

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-912-2008
v.	:	CR-913-2008
	:	
JAMAR ANDREWS,	:	
Petitioner	:	PCRA/WITHDRAWAL
	:	GRANTED

OPINION AND ORDER

On March 4, 2020, Counsel for Jamar Andrews (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 timely raise any meritorious issues in his PCRA Petition. Therefore the Petition shall be dismissed.

Background

On October 3, 2008, Petitioner entered an open guilty plea. On February 2, 2009, he was sentenced to an aggregate term of twenty-five and one half (25 ½) years minimum to forty-six (46) years maximum. Petitioner subsequently filed a Motion for Reconsideration of Sentence, which was denied on February 20, 2009. He then filed an appeal on March 9, 2009. His appeal was then denied by the Pennsylvania Superior Court on May 19, 2010. The Pennsylvania Supreme Court denied his Petition for Allowance of Appeal on March 23, 2011. On December 2, 2019, Petitioner filed a Petition for Post-Conviction Relief and/or Petition for Writ of Habeas Corpus. This Court then assigned Donald Martino, Esq. to represent Petitioner on December 19, 2019. Assigned counsel reviewed the 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 and therefore this Court does not have jurisdiction to rule on his claims.

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, which are enumerated under 42 Pa. C.S. § 9545(b)(1). Those exceptions 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.

42 Pa. C.S. § 9545(b)(1).

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). If an exception is raised a petitioner is required to “affirmatively plead and prove” the exception, upon which he or 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's judgment of sentence became final ninety (90) days after the Pennsylvania Supreme Court denied his Petition for Allowance of Appeal, June 21, 2011. U.S. Sup. Ct. Rule 13. Therefore Petitioner had until June 21, 2012 to file a timely PCRA Petition. Petitioner filed this PCRA Petition on December 2, 2019, which is well beyond one year of the date his judgment of sentence became final.

Therefore, Petitioner 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 substantive merits of his PCRA Petition.

Petitioner raises two claims. First that he was unaware of his right PCRA relief, which is inaccurate. As outlined in Attorney Martino's Motion to Withdraw as Counsel, Petitioner's appellate counsel sent him a letter dated July 13, 2011 stating Defendant had a finite period of time to file a PCRA Petition and outlining such relief. *See* Petitioner's Motion to Withdraw as Counsel, Exhibit #2. Therefore, Petitioner's first claim has no merit. Second, Petitioner claims because 42 Pa. C.S. § 9712.1 was found to be unconstitutional and he has just become aware of this he should be entitled to relief. 42 Pa. C.S. § 9712.1 was determined to be unconstitutional based on the United States Supreme Court holding in *Alleyne v. United States*, 570 U.S. 99 (2013). *See Commonwealth v. Newman*, 99 A.3d 86, 98 (Pa. Super. 2014). Although it is true Petitioner was sentenced pursuant to 42 Pa. C.S. § 9712.1, it is well established that *Alleyne* does not apply retroactively to untimely PCRA claims. *Commonwealth v. Miller*, 102 A.3d 988, 995 (Pa. Super. 2014); *see also Commonwealth v. Riggle*, 119 A.3d 1058, 1067 (Pa. Super. 2015) ("*Alleyne* is not entitled to retroactive effect in this PCRA setting," when the timely PCRA petitioner's sentence was final prior to the holding in *Alleyne*). Therefore, Petitioner's second contention is similarly meritless.

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 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 25th day of March, 2020, 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 March 4, 2020, 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.
Jamar Andrews #HX9573
SCI Somerset
1590 Walters Mill Road
Somerset, PA 15510-0001