

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH</b>	<b>: No. CR-151-2011</b>
	<b>:</b>
<b>vs.</b>	<b>: CRIMINAL DIVISION</b>
	<b>:</b>
<b>ANTHONY LATTIMORE,</b>	<b>: Notice of Intent to Dismiss PCRA</b>
<b>Defendant</b>	<b>: Without Holding An Evidentiary Hearing</b>
	<b>: and Order Granting Counsel's Motion</b>
	<b>: to Withdraw</b>

**OPINION AND ORDER**

This matter came before the court on the Post Conviction Relief Act (PCRA) petition filed by Anthony Lattimore.

By way of background, on July 12, 2010, Lattimore was charged with various drug-related offenses arising out of incidents that occurred on March 5, 2010 and March 6, 2010.

On July 24, 2011, following a jury trial, Lattimore was found guilty of one count of criminal conspiracy to deliver a controlled substance, two counts of criminal use of a communication facility, one count of possession with intent to deliver a controlled substance and one count of possession of a controlled substance.

On August 31, 2011, the court sentenced Lattimore to an aggregate term of two and one-half (2 ½) to five (5) years' incarceration in a state correctional institution. The court found that Lattimore was eligible for the State Motivational Boot Camp. Lattimore was also eligible for a Recidivism Risk Reduction Incentive (RRRI) with his RRRI minimum being twenty-two and one-half (22 ½) months. Lattimore was given credit for time served from December 12, 2010 until August 20, 2011. Lattimore did not file a post sentence motion or an appeal.

On July 29, 2019, Lattimore filed a pro se PCRA petition. The court appointed counsel to represent Lattimore and directed counsel to file either an amended PCRA petition or a *Turner/Finley*<sup>1</sup> no merit letter.

On December 3, 2019, PCRA counsel filed a motion to withdraw which included a no merit letter.

Following an independent review of the record, the court finds that Lattimore's PCRA petition is untimely and he is not entitled to relief as a matter of law.

To be considered timely, a PCRA petition must be filed within one year of the date the judgment of sentence becomes final or the petitioner must plead and prove facts to support one of the three limited exceptions to the one year time limit.

A judgment of sentence "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).

The three exceptions are:

(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

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<sup>1</sup> *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)(en banc).

held by that court to apply retroactively.

42 Pa.C.S.A. §9545(b)(1). A petition invoking one of these exceptions must be filed within one year of the date the claim could first have been presented if the claim arose on or after December 24, 2017. 42 Pa. C.S.A. §9545(b)(2). If the claim arose prior to December 24, 2017, the petition invoking the exception must be filed within sixty days of the date the claim could first have been presented. *Commonwealth v. Hernandez*, 79 A.3d 649, 651 (Pa. Super. 2013).

The PCRA's time limits are mandatory and jurisdictional in nature such that when a petition is not filed in a timely manner, the trial court has no power to address the substantive merits of a petitioner's PCRA claims. *Commonwealth v. Gamboa-Taylor*, 753 A.2d 780, 783 (Pa. 2000).

Lattimore was sentenced on August 30, 2011. Neither Lattimore nor the Commonwealth filed a post sentence motion or a motion to modify sentence. Therefore, Lattimore had thirty (30) days from August 30, 2011 within which to file an appeal. Pa.R.Crim.P. 720(A)(3). Lattimore did not file an appeal. Therefore, his judgment of sentence became final on September 29, 2011.

To be considered timely, Lattimore's PCRA petition had to be filed on or before October 1, 2012<sup>2</sup> or Lattimore had to allege facts in his petition to support one of the three exceptions. Lattimore's PCRA petition was not filed until July 29, 2019, and although he checked a box for the "newly recognized constitutional right" exception, he did not allege any facts to support this

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<sup>2</sup> As September 29, 2012 fell on a Saturday, his one year time limit would expire on Monday, October 1, 2012. 1 Pa.C.S.A. §1908.

exception. In fact, the only allegation that Lattimore makes in his petition is: “I tend to find inconsistency with my lawyer at trial and I tend to show my case and all things related to my charges to be a problem to my freedom.”

Lattimore’s petition is patently untimely. Therefore, the court lacks jurisdiction to hold an evidentiary hearing or to grant Lattimore any relief in this case.

In the alternative, Lattimore is not eligible for relief because he has served his sentence. As Lattimore was not sentenced to death and is not seeking relief based on DNA evidence obtained under section 9543.1(d)(relating to postconviction DNA testing), Lattimore must plead and prove by a preponderance of the evidence that he is currently serving a sentence of imprisonment, probation or parole for the crimes in this case or he is serving a sentence which must expire before he may commence serving the sentence imposed for the crimes in this case. 42 Pa.C.S.A. §9543(a)(1). Notably, Lattimore did not check any of the boxes on his form PCRA to indicate that he was serving or waiting to serve the sentence imposed. There also is nothing in Lattimore’s petition or the court file to indicate that Lattimore had any parole violations which would have resulted in any adjustment to or extension of his maximum date such that he is still incarcerated or on parole in this case. As it appears that Lattimore finished serving his sentence in this case on or about December 12, 2015, Lattimore would not be eligible for relief even if his PCRA petition had been timely filed.

**ORDER**

AND NOW, this \_\_\_ day of January 2020, upon review of the record and

pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the parties are hereby notified of the court's intention to dismiss Lattimore's PCRA petition without holding an evidentiary hearing. Lattimore 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.

The court also grants PCRA counsel's motion to withdraw. Lattimore may represent himself or hire private counsel, but the court will not appoint counsel to represent Lattimore further in this matter unless or until he alleges facts to show that his petition is timely and he is eligible for relief.

By The Court,

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Marc F. Lovecchio, Judge

cc: District Attorney  
Trisha Jasper, Esquire  
Anthony Lattimore, c/o Lycoming County Prison  
Gary Weber, Esquire (Lycoming Reporter)  
Work file