

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

v.

LEON BODLE,

:
:
CR-1997-2008;
:
CR- 2072-2008
:
CRIMINAL DIVISION
:
PCRA

ORDER

Before the Court is a fourth petition for post-conviction relief filed by Defendant, Leon Bodle, on April 5, 2017, pursuant to the Post Conviction Relief Act (PCRA), 42 Pa. C.S. §§ 9541-9546. The Court will treat this petition as Mr. Bodle's **third** PCRA petition.¹ For the reasons provided below, after a comprehensive and independent review of the claims, the Court intends to deny and dismiss the instant PCRA petition. The petition is untimely and all claims were previously litigated or are deemed waived, and/or lack merit. The Court concludes that the petition is without merit to warrant an evidentiary hearing. Accordingly, no attorney shall be appointed pursuant to Pa. R. Crim. P. 904(D); *See also, Comment to Pa. R. Crim. P. 904(D)*. Mr. Bodle is hereby notified of the Court's intention to dismiss the PCRA Petition, unless he files an objection to dismissal within twenty days (20) of today's date.

I. Factual and Procedural Background

On January 2, 2009 the Commonwealth charged Bodle at docket no. 1997-2008 with five counts of sexual offenses against a seven year old boy.² On December 10, 2008, the

¹Mr. Bodle's first PCRA petition resulted in the reinstatement of Mr. Bodle's direct appeal rights. Therefore, his second PCRA petition was treated as his first and each subsequent petition is treated accordingly.

² Bodle was charged with: count 1, criminal solicitation, a felony of the first degree; count 2, unlawful contact, a felony of the first degree; count 3, obscene and other sexual material, a felony of the third degree; count 4, indecent assault, a misdemeanor of the first degree; and count 5, corruption of the morals of a minor, a misdemeanor of the first degree. 18 Pa. C.S. § 902(a); 18 Pa. C.S.A. § 6318(A); 18 Pa. C.S. § 5903(c)(1); 18 Pa. C.S.A. § 3126(A)(7); 18 Pa. C.S.A. § 6301 (a)(1).

Commonwealth charged Bodle at docket no. 2072-2008 with ten counts of sexual offenses against a nine year old boy, a nine year old girl and a six year old boy.³

The Court consolidated these cases for purpose of trial. The Undersigned presided over a two-day jury trial held on December 6-7, 2011. On December 7, 2011, the jury rendered a verdict of **guilty on all counts** at both docket numbers for a total of 15 counts.

The Court sentenced Bodle on April 6, 2011 to serve an aggregate sentence at a State Correctional Institution, the minimum of which was 242 months and the maximum of which was 484 months. Mr. Bodle did not file post-sentence motions.

On May 5, 2011, Mr. Bodle filed a notice of appeal from his sentence of April 6, 2011. On July 6, 2012, the Superior Court dismissed the appeal for failure to include the relevant transcripts. Since that time, Bodle has filed PCRA petitions four times.

First PCRA Petition – August 20, 2012

On August 20, 2012, Bodle filed his first PCRA petition. On August 24, 2012, the court appointed the public defender to represent Bodle. On November 27, 2012, Bodle prevailed in that petition when this Court reinstated Bodle's direct appeal rights.

Direct Appeal to Superior Court – December 24, 2012

³ Bodle was charged with: count 1, criminal solicitation, a felony of the second degree, count 2, criminal solicitation, a felony of the third degree, count 3, obscene and other sexual materials, count 4, obscene and other sexual materials, a felony of the third degree, count 5, unlawful communication with a minor, a felony of the third degree, and count 6, unlawful communication with a minor, a felony of the third degree, count 7 indecent exposure, a misdemeanor of the first degree, count 8 indecent exposure, a misdemeanor of the first degree, count 9 corruption of minors, a misdemeanor of the first degree, and count 10 corruption of minors, a misdemeanor of the first degree 18 Pa. C.S. § 902(a); 18 Pa. C.S. § 5903(c)(1); 18 Pa. C.S.A. §6318(A); 18 Pa. C.S. §3127 (A); 18 Pa. C.S.A. §6301(a)(1).

