

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0001229-2015  
:   
vs. : CRIMINAL DIVISION  
:   
: Order Treating Petition for  
DERRICK BOONE, : Reconsideration as PCRA Petition  
Defendant : and Notice of Intent to Dismiss

**OPINION and ORDER**

This matter came before the court on the Petition for Reconsideration filed by Derrick Jermaine Boone (hereinafter Petitioner). The court must treat the Petition as Petitioner’s third Post Conviction Relief Act (PCRA) petition.<sup>1</sup>

The PCRA is the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies. 42 Pa. C.S.A. §9542; *Commonwealth v. Descardes*, 136 A.3d 493, 497-98 (Pa. 2016). The PCRA is the exclusive vehicle for obtaining post-conviction relief regardless of the manner in which the pleading or petition is titled. *Commonwealth v. Hromek*, 232 A.3d 881, 884 (Pa. Super. 2020); *Commonwealth v. Taylor*, 65 A.3d 462, 466 (Pa. Super. 2013); *Commonwealth v. Kutnyak*, 781 A.2d 1259, 1261 (Pa. Super. 2001). The court must treat any pleading filed after the judgment of sentence becomes final as a PCRA petition as long as the pleading falls within the purview of the PCRA. *Commonwealth v. Tedford*, 228 A.3d 891, 904 n.10 (Pa. 2020); *Commonwealth v. Torres*, 223 A.3d 715, 716 (Pa. Super. 2019).

Petitioner contends that his counsel was ineffective for failing to request or preserve his right to a Pre-Sentence Investigation (PSI). Petitioner’s ineffective assistance of counsel claim falls within the purview of the PCRA. 42 Pa. C.S.A. §9543(2)(ii).

Therefore, the court must treat the Petition as Petitioner's third PCRA petition.

The court intends to dismiss this third PCRA petition without holding an evidentiary hearing because the petition is untimely and Petitioner waived this claim of ineffective assistance of counsel by failing to assert it in his first PCRA petition.

A petitioner must file any PCRA petition, including a second or subsequent petition, within one year of the date the judgment becomes final. 42 Pa. C.S.A. §9545(b)(1). 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." 42 Pa. C.S.A. §9545(b)(3). Otherwise, the petitioner must plead and prove one of the following three exceptions:

- (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 petitioner who attempts to invoke these exceptions must do so "within one year of the date the claim could have been presented." 42 Pa. C.S.A. §9545(b)(2). The PCRA time limitations are mandatory and jurisdictional in nature. *Commonwealth v. Natividad*, 650 Pa. 328, 200 A.3d 11, 25 (2019). No court may disregard these time limits in order to reach the merits of claims raised in an untimely PCRA petition. *Commonwealth v. Lambert*, 584 Pa.

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<sup>1</sup> Petitioner previously filed two other PCRA petitions.

461, 884 A.2d 848, 851 (2005).

Petitioner entered his guilty plea and was sentenced on November 28, 2017. On December 12, 2017, the court issued an amended sentencing order that clarified the period for which Petitioner would receive credit for time served. Petitioner did not file an appeal from the original sentencing order or the amended sentencing order. Therefore, his judgment of sentence became final on January 11, 2018. Petitioner did not plead any of the three statutory exceptions to the one-year time bar. Therefore, the court lacks jurisdiction to hear Petitioner's claim.

Furthermore, Petitioner waived his claim by failing to assert it in his first PCRA petition or his second PCRA petition. 42 Pa.C.S.A. §9544(b) (“For purposes of this subchapter, an issue is waived if the petitioner could have raised it but failed to do so...in a prior state postconviction proceeding.”).

### **ORDER**

AND NOW, this \_\_\_ day of December 2020, the parties are hereby notified of this court's intention to dismiss the Petition without holding an evidentiary hearing. Petitioner Derrick Boone may respond to this proposed dismissal within twenty (20) days. His response must establish that his Petition is timely and that he has not waived his claim(s). If the court does not receive a response within that time or the response does not establish that his Petition is timely and his claim has not been waived, the court will enter an order dismissing the petition.

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Ryan Gardner, Esquire (DA)  
Derrick Boone, #NF-3694  
SCI Houtzdale, PO Box 1000, 209 Institution Drive, Houtzdale PA 16698-1000  
Work file