

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	<b>1680-1998</b>
	:	
<b>v.</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>LEON J. NORRIS,</b>	:	
<b>Petitioner</b>	:	<b>PCRA</b>

**OPINION AND ORDER**

On August 13, 2014, the Petitioner filed a Post-Conviction Relief Act (PCRA) petition. On September 24, 2014, PCRA Counsel sent the Petitioner a “No Merit Letter.” On October 15, 2014, PCRA Counsel filed a Motion to Withdraw as Counsel. On December 2, 2014, the Court held a conference to discuss the petition.

**I. Background**

On June 11, 1999, the Petitioner pled guilty to Count 2, Count 6, and Count 10, all Delivery of Cocaine.<sup>1</sup> On August 17, 1999, the Petitioner was sentenced on Count 2 to a minimum of two years and a maximum of 10 years in a state correctional institution. On Counts 6 and 10, the Petitioner was sentenced to a minimum of two years and a maximum of 10 years in a state correctional institution. However, the sentence for Counts 6 and 10 was suspended, and the Defendant was sentenced to probation for a period of five years for Count 6 and five years for Count 10. The Court stated that it intended to impose an aggregate sentence of two to 10 years with a consecutive 10 year period of probation.

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<sup>1</sup> “The following acts and the causing thereof within the Commonwealth are hereby prohibited . . . [e]xcept as authorized by [The Controlled Substance, Drug, Device and Cosmetic Act], the . . . delivery . . . a controlled substance by a person not registered under [The Controlled Substance, Drug, Device and Cosmetic Act].” 35 P.S. § 780-113(a)(30). “Any person who violates clause . . . (30) of subsection (a) with respect to . . . coca leaves and any salt, compound, derivative or preparation of coca leaves . . . is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding ten years.” 35 P.S. § 780-113(f)(1.1).

In the petition, the Petitioner argues that he is eligible for relief because of the decision of the Supreme Court of the United States in Alleyne v. United States.<sup>2</sup>

## **II. Discussion**

“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).

“[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

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<sup>2</sup> 133 S. Ct. 2151 (2013).

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 Petitioner did not appeal to the Superior Court, he could not appeal to the Pennsylvania Supreme Court or the Supreme Court of the United States. Therefore, the Petitioner’s judgment of sentence became final 30 days after the date on which he was sentenced. The Petitioner was sentenced on August 17, 1999, so his judgment of sentence became final on September 16, 1999. Because the Petitioner filed his petition more than one year after September 16, 1999, his petition is untimely.

In Commonwealth v. Miller,<sup>3</sup> a PCRA petitioner filed a petition more than one year after the date that his judgment of sentence became final. 2014 Pa. Super. 214, 8. The PCRA court dismissed the petition, and the petitioner appealed the dismissal. Id. at 3-4. On appeal, the petitioner argued “that the time-bar exception at Section 9545(b)(1)(iii) applie[d] in [his] case.” Id. at 8. “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 14. 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 11.

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 13-14. “Though not

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<sup>3</sup> 2014 Pa. Super. 214.

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. (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)).

### **III. Conclusion**

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

### **ORDER**

**AND NOW**, this \_\_\_\_\_ day of January, 2015, it hereby ORDERED and DIRECTED as follows:

1. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the Petitioner is hereby notified that the Court intends to dismiss his PCRA petition unless he files an objection to the intended dismissal within twenty (20) days of this order’s date.
2. The Motion to Withdraw as Counsel, filed October 15, 2014, is hereby GRANTED, and Attorney may withdraw from the above-captioned case.

By the Court,

Nancy L. Butts, President Judge