On December 24, 2012, Bodle filed a direct appeal to the Superior Court. On appeal, Bodle raised four issues and two sub-issues for review. See, Superior Court Opinion, Commonwealth v. Bodle, No. 2251 MDA 2012 (Pa. Super. Jan. 08, 2014) J-S71003-13. Bodle challenged the sufficiency of the evidence and the weight of the evidence as to all charges, the jury instruction on consciousness of guilt and the permission to amend the information. On January 8, 2014, the Superior Court affirmed the judgment of sentence. Bodle did not further appeal that determination.

Second PCRA Petition – February 3, 2014 - Treated as First PCRA Petition

Less than one month later, on February 3, 2014, Bodle filed his second PCRA petition pro se. The Court treated that petition as his first. On April 24, 2014, the Court appointed Jerry Lynch, Esquire to represent Bodle and directed the filing of an amended petition or *Turner/Finley*⁴ letter on or before June 20, 2014. The Court held a conference on July 1, 2014. At that time, the court granted Bodle's request and extended the deadline to August 11, 2014 to file an amended PCRA petition and to attach witness certifications concerning any witness not called at trial. At Bodle's request, the Court further directed the preparation of transcripts of jury selection. The Court scheduled a follow up conference for August 28, 2014. Upon Bodle's application, the Court continued that conference to October 23, 2014. Again, upon Bodle's application, the Court continued the conference to November 25, 2014.

Bodle filed an amended PCRA petition on November 24, 2014. Upon Bodle's motion, the conference was again continued to allow PCRA counsel to meet with trial

⁴ *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988), and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)

counsel. The Court ordered PCRA counsel to file a supplemental amended petition on or before January 10, 2015. On January 14, 2015, Bodle filed a supplemental PCRA petition. In his amended supplemental PCRA petition, Bodle sought relief on the grounds that trial counsel was ineffective for failure to call certain witnesses. Following a conference on February 4, 2015, the Court ordered an evidentiary hearing which was held on March 17, 2014. Following an evidentiary hearing and upon consideration of the testimony, arguments and case-law, this Court denied Bodle's petition for relief on June 26, 2015. On July 20, 2015, Mr. Bodle filed an appeal to the Superior Court.

On April 20, 2016, the Superior Court affirmed the denial of Mr. Bodle's PCRA petition. Commonwealth v. Bodle, 1234 MDA 2015, J-S22010-16. In that affirmance, the Superior Court adopted this Court's June 25, 2014 and September 18, 2015 opinions as its own for purposes of disposition of the appeal and concluded that this Court committed no error or abuse of discretion in dismissing Mr. Bodle's second PCRA petition.

(Commonwealth v. Bodle, 1234 MDA 2015 at 10.) The Superior Court concluded that Bodle's issue as to permitting Karen Bodle to testify as to specific acts reiterated to her by parents and teachers had been waived and even if it had not been waived, the Superior Court would adopt the PCRA court's findings and analysis as an alternative basis for affirming on that issue. Commonwealth v. Bodle, 1234 MDA 2015 at 5, n.3.)

Third PCRA Petition – June 2, 2016 - Treated as Second PCRA Petition

Approximately one and half months later, on June 2, 2016, Bodle filed his third PCRA, which this Court treated as his second. In the June 2, 2016 PCRA, Bodle baldly claimed that his conviction and sentence violated his rights under the Fifth, Sixth, and

Fourteenth Amendments of the United States Constitution and Article One Section 9 of the Pennsylvania Constitution and warranted relief under 42 Pa. C.S. § 9543(a)(2)(i), (ii), (vi) and (vii). In addition, Bodle claimed ineffective assistance of trial counsel for failing to obtain a psychologist as an expert, as to discrepancies in the prosecution's time-line and rulings of the trial court about such evidence. In addition, Mr. Bodle raised claims of ineffective assistance of PCRA counsel as to the failure to elicit testimony from witnesses at the PCRA evidentiary hearing to support his claim and as to the filing of a vague concise statement of matters complained of on appeal. Lastly, Bodle claimed the District Attorney and the Undersigned should have recused themselves. Finally, Bodle asserted that new evidence is available to establish that Mr. Bodle did not reside at 2027 Newlawn Avenue at the time of the offenses. Such evidence purportedly included driver's license, vehicle registration, mail, tax returns and company records and witnesses.

