applied retroactively, Blackwell did not file his petition within 60 days of either Alleyne or Munday. Alleyne was decided on June 17, 2013 and Munday was decided on October 10, 2013.

Therefore, the court lacks jurisdiction to address the merits of Blackwell's petition.<sup>1</sup>

### **ORDER**

AND NOW, this \_\_\_ day of December 2014, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that it lacks jurisdiction to address the merits of Blackwell's PCRA petition.

As no purpose would be served by conducting any further hearing, none will be scheduled and the parties are hereby notified of this court's intention to dismiss the petition. Blackwell 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.

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<sup>1</sup> A review of the transcript from the guilty plea and sentencing hearing also reveals that the court did not impose any mandatory minimum sentences in this case. Instead, the negotiated plea agreement was for a three year minimum sentence, which in this case was achieved by imposing an aggravated range sentence on a single delivery count and imposing concurrent sentences on the other two counts.

The court also grants counsel's petition to withdraw. Blackwell has the right to represent himself or to hire a private attorney to pursue his issues. The court, however, will not appoint another attorney to represent him.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Donald F. Martino, Esquire  
William Blackwell, #JW4179  
SCI Somerset, 1600 Walters Mill Rd, Somerset PA 15510  
Work File