

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :  
 :  
 v. : CR-1977-2014  
 :  
 JACK EMERY GIRARDI, :  
 Petitioner : PCRA

**OPINION AND ORDER**

On July 3, 2018, Counsel for the Petitioner filed a Petition 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 Petitioner has failed to raise any meritorious issues in his PCRA Petition, and his petition shall be dismissed.

***Background***

On October 20, 2015, Jack Girardi (Petitioner) was found guilty of Rape of a Child,<sup>1</sup> Statutory Sexual Assault,<sup>2</sup> Aggravated Indecent Assault,<sup>3</sup> Unlawful Restraint of a Minor,<sup>4</sup> Incest of a Minor,<sup>5</sup> Endangering the Welfare of a Child,<sup>6</sup> Corruption of Minors,<sup>7</sup> and Indecent Assault.<sup>8</sup> On January 13, 2016, Petitioner was sentenced to an aggregate term of Eighteen (18) minimum to forty (40) years maximum in a State Correctional Institution. Petitioner was additionally designated a Sexually Violent Predator. A timely subsequent appeal was filed on January 20, 2016, which the Pennsylvania Superior Court affirmed on September 15, 2016.

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<sup>1</sup> 18 Pa.C.S.A. § 3121(c).

<sup>2</sup> 18 Pa.C.S.A. § 3122.1(b).

<sup>3</sup> 18 Pa.C.S.A. § 3125(c).

<sup>4</sup> 18 Pa.C.S.A. § 2902(c)(1).

<sup>5</sup> 18 Pa.C.S.A. § 4302(b)(1).

<sup>6</sup> 18 Pa.C.S.A. § 4304(a)(1).

<sup>7</sup> 18 Pa.C.S.A. § 6301(a)(1)(ii).

<sup>8</sup> 18 Pa.C.S.A. § 3126(a)(7).

On December 27, 2017, Petitioner filed his first Post-Conviction Relief Act petition through his counsel, William Miele, Esq., challenging the validity of his registration requirements under the Sex Offender Registration and Notification Act (SORNA). The conference was stayed awaiting pending decision before the Pennsylvania Supreme and Superior Courts. Upon the resolution of those decisions, Mr. Miele sent Petitioner a *Turner/Finley* letter on June 20, 2018 and filed his Petition to Withdraw as Counsel on July 3, 2018. After an independent review of the record and an additional PCRA conference held on September 11, 2018, this Court agrees with Attorney Miele that Petitioner's PCRA Petition is untimely and that he also failed to raise any meritorious issues.

***Whether the Petitioner's PCRA Petition is untimely pursuant to 42 Pa.C.S. § 9545(b)***

Petitioner's PCRA Petition is untimely. 42 Pa.C.S. 9545(b) 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. § 9545(b)(1). The exceptions set forth in 42 Pa.C.S. § 9545(b)(1) are as follows:

- (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.

A PCRA petition raising one of these exceptions "shall be filed within [sixty] days of the date the claim could have been presented." 42 Pa.C.S. § 9545(b)(2). A petitioner must

“affirmatively plead and prove” the exception. *Commonwealth v. Taylor*, 933 A.2d 1035, 1039 (Pa. Super. 2007).

As such, when a PCRA is not filed within one year of the expiration of direct review, or not eligible for one of the exceptions, or entitled to one of the exceptions, but not filed within [sixty] 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.

*Id.* at 1039.

Petitioner was sentenced on January 13, 2016. A Post-Sentence Motion was filed and the decision was subsequently affirmed by the Superior Court on September 15, 2016. His judgment of sentence, therefore, became final thirty (30) days later on October 17, 2016 (the 15<sup>th</sup> being a weekend). 42 Pa.C.S. § 9545(b)(3). Petitioner filed his PCRA Petition on December 27, 2017, which is well beyond one (1) year of the date the judgment became final. Therefore, Petitioner must fall within one of the exceptions listed in 42 Pa.C.S. § 9545(b)(1) for his PCRA Petition to be deemed timely and for this Court to address the merits of the PCRA Petition.

Petitioner’s basis for his PCRA Petition rests on the holding in *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017), which held retroactive application of SORNA requirements to convictions prior to the enactment of SORNA were unconstitutional. Petitioner is correct in his analysis and observation that his conviction would fall under the holding in *Muniz*. Since the holding in *Muniz* the Pennsylvania Superior Court has more narrowly defined the applicability of *Muniz*. In *Commonwealth v. Rivera-Figueroa*, 174 A.3d 674 (Pa. Super. 2017), the court held that the holding in *Muniz* applied to collateral review, but later distinguished that “because [petitioner’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).” *Commonwealth v. Murphy*, 180 A.3d 402, 405-06 (Pa. Super. 2018).

*Muniz* was decided on July 19, 2017, therefore Petitioner had sixty (60) days, or until September 18, 2017, to file his PCRA, because that is when the claim “could have been first brought.” Since the Pennsylvania Supreme Court has yet to make a determination of whether *Muniz* applies retroactively, untimely PCRAs are not entitled to relief. Therefore, the Court finds that Petitioner’s PCRA Petition is untimely and cannot be afforded relief.

### ***Conclusion***

Based upon the foregoing, the Court finds no basis upon which to grant Petitioner’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 Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this Court’s intention to deny Petitioner’s PCRA Petition. The 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.

**ORDER**

**AND NOW**, this \_\_\_\_ day of September, 2018, it is hereby ORDERED and DIRECTED as follows:

1. Petitioner 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.
2. The application for leave to withdraw appearance filed July 3, 2018, is hereby GRANTED and William Miele, Esq. may withdraw his appearance in the above captioned matter.
3. **Petitioner Jack Girardi will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge

xc: DA  
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