

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : CR-1898-2014  
:   
v. :   
:   
ROGER GEIGER, :   
Defendant : PCRA

**OPINION AND ORDER**

On February 13, 2017, PCRA 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 February 27, 2017, Defendant entered a plea of guilty to one (1) count of Failure to Register<sup>1</sup>, a felony of the second degree. In accordance with the plea agreement, the Defendant was sentenced on May 14, 2015, to a state correctional facility for a minimum of 15 months and a maximum 30 months.

On July 13, 2016, Defendant filed a Motion for Post Conviction Collateral Relief, asserting that his Public Defender did not advise him that the Commonwealth was required to prove the element of intent if the matter were taken to trial. On July 20, 2016, this Court issued an Order appointing counsel in accordance with Pa.R.Crim.P.

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<sup>1</sup> 18 Pa.C.S. § 4915 (a)(2) (failure to comply with registration of sexual offenders requirements.).

904(C),<sup>2</sup> and scheduled a court conference for November 14, 2016. At the time of the conference, another conference was scheduled for February 27, 2017, in order for transcripts to be prepared and for PCRA counsel to determine whether to file an amended petition or a Turner/Finley Letter. Appointed counsel filed a Motion to Withdraw as Counsel and a *Turner-Finley* letter on February 13, 2017, prior to the second court 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.

***Defendant's PCRA Petition is not timely pursuant to 42 Pa.C.S. § 9545(b)***

Defendant's PCRA Petition is untimely. Title 42 Pa.C.S. Section 9545(b) (time for filing post-conviction relief petition) 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. Section 9545(b)(1). Here, Defendant was sentenced on May 15, 2015, and took no appeal to the Superior Court of Pennsylvania. Thus, his judgment of sentence became final thirty (30) days later on June 15, 2015.<sup>3</sup> Defendant filed his PCRA Petition on July 13, 2016, which is outside one year of the date his judgment of sentence became final and thus the Petition is untimely and the

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<sup>2</sup> "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.

<sup>3</sup> For purposes of this subchapter, 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).

PCRA Court is without jurisdiction to consider whether it has merit. Defendant has pled no exception to the timeliness requirement and the PCRA Court finds none.

If the PCRA Court were able to consider the underlying merit of the petition, it would still find it without merit. Defendant complains that he did not have the requisite *mens rea* to be adjudicated guilty for failure to register because he did not “intend” to fail to register. Defendant believes the intent requirement means it was his conscious object to engage in conduct of that nature or to cause such a result. 18 PA.C.S. § 302 (GENERAL REQUIREMENTS OF CULPABILITY). Because he failed to register due to intervening stressful life issues, it was no really his “intent” to fail to register, just “life got in the way”.

Unfortunately, not desiring the outcome that he failed to register is not a defense to the crime of failure to register. The *mens rea* requirement is “knowingly” commits:

An individual who is subject to registration...commits an offense if he knowingly fails to: (1) register with the Pennsylvania State Police as required under 42 Pa.C.S. § 9795.2 (relating to registration procedures and applicability); (2) verify his residence or be photographed as required under 42 Pa.C.S. § 9796 (relating to verification of residence).<sup>4</sup>

“Knowingly” in the context of Pennsylvania Crimes and Offenses means a “[person] is aware that his conduct is of that nature or that such circumstances exist”. 18 PA.C.S. § 302(B) (KINDS OF CULPABILITY DEFINED). Defendant admitted he knowingly

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<sup>4</sup> 18 Pa.C.S. § 4915.

failed to register at the guilty plea colloquy in that he knew he had to register and did not register:

THE COURT: And then did you receive correspondence from the State Police to come in and be photographed.

DEFENDANT GEIGER: I did. They sent me the letter they send every time.

THE COURT: Quarterly?

DEFENDANT GEIGER: Yes.

THE COURT: And then did you go in?

DEFENDANT GEIGER: Not that time, no.

THE COURT: Okay, and you understood that if you didn't report within I think it was like 48 hours -

DEFENDANT GEIGER: Yes.

THE COURT: that you could be charged with a crime?

DEFENDANT GEIGER: Yes.

N.T., 2/27/2015, AT 5.

### ***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 1st day of May, 2017, it is hereby ORDERED and DIRECTED as follows:

1. The **Petition to Withdraw from Representation of Post-Conviction Collateral Relief** filed February 13, 2017 is hereby **GRANTED**.
  
2. 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.

BY THE COURT,

Nancy L. Butts, P.J.

cc: DA  
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