

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	CR-2027-1997
	:	
HILTON MINCY,	:	
Petitioner	:	CRIMINAL DIVISION
	:	

ADDITIONAL OPINION AND ORDER

This Court issued an order notifying Petitioner of the Court’s intent to dismiss his Sixth Post Conviction Relief Act (PCRA) petition on October 5, 2021. Pursuant to that order, Petitioner had twenty (20) days to respond to the Court, otherwise the petition would be dismissed. On October 29, 2021, this Court dismissed Petitioner’s PCRA believing Petitioner failed to respond. Upon this Court’s discovery of Petitioner’s timely response, the Court vacated the dismissal order on November 22, 2021. This Additional Opinion and Order is in response to the Petitioner’s timely supplemental PCRA petition. Petitioner’s supplemental PCRA asserts a similar issue as Petitioner asserted in his initial PCRA petition for which the Court already gave notice as well as additional ineffective assistance of counsel claims generally alluded to in the current PCRA before the Court.

The Court must once more address the timeliness of Petitioner’s petition before addressing the merits. For a PCRA Petition to be considered timely it must satisfy the following requirements:

- (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. § 9545(b)(1) (emphasis added).

In Petitioner's response to this Court's intent to dismiss, Petitioner relies on the newly discovered facts exception in Section 9545(b)(1)(ii) to justify the delay in the filing of his most recent petition in front of the Court. Petitioner repeats his argument that the victim's testimony differed at trial than what the original testimony was at the preliminary hearing. Petitioner believes that facts pertaining to preferable treatment in exchange for condemning testimony against Petitioner by the victim were purposefully concealed from Petitioner and his counsel. Petitioner asserts that this falls under the newly discovered evidence exception to the PCRA timeliness requirement because Petitioner only became aware of the prosecution's behavior in releasing the victim from prison prior to trial in the above captioned case once Petitioner himself inspected the dockets of the victim's criminal cases and transcripts regarding victim's release from incarceration.

Nevertheless, the newly discovered facts exception "explicitly requires due diligence in the discovering of new facts previously unknown to a petitioner." Commonwealth v. Smith, 194 A.3d 26, 134 (Pa. Super. 2018). "Due diligence requires neither perfect vigilance nor punctilious care, but rather it requires reasonable efforts by a petitioner, based on the particular circumstances, to uncover facts that may support a claim for collateral relief." Commonwealth v. Burton, 121 A.3d 1063, 1071 (Pa. Super. 2015). A petition must be filed within 60 days of the date the claim could have been presented. Commonwealth v. Chmiel, 173 A.3d 617 (Pa. 2017).

However, Petitioner's supplemental PCRA petition fails to support his claims of newly discovered facts. Most notably, Petitioner failed to provide any specific information to the Court to corroborate his petition. Petitioner makes no indication of when he became aware of the alleged conspiracy between the prosecution and the victim or even an approximation of the time of discovery. As a result, this Court has no possible way to determine if Petitioner has filed

within 60 days of the date the claim could have been presented. Moreover, Petitioner neglected to include in his petition what prompted his inquiries into the victim's criminal cases and release from incarceration other than his belief that the "justifications tendered on record for [victim's] release were intentionally exaggerated in order to create the impression of legitimate penological [sic] interests on behalf of the County of Lycoming." Supplemental PCRA, at 2. Petitioner also does not mention when he began such inquiries into the victim's release and why he could not have discovered this information earlier than twenty (20) years after his conviction became final. Petitioner did not provide the transcripts upon which he bases his petition to the Court and an independent attempt by this Court to read the trial transcript of the case *sub judice* involving the victim's testimony was unsuccessful.

Petitioner's sentence was affirmed by the Superior Court on February 27, 2001 and became final on March 27, 2001 following his failure to appeal to the Pennsylvania Supreme Court. His asserted finding of newly discovered facts twenty (20) years later does not demonstrate the due diligence required to fall under this exception to the timeliness requirement. Since Petitioner has not established this Court has jurisdiction over the claim, it cannot be addressed.

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 Lycoming 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
Hilton Mincy #DT-6431
SCI Huntingdon
1100 Pike Street
Huntingdon, PA 16654
NLB/jmh