



additional PCRA conference, this Court agrees with Attorney Martino that Defendant's PCRA Petition is untimely and that he also failed to raise any meritorious issues.

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

Defendant'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.

Defendant was sentenced on August 24, 2009, and his judgment of sentence became final thirty (30) days later on September 23, 2009. 42 Pa.C.S. § 9545(b)(3). Defendant filed his PCRA Petition on March 28, 2018, which is beyond one (1) year of the date the judgment became final. Therefore, the Defendant 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.

The Defendant did not state a specific reason for the delay in filing his PCRA Petition. The Defendant stated that he believes “there was a decision by the Higher Courts calling into question the convictions and sentences of those convicted and punished for failing to register.” After an in depth look into any relevant case law Defendant may be referring to and Defendant’s documents, both this Court and Attorney Martino found no relevant subsequent case law that would vacate Defendant’s sentence as asked. Therefore, the Court finds that Defendant’s PCRA Petition is untimely.

### ***Conclusion***

Based upon the foregoing, the Court finds no basis upon which to grant Defendant’s PCRA petition. 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 the Defendant’s PCRA Petition. The Defendant 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 15<sup>th</sup> day of August, 2013, it is hereby ORDERED and DIRECTED as follows:

1. Defendant 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 June 27, 2018, is hereby GRANTED and Donald Martino, Esq. may withdraw his appearance in the above captioned matter.
3. **Defendant Jerry Wilcox will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge

xc: DA  
Donald Martino, Esq.  
25 West Third Street, Suite 302  
Williamsport, PA 17701  
Jerry Wilcox #JF-5195  
SCI-Houtzdale  
P.O. Box 1000  
Houtzdale, PA 16698-1000