

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

<b>COMMONWEALTH</b>	<b>: No. CR-1155-1996</b>
	<b>:</b>
<b>vs.</b>	<b>: CRIMINAL DIVISION</b>
	<b>:</b>
	<b>:</b>
<b>CARL STONE,</b>	<b>: Notice of Intent to Dismiss PCRA</b>
<b>Defendant</b>	<b>: Without Holding An Evidentiary Hearing</b>

**OPINION AND ORDER**

This matter came before the court on Petitioner Carl Stone's Post Conviction Relief Act (PCRA) petition.

On November 20, 1996, a jury convicted Petitioner of rape and related sexual offenses against an eleven year old girl as a result of an incident that occurred on June 1, 1996. On February 6, 1997, the Honorable William S. Kieser sentenced Petitioner to an aggregate sentence of 9 years 8 months to 30 years' incarceration in a state correctional institution. Judge Kieser also determined that Petitioner was a sexually violent predator (SVP). The Commonwealth filed a motion for reconsideration in which it asserted that Megan's Law I required the court to impose a lifetime maximum sentence for an SVP. Judge Kieser granted the Commonwealth's motion for reconsideration and, on May 9, 1997, resentenced Petitioner to an aggregate sentence of 9 years 8 months to life.

Petitioner appealed. In a decision issued on June 3, 1999, the Pennsylvania Superior Court found that portions of Megan's Law I (related to SVPs) were unconstitutional, so it vacated Petitioner's sentence and remanded for re-sentencing.

On October 20, 1999, Judge Kieser sentenced Petitioner to an aggregate sentence of 9 years 8 months to 30 years' incarceration followed by 10 years' probation,

consisting of 8 to 20 years for rape, 20 months to 10 years for aggravated indecent assault, 5 years' probation for indecent assault, and 5 years' probation for corruption of minors. Judge Kieser also directed that Petitioner must register as a sexual offender upon his discharge from prison. Petitioner did not file any post sentence motions or an appeal.

On January 22, 2018, Petitioner filed his PCRA petition, in which he asserts that Pennsylvania's Sexual Offender Registration and Notification Act (SORNA) is illegal based on *Muniz*,<sup>1</sup> *Butler*,<sup>2</sup> and *Derhammer*.<sup>3</sup>

After an independent review of the record, the court finds that Petitioner's PCRA petition is untimely.

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

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<sup>1</sup> *Commonwealth v. Muniz*, 640 Pa. 699, 164 A.3d 1181 (2017).

<sup>2</sup> *Commonwealth v. Butler*, 173 A.3d 1212 (Pa. Super. 2017).

<sup>3</sup> *Commonwealth v. Derhammer*, 173 A.3d 723 (Pa. 2017).

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 (Pa. 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 (Pa. 2000).

Following his direct appeal, Petitioner was re-sentenced on October 20, 1999. Petitioner did not file a post sentence motion or an appeal from that sentence. Therefore, his sentence became final 30 days thereafter or on November 19, 1999. To be facially timely, Petitioner was required to file his PCRA petition on or before November 20, 2000.<sup>4</sup>

Petitioner attempts to assert all three statutory exceptions to the one-year filing period. Petitioner contends that his failure to raise the claim previously was the result of interference of government officials in that “no one from the public defender’s office nor the district attorney notified me about this new outcome.” He claims he has been eligible for parole since 2007 but “can’t leave because of this unconstitutional law.” Petitioner’s allegations do not satisfy the “government interference” exception.

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<sup>4</sup>November 19, 2000 was a Sunday. Whenever the last day of a time period falls on a Saturday, a Sunday, or a legal holiday, it is omitted from the computation. 1 Pa. C.S. §1908. Therefore, Monday, November 20, 2000

Contrary to Petitioner’s assertions, neither the district attorney nor his former counsel had an obligation to notify Petitioner of cases that were decided nearly two decades after his judgment of sentence became final. No one from the district attorney’s office ever represented Petitioner. Defense counsel ceased representing Petitioner once his judgment of sentence became final on November 19, 1999. Pa. R. Crim. P. 122(B)(2)(“When counsel is appointed, the appointment shall be effective until final judgment, including any proceedings upon direct appeal.”). Furthermore, a defense attorney is not considered a “government official.” 42 Pa. C.S. §9545(b)(4)(“For purposes of this subchapter, ‘government officials’ shall not include defense counsel whether appointed or retained.”).

Petitioner also contends that the facts upon which his claims are predicated were unknown to him and could not have been ascertained by the exercise of due diligence. Specifically, Petitioner asserts that “these three brand new cases were just given to me by another inmate [whose] attorney let him know about [them].” New cases are not facts; they are law. *Commonwealth v. Watts*, 611 Pa. 80, 23 A.3d 980, 986-987 (2011). Therefore, even if true, Petitioner’s assertions do not satisfy the “newly discovered facts” exception.

Finally, Petitioner claims 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 and has been held by that court to apply retroactively. Petitioner relies on *Muniz*, *Butler*, and *Derhammer*. None of these cases cited by Petitioner satisfy the “new constitutional right” exception.

In *Muniz*, the Pennsylvania Supreme Court found that the retroactive

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

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 a Petitioner whose appeal was completed well 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).

Petitioner also did not file his petition within 60 days of the *Muniz* decision. Any 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.

The *Butler* case also does satisfy the “new constitutional right” exception. *Butler* is a decision from the Pennsylvania Superior Court. The only decisions that meet the exception are decision from the United States Supreme Court or the Pennsylvania Supreme Court. Petitioner also did not file his PCRA petition within 60 days of the *Butler* decision. The Superior Court issued the *Butler* decision on October 31, 2017. To be considered timely under section 9545(b)(1)(iii), Petitioner’s PCRA petition would have had to have been filed

by January 2, 2018. *Butler* also does not apply to Petitioner's case, because Peitioner's SVP designation was already vacated in his direct appeal.

*Derhammer* also does not satisfy the exception. The Pennsylvania Supreme Court has not held that *Derhammer* applies retroactively. Furthermore, the *Derhammer* decision invalidated section 4915 of the Crimes Code, 18 Pa. C.S. §4915 (relating to the crime of failing to comply with registration requirements). Petitioner was not convicted of failing to register; he was convicted of rape and related sexual offenses. He has not been required to register yet because he has been continuously incarcerated. Therefore, *Derhammer* does not apply to Petitioner's case.

Accordingly, as a matter of law, Petitioner's PCRA petition is untimely.

**ORDER**

AND NOW, this \_\_\_\_ day of August 2018, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that the PCRA petition filed on January 22, 2018 is untimely.

As no purpose would be served by conducting any hearing, none will be scheduled and the parties are hereby notified of this Court's intention to dismiss the 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.

By The Court,

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Nancy L. Butts, President Judge

cc: Kenneth Osokow, Esquire (DA)

William Miele, Esquire  
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Work file