

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1404-2011
:
vs. : CRIMINAL DIVISION
:
:
:
RICHARD LAFAYETTE, : Notice of Intent to Dismiss PCRA
Defendant : Without Holding An Evidentiary Hearing

OPINION AND ORDER

On November 7, 2011, Petitioner, Richard Lafayette, pled guilty to criminal solicitation of rape of a child based on events that occurred between August 20, 2010 and April 29, 2011. On February 13, 2012, Petitioner was sentenced to 7 ½ to 15 years’ incarceration in a state correctional institution. At a separate hearing held immediately prior to sentencing, Petitioner was found to be a sexually violent predator (SVP).

On October 23, 2017, Petitioner filed a motion to bar the application of sexual offender registration and/or petition for writ of habeas corpus, which the court treated as Petitioner’s first Post Conviction Relief Act (PCRA) petition. The court appointed counsel to represent Petitioner and directed counsel to file either an amended PCRA petition or a *Turner/Finley*¹ “no merit” letter. On June 22, 2018, counsel filed a no merit letter and a motion to withdraw.

Petitioner contends that subjecting him to SORNA’s registration requirements would violate the ex post facto clause and the due process clause of the Pennsylvania Constitution, and neither SORNA nor any other version of Pennsylvania’s Megan’s Law is applicable to Petitioner. Petitioner seeks relief based on the Pennsylvania Supreme Court

¹ *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)

decision in *Commonwealth v. Muniz*, 640 Pa. 699, 164 A.3d 1181 (2017), and the expiration of all prior versions of Megan’s Law as provided by 42 Pa. C.S. §9799.41. Petitioner also asserts that the court has the authority to hear the petition as a writ of habeas corpus based on *Commonwealth v. Giannattonio*, 114 A.3d 429, 423 (Pa. Super. 2014) and *Commonwealth v. Miller*, 787 A.2d 1036, 1038 (Pa. Super. 2001).

After an independent review of the record, the court finds Petitioner is not entitled to relief as a matter of law.

Giannattonio and *Miller* are distinguishable. At the time *Giannattonio* and *Miller* were decided, SORNA’s registration requirements were considered non-punitive, collateral consequences of conviction. As such, those requirements could not be challenged through the PCRA. Petitioner is challenging his registration requirements based on *Muniz*. The Pennsylvania Supreme Court held in *Muniz* that SORNA’s registration requirements were punitive. Therefore, Petitioner is challenging the legality of his sentence.

The PCRA provides a mechanism for an individual to challenge the legality of his sentence. See 42 Pa. C.S. §9543(a)(2)(vii). The PCRA is the “sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose ..., including habeas corpus and coram nobis.” 42 Pa. C.S. §9542. Therefore, the court must analyze Petitioner’s motion under the PCRA.

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

(en banc).

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 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).

Petitioner was sentenced on February 13, 2012. He had ten days within which to file any post sentence motion and 30 days within which to appeal. He did neither. Therefore, his judgment of sentence became final on March 15, 2013. To be facially timely,

Petitioner was required to file his PCRA petition on or before March 17, 2014.² Petitioner has not asserted any facts to show that his claim would fall within any of the statutory exceptions.

Even if Petitioner claimed that 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 one-year time period provided by the PCRA, he would not satisfy the “new constitutional right” exception.

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 long 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).

Even if the Pennsylvania Supreme Court had held that *Muniz* applies retroactively, Petitioner did not file his petition within 60 days of the *Muniz* decision. Any

² March 15, 2014 was a Saturday. Whenever the last day of a time period falls on a Saturday, a Sunday, or a legal holiday, it is excluded from the computation. 1 Pa. C.S. §1908. Therefore, Monday, March 17, 2014, was

petition invoking one of the exceptions in section 9545(b)(1) must be filed within 60 days of the date the claim could have been presented. 42 Pa. C.S. §9545(b)(2). *Muniz* was decided on July 19, 2017. To be considered timely under section 9545(b)(1)(iii), Petitioner's PCRA petition would have had to have been filed by September 18, 2017.

Finally, Petitioner's assertion that no statutory provision exists which can currently obligate him to register as a sexual offender in Pennsylvania is no longer accurate. The Pennsylvania legislature passed two acts, Act 10-2018 and Act 29-2018, to address the *Muniz* decision. These Acts amended SORNA so that it 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 registration requirements upon individuals who were convicted of sexually violent offenses that were committed on or after April 22, 1996, but before December 20, 2012.

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, as no purpose would be served by conducting a hearing in this matter, none will be scheduled. 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 counsel's motion to withdraw. Petitioner may represent himself or hire private counsel to represent him, but the court will not appoint

the last day for Petitioner to file a facially timely PCRA petition.

counsel to represent him further in this matter unless or until he alleges facts to show that his
Petition is timely.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
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