

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-563-2009**
 v. :
 :
 :
 MARCUS DEGARMO, :
 Petitioner : **PCRA/WITHDRAWAL**
 : **GRANTED**

OPINION AND ORDER

On January 7, 2020, Counsel for Marcus DeGarmo (Petitioner) filed a Petition to Withdraw from Representation of Post-Conviction Collateral Relief 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 August 18, 2009, Petitioner pled guilty and was sentenced on one count of Aggravated Assault to five (5) years minimum to ten (10) years maximum with a ten (10) year consecutive probation. No subsequent appeals or motions for reconsideration were filed. On October 21, 2019, Petitioner filed a Motion for Sentence Reconsideration requesting this Court to vacate his sentence because of a letter he received from Lycoming County Children and Youth Services determining the report of child abuse against him was unfounded.¹ This Court then assigned Trisha Hoover-Jasper, Esq. to represent Petitioner on October 29, 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 to Petitioner and filing her Petition

¹ Unfounded as defined in the letter is defined as: “(1) the incident did not occur, (2) the injury was not of a serious nature, or (3) substantial evidence was not found.” See Petitioner’s Motion for Sentence Reconsideration 10/21/19, at 2.

to Withdraw from Representation of Post-Conviction Collateral Relief. After an independent review of the record, this Court agrees with Attorney Hoover-Jasper 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, 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 was sentenced on August 18, 2009, and therefore his judgment of sentence became final thirty days later on September 18, 2009. 42 Pa. C.S. § 9545(b)(3); *see also* Pa. R.A.P. 541. Petitioner filed this PCRA Petition on October 21, 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 asks this Court to address a sentencing issue, but he does not aver any justification for this Court to have jurisdiction over the matter. The only potential applicable exception is 42 Pa. C.S. § 9545(b)(1)(ii) or a fact that was unknown to Petitioner based on the letter received from Lycoming County Children and Youth Services. This exception would have had to have been raised within one year of Petitioner's discovery. *See* 42 Pa. C.S. § 9545(b)(2). Petitioner admits in his filing that the letter was received on May 19, 2016, and therefore Petitioner had until May 19, 2017 to raise his claim. Since Petitioner did not, his PCRA Petition is untimely and the Court cannot address the substantive issues presented by Petitioner.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

² Even if this Court were to address the substantive portion of Petitioner's claim, it has no merit. This Court is not beholden to determinations made by Lycoming County Children and Youth Services and Petitioner admitted to the allegations, which form the underlying charges on the record during his oral guilty plea colloquy. *See* N.T. 8/18/09, at 3-6.

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 4th day of February, 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 January 7, 2020, is hereby **GRANTED** and Trisha Hoover-Jasper, Esq. may withdraw her 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
Trisha Hoover-Jasper, Esq.
Marcus Degarmo
LCP