

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	CR-2055-2004
	:	
v.	:	OTN: K075605-5
GEORGE SEITZER, JR.,	:	NOTICE OF INTENT TO DISMISS
Defendant	:	PCRA WITHOUT HEARING

OPINION AND ORDER

Before the Court is a Motion for a New Trial filed on April 8, 2014 which, as explained below, the Court will treat as a Petition for Post-Conviction Relief, pursuant to the Post Conviction Relief Act (PCRA), 42 Pa. C.S. §§ 9541-9546. After conducting an independent review of Defendant's petition and, for the reasons provided below, the Court finds that Defendant is ineligible for relief and, even if he had been eligible, his petition is untimely. The Defendant is notified of the Court's intention to dismiss the PCRA Petition without a hearing, unless he files an objection to dismissal within twenty days (20) of today's date.

I. Factual and Procedural Background

The record establishes the following factual and procedural background. On October 21, 2004, the Commonwealth charged the Defendant, George Seitzer, Jr., (Seitzer) with one count of indecent assault, a misdemeanor of the second degree, one count of unlawful contact with a minor –sexual offenses, a misdemeanor of the first degree, one count of corruption of minors, a misdemeanor of the first degree, and one summary count of harassment- physically strike kick, etc.¹ Following trial on June 27, 2005, the jury rendered a verdict of guilty of count 2, Unlawful contact of Communication with a minor. The jury rendered a verdict of not guilty as to the

¹ 18 Pa. C.S. §3126(1); 18 Pa. C.S. §6318 A1; 18 Pa. C.S. § 6301 A; 18 Pa. C.S. §2709(a) (1)

indecent assault and corruption of minors' counts. The Court entered a finding of guilty as to the summary harassment count.²

On December 19, 2005, the Court sentenced Seitzer under Count 2, unlawful contact with a minor, to serve a three year period of probation, pay fines and perform community service. As to Count 4, harassment, a summary offense, the court sentenced the defendant to pay a fine of \$300. Seitzer was advised that he must register with the State Police as a Sexual Offender for a period of 10 years, and the he must report changes in address and respond to an annual report. On December 22, 2005, the Court stayed the sentence pending the outcome of appeal. Seitzer filed his notice of appeal on December 27, 2005.

On July 12, 2006, the Superior Court affirmed in part and reversed in part. The Superior Court affirmed the sentence for unlawful contact with a minor but reversed the sentence for harassment since the parties agreed to drop that count. By Order dated August 23, 2006, the judgment of sentence having been affirmed in part, Seitzer was ordered to report to the Lycoming County Adult Probation Office on September 5, 2006 to commence serving his 3 year sentence of probation. The sentence imposed for the offence of harassment was vacated. No appeal was taken from the Superior Court's decision on July 12, 2006.

As to the conviction of count 2, unlawful contact with a minor –sexual offenses, a misdemeanor of the first degree under 18 Pa. C.S. § 6318(a)(1), the evidence adduced at trial established Seitzer communicated with the sixteen year old girl victim about sexual acts he planned to perform on her. The Superior Court specifically concluded that the evidence was sufficient to sustain the conviction under 18 Pa. C.S. § 6318(a)(1). The victim's testimony was partially corroborated by the testimony of her friend to whom she confided some of the

² On August 23, 2005, the Court corrected the Order of June 27, 2005 by agreement of the parties to a finding of not guilty on Count 4, harassment. However, that Order was not filed or docketed until October 27, 2005.

information immediately after its occurrence. The victim also confided in her mother shortly after the incident. In addition, a report was made to the police soon after the incident.

Since Seitzer was ordered to report to the Lycoming County Adult Probation Office on September 5, 2006 to commence serving his 3 year sentence of probation, Mr. Seitzer is no longer serving a sentence of probation. However, Mr. Seitzer is still within the ten year period of required registration with the State Police as a Sexual Offender.

