

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-732-2016**
 v. :
 :
 :
 DAVID DAUBERT, :
 Petitioner : **PCRA/WITHDRAWAL**
 : **GRANTED**

OPINION AND ORDER

On August 9, 2021, counsel for David Daubert (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 May 2, 2016, Petitioner was charged with Rape of a Child, Statutory Sexual Assault, Corruption of Minors, Indecent Assault, and Harassment. On May 23rd, Petitioner pled guilty to Indecent Assault and was sentenced by President Judge Nancy L. Butts in accordance with his plea agreement. Petitioner was sentenced to serve an indeterminate period of time, the minimum of which shall be seven (7) months and the maximum of which shall be twenty-three (23) months with a consecutive thirty (30) month probation period. No subsequent appeals or motions for reconsideration were filed. On November 9, 2017, Petitioner appeared before Judge Marc F. Lovecchio for a parole/probation violation hearing, at which time Judge Lovecchio continued Petitioner’s parole sentence, but revoked the probationary sentence. Judge Lovecchio resentenced Petitioner to an indeterminate term with the minimum of one (1) year and a maximum of three (3) years in a state correctional facility. This sentence was to run consecutive

to any other sentence Petitioner was serving. Then, on June 9, 2021, Petitioner filed a *pro se* PCRA Petition, asserting ineffective assistance of counsel and unlawful inducement of his guilty plea. This Court then assigned Trisha Hoover-Jasper, Esq. to represent Petitioner on June 17, 2021. Assigned counsel reviewed the Petition as well as state court records and Petitioner's case file prior to sending Petitioner a *Turner/Finley* letter to Petitioner and filing her Petition 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 23, 2016, and resentenced on his probation sentence on November 9, 2017. No appeals from his resentencing were filed. His judgment of sentence then became final thirty days later on December 9, 2017. 42 Pa. C.S. § 9545(b)(3); *see also* Pa. R.A.P. 541. Petitioner filed this PCRA Petition on June 9, 2021, 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 failed to assert any of the exceptions to the timely filing requirement that would sufficiently explain his four-year delay in filing his PCRA petition. Since Petitioner did not assert an exception, his PCRA Petitioner is untimely and the Court cannot address the substantive issues presented by Petitioner. Additionally, Petitioner’s parole sentence expired on March 12, 2018 and his sentence maxed out on March 12, 2021. To be eligible for relief under the PCRA, the petitioner must prove “[t]hat the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted: currently serving a sentence of imprisonment, probation or parole for the crime. 42 Pa.C.S. § 9543(a). At the time he filed his PCRA petition, Petitioner was

no longer serving a sentence as required. Therefore, Petitioner is ineligible for relief and his petition is untimely.

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 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 10th day of September, 2021, 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 August 6, 2021, 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.
David Daubert
Columbia County Prison
721 Iron Street
Bloomsburg, PA 17815