

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

: No. CR-1025-2010

vs.

:  
:

: **Order Giving Notice of the Court's Intent**  
: **to Dismiss Defendant's PCRA and**  
: **Granting Counsel's Motion to Withdraw**

**BILAL JUSTICE,**  
**Defendant**

:  
:

**OPINION AND ORDER**

This matter came before the court on the Post Conviction Relief Act (PCRA) petition filed by Bilal Justice ("Justice"). The relevant facts follow.

Justice was charged with possession with intent to deliver cocaine, possession of cocaine, possession of drug paraphernalia, resisting arrest, and disorderly conduct. Justice reached a plea agreement with the Commonwealth where he would plead guilty to possession with intent to deliver cocaine and resisting arrest in exchange for an aggregate sentence of 3-6 years' incarceration and dismissal of the remaining charges. Justice accepted the plea agreement and pled guilty to those two charges on September 2, 2011. On December 7, 2011, the court sentenced Justice to 3-6 years' incarceration, consisting of 27-54 months' incarceration for possession with intent to deliver cocaine and 9-18 months' incarceration for resisting arrest.

On October 10, 2014, Justice filed a PCRA petition in which he alleged that his constitutional rights were violated, his guilty plea was unlawfully induced, and his sentence was illegal, because he entered his guilty plea only under the threat of the imposition of a mandatory minimum sentence that could not have legally been imposed

based on *Alleyne v. United States*<sup>1</sup> and *Commonwealth v. Mundy*.<sup>2</sup> As this was Justice's first PCRA petition and he appeared to be indigent, the court appointed counsel to represent Justice and gave counsel the opportunity to file either an amended PCRA petition or a no merit letter pursuant to *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988). The court noted, however, that any filing should address the timeliness of the petition.

Appointed Counsel filed a petition to withdraw from representation, which included a *Turner/Finley* letter, because counsel concluded that the petition was untimely and petitioner was not entitled to relief due to the fact that he was not sentenced to a mandatory minimum.

After an independent review of the record, the court agrees with counsel's no merit letter.

Any PCRA petition must be filed within one year of the date the judgment of sentence became final, or allege facts to support one of the statutory exceptions. 42 Pa.C.S.A. §9545(b). A judgment becomes final at the conclusion of direct review or the time for seeking such review. 42 Pa.C.S.A. §9545(b)(3).

The court sentenced Justice on December 7, 2011. Justice did not file any post sentence motions or an appeal. Therefore, his judgment became final on or about January 6, 2012.

To be considered timely, Justice needed to file his current petition on or before January 6, 2013 or allege facts to support one of the statutory exceptions. Justice's

---

<sup>1</sup> 133 S.Ct. 2151 (2013).

<sup>2</sup> 78 A.3d 661 (Pa. Super. 2013).

petition was not filed until October 10, 2014 and it did not allege any facts to support an exception to the one-year filing period. Therefore, the petition is untimely and the court lacks jurisdiction to hold an evidentiary hearing or to grant Justice any relief.

*Commonwealth v. Williams*, 105 A.3d 1234, 1239 (Pa. 2014)(“The PCRA time restrictions are jurisdictional in nature. Thus, if a PCRA petition is untimely, neither this Court nor the PCRA court has jurisdiction over the petition.”).

Although one of the statutory exceptions pertains to situations where the right asserted is a constitutional right that was recognized by the Supreme Court of the United States after the time period provided in this section, see 42 Pa.C.S.A. §9545(b)(1)(iii), Justice cannot invoke that exception in this case. The Pennsylvania Superior Court has held that a petitioner cannot raise a successful *Alleyne* claim in a PCRA petition because neither the United State Supreme Court nor the Pennsylvania Supreme Court has held that *Alleyne* is to be applied retroactively to cases in which the judgment of sentence has become final.

*Commonwealth v. Miller*, 102 A.3d 988, 995 (Pa. Super. 2014). Justice also did not file his petition within 60 days of the *Alleyne* decision, which was issued on June 17, 2013. 42 Pa.C.S.A. §9545(b)(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.”).