On April 8, 2014, Mr. Seitzer filed a document entitled “post-sentence motion for a new trial on the ground of after discovered evidence.” In that document, Mr. Seitzer averred that an individual spoke with the victim on March 12, 2015 and that the victim told this individual that Mr. Seitzer never verbally sexually assaulted her and that she wanted to “set the record straight.” Mr. Seitzer attached to the document a letter dated March 12, 2015 from the individual who allegedly spoke with the victim. In that letter, the individual states that, after reading the transcripts of the case, she agreed to speak with the victim and she spoke with the victim on 2 occasions over the summer of 2014. The individual states that she took the information back to the Seitzer family and advised them to seek legal counsel. As a result of the filing of the motion, the matter was placed on criminal motions court for a conference on May 4, 2015.

II. Treatment of Request for Relief as PCRA

The Defendant’s Post-Sentence Motion for a New Trial on the Ground of After Discovered Evidence filed on April 8, 2014 must be treated as a PCRA petition. PCRA “provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief.” 42 Pa.C.S. § 9542 Moreover, PCRA “shall be the **sole** means of obtaining **collateral relief** and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect,

including habeas corpus and coram nobis.” *Id.* The Superior Court has repeatedly held that “any petition filed after the judgment of sentence becomes final will be treated as a PCRA petition.” Commonwealth v. Johnson, 2002 PA Super 238, 803 A.2d 1291(Pa. Super. 2002), *citing*, Commonwealth v. Hutchins, 2000 PA Super 274, 760 A.2d 50, 52 n.1 (Pa.Super. 2000); see also, Commonwealth v. Lantzy, 558 Pa. 214, 736 A.2d 564 (Pa. 1999); Commonwealth v. Peterkin, 554 Pa. 547, 722 A.2d 638 (Pa. 1998), *reargument denied*, (Pa. 1999).Commonwealth v. Kubis, 2002 PA Super 296, 808 A.2d 196, 199 (Pa. Super. 2002); Commonwealth v. Lusch, 2000 PA Super 241, 759 A.2d 6, 8 (Pa. Super. 2000). As the judgment of sentence became final in this matter on August 11, 2006, the Court must treat the motion for new trial on the grounds of a witness allegedly recanting as a PCRA.

III. Petitioner not Eligible for Relief

The PCRA provides specific requirements for eligibility for post-conviction relief. 42 Pa. C.S. § 9543. Section 9543(a) provides that in order to be eligible for relief, a Defendant must be convicted and at the time relief is granted, the petitioner must be: “(i) currently serving a sentence of imprisonment, probation or parole for the crime; (ii) awaiting execution of a sentence of death for the crime; or (iii) serving a sentence which must expire before the person may commence serving the disputed sentence.” *Id.* In this matter, Seitzer is not currently serving a sentence of imprisonment, probation or parole for the crime at issue. He commenced his three years’ probation on September 5, 2006 and more than three years have passed. Accordingly, Seitzer is not eligible for relief under the PCRA and the petition must be dismissed.

IV. The Petition is Untimely

Even if the petitioner were eligible for relief under the PCRA, the petition is untimely. 42 Pa. C.S. § 9545(b)(1) requires that all petitions filed pursuant to the Post Conviction Relief Act be

filed within *one (1) year* of the date that Defendant’s judgment becomes final. The PCRA statute provides for three (3) exceptions to the timeliness requirement. See 42 Pa. C.S. § 9545(b)(1). These exceptions include:

- (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. 42 Pa. C.S. § 9545(b)(1)(i)-(iii).

The petitioner must plead and prove one of the exceptions to the one-year timeliness requirement under 42 Pa. C.S. § 9545(b)(1). *Commonwealth v. Beasley*, 741 A.2d 1258, 1261 (Pa. 1999); *Commonwealth v. Taylor*, 933 A.2d 1035, 1039 (Pa. Super. 2007). If a PCRA petition is found to be untimely, “[u]nder the plain language of Section 9545 [of the Post Conviction Relief Act], the substance of [petitioner’s] PCRA petition must yield to its untimeliness.” *Taylor*, 933 A.2d at 1043. Even these exceptions to the timeliness requirement have a timeliness element; any PCRA petition raising one of these timeliness exceptions should be “filed within 60 days of the date the claim could have been presented.” 42 Pa. C.S. § 9545(b)(2).

