

as a first Post-Conviction Relief Act petition on December 11, 2016. This Court then assigned Julian Allatt, Esq., who failed to file either an Amended PCRA petition or a *Turner/Finley* letter and request for withdrawal of representation. Then this Court improperly dismissed Petitioner's PCRA petition on August 29, 2017 without a filing. Petitioner filed an appeal with the Superior Court, which was subsequently granted on July 25, 2018, and remanded to this Court for the purposes of appointing counsel to either file an Amended PCRA Petition or a *Turner/Finley* letter and Petition to Withdraw. *See Commonwealth v. Johnson*, 2018 WL 3569735, at *2 (Pa. Super. 2018). This Court assigned Donald Martino, Esq. as counsel on August 31, 2018. Attorney Martino reviewed the petition and all documents pertaining to Petitioner's 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 with Attorney Martino that Petitioner's PCRA Petition is untimely.

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

Before determining whether Petitioner is substantively entitled to any relief, Petitioner must establish jurisdiction. This Court does not have jurisdiction because 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 June 19, 2014, and he filed a timely appeal on July 14, 2014. The sentence was affirmed on April 8, 2015 and therefore judgment of sentence became final thirty (30) days later on May 8, 2015. 42 Pa.C.S. § 9545(b)(3). Attorney Morrone put Petitioner on notice of his unwillingness to file a PCRA Petition on July 27, 2016, which is over two months beyond Petitioner’s time to file. Petitioner then filed his Brief in Support of PCRA *Nunc Pro Tunc*, which was treated as a first PCRA petition on December 11, 2016. The Pennsylvania Supreme Court has held that abandonment by an attorney is proper grounds to establish “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” exception under 42 Pa.C.S. § 9545(b)(1)(ii). *Commonwealth v. Peterson*, 192 A.3d 1123, 1130-31 (Pa. 2018). Therefore, Petitioner had sixty days following notice of Attorney Morrone’s abandonment to file a PCRA petition. Petitioner was aware of abandonment upon receipt of the letter, which Petitioner claims was July 27, 2016,

but since that date is highly improbable the Court will treat receipt as a late date, August 1, 2016, the following Monday. Petitioner then had until October 3, 2016 to file and meet the exception enumerated under 42 Pa.C.S. § 9545(b)(1)(ii). Petitioner filed on December 11, 2016 approximately seventy (70) days late.

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 November, 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 November 5, 2018, is hereby GRANTED and Donald Martino, Esq. may withdraw his appearance in the above captioned matter.
3. **Petitioner Kenneth Johnson 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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NLB/kp