

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

COMMONWEALTH OF PENNSYLVANIA	:	CR 1248-2010
	:	
v.	:	
	:	
MAB,	:	
Defendant	:	PCRA

OPINION AND ORDER

On July 1, 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 his PCRA Petition, and his petition should be dismissed.

Background

On September 20, 2010, Defendant entered a plea of guilty to one (1) count of incest, a felony of the second degree. Defendant was sentenced on December 21, 2010 to a period of county incarceration of twelve (12) months less one day to twenty-four (24) months less one day and a consecutive period of county supervision of five (5) years. On December 21, 2015, Defendant was found to have violated the conditions of his probation (by being charged with new crimes) and by Order of that date his sentence of probation was revoked and he was instead sentenced to state incarceration of one to two years, to run consecutive to the sentence on the new charges.

On March 28, 2016, Defendant filed a “Motion for Post Conviction Collateral Relief, claiming that his guilty plea was entered under duress. On April 4, 2016, this Court issued an

Order appointing counsel in accordance with Pa.R.Crim.P. 904(C),¹ and scheduling a conference for July 1, 2016. Appointed counsel filed a Motion to Withdraw as Counsel and a *Turner-Finley* letter on July 1, 2016, prior to the conference. Following the conference, 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 his plea was entered under duress as his petition is untimely and the court thus has no jurisdiction to consider it.

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

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.

“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 December 21, 2010, and took no appeal to the Superior Court of Pennsylvania. Thus, his judgment of sentence became final thirty (30) days later on January 21, 2011.² 42 Pa.C.S. § 9545(b)(3). Defendant filed his PCRA Petition on March 28, 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 letter written by the victim which recants her prior incriminating statements. Even assuming that the letter was written within sixty days of Defendant’s filing, however, the exception does not apply. Defendant pled guilty to the charge of incest, gave a factual basis for the plea (that he had sexual relations with his sister) and the facts which supported his guilt or innocence were known to him at that time. The letter’s statement that Defendant is not guilty cannot be a fact not known to Defendant at the time of his plea. That is, he knew at that time whether or not he was guilty.

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

² Because Defendant asserts his alleged innocence in his petition, the timeliness of that petition relates back to the initial guilty plea and the original sentencing, rather than to the probation violation sentence.

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 Donald Martino, Esq. may withdraw his appearance in the above captioned matter.

BY THE COURT,

Nancy L. Butts, President Judge

cc: DA
Donald Martino, Esq.
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