In the present case, no appeal was taken from the Superior Court’s decision on July 12, 2006; thus the judgment was final thirty days later on August 11, 2006. See 42 Pa. C.S. § 9545(b)(3). Therefore, Seitzer was required to file his petition by August 11, 2007. Seitzer filed his petition on April 9, 2014, 7 years and four months after the judgment became final. Therefore, on its face, the petition appears to be untimely. Since petitioner filed more than one year after the judgment became final, the petitioner must plead and prove one of the exceptions

to the one-year timeliness requirement under 42 Pa. C.S. § 9545(b)(1). *Commonwealth v. Beasley*, 741 A.2d 1258, 1261 (Pa. 1999); *Commonwealth v. Taylor*, 933 A.2d 1035, 1039 (Pa. Super. 2007).

In this instance, Seitzer failed to affirmatively establish any one of the PCRA timeliness exceptions. *See Taylor*, 933 A.2d at 1039. The only exception implicated is under 42 Pa. C.S. § 9545(b)(1)(ii), that “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[.]” *Id.* Providing the petitioner with the benefit of all possible doubts and assuming the witness recanted in the summer of 2014, the petition was required to be filed “within 60 days of the date the claim could have been presented.” 42 Pa. C.S. § 9545(b)(2). Despite Mr. Seitzer’s contention that he “was apprised of this development in March 2015,” the letter attached to the motion states that the information about the alleged recanting by the witness was available in the summer of 2014, when the individual writing the letter became apprised of it. To be timely, the petition should have been filed within 60 days of the summer of 2014 when the recantation allegedly occurred, which would certainly have been before the end of 2014. The letter suggests that the individual was acting at the direction of Mr. Seitzer or someone on his behalf because the individual had access to transcripts and “agreed” to contact the victim. Exhibit “A.”

V. The Petition Lacks Witness Certifications

42 Pa. C.S. § 9545(d)(1) requires that all petitions requesting a hearing include witness certifications and provides that a failure to provide such renders the proposed witness’s testimony inadmissible. In the present case, Mr. Seitzer requested a new trial based upon a letter from an individual asserting that the victim allegedly recanted in the summer of 2014. This essentially is a petition for a hearing. It suggests that Seitzer intended to present testimony at

such hearing from the victim to allegedly exonerate Mr. Seitzer. However, there is no statement directly from that proposed witness, the victim. Furthermore there is no certification from the witness or the individual who allegedly spoke to her. The failure to substantially comply with that requirement renders the witnesses' testimony inadmissible. This petition was not filed pro se. There was no request to file an amended petition. Without the proposed witness testimony, the PCRA petition must be dismissed.

VI. Conclusion

Based upon the foregoing, the Court finds Mr. Seitzer ineligible for relief, finds that the petition is untimely, and finds that there is no basis upon which to grant the Defendant's PCRA Petition filed on April 9, 2015. As the Court finds that no purpose would be served by conducting any further evidentiary hearing regarding this matter, a hearing will not be scheduled. Pa.R.Crim.P. 909(B)(2); *See Commonwealth v. Walker*, 36 A.3d 1, 17 (Pa. 2011) (holding that a PCRA petitioner is not entitled to an evidentiary hearing as a matter of right, but only when the PCRA petition presents genuine issues of material facts). *See also Commonwealth v. McLaurin*, 45 A.3d 1131, 1135-36 (Pa. Super. 2012).

Pursuant to Pennsylvania Rules of Criminal Procedure 907(1), the parties are hereby notified of the Court's intention to deny the petition. The 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.

ORDER

AND NOW, this 29th day of July, 2015, Defendant is hereby notified that it is the Court's intention to dismiss his PCRA Petition filed on April 8, 2015, unless he files an objection to that dismissal *within twenty days (20) of today's date*. This Opinion and Order will be served on Defendant as set forth in Pa.R.Crim.P. 907(1). **The Prothonotary is ORDERED AND DIRECTED to serve defendant by certified and regular mail.**

BY THE COURT,

July 29, 2015
Date

Richard A. Gray, Judge

cc: DA (KO)
Mary C. Kilgus, Esq.
GEORGE SEITZER, JR., (by certified and regular mail)
221 FORREST ST.
SOUTH WILLIAMSPORT, PA 17702
Prothonotary (Please serve defendant by certified and regular mail.)