

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-342-2006
	:	
v.	:	
	:	CRIMINAL DIVISION
NATHANIEL CLARK,	:	
Defendant	:	PCRA

OPINION AND ORDER

I. Background

On October 25, 2006, after a jury trial, the Defendant was found guilty of Possession with Intent to Deliver a Controlled Substance¹ and Criminal Use of a Communication Facility.² On December 19, 2006, after a non-jury trial before Judge William S. Kieser,³ the Defendant was found guilty of a single charge of Possession of a Firearm by a Prohibited Person,⁴ which was severed for trial. The Defendant was initially sentenced on January 5, 2007, but was resentenced on January 26, 2007 following post-sentence motions. Judge Kieser imposed an aggregate sentence of seven (7) years and nine (9) months to twenty (20) years of incarceration in a state correctional institution. The Defendant appealed. On April 6, 2009, the Superior Court denied the appeal by memorandum opinion.

On June 6, 2014, the Defendant filed a Post-Conviction Relief Act (PCRA) Petition. The petition is postmarked June 4, 2014. The petition is not the Defendant's first PCRA petition. In the petition, the Defendant argues that as a result of the decision of the Supreme Court of the

¹ 35 P.S. § 780-113(a)(30).

² 18 Pa.C.S. § 7512(a).

³ Judge Kieser retired from active service on December 31, 2008.

⁴ 18 Pa.C.S. § 6105(a)(1).

United States in Alleyne v. United States,⁵ his rights under the Sixth Amendment to the United States Constitution were violated when a mandatory minimum sentence was imposed on him.

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. C.S. § 9545(b)(3). “[A] petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 30 days after the entry of the order of the Superior Court or the Commonwealth Court sought to be reviewed.” Pa. R.A.P. 1113(a).

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 his appeal was denied by the Superior Court. See Pa. R.A.P. 1113(a). The Superior Court denied the Defendant’s appeal on

⁵ 133 S. Ct. 2151 (2013).

April 6, 2009. Therefore, the Defendant's judgment became final on May 6, 2009. The Defendant did not file his petition by May 6, 2010 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,⁶ the Supreme Court did not hold this right to apply retroactively. See Alleyne, 133 S. Ct. 2151 (2013).

Even if the Defendant's argument fell into an exception 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.

⁶ The Supreme Court decided Alleyne on June 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

xc: DA
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