

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1758-2008
v.	:	
	:	
ANDREW A. MONROE,	:	PCRA
Defendant	:	

OPINION AND ORDER

On March 21, 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 deemed unconstitutional”. He cites Alleyne v. United States² and Montgomery v. Louisiana.³

I. Background

On September 2, 2009, Defendant pled guilty to aggravated assault, criminal mischief, carrying a firearm without a license, and persons not to possess. On October 26, 2012, Defendant was sentenced to an aggregate period of incarceration of ninety months to twenty years with a consecutive ten year period of supervision. Defendant’s Post-Sentence Motion was denied on October 28, 2009. Defendant did not file any direct appeal, but on March 31, 2010, filed a PCRA petition. That petition was dismissed on January 5, 2011. No appeal to the dismissal was filed. On October 14, 2014, Defendant filed a Second PCRA petition. That petition was dismissed on December 15, 2014.

¹ 42 Pa.C.S. § 9541 *et seq.*

² 133 S.Ct. 2151 (2013).

³ 136 S. Ct. 718 (2016).

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).

On October 28, 2009, Defendant’s post-sentence motion was denied. The Defendant did not file an appeal. Therefore, his judgement of sentence became final on November 28, 2009. Because the PCRA petition was not filed within one year of November 28, 2009, Defendant must plead and prove one of the exceptions in 42 Pa.C.S. § 9545(b)(1) for this Court to have jurisdiction.

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
Andrew Monroe, JE8465
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