

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-14-CR-0000563-2017
	:
vs.	: CRIMINAL DIVISION
	:
	:
RASHEEN STURGIS,	: Notice of Intent to Dismiss PCRA
Defendant	: Without Holding An Evidentiary Hearing

OPINION AND ORDER

Before the court is the Post Conviction Relief Act (PCRA) petition filed by Rasheen Sturgis (hereinafter “Petitioner”).

By way of background, the Commonwealth charged Petitioner with Possession With Intent to Deliver a Controlled Substance (PWID), Possession of a Controlled Substance (PCS), Possession of Drug Paraphernalia (PDP), and Criminal Use of Communication Facility. The controlled substance was Fentanyl.

Petitioner waived his right to a jury trial. On January 29, 2019, following a bench trial, the court found Petitioner guilty of PWID, PCS, and PDP. The court acquitted Petitioner of Criminal Use of a Communication Facility.

On April 2, 2019, the court sentenced Petitioner to 33 months to 15 years’ incarceration in a state correctional institution. The court gave Petitioner credit for time served from March 5, 2017 to April 1, 2019. The court found that Petitioner was not eligible for the State Motivational Boot Camp or a Recidivism Risk Reduction Incentive (RRRI). Petitioner did not file a post sentence motion or an appeal.

On or about July 10, 2020, Petitioner filed a pro se PCRA petition.¹ In his

¹ Although the clerk of courts time-stamped and filed the petition on July 10, 2020, it appears from the postmark

petition, Petitioner alleged that he is eligible for relief due to the following: (1) ineffective assistance of counsel which undermined the truth-determining process; (2) the improper obstruction of government officials of Petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court; and (3) the unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced. Specifically, Petitioner alleged that trial counsel failed to: file a motion on time; file an appeal on time; suppress an illegal search; and impeach Officer Joshua Bell's statement pertaining to the 9-1-1 call that was made two days before a vehicle description was given with evidence from a rental agreement showing the rental occurred two days after the 9-1-1 call. Petitioner did not specify the newly available exculpatory evidence, and he did not assert any of the statutory exceptions to the one-year filing requirement.

The court appointed PCRA counsel to represent Petitioner and directed PCRA counsel to file either an amended PCRA petition or a *Turner/Finley*² no merit letter.

On September 9, 2020, PCRA counsel filed a PCRA petition in which she alleged that Petitioner could not file his PCRA petition within one year of the date his judgment of sentence became final "due to the General Libraries being closed at the State Correctional Facilities." PCRA counsel attached (as Exhibit A) a letter from the Acting Chief Counsel of the Department of Corrections (DOC) regarding the closure. PCRA counsel further alleged that Petitioner believed the letter meant he could not have access to

on the mailing envelope that Petitioner mailed his PCRA petition to his trial counsel on July 7, 2020. It is unclear when Petitioner provided his petition to prison officials for mailing.

² *Commonwealth v. Turner*, 554 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)(en banc).

the law library to file his petition and therefore, he met the first exception. Substantively, the only claim PCRA counsel asserted in the petition was ineffective assistance of counsel for failing to timely file a motion to suppress evidence and for failing to raise in the motion nunc pro tunc that the investigatory detention violated Petitioner's rights.

After a review of the record, the court finds that Petitioner did not timely file his PCRA petition. Therefore, the court lacks jurisdiction to hold an evidentiary hearing or to grant any relief.

A petitioner must file a PCRA petition within one year of the date the judgment of sentence becomes final, unless the petitioner pleads and proves that he is entitled to one of three statutory exceptions to this general rule, and that the petition was filed within one year of the date the claim could have been presented. 42 Pa. C.S.A. §9545(b)(1), (2); *Commonwealth v. Natividad*, 650 Pa. 328, 200 A.3d 11, 25 (2019). These time limits are mandatory and jurisdictional in nature. *Natividad, id.* 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. 461, 884 A.2d 848, 851 (2005). 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).

