

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-601-2009
	:	
v.	:	
	:	CRIMINAL DIVISION
NIGEL JACKSON,	:	
Defendant	:	PCRA

OPINION AND ORDER

On January 23, 2015, the Defendant filed a Post-Conviction Relief Act (PCRA) petition.

I. Background

The Defendant was sentenced on May 4, 2009. The Defendant did not file an appeal. On July 25, 2012, the Defendant filed his first PCRA Petition. The Defendant was represented by counsel. On April 1, 2013, the Court dismissed the petition. The Defendant did not appeal the dismissal.

II. Discussion

In the instant petition, the Defendant argues only that his sentence was illegal as a result of the decision of the Supreme Court of the United States in Alleyne v. United States.¹

“Any petition under [the PCRA], 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 . . . 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.” 42 Pa. C.S. § 9545(b)(1)(iii).

¹ 133 S. Ct. 2151 (2013).

“[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). “In a criminal case in which no post-sentence motion has been filed, the notice of appeal [to the Superior Court] shall be filed within 30 days of the imposition of the judgment of sentence in open court.” Pa. R.A.P. 903(c)(3). “[A] petition for allowance of appeal shall be filed with the Prothonotary of the [Pennsylvania] 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). “Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort . . . is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.” Sup. Ct. R. 13(1).

Because the Defendant did not appeal his sentence to the Superior Court, he could not appeal to the Pennsylvania Supreme Court or the Supreme Court of the United States. Therefore, the Defendant’s judgment of sentence became final 30 days after the date on which he was sentenced. The Defendant was sentenced on May 4, 2009, so his judgment of sentence became final on June 4, 2009. Because the Defendant filed his petition more than one year after June 4, 2009, his petition is untimely.

In Commonwealth v. Miller,² a PCRA petitioner filed a petition more than one year after the date that his judgment of sentence became final. 102 A.3d at 993. The PCRA court dismissed the petition, and the petitioner appealed the dismissal. Id. at 991-92. On appeal, the petitioner argued “that the time-bar exception at Section 9545(b)(1)(iii) applie[d] in [his] case.” Id. at 993. “Specifically, [the petitioner] aver[red] that the United States Supreme Court’s decision in *Alleyne* announced a new constitutional right that applies retroactively.” Id. The Superior Court of Pennsylvania held that the PCRA correctly dismissed the petition. Id. at 996. The Court wrote, “Even assuming that *Alleyne* did announce a new constitutional right, neither our Supreme Court, nor the United States Supreme Court has held that *Alleyne* is to be applied retroactively to cases in which the judgment of sentence had become final. This is fatal to [the petitioner’s] argument regarding the PCRA time-bar.” Id. at 995.

Although the Court was “aware that an issue pertaining to *Alleyne* goes to the legality of the sentence,” it held that “the PCRA court lacked jurisdiction to consider the merits of . . . [the] petition, as it was untimely filed and no exception was proven.” Id. at 995-96. “Though not technically waivable, a legality [of sentence] claim may nevertheless be lost should it be raised . . . in an untimely PCRA petition for which no time-bar exception applies, thus depriving the court of jurisdiction over the claim.” Id. at 995. (quoting Commonwealth v. Seskey, 86 A.3d 237, 241 (Pa. Super. 2014)). “The PCRA’s time restrictions are jurisdictional in nature. Thus, [i]f a PCRA petition is untimely, neither [the Superior Court] nor the trial court has jurisdiction over the petition.” Seskey, 83 A.3d at 241 (quoting Commonwealth v. Albrecht, 994 A.2d 1091, 1093 (Pa. 2010)).

² 102 A.3d 988 (Pa. Super. 2014).

III. Conclusion

The Court lacks jurisdiction over the petition because it is untimely.

ORDER

AND NOW, this _____ day of February, 2015, pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the Defendant is hereby notified that this Court intends to dismiss his PCRA petition for the reason discussed in the foregoing Opinion. The Defendant may respond to the proposed dismissal within 20 days of the date that he receives this notice.

By the Court,

Nancy L. Butts, President Judge