

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** : **CR-1012-2008**  
:   
v. :   
: **CRIMINAL DIVISION**  
**GREGORY RICKS,** :   
**Defendant** : **PCRA**

**OPINION AND ORDER**

On January 20, 2009, after a jury trial before the Honorable Kenneth D. Brown, Gregory Ricks (Defendant) was found guilty of Possession of Firearm Prohibited,<sup>1</sup> a felony of the second degree; Receiving Stolen Property,<sup>2</sup> a felony of the second degree; and Possession With Intent to Deliver,<sup>3</sup> an ungraded felony.<sup>4</sup> Subsequently, the Defendant filed an appeal to the Superior Court of Pennsylvania, which was denied on March 4, 2010. In the appeal, the Defendant argued three (3) issues: 1) whether the verdict was against the weight of the evidence; 2) whether the evidence was insufficient to convict; and 3) whether the court abused its discretion when imposing consecutive sentences.

On April 22, 2010, the Defendant filed his first Post Conviction Relief Act (PCRA) Petition. This PCRA Petition challenged whether trial counsel was ineffective for not filing a suppression motion regarding the landlord finding a rifle and turning it over to police. Joel McDermott, Esquire was appointed to represent the Defendant and on June 3, 2010, filed a Petition to Withdraw as Counsel in accordance with Commonwealth v. Turner, 544 A.2d 927 (1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa.Super.1988). After an independent review of the PCRA Petition, the Court dismissed the PCRA Petition on August 10, 2010.

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<sup>1</sup> 18 Pa.C.S.A. § 6105(a)(1)

<sup>2</sup> 18 Pa.C.S. § 3925(a)

<sup>3</sup> 35 P.S. § 780-113(a)(30)

<sup>4</sup> Judge Brown retired from active service on December 31, 2009.

On January 10, 2011, the Defendant filed his second timely PCRA Petition. The Defendant alleged three (3) issues: 1) whether the police improperly seized the rifle from his apartment without a warrant; 2) that the Defendant never received a copy of the criminal complaint, Bill of Particulars, or discovery; and 3) the seized rifle did not contain a serial number, resulting in the police's inability to confirm it was the same rifle stolen from the victim. On January 24, 2011, James Protasio, Esquire, was appointed to represent the Defendant. On March 18, 2011, the Court received a letter from Mr. Protasio stating that the PCRA Petition is without merit. After a review of the Petition, the Court agreed with Counsel, and the Petition was denied on May 3, 2011. On May 13, 2011, the Defendant filed a notice of appeal to the Superior Court. The Court's denial of the PCRA Petition was affirmed on February 21, 2012. On March 21, 2012, the Defendant filed a Petition for allowance of Appeal to the Pennsylvania Supreme Court, which was denied on October 29, 2012.

On November 14, 2012, the Defendant filed his third PCRA Petition. The Defendant alleged that he was illegally evicted from his apartment and that he was not in possession of the firearm that was located within it. In addition, the Defendant alleged that his PCRA Counsel was ineffective because they filed Turner/Finley letters requesting to withdraw as counsel. The Defendant's third PCRA petition was dismissed because it was untimely, and the Court found no meritorious issue.

On April 28, 2014, the Defendant filed his fourth PCRA Petition. In his fourth PCRA Petition, the Defendant argued that there was no evidence that he owned the gun retrieved by police. Defendant also argued that there was no evidence that he was in possession of drugs. Additionally, the Defendant argued that certain people should have been called to testify at his trial.

***The Defendant's PCRA Petition is untimely pursuant to 42 Pa.C.S. § 9545(b)***

The Defendant's fourth 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's direct appeal to the Superior Court was decided on March 4, 2010, and no appeal was filed to the Supreme Court. Thus, his judgment of sentence became final thirty (30) days later on April 4, 2010, the expiration of the time for filing a direct appeal to the Supreme Court of Pennsylvania. 42 Pa.C.S. § 9545(b)(3); Pa.R.A.P. 903. Defendant filed his PCRA Petition on April 28, 2014, 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 the 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). The Defendant has not shown any governmental interference with the presentation of his claim. Additionally, the facts upon which the Defendant's claims are predicated were known to the Defendant or could have been ascertained by the exercise of due diligence.

Additionally, the claims that the Defendant raises in his fourth PCRA Petition are waived because the Defendant could have raised the claims in his first PCRA Petition. As directed by 42 Pa.C.S. § 9544(b), an issue is waived "if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal, or in a prior state post-conviction proceeding."

Because the court finds there are no meritorious issues in the Defendant's PCRA Petition, the Court 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 the Court’s intention to deny the Defendant’s PCRA Petition.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of May, 2014, 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

xc: DA  
Gregory Ricks