

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

COMMONWEALTH OF PENNSYLVANIA	:	CR 640-2015
	:	
v.	:	
	:	
BRANDON FREEMAN RIVERA	:	
Defendant	:	PCRA

OPINION AND ORDER

On June 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 May 11, 2015 Defendant entered a plea of guilty to one (1) count of Person not to Possess a Firearm, a felony of the second degree, and one (1) count of Simple Assault, a misdemeanor of the second degree. Defendant was sentenced on July 16, 2015 to a period of state incarceration of three (3) to six (6) years on the Person not to Possess charge and a concurrent term of six (6) to twelve (12) months on the Simple Assault charge. Defendant did not take a direct appeal from his order of sentence.

On March 4, 2016, the court received a letter from Defendant in which he asks the court to make him bootcamp eligible. That same date, the court entered an order treating Defendant's letter as a request for post-conviction relief based on a determination that the request to be made bootcamp eligible constitutes "a challenge to the legality of the sentence". Counsel was appointed

in accordance with Pa.R.Crim.P. 904(C), and a conference was scheduled for June 13, 2016. As noted above, appointed counsel filed a Motion to Withdraw as Counsel and a *Turner-Finley* letter on June 1, 2016. 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.

Discussion

Under the Post Conviction Relief Act (PCRA), Defendant has one year after his judgment of sentence becomes final to request Post Conviction Relief unless circumstances exist that prevented Defendant from filing within one year and he files within 60 days of when his claim could have been presented. Defendant was sentenced on July 16, 2015. He did not file post sentence motions nor take a direct appeal to the Superior Court and as such his Judgment of Sentence became final on August 15, 2015. Defendant had until August 15, 2016, to file a request for Post Conviction Relief and thus his Petition is timely.

A Defendant is eligible for relief under the PCRA if he pleads and proves by a preponderance of the evidence the following four components:

- 1) That he has been convicted of a crime under the laws of Pennsylvania and is at the time relief is granted currently serving a sentence of imprisonment, probation or parole for the crime.
- 2) That the conviction or sentence resulted from one or more of the following:
 - i. A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
 - ii. Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
 - iii. A plea of guilty unlawfully induced where the circumstances make

- it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
- iv. The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.
 - v. The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.
 - vi. The imposition of a sentence greater than the lawful maximum.
 - vii. A proceeding in a tribunal without jurisdiction.
- 3) That the allegation of error has not been previously litigated or waived.
 - 4) That the failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel.

42 Pa.C.S. § 9543.

In this case, Defendant's request to be made bootcamp eligible does not relate to the truth-determining process or his guilty plea, nor does it implicate his right of appeal or involve exculpatory evidence. And, although it could affect the length of his sentence, the determination that he not be eligible for bootcamp does not lead to imposition of a sentence greater than the lawful maximum. Finally, there is no dispute that this court had jurisdiction over the matter. Thus, because Defendant cannot plead, let alone prove, any basis for relief, he is not entitled to such.

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 26th 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 June 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 (TC)
Donald Martino, Esq.
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