

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-1574-2014
	:	CR-2027-2014
	:	
v.	:	
	:	CRIMINAL DIVISION
JASON VINSON,	:	
Petitioner	:	PCRA

OPINION AND ORDER

On November 6, 2019, Counsel for Jason Vinson (Petitioner) filed a Second Amended Petition Post Conviction Relief, on which an evidentiary hearing was held on January 7, 2020. After an independent review of the entire record, this Court finds Petitioner has failed to timely raise any meritorious issues in his PCRA Petition. As the Petition is untimely, this Court does not have jurisdiction to determine the substantive merits of Petitioner’s claims and therefore the Petition is dismissed.

Procedural History and Background¹

On March 3, 2017 under CR-2027-2014, Petitioner pled guilty to Burglary,² Conspiracy to Commit Burglary,³ Criminal Trespass,⁴ Theft by Unlawful Taking,⁵ and Receiving Stolen Property,⁶ and pled no contest to Burglary,⁷ Criminal Trespass,⁸ two counts of Receiving Stolen Property,⁹ and two counts of Theft by Unlawful Taking.¹⁰ Then on April 17, 2017 under CR-

¹ As the procedural history of the case is of the upmost importance to this Court’s decision, it has been laid out in detail.

² 18 Pa. C.S. § 3502(a)(2).

³ 18 Pa. C.S. § 903.

⁴ 18 Pa. C.S. § 3503(a)(1)(i).

⁵ 18 Pa. C.S. § 3921(a).

⁶ 18 Pa. C.S. § 3925(a).

⁷ 18 Pa. C.S. § 3502(a)(2).

⁸ 18 Pa. C.S. § 3503(a)(1)(i).

⁹ 18 Pa. C.S. § 3925(a).

¹⁰ 18 Pa. C.S. § 3921(a).

1574-2014, Petitioner pled guilty to Theft from a Motor Vehicle.¹¹ Petitioner was sentenced on November 21, 2017 to ten (10) years to twenty (20) years for one count of Burglary, one and one half (1 ½) years to five (5) years on one count of Receiving Stolen Property, and one and one half (1 ½) years to five (5) years on one count of Theft by Unlawful Taking, all counts to run consecutive to one another. All other charges either merged for purposes of sentencing or were ordered to run concurrently.

On November 30, 2017, Petitioner filed *pro se* Post-Sentence Motions while represented by counsel. Petitioner's current attorney then filed his appearance on December 28, 2017 and filed Post-Sentence Motions on the following day. This Court scheduled a hearing on Petitioner's Post-Sentence Motions filed by counsel to determine whether Petitioner's right to file Post-Sentence Motions should be reinstated *nunc pro tunc* and to determine change of counsel.¹² At that hearing on March 9, 2018, this Court allowed plea counsel to withdraw his appearance and allowed current counsel to enter his appearance. Order 3/15/18 (labeled Withdraw of Counsel). On that same day, the Court denied Petitioner's request to have his Post-Sentence Motion rights reinstated *nunc pro tunc*. Order 3/15/18 (labeled Nunc Pro Tunc). In that Order, this Court stated: "This does not preclude [Petitioner's counsel] from entering the case and filing a Post Conviction Relief Act Petition as the Court believes that we would be well within the timely filing time for such a motion." *Id.* Despite representation, Petitioner filed a *pro se* Notice of Appeal on April 6, 2018. An Order directing Petitioner to file a concise statement of matters complained of on appeal was then filed on April 23, 2018. After receiving no such statement, this Court rendered an Opinion in compliance with Pa. R.A.P. 1925(a) on

¹¹ 18 Pa. C.S. § 3924(a).

¹² Petitioner's counsel for his guilty plea and sentencing and had not filed a Motion to Withdraw as counsel.

August 14, 2018. The Pennsylvania Superior Court subsequently quashed Petitioner's appeal on September 28, 2018 as untimely. *See Commonwealth v. Vinson*, 611 MDA 2018 (Pa. Super. 2018) (*Per Curiam* Order).