On November 3, 2016, this Court entered an Opinion and Order providing notice of and reasons for the Court's intention to dismiss the PCRA. On November 30, 2016 Bodle filed a Notice of Appeal to the Superior Court. On December 22, 2016, Appellee filed a concise statement setting forth the matters complained of on appeal. The Court relied upon its Opinion and Order entered November 3, 2016 and the Superior Court Opinion entered June 2, 2016, this Court's 1925(a) opinion entered September 18, 2015, and Opinion and Order entered by this Court on September 18, 2015, to fully provide the reasoning of this Court with respect to the matters complained of on appeal. Bodle discontinued his appeal and on March 3, 2017 Superior Court of Pennsylvania issued a Certificate of Remittal/Remand of Record from Superior Court – Discontinuance.

Fourth PCRA Petition –April 5, 2017- Treated as Third PCRA Petition

Approximately one and half months later, on April 5, 2017, Bodle filed his fourth PCRA petition, which this Court is treating as his third. Bodle made five bald claims in the instant April 5, 2017 PCRA without linking those claims to any facts. Those bald claims are as follows:

- (a) that his conviction and sentence violate the fifth sixth and fourteenth amendments to the US Constitution and Article One, Section 9 of the Pa Constitution;
- (b) entitlement to relief under Article One, Section 14 of the Pennsylvania Constitution for habeas corpus;
- (c) ineffective assistance of counsel
- (d) violations of the constitution of Pennsylvania and/or United States that undermine the truth determining process;
- (e) the imposition of the sentence was greater than the lawful maximum.

In addition to the bald claims for relief, Bodle also claimed that the conviction and sentence resulted from the unavailability of exculpatory evidence at the time of trial that has subsequently become available and would have changed the outcome. In support of that claim, Bodle claimed in essence that the exculpatory evidence is that the victim LB was allegedly not afraid of Bodle at the time of the Tender Years Hearing. LB allegedly told his grandmother, Bodle's mother, who did not tell Bodle at the time because of fears that LB would get in trouble with the police and/or that LB's parents would not let her see her grandchildren. Bodle claims this resulted in a faulty Tender Years Hearing determination,

depriving Bodle of the right to confront his accusers.⁵ Lastly, Bodle claimed that one of the witnesses at his PCRA hearing committed perjury.

As explained further below, these issues are untimely, have been waived and/or lack merit.

II. The PCRA Petition is Untimely.

42 Pa. C.S. § 9545(b)(1) requires that all petitions filed pursuant to the Post Conviction Relief Act be filed within *one (1) year* of the date that Defendant's judgment becomes final; this one-year requirement includes second and/or subsequent PCRA petition(s). 42 Pa.C.S. §9545(b)(1); Pa.R.Crim.P. Rule 901. In the present case, the Superior Court affirmed the judgment of sentence on January 8, 2014. As Mr. Bodle did seek further review from the Superior Court's Order, the judgment in this case became final thirty days later, or on **February 8, 2014**.⁶ See 42 Pa. C.S. § 9545(b)(3). Defendant filed the instant petition on April 5, 2017, well beyond the one-year filing requirement. Therefore, on its face, the petition appears to be untimely. 42 Pa.C.S. §9545(b)(1); Pa.R.Crim.P. Rule 901.

However, the PCRA statute provides for three (3) exceptions to the timeliness requirement. See 42 Pa. C.S. § 9545(b)(1). These exceptions include:

- (i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation

⁵ Intertwined in this claim is Bodle's assertion that alleged police misconduct led to false statements by the child victim and alleged witness intimidation precluded his mother from telling him about LB allegedly telling her that LB was not afraid of Bodle.

⁶ Thirty days falls on Sunday, February 7, 2014 so that the appeal deadline passed on the following Monday, February 8, 2014.

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)(i)-(iii).

