

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	CR-0839-2009
	:	
v.	:	
TODD SHELDON,	:	
Defendant	:	PCRA

OPINION AND ORDER

Before the Court is a Petition for Post-Conviction Relief filed by Defendant on February 27, 2015, pursuant to the Post Conviction Relief Act (PCRA), 42 Pa. C.S. §§ 9541-9546 and a Motion to Withdraw as Counsel filed by Defendant’s court-appointed counsel pursuant to *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988), and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988). After conducting an independent review of Defendant’s petition and considering appointed counsel’s motion, for the reasons provided below, the Court finds that Defendant’s petition is untimely and that counsel’s motion to withdraw should be granted. The Defendant is notified of the Court’s intention to dismiss the PCRA Petition, unless he files an objection to dismissal within twenty days (20) of today’s date.

I. Factual and Procedural Background

The following facts have been succinctly summarized by PCRA Counsel. On April 29, 2009 Defendant was charged with two counts of Rape of a Child, each a felony of the first degree, two counts of Involuntary Deviate Sexual Intercourse with a Child, each a felony of the first degree, two counts of Unlawful Contact with a Minor, each a felony of the first degree, two counts of Statutory Sexual Assault, each a felony of the second degree, two counts of Sexual Assault, each a felony of the second degree, two counts of Indecent Assault of a Child under the Age of Thirteen, each a felony of the third degree, two counts of Endangering the Welfare of

Children, each a felony of the third degree and two counts of Corruption of Minors, each a misdemeanor of the first degree.

On June 15, 2009, Defendant entered a plea of no contest to two counts of Rape of a Child, each a felony of the first degree. On October 5, 2009, the Court sentenced Mr. Sheldon in accordance with his plea agreement to undergo an aggregate period of state incarceration the minimum of which shall be ten years and the maximum of which shall be twenty years with a twenty year consecutive period of supervision. Defendant did not file a post-sentence motion or a direct appeal.

On February 27, 2015, Defendant filed the instant pro se PCRA petition and attorney Martino was appointed to represent him. Attorney Martino reviewed the petition, the docket, case law and provided additional research into the issue of timeliness and the relief requested. On March 22, 2015, PCRA counsel sent Defendant a letter in accordance with *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988), and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988) detailing the extent of review and setting forth the issues Defendant raised and explaining why the petition is untimely. After independent review, the Court determines that appointed PCRA counsel was correct in finding that the petition is untimely.

II. 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, the Court sentenced Defendant on October 5, 2009; the sentence was final thirty days later on November 4, 2009 because Defendant did not seek appellate review. *See* 42 Pa. C.S. § 9545(b)(3). Therefore, the Defendant was required to file his petition by November 4, 2010. Defendant filed his petition on February 27, 2015. Therefore, on its face, the petition appears to be untimely. Since petitioner filed more than one year after his sentence 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). 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.

In this instance, Defendant failed to affirmatively establish any one of the PCRA timeliness exceptions. *See Taylor*, 993 A.2d at 1039. The only exception implicated is 42 Pa. C.S. § 9545(b)(1)(iii). Defendant essentially claims his petition falls within one of the timeliness exception as 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.” 42 Pa. C.S. § 9545(b)(1)(iii). Defendant relies upon Commonwealth v. Wolfe, 2014 PA Super 288, 106 A.3d 800 (Pa. Super. 2014)¹ as establishing the constitutional right at issue. However, even assuming that a constitutional right was established, it would have first been announced and recognized in Alleyne v. United States, 133 S.Ct. 2151, 186 L. Ed. 2d 314 (2013). As a result the petition was required to have been filed within sixty day of that decision. Alleyne was decided on June 17, 2013. Therefore an issue related to Alleyne could have been presented and must have been filed by August 17, 2013. The instant petition was filed more than a year after later on February 27, 2015. Even if it had been filed within sixty days of Alleyne, the timeliness exception requires that the right must have been held by that court to apply retroactively. 42 Pa. C.S. § 9545(b)(1)(iii). See, Commonwealth v. Miller, 2014 PA Super 214, 102 A.3d 988 (Pa. Super. 2014) *citing* Commonwealth v. Phillips, 2011 PA Super 231, 31 A.3d 317, 320 (Pa. Super. 2011), *appeal denied*, 615 Pa. 784, 42 A.3d 1059 (Pa. 2012), *citing* Tyler v. Cain, 533 U.S. 656, 663, 121 S. Ct. 2478, 150 L. Ed. 2d 632 (2001); *see also, e.g.,* Commonwealth v. Taylor, 2007 PA Super 282, 933 A.2d 1035, 1042 (Pa. Super. 2007). As stated in *Miller*, *supra*, “[e]ven 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.” Miller, *supra*, 102 A.3d at 995.

¹ Commonwealth v. Wolfe, 2014 PA Super 288, 106 A.3d 800 (Pa. Super. 2014) was decided on December 24, 2014 and the petition was filed within sixty days of that date.

For all of these reasons, Mr. Sheldon's PCRA petition should be dismissed pursuant to 42 Pa. C.S. § 9545(b) as untimely.

III. Conclusion

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant's PCRA Petition filed on February 27, 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 February 27, 2015 petition.

ORDER

AND NOW, this day of **May, 2015**, Defendant is hereby notified that it is the Court's intention to dismiss his PCRA Petition filed on February 27, 2015, unless he files an objection to that dismissal *within twenty days (20) of today's date*. It is further Ordered that Attorney Martino's motion to withdraw is GRANTED. 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,

May 12, 2015
Date

Richard A. Gray, Judge

cc: DA (KO)
Donald F. Martino, Esq.
Todd Sheldon, # JF5128 **(by certified and regular mail)**
SCI-Graterford
PO Box 244
Graterford, PA 19426-0244

Prothonotary (please serve defendant by certified and regular mail)