

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-0000517-2008
v.	:	
	:	
PATRICK HAUGHT,	:	PCRA
Defendant	:	
	:	

OPINION AND ORDER

On November 30, 2016, 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 March 17, 2009, Defendant was found guilty by a jury of two counts of Aggravated Indecent Assault of a Child¹, one count of Criminal Attempt to Commit Aggravated Indecent Assault of a Child²; one count of Unlawful Contact with a Minor of a Sexual Nature³; and two counts of Indecent Assault⁴. Defendant was sentenced by this Court on August 10, 2010, and found to be required to register as a sexually violent offender.

The Public Defender filed an appeal with the Superior Court. In an order dated March 20, 2012, the Superior Court remanded the matter for re-sentencing.

¹ 18 Pa.C.S. § 3125(a)(1) and 18 Pa.C.S. § 3125(b).

² 18 Pa.C.S. 901(a).

³ 18 Pa.C.S. § 6318(a)(1).

⁴ 18 Pa.C.S. § 3126(a)(7) and 18 Pa.C.S. § 3126(a)(1).

Following the remand, Defendant was re-sentenced on all counts but Unlawful Contact with a Minor, it having been dismissed by the Superior Court. On July 18, 2013, Defendant was re-sentenced to a state correctional facility for a minimum of ten years to a maximum of twenty (20) years. The Court again found that Defendant was a sexually violent predator.

On August 14, 2016, Defendant filed a Motion for Post Conviction Collateral Relief, asserting that he was entitled to relief under Alleyne⁵. On September 2, 2016, this Court issued an Order appointing counsel in accordance with Pa.R.Crim.P. 904(C),⁶ and scheduled a court conference for December 20, 2016. PCRA Counsel filed a Motion to Withdraw as Counsel and a *Turner-Finley* letter on November 30, 2016. The original court conference was continued until January 13, 2017. 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

“[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:

⁵ 133 S. Ct. 2151 (2013).

⁶ “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.

(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).

Moreover, to qualify under the time bar exception, Petitioner must file within sixty (60) days of when the claim could be presented (Id.) and it is the Petitioner's duty to plead in the petition and prove that one of the exceptions applies. COMMONWEALTH V. BEASLEY, 741 A.2D 1258, 1261 (PA. 1999).

Defendant did not appeal the re-sentencing by the Court. He was re-sentenced on July 18, 2013. As such his Order of Sentence became final on August 19, 2013. In the current PCRA petition, Defendant acknowledge its untimeliness and pled all three exceptions to the time bar rule, however none of the exceptions apply.

Defendant asserts that he was sentenced to an unconstitutional mandatory minimum sentence. Factually, this is an incorrect statement. The Sentencing Court noted specifically stated that "There is no mandatory being used". N.T., 8/10/10, at 29. The Court went on to explain that it imposed a sentence in the aggravated range not utilizing a mandatory minimum sentence. There is no mandatory referred to in the second sentencing hearing of July 18, 2013, where the Court re-imposed the original, aggravated range sentence.

Even if Defendant had been sentenced to a mandatory minimum sentence deemed unconstitutional, which again he was not, the Supreme Court of Pennsylvania held in Commonwealth v. Washington, 142 A.3d 810 (Pa. 2016) that Alleyne will not be applied retroactively to cases on collateral review in Pennsylvania. Using the Teague⁷ analysis, the Supreme Court of Pennsylvania found Alleyne to be a change in constitutional law regarding criminal procedure. Federal law does not compel retroactive effect be given on collateral review to changes in constitutional criminal procedure and the Supreme Court of Pennsylvania declined to give the change retroactive effect in the Commonwealth. WASHINGTON AT 819.

Conclusion

Based upon the untimeliness of the petition and that it is without substantive merit, the Court finds no purpose would be served by conducting any further hearing. And the Court, is in fact, without jurisdiction to compel further hearing as the petition is untimely.

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.

⁷ Teague v. Lane, 489 U.S. 288 (1989).

ORDER

AND NOW, this _____ 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 November 30, 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.

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