

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-2044-2014
:
vs. : CRIMINAL DIVISION
:
BEELEY MEAD, : Notice of Intent to Dismiss PCRA and
: Order Granting Counsel's Motion to
Defendant : Withdraw

OPINION AND ORDER

Before the court is Petitioner's Post Conviction Relief Act (PCRA) petition. By way of background, on July 17, 2017, Petitioner pleaded guilty to Count 1, Criminal Solicitation to Commit Aggravated Indecent Assault of a Child under 13 Years of Age in exchange for a negotiated sentence with a minimum of five (5) years and a maximum of twenty (20) years. On January 5, 2018, the court sentenced Petitioner in accordance with the negotiated plea agreement. Petitioner did not file a post sentence motion or an appeal.

On February 21, 2020, Petitioner filed his PCRA petition. Petitioner alleges that: (1) plea counsel was ineffective for failing to request a competency examination of Petitioner due to his adjustment disorder, motor vehicle accident and medical problems; (2) counsel was ineffective for failing to obtain leniency or an adjustment of his sentence due to his and his girlfriend's cooperation against James Holmes; and (3) his guilty plea was not knowingly, intelligently and voluntarily entered because of his medical issues (adjustment disorder).

The court appointed counsel to represent Petitioner and directed PCRA counsel to file either an amended PCRA petition or *Turner/Finley*¹ no merit letter. On

¹ *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super.

August 6, 2020, PCRA counsel filed a Motion to Withdraw and a No Merit Brief. The court held a conference with counsel for both parties on August 26, 2020.

The court has conducted an independent review of the record. The court finds that it lacks jurisdiction to hold an evidentiary hearing or to grant Petitioner any relief as the petition is untimely.

Section 9545(b)(1) of the Judicial Code, which contains the time limits for filing a PCRA petition, states:

(b) Time for filing petition

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that:

(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.A. §9545(b)(1). A judgment becomes final at the conclusion of direct review or the expiration of time for seeking the review. 42 Pa. C.S.A. §9543(b)(3).

The court sentenced Petitioner on January 5, 2018. Petitioner had 30 days within which to file a direct appeal, but he did not file one. Therefore, Petitioner's judgment

became final on February 5, 2018. To be timely, Petitioner had to file his PCRA petition on or before February 5, 2019 or allege facts to support one of the three statutory exceptions. Petitioner filed his PCRA petition on February 21, 2020, more than a year late. Although Petitioner checked the boxes to attempt to invoke all three statutory exceptions, he failed to allege sufficient facts or to include appropriate witness certifications to establish them.

The basis for all of the exceptions appears to be an assertion that the court, the district attorney and his counsel failed to do any competency test on him and he failed to receive an adjustment to his sentence based on either his or his girlfriend's cooperation against another individual.

A defendant is presumed competent and it is his burden to show otherwise. *Commonwealth v. Stevenson*, 64 A.3d 715, 720 (Pa. Super. 2013). Placing the burden on the defendant to prove incompetency does not offend due process. *Medina v. California*, 505 U.S. 437, 112 S.Ct. 2572, 2577-78 (1992). In order to rebut the presumption of competence, a defendant must prove, by a preponderance of the evidence, that he was either unable to understand the nature of the proceedings against him or to participate in his own defense. *Commonwealth v. Santiago*, 855 A.2d 682, 694 (Pa. 2004).

There is nothing in the record to suggest that either the court or the district attorney were aware of any issues with Petitioner's competency. Petitioner allegedly asked his attorney for a competency test, and his attorney allegedly told him that if he wasn't suicidal, he didn't need one. Petitioner also asserts that if his counsel had conducted a medical background check, it would have shown that he had been diagnosed with adjustment disorder. The term "government official," however, does not include Petitioner's attorney.

42 Pa.C.S.A. §9542(b)(4). Petitioner also has not submitted a witness certification from any medical professional to show that Petitioner was suffering from an adjustment disorder at the time he entered his guilty plea or sentence or that an adjustment disorder would render him unable to understand the proceedings or assist in his defense. In fact, Petitioner asking his counsel for a competency test would tend to show that he had an ability to participate or assist in his own defense. Furthermore, Petitioner was allegedly diagnosed with his adjustment disorder in 2011, several years before he was charged or pleaded guilty. Petitioner has not alleged any facts to show why he could not have asserted this claim on or before February 5, 2019.

Similarly, Petitioner should have been aware at the time of his sentencing hearing that he did not receive an adjustment to his sentence based on his girlfriend's cooperation in another case. Again, Petitioner has not alleged any facts to show why he could not have asserted this claim on or before February 5, 2019.

Petitioner states in his motion to amend filed on September 11, 2020 that he left for SCI - Camp Hill on January 22, 2018, arrived at SCI - Benner on April 10, 2018 and did not have access to a law library for approximately 78 days while he was at Camp Hill. These allegations do not explain why Petitioner could not have filed his PCRA petition any time after April 10, 2018 and on or before February 5, 2019.

With the exception of the information regarding his lack of access to a law library while he was at Camp Hill, Petitioner's filings, including his response to PCRA counsel's motion to withdraw and *Turner/Finley* letter focus on the underlying merits of his claims. The court cannot review the merits of his claims unless or until Petitioner shows that

his petition is timely. As it appears that Petitioner's petition is patently untimely, the court will give Petitioner notice of the court's intent to dismiss his petition without holding an evidentiary hearing. The court will give Petitioner 20 days to respond to the notice.

Petitioner's response to the court's notice should focus on when he discovered information about his medical diagnoses and the lack of adjustment to his sentence, why he could not have discovered that information on or before February 5, 2019, and why he could not have filed his PCRA petition on any of his claims on or before February 5, 2019.

The court also intends to deny Petitioner's request for discovery. Discovery is not permitted in PCRA proceedings, except upon leave of court after a showing of exceptional circumstances. Petitioner has not made a showing of exceptional circumstances. He has not stated how the requested information would establish that his PCRA petition is timely. Petitioner must first establish that his PCRA petition is timely before the court will review the merits of his claims or consider a request for discovery that relates to the merits of his claims.

ORDER

AND NOW, this 23rd day of November 2020, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, no purpose would be served by conducting a hearing in this matter because it appears that Petitioner's PCRA petition is untimely. The court lacks jurisdiction to hold an evidentiary hearing or grant relief on an untimely petition. The court notifies the parties of its intention to dismiss the petition. Petitioner may respond to this proposed dismissal within twenty (20) days. If the court does not receive a response from Petitioner within that time, the court will enter an

order dismissing the petition.

The court grants PCRA counsel's motion to withdraw. Petitioner may hire private counsel or represent himself, but the court will not appoint counsel to represent him unless or until he alleges facts that would show that his petition is timely or falls within one of the statutory exceptions.

By The Court,

Marc F. Lovecchio, Judge

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