

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

COMMONWEALTH OF PENNSYLVANIA	:	CR 1714-2006
	:	
v.	:	
	:	
SEAN PATRICK FORD,	:	
Defendant	:	PCRA

OPINION AND ORDER

On August 16, 2016, Counsel for the Defendant filed a Motion to Withdraw as Counsel pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988) and Commonwealth v. Finley, 550 A.2d 213 (Pa. Super.1988). After an independent review of the entire record, the Court agrees with PCRA Counsel and finds that the Defendant has failed to raise any meritorious issues in a timely manner and thus his Petition must be dismissed.

Background

On March 31, 2008, under information 1714-20006 a jury trial was held before this Court, at which time Sean Patrick Ford (Defendant) was convicted of one count of Criminal Trespass at 18 Pa.C.S. § 3503(a)(1)(ii) and acquitted on count of Criminal Mischief at 18 Pa.C.S. § 3304(a)(5). The jury found Defendant entered the residence of a former girlfriend in a highly intoxicated state without permission, removed most of his clothing and fell asleep in one of the beds of the residence. The victim Carl Altenderfer testified at trial that he was dating Defendant's ex-girlfriend, Lorraine Thomas (Thomas). On May 1, 2008, after his jury trial, Defendant pled under information 753-2007 to the charges of Possession of Drug Paraphernalia and the summary offense of Driving under Suspension – DUI related. At the time the plea was taken, the plea agreement was that any sentence the court would on his set of charges would run entirely concurrent to the sentence imposed under 1714-2006. Finally, on May 30, 2008, under

information 1132-2007, and on the date scheduled for sentencing in the case that is the subject of this Petition for Post Conviction Relief (1714-2006) and 753-2007, Defendant entered a plea of guilty to a charge of Retail Theft. The plea agreement listed on the colloquy was that Defendant would receive a sentence, which would also run concurrently to 1714-2006. At sentencing, this Court as to information 1714-2006, sentenced Defendant to a period of state imprisonment of 16 months to five (5) years with a consecutive period of five (5) years probation under the supervision of the Pennsylvania Board of Probation and Parole. Defendant appealed his judgment of sentence in 1714-2006. The judgement of sentence was affirmed by the Superior Court on July 23, 2009. Defendant did not request appeal to the Pennsylvania Supreme Court and as such his sentence became final on August 24, 2009. A timely PCRA petition would have needed to have been filed by August 24, 2010.

On September 11, 2013, Defendant was found to have violated the conditions of his intermediate punishment and by Order of that date Defendant was sentenced to undergo incarceration in a State Correctional Institution for an indeterminate period of time, the minimum of which shall be eighteen (18) months and the maximum of which shall be five (5) years.

On April 20, 2016, Defendant filed a Motion for Post Conviction Collateral Relief, claiming his trial counsel was ineffective for failing to put Thomas on the stand where “she would have told the truth that she showed me how to get into her house” and that he was merely guilty of misdemeanor trespass rather than felony trespass. On April 29, 2016, this Court issued an Order appointing counsel in accordance with Pa.R.Crim.P. 904(C),¹ and scheduled a court conference. Appointed counsel filed a Motion to Withdraw as Counsel and a *Turner-Finley* letter on August 4, 2016, prior to the conference. Following the conference, on August 26, 2016,

¹ “when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, the judge shall appoint counsel to represent the defendant on the defendant’s first petition for post-conviction collateral relief.” Pa.R.Crim.P. 904.

and after thorough review, this Court finds that there are no genuine issues of material fact and that Defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings. The court does not reach Defendant's assertion that counsel was ineffective as his request for Post Conviction Relief was untimely.

Defendant's PCRA Petition is untimely pursuant to 42 Pa.C.S. § 9545(b)

Defendant's PCRA Petition is untimely. 42 Pa.C.S. 9545(b) requires that a PCRA petition be filed within one (1) year of the date the judgment in a case becomes final, or else meet one of the timeliness exceptions under 42 Pa.C.S. § 9545(b)(1). The exceptions set forth in 42 Pa.C.S. § 9545(b)(1) are as follows:

- (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.

A PCRA petition raising one of these exceptions "shall be filed within [sixty] days of the date the claim could have been presented." 42 Pa.C.S. § 9545(b)(2). A petitioner must "affirmatively plead and prove" the exception. Commonwealth v. Taylor, 933 A.2d 1035, 1039 (Pa. Super. 2007).

As such, when a PCRA is not filed within one year of the expiration of direct review, or not eligible for one of the exceptions, or entitled to one of the exceptions, but not filed within [sixty] days of the date that the claim could have been first brought, the trial court has no power to address the substantive merits of a petitioner's PCRA claims.

Id. at 1039.

Here, Defendant was sentenced on May 30, 2008, and took an appeal to the Superior Court of Pennsylvania. His judgment of sentence was affirmed and became final thirty (30) days later on August 24, 2009. 42 Pa.C.S. § 9545(b)(3). Defendant filed his PCRA Petition on April 20, 2016, which is beyond one (1) year of the date the judgment became final. Therefore, the 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 petition.

Defendant asserts the “newly discovered evidence” exception, based on a belief that if Thomas were contacted that she “will testify to the fact the she showed me how to get into her house”. In fact, Thomas did speak at Defendant’s guilty plea/sentencing hearing:

MS. THOMAS: I’ve known Mr. Ford since I was 13 years old. His words mean nothing. It is all a game to try to get himself out of state prison and to allow him back out on the streets is a big mistake because his life is all drugs and alcohol. That’s why his family is not here to support him. That’s why his mother doesn’t want him in her house. He will not change. He hadn’t changed. As far as restitution goes the damage done to the house was damage that he did trying to get into the house. He was found guilty of breaking into that house. My children are not safe if he’s out on the streets because he was coming there looking for me. My family is not safe and to believe what they’re saying to you not you would be a fool because he just does not want to go to state prison and I don’t think it’s fair. Thank you.

Conclusion

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant’s PCRA petition. Additionally, the Court finds that no purpose would be served by conducting any further hearing. As such, no further hearing will be scheduled. Pursuant to Pa.R.Crim.P. 907(1), the parties are hereby notified of this Court’s intention to deny the Defendant’s PCRA 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 _____ day of August 2016, it is hereby ORDERED and DIRECTED as follows:

1. Defendant is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 907(1), that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.
2. The application for leave to withdraw appearance filed July 1, 2016, is hereby GRANTED and Jerry Lynch, Esq. may withdraw his appearance in the above captioned matter.

BY THE COURT,

Nancy L. Butts, President Judge

cc: District Attorney (KO)
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