Petitioner must plead and prove one of the timeliness exceptions. In this instance, Defendant failed to affirmatively plead one of the PCRA timeliness exceptions. *See Taylor*, 993 A.2d at 1039. In addition to failing to affirmatively plead one of the timeliness exceptions, Defendant did not provide any genuine issue of material fact regarding the timeliness of his PCRA petition. Therefore, his April 5, 2017 petition should be dismissed pursuant to 42 Pa. C.S. § 9545(b).

In the instant petition, the only possible exception to timeliness implicated by his petition is 42 Pa. C.S. § 9545(b)(1)(ii), that is, that his claim is predicated on a fact that was unknown to the petitioner and could not have been ascertained by the exercise of due diligence. Here Bodle claimed that the victim LB allegedly made a statement to LB's grandmother, Bodle's mother, in the fall of 2009 and that Bodle did not know about this statement until February 16, 2017. The statement was that LB was not afraid of Bodle. Even giving Bodle the benefit of every doubt and assuming for the sake of argument that the statement was made, and that Bodle did not know about it until February 16, 2017, Bodle

has not set forth a meritorious reason that he could not have ascertained the statement by the exercise of due diligence. Bodle's mother was available to him and supportive of him throughout the trial and PCRA hearing process; Bodle has not plead and proven that through reasonable diligence Bodle could not have ascertained the existence of the alleged statement.⁷

If a PCRA petitioner attempts to file an untimely PCRA petition, it is the burden of the petitioner to plead and prove one of the exceptions to the one-year timeliness requirement. *Commonwealth v. Beasley*, 741 A.2d 1258, 1261 (Pa. 1999); *Commonwealth v. Taylor*, 933 A.2d 1035, 1039 (Pa. Super. Ct. 2007). If a PCRA petition is found to be untimely, “[u]nder the plain language of Section 9545 [of the Post Conviction Relief Act], the substance of [petitioner's] PCRA petition must yield to its untimeliness.” *Taylor*, 933 A.2d at 1043. In the present case, the petitioner has not plead and proven an exception to the one-year timeliness requirement or that the petition fell within 60 days of the date the claim could first be made.

III. The Claims are Waived.

In addition to the instant petition being untimely, the Court finds that the issues raised in the instant petition are waived.

⁷ Bodle asserts that his mother did not come forward with this statement sooner because she was afraid LB would get in trouble with the police and because she was afraid she would not be allowed to see her grandchildren. The claim that Bodle could not have ascertained the existence of the statement by LB to Bodle's mother by using reasonable diligence is without merit. With reasonable diligence, Bodle was able to secure his mother's willingness to testify on his behalf despite the alleged threats against her. Bodle contended that his mother was threatened with consequences should she testify for him. Nonetheless, the record shows that his mother was willing and available to testify for him at his trial and did testify for him at his PCRA hearing.

Defendant must plead and prove that an allegation of error has not been previously litigated or waived. 42 Pa. C.S. § 9543(a)(3). The issues raised have either been litigated or could have been previously raised and are therefore waived. Pursuant to 42 Pa. C.S. § 9544(b), if a PCRA petitioner could have raised an issue during a prior post-conviction proceeding and failed to do so that issue is deemed waived. *Id.*

All of the claims in the instant PCRA petition, including the constitutional claims, claims of ineffective assistance of counsel, challenges to the Tender Years ruling, challenge to the sentence, and challenge to the testimony of PCRA witnesses were raised, and those not raised could have been raised during trial or prior post-conviction proceedings. Therefore they are waived.

Similarly, the constitutional claims and claims of ineffective assistance of counsel and challenges to sentence are waived for lack of development. See, e.g., Commonwealth v. Steele, 599 Pa. 341, 361, 961 A.2d 786, 797 (Pa. 2008) (“[U]ndeveloped claims, based on boilerplate allegations, cannot satisfy Appellant's burden of establishing ineffectiveness.”) To the extent Bodle challenges the legality of his sentence,⁸ such claim is lost because it has been raised in an untimely petition for which no exception applies. Commonwealth v. Seskey, 2014 PA Super 27, 86 A.3d 237, 242 (Pa. Super. 2014)

IV. The Claims Lack Merit.

The PCRA provides specific requirements for eligibility for post-conviction relief. 42 Pa. C.S. § 9543. Section 9543(a) provides that in order to be eligible for relief, a

⁸ The Court sentenced Bodle on April 6, 2011 to serve an aggregate sentence at a State Correctional Institution, the minimum of which was 242 months and the maximum of which was 484 months.

