

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH	:	CR-2010-2012
	:	
vs.	:	
	:	Opinion and Order Dismissing
TIRRELL WILLIAMS,	:	Petitioner’s PCRA Petition
Petitioner	:	

OPINION AND ORDER

This Opinion addresses Petitioner’s timely response to this Court’s order giving notice of its intent to dismiss Defendant’s Post Conviction Relief Act (PCRA) petition, which consisted of a 907 Notice Response. The response asserts similar issues as Petitioner argued in his initial PCRA petition for which the Court already gave notice of its intent to dismiss. The Court, however, would add the following comments.

In his Rule 907 response to this Court’s intent to dismiss, Petitioner argues that his second PCRA is timely because it was filed within one (1) year of the resolution of the first PCRA. Petitioner cites to Commonwealth v. Lark, 746 A.2d 585 (Pa. 2000) which held that

when an appellant’s PCRA appeal is pending before a court, a subsequent PCRA petition cannot be filed until the resolution of review of the pending PCA petition by the highest state court in which review is sought, or upon the expiration of the time for seeking such review. If the subsequent petition is not filed within one year of the date when the judgment became final, then the petitioner must plead and prove that one of the three exceptions to the time bar under 42 Pa.C.S. § 9545(b)(1) applies.

Id. at 588. Lark also held that the “subsequent petition must also be filed within sixty days of the date of the order which finally resolves the previous PCRA petition, because this is the first ‘date the claim could have been presented.’” Id.; *See* 42 Pa.C.S. § 9545(b)(2).

Petitioner's first PCRA Petition was dismissed on November 8, 2017 and Petitioner subsequently appealed that dismissal. The Pennsylvania Superior Court remanded the issue finding Defendant did not receive notice of intent to dismiss in accordance with Rule 907. This Court reissued a notice of intent to dismiss in accordance with Rule 907 on October 16, 2018. Original PCRA counsel, Ryan Gardner, Esquire, as directed by this Court at a hearing on the petition, investigated one issue that raised potential concern. Upon investigation of that issue, Attorney Gardner filed a timely Motion to Withdraw as Counsel and sent Defendant a *Turner/Finley* letter on February 11, 2019. This Court agreed with Attorney Gardner's position that Petitioner failed to raise any additional meritorious issues and accordingly dismissed the singular issue remaining on March 6, 2019.

As a result, any subsequent PCRA petition must have been filed within a year after the judgment became final or if that was not possible, within sixty days of the dismissal of the first PCRA. 42 Pa.C.S. § 9545(b)(1), (b)(2). Sixty days following the first PCRA dismissal would have been May 6, 2019. However, the present PCRA Petition before this Court was filed on October 21, 2020, which failed to comply with the rule requiring filing within the year after judgment or the sixty days after the resolution of the first PCRA. Petitioner has not alleged any of the other exceptions to the filing requirement to justify this delay. However, Petitioner cites to Williams v. Miller, No. 1:20-cv-931 (M.D. Pa. Oct. 7, 2020), which is the citation to Petitioner's federal habeas corpus petition pursuant to 28 U.S.C. § 2254 with the United States District Court for the Middle District of Pennsylvania. In Williams v. Miller, the District Court denied Petitioner's federal habeas corpus petition on October 7, 2020. Id. Petitioner argues that his second PCRA petition was timely because it

was filed within one year of the Middle District Court dismissing his petition.

However, Petitioner misunderstands the nature of his federal habeas corpus petition and the timeline for filing his second PCRA. Petitioner's petition for relief with the District Court is not incorporated into his first PCRA petition, but instead is relief of its own accord. Though Petitioner must exhaust state remedies before asking for this type of specific relief from the District Court, the Middle District's dismissal of his habeas petition is not part of the PCRA process at the state level. As such, Petitioner misconstrues the deadline for when his subsequent PCRA petition was due. As previously stated, Petitioner was required to submit his second PCRA within one year of the final judgment under this docket or within sixty days following the resolution of the first PCRA petition. By filing the PCRA in question on October 21, 2020, Petitioner has missed both deadlines and his petition is untimely. Since the Court does not have any jurisdiction over this PCRA petition and no new issues have been raised in his Rule 907 Response that were not already addressed by this Court's Opinion and Order issued on July 12, 2021, Petitioner's current PCRA petition shall be dismissed.

ORDER

AND NOW, this 21st day of September, 2021, after review of Petitioner's response to the Court's order giving notice of its intent to dismiss Petitioner's Post Conviction Relief Act (PCRA) petition, which consisted of a 907 Notice Response, the Court dismisses all of Petitioner's PCRA petitions and amendments.

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, and sending a copy to the trial judge, the court reporter and the prosecutor. The form and contents of the Notice of Appeal shall conform to the requirements 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.App.P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, Defendant may lose forever his right to raise these issues.

The Clerk of Courts shall mail a copy of this order to the defendant by certified mail, return receipt requested.

By The Court,

Nancy L. Butts, President Judge

cc: DA
Tirrell Williams, MU3104
SCI Waymart
P.O. Box 256
Waymart, PA 18472-0256