The court sentenced Petitioner on April 2, 2019. Petitioner did not file a post

sentence motion. Therefore, Petitioner had 30 days, or until May 2, 2019, to file a direct appeal. Petitioner did not file an appeal. Therefore, his judgment of sentence became final on May 2, 2019. Under normal circumstances, Petitioner would have had to file his PCRA petition on or before May 4, 2020 for it to be considered timely.³ Due to the COVID-19 pandemic, however, the Pennsylvania Supreme Court extended filing dates to June 1, 2020. Nevertheless, Petitioner's PCRA petition is still facially untimely, because he did not file it until on or about July 7, 2020. See footnote 1.

In his counseled PCRA petition, Petitioner asserts that his petition meets the first statutory exception, i.e., his 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, 42 Pa. C.S.A. §9545(b)(1)(i). Petitioner asserts that, based on the letter he received from the Acting General Counsel of the Department of Corrections (DOC), he could not have access to the law library to file his petition. Unfortunately, the court cannot agree.

Petitioner misconstrues the letter. The letter, which is dated March 22, 2020, states:

Given the need to limit the amount of physical interaction between people because of the emergency situation with the COVID-19 virus, we must temporarily close the General Libraries. If you desire to retrieve or return any items to the General Library, your institutional staff will develop a plan for you to be able to do that without being physically present at the General Library.

For Law Library, services should continue as needed. We will prioritize those cases concerning criminal matters like Post Conviction Relief Act (PCRA) matters or Writs of Habeas Corpus. If you have civil cases, nearly all courts have been granting stays of at least thirty days. If

³ As May 2, 2020 was a Saturday, Petitioner's time period would be extended to the next business day, i.e., May 4, 2020. See 1 Pa. C.S.A. §1908.

you have civil case deadlines and cannot meet those deadlines because of this situation, then your cases will not be dismissed and late filings will not be rejected.

PCRA petition, Exhibit A.

Clearly, the letter states Law Library services would continue and criminal matters like PCRA matters would be a priority for such services. Although the General Library was closed, the Law Library was not. Furthermore, an individual like Petitioner who wished to use the law library for a PCRA matter would receive access to law library services over other individuals who had civil cases or other noncriminal matters.

Petitioner also has not alleged why he even needed to use the law library to file his PCRA in this case. Greta Davis, an assistant public defender, initially represented Petitioner. When Ms. Davis left the Public Defender's Office, another assistant public defender, Kirsten Gardner, entered her appearance on October 19, 2017 and began representing Petitioner. On May 1, 2018, Ms. Gardner filed a motion to suppress nunc pro tunc. The court held a hearing on May 17, 2018 on the timeliness of the motion. At that hearing, Ms. Gardner argued that Petitioner was adamant about filing the nunc pro tunc motion, regardless of the late nature of the submission. In the interests of preserving the attorney-client relationship, Ms. Gardner filed the motion and asked the court to hear it in the interests of justice. The court denied that request. The motion was patently untimely, and the merits of the motion were not readily apparent to the court. Opinion and Order, 6/12/2018. Accordingly, it is clear as of May of 2018 that Petitioner believed the police had violated his rights and Petitioner was aware that his counsel had failed to file a timely motion to suppress evidence. Thus, he was aware of his claim of ineffective assistance of counsel long before the

COVID-19 pandemic arose. Moreover, Petitioner's pro se PCRA petition does not cite any legal authorities.

ORDER

AND NOW, this ___ day of December 2020, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court notifies the parties of its intention to dismiss the PCRA petition without holding an evidentiary hearing. Petitioner may respond to this proposed dismissal within twenty (20) days. Petitioner's response should focus on any facts and circumstances that might show that his PCRA petition was timely. Some examples of facts and circumstances that might be relevant are the date when he gave his petition to prison officials for mailing; any circumstances relating to his ability or inability to read or understand the letter about law library services such as learning disabilities, mental health issues, or dropping out of school; any explanation of why he needed to use law library services to prepare or file his PCRA petition; and the attempts, if any, that he made to use law library services and if those attempts were successful or refused.

If the court does not receive a response from Petitioner within twenty (20) days, the court will enter an order dismissing the petition.

By The Court,

Marc F. Lovecchio, Judge

cc: Ryan Gardner, Esquire (DA)
Trisha Jasper, Esq.
Rasheen Sturgis, #NU4917
SCI Camp Hill, PO Box 8837, 2500 Lisburn Rd, Camp Hill PA 17001
Work file