

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1019-2004
:
vs. : CRIMINAL DIVISION
:
:
DARRELL HARROLD, : Notice of Intent to Dismiss PCRA
Defendant : Without Holding An Evidentiary Hearing

OPINION AND ORDER

This matter came before the court on Petitioner Darrell Harrold's second PCRA petition filed on September 17, 2017.

By way of background, Petitioner was charged with multiple counts of involuntary deviate sexual intercourse (IDSI) with a child and related sexual offenses as a result of acts that were committed on May 8, 2004. On November 23, 2004, a jury convicted Petitioner of multiple counts of IDSI with a child, as well as aggravated indecent assault, indecent assault, endangering the welfare of children, and corruption of minors. On February 15, 2005, the court sentenced Petitioner to an aggregate term of 15 to 30 years' incarceration in a state correctional institution followed by 10 years' probation. Petitioner appealed his sentence, asserting that his sentences for IDSI with a child and aggravated indecent assault of a child should have merged. On April 3, 2006, the Superior Court affirmed Petitioner's judgment of sentence.

Petitioner filed his first PCRA petition on November 2, 2006, in which he asserted various claims of ineffective assistance of counsel including, but not limited to, a claim that counsel was ineffective for failing to inform Petitioner of the importance of character witnesses and failing to call such witnesses during his trial. Ultimately, the court

denied the PCRA petition.¹ The Superior Court affirmed in a decision issued on July 24, 2012, and the Pennsylvania Supreme Court denied allowance of appeal on December 12, 2012.

On September 28, 2017, Petitioner filed his second PCRA petition. Petitioner asserted that he was charged with violating 18 Pa. C.S. §4915.1 and that he was entitled to relief from his conviction based on *Commonwealth v. Muniz*, 640 Pa. 699, 164 A.3d 1181 (July 19, 2017). On December 19, 2017, an assistant public defender filed an amended second PCRA petition, in which he alleged that Megan’s Law III was in effect at the time of Petitioner’s sentencing; Megan’s Law III was held unconstitutional in *Commonwealth v. Neiman*, 624 Pa. 53, 84 A.3d 603 (2013); *Muniz* held that SORNA cannot be applied retroactively; and the Superior Court in *Commonwealth v. Rivera-Figueroa*, 174 A.3d 674 (Nov. 14, 2017) held that *Muniz* applies retroactively.

On February 15, 2018, the court scheduled an *en banc* argument on this case, and several other cases, to determine the retroactivity of *Muniz* to facially untimely PCRA petitions. On February 20, 2018, however, the Superior Court held in *Commonwealth v. Murphy*, 180 A.3d 402, 405-406 (Pa. Super. 2018) that *Rivera-Figueroa* does not apply to untimely PCRA petitions and petitioner did qualify for the “new constitutional right” exception because the Pennsylvania Supreme Court had not held that *Muniz* applies retroactively. As a result of this new case law, the court gave Petitioner 30 days within

¹ There was protracted litigation regarding the dismissal of the first PCRA petition. The court initially dismissed the petition in July of 2007. Petitioner appealed. The Superior Court found that initial PCRA counsel was ineffective and remanded for further proceedings with the appointment of new PCRA counsel. Following the appointment of new counsel, the court again dismissed the PCRA petition without holding an evidentiary hearing. The Superior Court reversed and remanded the case for an evidentiary hearing. Following the evidentiary hearing, the court denied the first PCRA petition, and the Superior Court affirmed.

which to file either an amended petition addressing the timeliness issue or a *Turner/Finley* no merit letter.² On April 16, 2018, the public defender filed a petition to withdraw which contained a no merit letter. After an independent review of the record, the court finds that Petitioner is not entitled to relief.

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 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

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

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 Superior Court affirmed Petitioner's judgment of sentence on April 3, 2006. No petition for allowance of appeal was filed. Therefore, Petitioner's judgment of sentence became final on May 3, 2006. To be considered facially timely, Petitioner's second PCRA petition needed to be filed on or before May 3, 2007. It was not filed until September 28, 2017.

In his pro se petition, Petitioner asserted that his petition falls within all three exceptions found at 42 Pa. C.S. §9545(b)(1) based on *Muniz*. The court cannot agree.

Petitioner does not explain how a new appellate court decision would constitute interference by government officials, and the court cannot fathom any way in which it would. The court also notes that "government officials" do not include defense counsel, whether appointed or retained. 42 Pa. C.S. §9545(b)(4). Therefore, the petition does not fall within the exception found at 42 Pa. C.S. §9545(b)(1)(i).

Petitioner contends that the *Muniz* decision is a new fact that he could not discover until after the decision was issued on July 19, 2017. New cases are not facts; they are law. *Commonwealth v. Watts*, 611 Pa. 80, 23 A.3d 980, 986-987 (2011). Therefore, Petitioner cannot satisfy the "newly discovered fact" exception of 42 Pa. C.S.

1988)(en banc).

§9545(b)(1)(ii).

Petitioner also contends that *Muniz* recognized a new constitutional right; therefore, his petition is timely pursuant to section 9545(b)(1)(iii). 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 appeal was completed well 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). Therefore, the petition also does not satisfy the “new constitutional right” exception in section 9545(b)(1)(iii).

Petitioner’s PCRA petition is untimely. It was not filed within one year of the date his judgment of sentence became final and it does not satisfy any of the statutory exceptions. Therefore, the court lacks jurisdiction to grant Petitioner any relief.

Even if Petitioner’s second PCRA petition could be considered timely, he would not be entitled to relief from sexual offender registration requirements. The

Pennsylvania legislature passed two acts, Act 10 of 2018 and Act 29 of 2018, to address the *Muniz* decision. These Acts amended SORNA so that it only applies to individuals who are 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 Megan's Law registration requirements upon individuals who were convicted of sexually violent offenses committed on or after April 22, 1996, but before December 20, 2012. Since Petitioner was convicted of a sexually violent offense that was committed in 2004, he is subject to the registration requirements of subchapter I. Involuntary deviate sexual intercourse is an offense that requires lifetime registration. 42 Pa. C.S. §9799.55(b)(2).

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, the parties are hereby notified of this court's intention to dismiss Petitioner's second PCRA petition without holding an evidentiary. 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 hire private counsel or he may represent himself, but the court will not appoint counsel to represent Petitioner unless or until he shows that his petition is timely.

By The Court,

Nancy L. Butts, President Judge

cc: District Attorney

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