

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-226-2011  
:   
vs. : Order Notifying Defendant of the Court's  
: Intent to Dismiss His PCRA Petition and  
WILLIAM L. WILSON, JR., : Granting Counsel's Motion to Withdraw  
Defendant :

**OPINION AND ORDER**

Defendant was charged with aggravated assault, two counts of simple assault, and recklessly endangering another person as a result of an incident that occurred on December 14, 2010. On September 22, 2011, Defendant pled guilty to recklessly endangering another person and both counts of simple assault and, in accordance with the negotiated plea agreement, the court imposed an aggregate sentence of incarceration in a state correctional institution of three to six years. Defendant did not file a post sentence motion or an appeal.

On or about September 19, 2013, Defendant filed a pro se Post Conviction Relief Act (PCRA) petition in which he claimed that his sentence was illegal because he received three consecutive one to two year sentences for crimes arising from the same incident that had the same victim. Since this was Defendant's first PCRA petition, the court appointed counsel to represent Defendant and gave counsel the opportunity to file an amended PCRA petition or a "no merit" letter in accordance with Commonwealth v. Turner, 518 Pa. 491, 544 A.2d 927 (1988) and Commonwealth v. Finley, 379 Pa. Super. 390, 550 A.2d 213 (1988). After corresponding with Defendant, PCRA counsel filed a motion to withdraw as counsel and a "no merit" letter, because his review of the record revealed that Defendant's PCRA petition was untimely.

After an independent review of the record, the court agrees that Defendant's PCRA petition is untimely.

A PCRA petition must be filed within one year of the date that the judgment of sentence becomes final. 42 Pa.C.S.A. §9545(b)(1). This time requirement is mandatory and jurisdictional in nature, and the court may not ignore it to reach the merits of the petition. Commonwealth v. Murray, 753 A.2d 201, 203 (Pa. 2000). A judgment of sentence "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.A. §9545(b)(3).

The only time that a court can address the merits of a petition that is filed more than one year after the judgment of sentence becomes final is if the petition alleges, and the petitioner proves, that any one of the three limited exceptions, set forth at 42 Pa.C.S.A. §9545(b)(1)(i), (ii) and (iii), is met.<sup>1</sup> Any petition invoking one of these exceptions must be filed within sixty days of the date the claim could first have been presented. 42 Pa.C.S.A. §9545(b)(2). Furthermore, "the petitioner must plead and prove specific facts that demonstrate his claim was raised within the sixty-day time frame." Commonwealth v. Hernandez, 79 A.3d 649, 651 (Pa. Super. 2013), citing Commonwealth v. Carr, 768 A.2d 1164, 1167 (Pa. Super. 2001).

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<sup>1</sup> The exceptions to the timeliness requirement are:

- (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 review of the record discloses that Defendant's judgment of sentence became final on October 22, 2011, thirty days after Defendant's sentence was imposed. Defendant did not file his PCRA petition until September 19, 2013. Defendant also has not alleged specific facts to meet any of the three limited exceptions. Thus, Defendant's petition is patently untimely.

The court recognizes that challenges to the legality of one's sentence cannot be waived. However, this does not mean that the court has jurisdiction to address such a claim. As the Pennsylvania Superior Court aptly stated in a recent decision:

Waiver and jurisdiction are separate matters. "Though not technically waivable, a legality [of sentence] claim may nevertheless be lost should it be raised for the first time in an untimely PCRA petition for which no time-bar exception applies, thus depriving the court of jurisdiction over the claim." Commonwealth v. Slotcavage, 2007 PA Super 378, 939 A.2d 901, 903 (Pa. Super. 2007) (citing Commonwealth v. Fahy, 558 Pa. 313, 737 A.2d 214, 223 (Pa. 1999) ("Although legality of sentence is always subject to review within the PCRA, claims must still first satisfy the PCRA's time limits or one of the exceptions thereto.")).

Commonwealth v. Seskey, 2014 PA Super 27 (February 19, 2014).

Since Defendant's PCRA petition was filed more than one year after his judgment of sentence became final and he has not alleged specific facts to meet any of the exceptions to the one-year filing requirement, the court simply does not have the legal authority to address Defendant's substantive claims. Commonwealth v. Albrecht, 994 A.2d 1091, 1093 (Pa. 2010).

In light of the court's finding that it does not have jurisdiction to address Defendant's claims, the court will grant counsel's motion to withdraw.

**ORDER**

AND NOW, this \_\_\_ day of March 2014, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court is satisfied that there are no genuine issues concerning any material fact and Defendant is not entitled to relief. As no purpose would be served by conducting any further hearing, none will be scheduled. The parties are hereby notified of this court's intention to dismiss Defendant's PCRA petition without holding an evidentiary hearing, because the petition is untimely. 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.

The court grants counsel's motion to withdraw.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Donald Martino, Esquire  
William Wilson, #KF2771  
SCI Mercer, 801 Butler Pike, Mercer PA 16137  
Work file