Defendant must be convicted and serving a sentence of incarceration. *Id.* In this matter, it is uncontested that Defendant is currently serving a state sentence of incarceration. However, section 9543(a) also lists three (3) other eligibility requirements; these requirements include:

- (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) [sic]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.
 - (vi) 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.
 - (vii) The imposition of a sentence greater than the lawful maximum.
 - (viii) A proceeding in a tribunal without jurisdiction.
 - (3) That the allegation of error has not been previously litigated or waived.
- and
- (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. *Id.*

Bodle does not assert a claim that meets the above requirements. In essence, Bodle's PCRA challenge to the Tender Years ruling is a claim that LB made a statement to his

grandmother around the time of his Tender Years Hearing that would have altered the Courts decision to admit certain statements by LB, to find him unavailable to testify and/or to permit recordings. The Commonwealth filed both a Motion to Admit Certain Statements and a Motion for Recorded Testimony on July 16, 2009. A Hearing on both Motions was held on September 8, and October 29, 2009 before the Honorable President Judge Nancy L. Butts. In its opinion supporting its ruling on those motions, the Court stated the following.

The Court interviewed L.B., who is currently eight years old, in chambers to determine whether it would cause him severe emotional distress were he to testify. L.B. related to this Court that he is scared the Defendant is going to come after him if he were to testify against him. L.B. explained that he had a dream where this occurred. He also said he is scared because of the stuff that he saw on the Defendant's computer. L.B. explained that he is mad about what happened. During the interview, L.B. was visibly agitated, noticeably scared of the Defendant, and very nervous, which was shown by his constantly putting his hands in his mouth. (Tender Years Hearing Opinion, February __, 2010)

Bodle's claim that a PCRA witness perjured himself lacks merit and does not fall within any of the eligibility requirements. Bodle's claim that his sentence exceeds the maximum permitted by law also lacks merit.

In light of the foregoing, Bodle's request for information to prepare for an evidentiary hearing is moot.

VI. Conclusion

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant's April 5, 2017 PCRA Petition. As the Court finds that no purpose would be served by conducting any further evidentiary hearing regarding this matter, a hearing will not be scheduled. Pa.R.Crim.P. 909(B)(2); *See Commonwealth v. Walker*, 36 A.3d 1, 17 (Pa. 2011) (holding that a PCRA petitioner is not entitled to an evidentiary hearing as a

matter of right, but only when the PCRA petition presents genuine issues of material facts).
See also Commonwealth v. McLaurin, 45 A.3d 1131, 1135-36 (Pa. Super. 2012). Since this is Defendant's third PCRA petition and the court has concluded that the petitioner is not entitled to an evidentiary hearing as the petition clearly lacks merit, Defendant is not entitled to the appointment of counsel. *See*, Pa.R.Crim.P. 904(D) and *Comment*.

ORDER

AND NOW, this 6th day of **June 2017**, upon review of Mr. Bodle's petition, it is ORDERED AND DIRECTED that the Court intends to dismiss his petition. In light of that, Mr. Bodle's request for information to prepare for an evidentiary hearing is DENIED as MOOT. *Accordingly, Defendant is hereby notified that it is the Court's intention to dismiss his PCRA Petition, unless he files an objection to that dismissal within twenty days (20) of today's date. This Order will be served on Defendant as set forth in Pa.R.Crim.P. 907(1). The Prothonotary is ORDERED AND DIRECTED to serve defendant by certified and regular mail.*

BY THE COURT,

June 6, 2017
Date

Richard A. Gray, J.

cc: DA (KO)
Leon D. Bodle, JV-4596 (by certified and regular mail)
SCI Houtzdale
P.O. Box 1000
Houtzdale, PA 16698-1000
Prothonotary (Please see the requirement for certified mail.)