

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-1020-2014
	:
vs.	: CRIMINAL DIVISION
	:
	:
JOHN BEILER,	: Notice of Intent to Dismiss PCRA
Defendant	: Without Holding An Evidentiary Hearing

OPINION AND ORDER

This matter came before the court on John Beiler’s (hereinafter Petitioner) Petition for Writ of Habeas Corpus, which the court treated as a Post Conviction Relief Act (PCRA) petition.

By way of background, in 2014 Petitioner was charged with committing various sexual offenses against children. On January 30, 2015, Petitioner pled guilty to a consolidated count of involuntary deviate sexual intercourse (IDSI) with a child, and one count of aggravated indecent assault with a child. These offenses were committed between 1997 and 2007. On April 28, 2015, following a brief hearing and upon stipulation of Petitioner, the court classified Petitioner as a sexually violent predator (SVP). The court also imposed an aggregate sentence of 8 to 16 years’ incarceration in a state correctional institution to be followed by 10 years’ probation.

On September 22, 2017, Petitioner filed his PCRA petition. In the petition, Petitioner seeks relief from the requirements to register under Pennsylvania’s Sexual Offender Registration and Notification Act (SORNA) on the basis that imposition of such requirements violates the ex post facto clauses, due process clauses, and the prohibitions against cruel and unusual punishment of the United States Constitution and the Pennsylvania

Constitution. Petitioner relies on *Commonwealth v. Muniz*, 640 Pa. 699, 164 A.3d 1181 (2017), which held that retroactive application of SORNA violated the ex post facto clauses of the United States Constitution and the Pennsylvania Constitution. Petitioner also contends that there currently exists no available remedy in replacement of SORNA.

The court appointed counsel and directed counsel to file either an amended PCRA petition or a *Turner/Finley*¹ “no merit” letter. Following the filing of Petitioner’s PCRA petition, there have been multiple additional appellate court cases and statutory changes regarding SORNA. On June 22, 2018, counsel filed a petition to withdraw from representation which included a *Turner/Finley* no merit letter.

After an independent review of the record, the court finds that the PCRA petition is untimely; therefore, the court lacks jurisdiction to hold an evidentiary hearing or to grant Petitioner any relief.

The PCRA provides a mechanism for an individual to challenge the legality of his sentence. See 42 Pa. C.S. §9543(a)(2)(vii). The PCRA is the “sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose ..., including habeas corpus and coram nobis.” 42 Pa. C.S. §9542. Therefore, the court must analyze Petitioner’s motion under the PCRA.

Section 9545(b) of the Judicial Code, which contains the time limits for filing a PCRA petition, states:

- (b) Time for filing petition
 - (1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment

¹ *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988) (en banc).

becomes final, unless the petition alleges and the petitioner proves that:

(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.

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within 60 days of the date the claim could have been presented.

(3) 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.

(4) For purposes of this subchapter, “government officials” shall not include defense counsel, whether appointed or retained.

42 Pa.C.S.A. §9545(b). The time limits of the PCRA are jurisdictional in nature. *Commonwealth v. Howard*, 567 Pa. 481, 485, 788 A.2d 351, 353 (2002); *Commonwealth v. Palmer*, 814 A.2d 700, 704-05 (Pa. Super. 2002). “[W]hen a PCRA petition is not filed within one year of the expiration of direct review, or not eligible for one of the three limited exceptions, or entitled to one of the exceptions, but not filed within 60 days of the date that the claim could have been first brought, the trial court has no power to address the substantive merits of a petitioner’s PCRA claims.” *Commonwealth v Gamboa-Taylor*, 562 Pa. 70, 77, 753 A.2d 780, 783 (2000).

The court sentenced Petitioner on April 28, 2015. Petitioner had 10 days within which to file a post sentence motion and 30 days within which to file an appeal. He did neither. Therefore, his judgment of sentence became final on May 28, 2015. To be

considered facially timely, his PCRA petition had to be filed on or before May 31, 2016.²

Petitioner did not allege any facts to support any exception to the one-year filing period. The third statutory exception found at 42 Pa. C.S. §9545(b)(1)(iii), which is sometimes referred to as the “new constitutional right” exception, would not apply to this case.

In *Muniz*, the Pennsylvania Supreme Court found that the retroactive application of SORNA violated the *ex post facto* clauses of the United States and Pennsylvania constitutions, but it did not hold, and has not held in any other case, that *Muniz* applies retroactively to individuals such a Petitioner whose judgment became final long before the decision was announced. In fact, the Pennsylvania Superior Court has held that *Muniz* does not apply retroactively to individuals in Petitioner’s situation. As the Pennsylvania Superior Court recently stated in *Commonwealth v. Murphy*:

[B]ecause Appellant’s PCRA petition is untimely (unlike the petition at issue in *Rivera-Figueroa*), he must demonstrate that the **Pennsylvania Supreme Court** has held that *Muniz* applies retroactively in order to satisfy section 9545(b)(1)(iii). Because at this time, no such holding has been issued by our Supreme Court, Appellant cannot rely on *Muniz* to meet that timeliness exception.

180 A.3d 402, 405-406 (Pa. Super. 2018)(emphasis original)(citation omitted).

Furthermore, Petitioner’s assertion that no statutory provision exists which can currently obligate him to register as a sexual offender in Pennsylvania is no longer accurate. The Pennsylvania legislature passed two acts, Act 10-2018 and Act 29-2018, to address the *Muniz* decision. These Acts amended SORNA so that it only applies to individuals who are

²May 28, 2016 was a Saturday. May 30, 2016 was Memorial Day. Whenever the last day of a time period falls on a Saturday, a Sunday, or a legal holiday, it is excluded from the computation. 1 Pa. C.S. §1908. Therefore,

convicted of sexually violent offenses that were committed on or after December 20, 2012, and enacted new subchapter I (42 Pa. C.S. §9799.51, et seq.) to re-impose registration requirements upon individuals who were convicted of sexually violent offenses that were committed on or after April 22, 1996, but before December 20, 2012.

Accordingly, the following Order is entered:

ORDER

AND NOW, this ___ day of September 2018, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, as no purpose would be served by conducting a hearing in this matter, none will be scheduled. The parties are hereby notified of this Court's intention to dismiss the Petition. Petitioner 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.

The court also GRANTS counsel's motion to withdraw. Petitioner may represent himself or hire private counsel to represent him, but the court will not appoint counsel to represent him further in this matter unless or until he alleges facts to show that his Petition is timely.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Julian Allatt, Esquire
Reymeyer & Allatt, 1317 N. Atherton St., State College PA 16803
John Beiler, #MA 0422

the last day for Petitioner to file a facially timely PCRA petition was May 31, 2016.

SCI Somerset, 1600 Walters Mill Road, Somerset PA 15510
Work file