Even if the petition had been timely filed, Justice would not be entitled to relief. The court did not impose a mandatory minimum sentence in this case. Instead, the court imposed two consecutive sentences to achieve the aggregate sentence of 3 to 6 years’ incarceration contemplated by the parties’ plea agreement.

Justice’s guilty plea also was not “unlawfully” induced by the prospect of a

mandatory minimum sentence. At the time Justice entered his guilty plea, he was facing the possibility of a mandatory minimum sentence based on the quantity of drugs. Justice pled guilty to possessing more than 10 but less than 50 grams of crack cocaine with the intent to deliver it. He had a prior conviction for possession with intent to deliver in 2003. At the time of Defendant's plea, an individual with a prior drug trafficking conviction who possessed more than 10 grams of cocaine could be sentenced to a mandatory minimum of five years in prison. 18 Pa.C.S.A. §7508(a)(3)(ii).<sup>3</sup> Therefore, at the time Justice was making the decision whether to plead guilty or to go to trial he **was** facing the possibility of a mandatory minimum five year sentence.

Justice's sentence was not illegal. Possession with intent to deliver cocaine is an ungraded felony with a statutory maximum of ten years in prison and a \$100,000 fine for a first drug trafficking offense. 35 P.S. §780-113(f)(1.1). For a second or subsequent drug trafficking offense, the court is permitted to double that maximum to 20 years and a fine of \$200,000. 35 P.S. §780-115. The offense gravity score was eight and Justice's prior record score was five, making the standard minimum guideline range 27-33 months.

The court imposed a sentence of state incarceration, the minimum of which was 27 months and the maximum of which was 54 months. The minimum sentence was at the bottom of the standard range. The maximum sentence was the lowest possible maximum that could be imposed with a minimum sentence of 27 months. 42 Pa.C.S.A. §9756(b)(1). ("The court shall impose a minimum sentence of confinement which shall not exceed one-

---

<sup>3</sup> Although the Pennsylvania Superior Court found that this mandatory minimum statute was unconstitutional under *Allelyne* and the provisions were not severable, see *Commonwealth v. Newman*, 99 A.2d 86 (Pa.Super. 2014) and *Commonwealth v. Watley*, 81 A.3d 1108, 1117 n.4 (Pa. Super. 2013), the issue is currently on appeal before the Pennsylvania Supreme Court, see *Commonwealth v. Hopkins*, 98 MAP 2013.

half of the maximum penalty imposed.”).

Even without the mandatory minimum, Justice could have been lawfully sentenced to a minimum sentence of five years or more and a maximum of up to 20 years for possession with intent to deliver cocaine. Because Justice has a prior drug trafficking conviction, the court is permitted to double the standard guideline range to 54-66 months (or 4 ½-5 ½ years). 35 P.S. §7809-115; *Commonwealth v. Warren*, 89 A.3d 1092 (Pa. Super. 2014). As previously noted, the statutory maximum also could have been doubled to 20 years pursuant to 35 P.S. §780-115. Therefore, the Commonwealth could have requested and the court could have lawfully imposed a minimum sentence of 5 ½ years and a maximum sentence of 20 years.

For the foregoing reasons, Justice’s sentence for possession with intent to deliver cocaine was not illegal and his guilty plea was not unlawfully induced. Accordingly, the following order is entered:

**ORDER**

**AND NOW**, this \_\_\_ day of June 2015, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, as no purpose would be served by conducting any further hearing, none will be scheduled and the parties are hereby notified of this court's intention to dismiss the petition. Bilal Justice 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 also grants counsel’s motion to withdraw from representation. Bilal

Justice is notified that he has the right to represent himself or to hire private counsel, but the court will not appoint another attorney to represent him unless he sets forth facts in his response to show that his PCRA petition is timely and contains an issue of arguable merit.

By The Court,

---

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Joshua Bower, Esquire (APD)  
Bilal Justice, HC 7008  
SCI Frackville, 1111 Altamont Blvd, Frackville PA 17931  
Work file