

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA,</b>	:	
	:	<b>No. CR-136-2009</b>
<b>v.</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>ARON HOYT,</b>	:	
<b>    Petitioner</b>	:	<b>PCRA</b>

**OPINION AND ORDER**

On August 5, 2009, Aron Hoyt (“Petitioner”) entered an open guilty plea to Resisting Arrest,<sup>1</sup> False Identification to Police Officers,<sup>2</sup> and Driving while Privilege is Suspended.<sup>3</sup> On that same day, Petitioner was sentenced to state prison for a minimum of two (2) months, with a consecutive one (1) year period of supervision under the Pennsylvania Board of Probation and Parole and a \$200 fine all to run consecutive to his other state sentences. A timely Post Conviction relief Act (PCRA) Petition was filed on September 22, 2010 and the Court appointed as Counsel Edward Rymsza, Esquire. In an Opinion and Order dated April 27, 2011, the Court granted Attorney Rymsza leave to withdraw. The Court also notified Petitioner of its intention to dismiss the Petition within twenty (20) days before dismissing the Petition on June 14, 2011.

On July 23, 2018, Petitioner filed this second *pro se* PCRA Petition. Petitioner alleges that his sentence was illegal in that it is an “Illegal Split Sentence” due to the probationary period of twelve (12) months to run consecutive to his other state sentences and he claims his sentence is illegal under *Alleyne v. United States*, 570 U.S. 99 (2013). As this is Petitioner’s second PCRA Petition he is not entitled to court appointed counsel unless the Court finds that an evidentiary hearing is required. Pa.R.Crim.P. 904(D). The Court has reviewed Petitioner’s current PCRA Petition and has found that it is untimely and that the issues have been waived.

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<sup>1</sup> 18 Pa.C.S. § 5104.

<sup>2</sup> 18 Pa.C.S. § 4914 (A).

<sup>3</sup> 75 Pa.C.S. § 1543 (A).

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

Petitioner's third 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.

Here, Petitioner was sentenced on August 5, 2009 and filed a Post-Sentence Motion, which was denied on September 25, 2009. No appeal was taken. Thus, his judgment of sentence became final thirty (30) days later on October 26, 2009 (October 25 was a Sunday and therefore

the date would roll over to that Monday). Petitioner filed this second PCRA Petition on July 23, 2018, which is clearly beyond one (1) year of the date the judgment became final. Therefore, Petitioner's claim 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 does argue that his PCRA Petition was timely due to after-discovered evidence. He alleges both the holding in *Alleynes* and an article he received in the mail on June 21, 2018, constitutes after-discovered evidence, which entitles him to an evidentiary hearing. First, it is well settled that *Alleynes* does not apply to petitions in the PCRA context that are either untimely or where judgment was final prior to the holding in *Alleynes*. See *Commonwealth v. Miller*, 102 A.3d 988 (Pa. Super. 2014) (*Alleynes* does not invalidate a mandatory minimum sentence presented in an untimely PCRA); *Commonwealth v. Riggle*, 119 A.3d 1058 (Pa. Super. 2015) (*Alleynes* does not apply to a timely collateral review when the judgment of sentence was final before *Alleynes* was decided). Petitioner's claim is both untimely and judgment of sentence was final prior to the holding in *Alleynes*, which was decided on June 17, 2013.

Second, the information Petitioner presents as after-discovered evidence is an article that was mailed to him from the publication Graterfriends: A Publication of the Pennsylvania Prison Society. It is under the section Legal Chat and titled *Illegal Split Sentences*. The article discusses cases decided in 1998 and 2002 regarding PCRA petitions and sentencing. Without delving into the merits of whether this is proper after-discovered evidence, the information in the article was from cases decided at the latest in 2002, well before *Alleynes*. In addition, the article itself does not appear in any of the archived publications online, which date back to 2015 leaving this Court to conclude the article itself was available prior to 2015. The fact that someone in

correspondence with Petitioner mailed him the article within the last sixty days does not make the information after-discovered evidence, since any of the information in the article could have been discovered through due diligence prior to 2015. *See* 42 Pa.C.S. 9545(b)(1)(ii) (petitioner is required to allege and prove facts could not have been discovered through due diligence).

Therefore, the Court finds that this PCRA Petition and its issues raised are untimely.

Similarly, the claims that Petitioner raises in his second PCRA Petition could have been raised in his previous Petition and were therefore waived. As directed by 42 Pa.C.S.A. § 9544(b), an issue is waived “if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal, or in a prior state post-conviction proceeding.” The issues that Petitioner raises in this PCRA Petition would have been known to him after his sentencing in August of 2009.

As the Court finds there are no meritorious issues with Petitioner’s PCRA Petition, it intends to dismiss the Petition unless Petitioner files an objection within twenty (20) days. “[A] PCRA petitioner is not entitled to an evidentiary hearing as a matter of right, but only where the petition presents genuine issues of material fact. . . . A PCRA court’s decision denying a claim without a hearing may only be reversed upon a finding of an abuse of discretion.”

*Commonwealth v. McLaurin*, 45 A.3d 1131, 1135-36 (Pa. Super. 2012) (citations omitted).

Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), Petitioner is hereby notified of this Court’s intention to deny the Petitioner’s PCRA Petition.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of August, 2018, Petitioner is notified that it is the intention of the Court to dismiss the Petitioner's PCRA petition because it does not raise a genuine issue concerning any material fact. The Court will dismiss Petitioner's claim unless Petitioner files an objection to that dismissal within twenty days (20) of today's date. **Petitioner Aron Hoyt shall be notified by means of certified mail at the address listed below.**

By the Court,

Nancy L. Butts, President Judge

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