

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	<b>CR-615-2007</b>
	:	
v.	:	
	:	<b>PCRA</b>
<b>JAVIER S. CRUZ-ECHEVARRIA,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

**I. Background**

Javier Cruz-Echevarria (Defendant) was charged with Criminal Homicide<sup>1</sup> and Criminal Conspiracy to Commit Homicide.<sup>2</sup> The jury found the Commonwealth proved beyond a reasonable doubt that on March 31, 2007, the Defendant conspired with Sean Durrant (Durrant) and Maurice Patterson (Patterson) to murder Eric Sawyer. The Defendant and Durrant met Sawyer in an alleyway and Durrant shot and killed Sawyer with a sawed-off shotgun. As part of the Commonwealth's evidence against the Defendant, Durrant testified to Defendant's involvement in the homicide. On May 14, 2008, following a jury trial before this Court, the Defendant was found guilty of both charges. The Defendant was sentenced to Count 1, First Degree Murder, to a State Correctional Institution for life without the possibility of parole. In addition, the Defendant received another concurrent life term of imprisonment for Count 2, Criminal Conspiracy to Commit Homicide.

On May 27, 2008, the Defendant filed Post-Sentence Motions, which included the issues of whether the Court erred in ruling that the Commonwealth could proceed on accomplice liability theory as to the Defendant and whether the Court erred in refusing a mistrial based upon

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<sup>1</sup> 18 Pa.C.S. § 2501.

<sup>2</sup> 18 Pa.C.S. § 903(a)(1).

Sean Durrant's outburst during his testimony. On March 4, 2011, the Superior Court of Pennsylvania upheld the Defendant's conviction but found that the Defendant's sentence on the Conspiracy charge was beyond the maximum sentence. On December 11, 2012, the Defendant was re-sentenced by the Court and he received a concurrent twenty (20) to forty (40) years of imprisonment for the charge of Criminal Conspiracy.

On June 13, 2012, Defendant filed his first Petition for Post-Conviction Relief. Relief was denied, and upon subsequent appeal to the Superior Court of Pennsylvania the Trial Court was affirmed on November 25, 2014.

On February 29, 2016, Defendant filed a second, the current, Petition for Post-Conviction Relief, which is the subject of this Opinion and Order.

In the current petition, the Defendant argues that as a result of the decision of the Supreme Court of the United States in Riley v. California, 134 S. Ct. 2473 (2014) his rights to be free from unlawful search and seizure guaranteed under the Fourth Amendment were violated because police searched the contents of his cell phone without a warrant. Riley v. California was decided on June 25, 2014, by the United States Supreme Court.

## **II. Discussion**

A petitioner must file a PCRA petition within one year of the date the judgment becomes final (one year rule). 42 Pa. C.S. § 9545(b)(1). “[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). “[A] petition for allowance of appeal shall be filed with the Prothonotary of the 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).

There are exceptions to the one year rule. 42 Pa. C.S. § 9545(b)(1). A petitioner can file a PCRA petition more than one year from the date the judgment becomes final if:

- (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 [one year time period] and has been held by that court to apply retroactively.

42 PA. C.S. § 9545(B)(1).

The Defendant did not file his current petition within one year of the date his judgment became final. The Defendant's judgment became final 30 days after his appeal was denied by the Superior Court. See Pa. R.A.P. 1113(a). The Supreme Court of Pennsylvania denied the Defendant's Petition for Allowance of Appeal on September 12, 2011. Therefore, the Defendant's judgment became final on October 12, 2011. The current PCRA petition is untimely unless it falls into one of the exceptions to the one year rule.

The Defendant's argument does not fall into any of the exceptions to the one year rule. Although the Defendant asserts a constitutional right that was recognized by the Supreme Court of the United States after the one year time period,<sup>3</sup> the Supreme Court did not hold this right to apply retroactively. See Alleyne, 133 S. Ct. 2151 (2013). Additionally, the holding in Riley did not find a new constitutional right, rather it applied a prior standing constitutional right to a new factual scenario. Specifically, because of the great amount of personal data contained on today's smart phones, a search warrant would need to issue before a smart phone could be searched. The

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<sup>3</sup> The Supreme Court decided Alleyne on June 17, 2013.

phone at issue in the above captioned matter is not a smart phone and therefore would not contain the type of private data the Supreme Court sought to protect. Additionally, a search warrant to search the SIM card of Defendant's SIM card was issued on March 19, 2008, Warrant Control Number: SW-8-08 by MDJ Carn.

Even if the Defendant's argument fell into an exception to the one year rule, the Defendant's petition would still be untimely. A PCRA petition raising an exception to the one year rule "shall be filed within 60 days of the date the claim could have been presented." 42 Pa. C.S. § 9545(b)(2). The United States Supreme Court decided Riley on June 25, 2014. Therefore, the Defendant had to raise his argument by August 17, 2014, for it to be timely. The Defendant raised the argument well after August 17, 2014.

### **III. Conclusion**

The Defendant did not file his petition within one year of the date his judgment became final. The Defendant's argument does not fall into any of the exceptions under 42 Pa. C.S. § 9545(b)(1). Therefore, the Defendant's petition is untimely.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of September, 2016, the Defendant is notified that this Court intends to dismiss the Defendant's PCRA petition because it is untimely. The Court will dismiss the Defendant's petition unless the Defendant files an objection to that dismissal within twenty (20) days of date of this Order.

BY THE COURT,

Nancy L. Butts, President Judge

cc: DA  
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