

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-1827-2016
	:	CR-2015-2013
v.	:	CR-2009-2013
	:	CR-1901-2013
	:	CR-1893-2013
	:	CR-1717-2013
	:	
CHRISTONY PETTIT,	:	
Petitioner	:	PCRA/WITHDRAWAL
	:	GRANTED

OPINION AND ORDER

On November 25, 2019, counsel for Chirstony Pettit (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, this Court agrees with Post Conviction Relief Act (PCRA) counsel and finds that Petitioner has failed to raise any meritorious issues in his PCRA Petition. Therefore the Petition shall be dismissed.

Background

On June 18, 2014, Petitioner pled guilty to a number of felonies and was sentenced to an aggregate term of two and a half years minimum to five years maximum under docket numbers CR-2015-2013, CR-2009-2013, CR-1901-2013, CR-1893-2013, and CR-1717-2013. On April 20, 2017, Petitioner pled guilty to Delivery of a Controlled Substance and sentenced to two years minimum to four years maximum under docket number CR 1827-2016. No subsequent appeals or motions for reconsideration were filed. This charge was a parole violation for Defendant's above mentioned cases. On September 19, 2019, this Court received Petitioner's letter claiming his sentence was illegal, which this Court treated as a PCRA Petition. *See Commonwealth v. Evan*, 866 A.2d 442, 445 (Pa. Super. 2005). As Petitioner's first PCRA Petition, this Court

assigned Donald Martino, Esq. on October 3, 2019. Assigned counsel reviewed Petitioner's Petition and all documents pertaining to Petitioner's guilty plea and sentencing prior to 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 Petitioner's PCRA Petition is untimely pursuant to 42 Pa.C.S. § 9545(b)

Before determining whether a petitioner is substantively entitled to relief, the petitioner must establish jurisdiction. *Commonwealth v. Robinson*, 837 A.2d 1157, 1161 (Pa. 2003). 42 Pa. C.S. § 9545(b) requires that a PCRA petition be filed within one year of the date the judgment in a case becomes final, or else meets one of the timeliness exceptions under 42 Pa. C.S. § 9545(b)(1). The exceptions set forth under 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 must raise it "within one year 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, upon which he/she relies. *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 [one year] 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 18, 2014 and April 20, 2017, and therefore his judgments of sentence became final thirty days later on July 18, 2014 and May 20, 2017, respectively. 42 Pa. C.S. § 9545(b)(3); *see also* Pa. R.A.P. 541. Petitioner filed his PCRA Petition on September 16, 2019,¹ which is well beyond one year from the date his judgments became final. Therefore, Petitioner's claim 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 his PCRA Petition. Petitioner asks this Court to address a sentencing issue, more specifically the amount of time given for his parole violation, but he does not aver any justification for this Court to have jurisdiction over the matter. This Court cannot determine Petitioner's substantive claims because his PCRA Petition is untimely.²

Conclusion

Based upon the foregoing, this 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

¹ Using the date of Defendant's letter.

² Although this Court cannot rule on the substantive issues raised by Petitioner, it should be noted that Attorney Martino's *Turner/Finley* letter and Motion to Withdraw as Counsel inform Petitioner of the administrative steps that can be taken to challenge any issues with the Pennsylvania Board of Probation and Parole.

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 31st day of December, 2019, it is hereby **ORDERED** and **DIRECTED** as follows:

1. Petitioner is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure 907(1), that it is the intention of this 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 July 26, 2019, is hereby **GRANTED** and Donald Martino, Esq. may withdraw his appearance in the above captioned matter.
3. **Petitioner 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.
Christony Pettit LQ 4764
SCI Phoenix
1200 Mokychie Drive
Collegeville, PA 19426