

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-74-2009
v.	:	
	:	
FREDERICO DACENZO,	:	PCRA
Defendant	:	

OPINION AND ORDER

On March 4, 2016, Defendant filed a petition for relief under the Post-Conviction Relief Act (PCRA).¹ Counsel was not appointed as this is Defendant’s third PCRA petition. In the petition, Defendant contends that he is entitled to relief because he was sentenced under a sentencing statute that has been “rendered invalid and unconstitutional”. He cites Alleyne v. United States² and Montgomery v. Louisiana.³

I. Background

On December 12, 2008, Frederico Dacenzo (Defendant) was charged with ten (10) counts of Sexual Abuse of Children, felonies of the third degree, and one (1) count of Criminal Use of a Communication Facility, a felony of the third degree. On October 13, 2009, Defendant pled guilty pursuant to a negotiated plea agreement, whereby he would receive a minimum sentence of ten (10) years incarceration. In accordance with the plea agreement, Defendant was sentenced on January 15, 2010 to ten (10) to twenty (20) years in a state correctional institution with a consecutive period of twenty (20) years probation under the supervision of the Pennsylvania Board of Probation and Parole.

¹ 42 Pa.C.S. § 9541 *et seq.*

² 133 S.Ct. 2151 (2013).

³ 136 S. Ct. 718 (2016).

Defendant did not file a post sentence motion or a direct appeal, but on August 13, 2012, filed a PCRA petition. That petition was dismissed on January 8, 2013, and on September 19, 2013, that Order was upheld on appeal by the Superior Court. The Pennsylvania Supreme Court denied a petition for allowance of appeal on March 26, 2014.

On December 11, 2014, Defendant filed a petition in which he sought RRRI eligibility. The petition was denied and, on appeal to the Superior Court, was treated as a second PCRA and dismissed as untimely on July 21, 2015.

II. Discussion

“[T]he timeliness of a PCRA petition is a jurisdictional requisite.” Commonwealth v. Brown, 111 A.3d 171, 175 (Pa. Super. 2015). Any petition under [the PCRA] . . . shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

- (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).

“[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).

Here, Defendant was sentenced on January 15, 2010 and he did not file a direct appeal. Thus, his judgment of sentence became final thirty (30) days later on February 15, 2010, the expiration of the time for filing a direct appeal to the Superior Court of Pennsylvania. 42 Pa.C.S. § 9545(b)(3). Defendant filed his PCRA Petition on March 4, 2016, which is beyond one (1) year of the date the judgment became final. Therefore, Defendant must fall within one of the exceptions listed in 42 Pa.C.S. § 9545(b)(1) for his PCRA Petition to be deemed timely and for this Court to address the merits of the PCRA Petition.

In Commonwealth v. Washington, 2016 Pa. LEXIS 1536, the Pennsylvania Supreme Court recently held that “Alleyne does not apply retroactively to cases pending on collateral review”. In the instant case, since Defendant’s case was not pending on direct review, Alleyne cannot be applied retroactively and thus the sought-after exception to the time-bar does not apply.

III. Conclusion

After conducting an independent review, this Court finds that the Defendant’s petition is untimely. In addition, he has not proven an exception to the PCRA time-bar. Therefore, this Court does not have jurisdiction over the petition.

ORDER

AND NOW, this _____ day of September 2016, it hereby ORDERED and DIRECTED as follows:

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: District Attorney
Frederico Dacenzo, JK1349
660 State Route 11
Hunlock Creek, PA 18621-3136
Gary Weber, Lycoming Law Reporter
Susan Roinick, Law Clerk