

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	CR-79-2010
	:	
JEREMY JOHNSON,	:	
Petitioner	:	PCRA

OPINION AND ORDER

On September 26, 2018, Counsel for Petitioner filed a Motion 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 therefore the petition shall be dismissed.

Background

On March 26, 2010, Jeremy Johnson (Petitioner) pled guilty to two (2) counts of Rape of a Child.¹ Petitioner was sentenced to a minimum sentence of fifteen (15) years to thirty (30) years maximum on August 5, 2010. No subsequent appeals or motions for reconsideration were filed.

On August 3, 2018, Petitioner filed a Petition to Modification of Sentence asking to be granted eligibility for the Statutory Risk Reduction Incentive Program, RRRI, which this Court treated as a first Post-Conviction Relief Act petition. This Court then assigned Donald Martino, Esq. on August 8, 2018. Assigned counsel reviewed the petition and all documents pertaining to Petitioner's guilty plea and case before sending Petitioner a *Turner/Finley* letter and filing his Motion to Withdraw as Counsel. After an independent review of the record, this Court agrees

¹ 18 Pa.C.S.A. § 3121(c).

with Attorney Martino 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)

Before determining whether Petitioner is substantively entitled to eligibility for RRRI, Petitioner must establish jurisdiction. Petitioner does not have jurisdiction because his 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 August 5, 2010, and his judgment of sentence became final thirty (30) days later on September 5, 2010. 42 Pa.C.S. § 9545(b)(3). Petitioner filed his PCRA Petition on May 17, 2018, 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 asks the Court to find him eligible for RRRI due to the holding in *Commonwealth v. Cullen-Doyle*, 164 A.3d 1239 (Pa. 2017). *Cullen-Doyle* was decided on July 20, 2017 and was not explicitly determined to apply retroactively, as the petitioner was filing a timely appeal. *Id.* at 1240-42. In addition, Petitioner raises his claim more than sixty (60) days after the decision was rendered in that case. *See* 42 Pa.C.S. § 9545(b)(2).

Conclusion

Based upon the foregoing, the Court finds no basis upon which to grant Petitioner's PCRA petition or to examine the substantive merits of his claim. 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. 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 October, 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 September 26, 2018, is hereby GRANTED and Donald Martino, Esq. may withdraw his appearance in the above captioned matter.
3. **Petitioner Jeremy Johnson will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge

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