

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. CR – 317 – 2009
	:
vs.	: CRIMINAL DIVISION
	:
MAURICE FUDGE,	:
Defendant	: PCRA

OPINION AND ORDER

Before the Court is Defendant’s “Petition for Writ of Habeas Corpus Ad Subjiciendum”, filed January 26, 2017, which will be treated as a PCRA petition¹.

After a jury trial on August 18, 2009, Defendant was convicted of two counts of robbery, two counts of criminal conspiracy, one count of theft, one count of receiving stolen property, one count of simple assault and one count of terroristic threats. He was sentenced on October 20, 2009 to a mandatory term of 10 to 20 years’ incarceration pursuant to 42 Pa.C.S. Section 9714(a)(1)(“Any person who is convicted in any court of this Commonwealth of a crime of violence shall, if at the time of the commission of the current offense the person had previously been convicted of a crime of violence, be sentenced to a minimum sentence of at least ten years of total confinement, notwithstanding any other provision of this title or other statute to the contrary.”). Defendant’s sentence was upheld on appeal to the Superior Court by Order dated August 10, 2010, and his petition for allocatur was denied on May 23, 2012.

¹ Defendant’s contention that his petition should not be treated as having been filed under the Post-Conviction Relief Act is without merit. Defendant seeks relief from an “unlawful sentence”; such a claim is cognizable under the PCRA, see 42 Pa.C.S. Section 9542 (“This subchapter provides for an action by which persons ... serving illegal sentences may obtain collateral relief.”), and therefore any petition raising such claim must be treated as a Post-Conviction Relief Act petition. Commonwealth v. Lusch, 759 A.2d 6 (Pa. Super. 2000).

On August 9, 2012, Defendant filed a first Petition for Post-Conviction Collateral Relief. That petition was dismissed by Order dated December 11, 2012, which was upheld by the Superior Court by Order of September 3, 2013. Defendant's allocator petition was denied by Order of February 26, 2014.

In the instant petition, Defendant challenges the legality of his sentence, citing Commonwealth v. Butler, 760 A.2d 384 (Pa. 2000), which held unconstitutional the prior requirement of 42 Pa.C.S. Section 9714 that the offender rebut a presumption of high risk dangerous offender. That requirement was eliminated in 2000, however, and was not applied in sentencing the Defendant herein.

In any event, Defendant's petition is untimely. "[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:

1. 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;
2. 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
3. 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 October 20, 2009, and the Pennsylvania Supreme Court denied allocatur on May 23, 2012. Thus, his sentence became final at the expiration of the time for seeking review in the United States Supreme Court, August 23, 2012. Because Defendant’s second PCRA petition was not filed until January 26, 2017, Defendant must plead and prove one of the exceptions for this Court to have jurisdiction. He has failed to do so and thus is not entitled to collateral review under the Act.

ORDER

AND NOW, this day of January 2017, the Defendant is notified that this Court intends to dismiss the Defendant’s 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,

Dudley N. Anderson, Judge

cc: DA
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Hon. Dudley Anderson