Petitioner filed, through counsel, his first PCRA petition on March 7, 2019. An initial conference was held on May 9, 2019. At that conference, parties discussed potential shortcomings of the PCRA Petition and Petitioner's counsel agreed to submit an Amended PCRA Petition by June 10, 2019. *See* Order 5/9/19. After a number of extensions, Petitioner's counsel filed an Amended PCRA on August 30, 2019 and another conference was held on October 7, 2019. Petitioner then filed a Second Amended Petition on November 6, 2019, which this Court granted an evidentiary hearing on November 15, 2019. That hearing was held on January 7, 2020.¹³

Discussion

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

¹³ Although an evidentiary hearing was held, after further review of the record this Court finds the testimony presented is irrelevant to the Court's holding.

(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.

In *Commonwealth v. Brown*, the PCRA petitioner’s counsel made oral Post-Sentence Motions, but failed to submit written Post-Sentence Motions pursuant to Pa. R. Crim. P. 720. 943 A.2d 264, 265 (Pa. 2008). Eleven months later the trial court dismissed the petitioner’s oral Post-Sentence Motions, and the petitioner filed an appeal six days later. *Id.* The Pennsylvania Superior Court quashed the appeal as untimely, because under Pa. R. Crim. P. 720 only a timely “written post-sentence motion” will toll the appeal period. *Id.* The Pennsylvania Supreme Court subsequently denied the petitioner’s Petition for Allowance of Appeal. *Id.* Within two months, the petitioner filed a *pro se* PCRA Petition seeking reinstatement of his appellate rights. *Id.* In reviewing the petitioner’s claims, the Pennsylvania Supreme Court held that “in circumstances in which no timely direct appeal is filed relative to a judgment of sentence, and direct review is therefore unavailable, the one-year period allowed for the filing of a post-conviction petition commences upon the actual expiration of the time period allowed

for seeking direct review.” *Id.* at 268. In absence of timely written post-sentence motions, the petitioner’s judgment of sentence became final thirty days after the sentence was rendered. *Id.* at 265-66.

Petitioner’s case is almost indistinguishable from the facts presented in *Brown*. Similar to *Brown*, Petitioner failed to timely file his Post-Sentence Motions, which meant his notice of appeal had to “be filed within 30 days of imposition of sentence.” Pa. R. Crim. P. 720(a)(3). For this reason, as in *Brown*, Petitioner’s appeal was quashed by the Pennsylvania Superior Court. Therefore, Petitioner’s judgment of sentence became final thirty days after his sentence was imposed, December 21, 2017. Petitioner had until December 21, 2018 to file a timely PCRA petition. As Petitioner’s PCRA petition was not filed until March 7, 2019, his Petition is untimely. The Court will also note Petitioner and counsel were made aware of Petitioner’s right to seek PCRA relief in its Order entered on March 15, 2018, denying Petitioner’s request to reinstate his post-sentence motion rights *nunc pro tunc*. Based on the holding in *Brown*, this Court does not have jurisdiction to evaluate the substantive claims raised in Petitioner’s PCRA Petition.¹⁴

¹⁴ Timeliness of Petitioner’s PCRA petition was not raised by either party, and this Court was not aware of the issue until further review of the record. Regardless, any court may raise the issue on its own at any time as the timeliness of a PCRA petition is jurisdictional in nature and goes to whether a court may review substantive claims. *See Commonwealth v. Gandy*, 38 A.3d 899, 902 (Pa. Super. 2012) (“Even where neither party nor the PCRA court have addressed the matter, it is well-settled that [an appellate court] may raise it *sua sponte* since a question of timeliness implicates the jurisdiction of our Court [as well].”).

ORDER

AND NOW, this 27th day of March 2020, upon review of the record and after an evidentiary hearing, Petitioner's Second Amended PCRA Petition is hereby **DISMISSED**. Petitioner is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the county courthouse, with notice to the trial judge, the court reporter and the prosecutor. The Notice of Appeal shall be in the form and contents as set forth in Rule 904 of the Rules of Appellate Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa. R.A.P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, Petitioner may lose forever his right to raise these issues.

By The Court,

Nancy L. Butts, President Judge

CC: DA (LF)
Michael Morrone, Esq.
Jason Vinson #NF3713
SCI Somerset
1590 Walters Mill Road
Somerset, PA 15510-0001

NLB/kp