

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1353-2009
:
vs. : CRIMINAL DIVISION
:
: Notice of Intent to Dismiss PCRA Petition
ULYSSES HOFFMAN, : Without Holding An Evidentiary Hearing
Defendant : and Order Granting Motion to Withdraw
: as Counsel

OPINION AND ORDER

This matter came before the court on the motion to modify sentence and the petition to vacate illegal sentence filed by Ulysses Hoffman (hereinafter “Petitioner”), which the court treated as his second Post Conviction Relief Act (PCRA) petition.

By way of background, on January 13, 2010, Petitioner pled guilty to two counts of rape of an impaired person. These offenses occurred between July 3, 2009 and August 8, 2009. On December 15, 2010, the court sentenced Petitioner to two concurrent terms of 7 to 20 years’ incarceration and awarded Petitioner credit for time served from August 9, 2009 to December 15, 2010. Petitioner did not file a post sentence motion or an appeal.

Petitioner filed his first PCRA petition on June 29, 2011. This petition was dismissed on August 29, 2012. Petitioner did not appeal.

On September 11, 2017, Petitioner filed his motion and petition that the court is treating as his second PCRA petition. In his filings, Petitioner claims that his registration requirements violate the *ex post facto* clause of the United States and Pennsylvania Constitutions. Although he does not expressly cite *Commonwealth v. Muniz*, 640 Pa. 699, 164 A.3d 1181 (Pa. 2017), it appears that his filings are based on that case.

In light of the drastic changes in SORNA due to *Muniz, Rivera-Figueroa*,¹ and *Butler*,² the court appointed counsel to represent Petitioner even though this was a second or subsequent PCRA petition. The court directed counsel to file either an amended PCRA petition or a no merit letter pursuant to *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)(en banc). On June 26, 2018, counsel filed a motion to withdraw as counsel and a no merit letter in which he asserted that the current petition was untimely.

After an independent review of the record and the law, the court concludes that Petitioner is not entitled to relief in this case as a matter of law.

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

¹ *Commonwealth v. Rivera-Figueroa*, 174 A.3d 674 (Pa. Super. 2017).

² *Commonwealth v. Butler*, 173 A.3d 1212 (Pa. Super. 2017), *alloc. granted*, 190 A.3d 581 (Pa. 2018).

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 December 15, 2010. He did not file a post sentence motion or an appeal. Therefore, his judgment of sentence became final on or about January 18, 2011.³ Therefore, Petitioner’s current PCRA petition is facially untimely.

Petitioner also has not plead any facts to fall within any of the statutory exceptions to the one-year filing requirement. 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 as Petitioner whose judgment became final before the decision was announced. In fact, the Pennsylvania Superior Court

³ January 15, 2011 was a Saturday, and Monday, January 17, 2011 was Martin Luther King Day. When the last day of the time period falls on a weekend or legal holiday, it is not counted and the time period ends on the next business day, which in this case would have been Tuesday, January 18, 2011. 1 Pa. C.S. §1908.

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).

The court also notes that neither *Butler* nor *Rivera-Figueroa* satisfies this exception because they are decisions of the Pennsylvania Superior Court, and not decisions of the United State Supreme Court or the Pennsylvania Supreme Court.

Petitioner also cannot satisfy the “new fact” exception under section 9545(b)(1)(ii), because judicial decisions are law, not facts. *Commonwealth v. Watts*, 23 A.3d 980, 987 (Pa. 2011).

As this PCRA petition is patently untimely, the court lacks jurisdiction to hold an evidentiary hearing or grant Petitioner any relief.

Finally, the court finds that Petitioner’s PCRA petition is moot due to legislative amendments to SORNA and the enactment of new Subchapter I of Chapter 97 of the Judicial Code, 42 Pa. C.S. §§9799.51 et seq. Due to the legislative changes, Petitioner will not be required to register pursuant to SORNA as a result of his convictions in this case. SORNA now only applies to individuals who are convicted of sexually violent offenses committed on or after December 20, 2012. Individuals, like Petitioner, who have been convicted of a sexually violent offense committed on or after April 22, 1996 and before

December 20, 2012, and who have not completed their registration requirements with the Pennsylvania State Police will be required to register pursuant to Subchapter I. Petitioner has not challenged the constitutionality of Subchapter I or the Acts which enacted it (Act 2018-10 and Act 2018-29).

ORDER

AND NOW, this ___ day of November 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 an evidentiary hearing, none will be scheduled and 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 PCRA counsel's motion to withdraw. Petitioner may represent himself or hire private counsel but the court will not appoint counsel to represent Petitioner further in this matter.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Ryan Gardner, Esquire
Ulysses Hoffman, JV 9557 (legal mail)
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Work file