

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-1370-2010  
vs. :  
: CRIMINAL DIVISION  
:   
:   
WILLIAM BLACKWELL, :   
Appellant : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN  
COMPLIANCE WITH RULE 1925(a) OF  
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this court's order dated January 7, 2015, which dismissed Appellant's Post Conviction Relief Act (PCRA) petition without holding an evidentiary hearing. The relevant facts follow.

Appellant 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, Appellant entered a guilty plea to the 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. Appellant 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). In an Opinion and Order dated December 10, 2014, the court provided Appellant with notice that it intended to dismiss his PCRA petition without holding an evidentiary hearing, because his petition was untimely; therefore, the court lacked jurisdiction to address the merits of Appellant's PCRA petition. In a footnote, the court also noted that it 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 one delivery conviction and imposing concurrent sentences on the other two delivery convictions.

The court provided Appellant with the requisite opportunity to respond to its notice of intent to dismiss his PCRA petition. On January 5, 2015, Appellant filed a "Motion for Amended P.C.R.A. and Reconsideration of Petition." In this motion, Appellant claimed the court had jurisdiction because legality of sentence claims are not waivable. He also claimed PCRA counsel was ineffective for failing to file an amended PCRA petition to challenge the discretionary aspects of his sentence on the basis that he believed he would receive a standard range sentence and the maximum sentence should have been six years, not ten years.

Relying on *Commonwealth v. Seskey*, 86 A.3d 237, 243 (Pa. Super. 2014), the court dismissed Appellant's PCRA petition on January 7, 2015. Since the petition was untimely, the court lacked jurisdiction to address the merits of Appellant's petition or to grant him any relief.

Appellant filed a notice of appeal. The court received the notice on February

5, 2015 and ordered Appellant to file a concise statement of errors complained of on appeal within twenty-one (21) days. Apparently, the clerk of courts did not receive Appellant's notice of appeal until February 6, 2015, as this is the date stamped on his appeal.

Despite being notified in the concise statement order that a failure to timely file such a statement would result in waiver, Appellant still has not filed a concise statement.<sup>1</sup>

Therefore, Appellant waived any and all issues he could have asserted in this appeal.

Pa.R.App.P. 1925(b)(4)(vii); *see also Commonwealth v. Lord*, 719 A.2d 306 (1998)(issues not raised in Rule 1925 statement are waived).

Even if Appellant had timely filed a concise statement, he did not allege any facts to show that his petition was timely.

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

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<sup>1</sup> It appears that, sometime after the court issued its concise statement order, Appellant was moved to a different institution. When the court issued the concise statement order, Appellant was housed in SCI Somerset. However, when the court checked the inmate locator to confirm Appellant's inmate number and address to send him a copy of this Opinion, it discovered that Appellant is now housed in SCI Chester. Since the court could not be sure that Appellant received the concise statement order, it has addressed the timeliness of his petition, in addition to waiver.

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).

Appellant pled guilty and was sentenced on December 27, 2010; therefore his conviction became final on or about January 26, 2011. To be considered timely, Appellant 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, Appellant 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).

Appellant's PCRA 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 Appellant's judgment of sentence became final, Appellant 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*, 102 A.3d 988 (Pa. Super. 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 lacked jurisdiction to address the merits of Appellant's petition or grant him any relief.<sup>2</sup>

DATE: \_\_\_\_\_

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
William Blackwell, JW 4179

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<sup>2</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. Therefore, Appellant's claims lack merit.

SCI Chester, 500 E. Fourth St., Chester PA 19103  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)