

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	CR-681-2014
	:	
DEMETRIUS WILLIAMS,	:	
Petitioner	:	CRIMINAL DIVISION
	:	

ORDER

AND NOW, this 16th day of December, 2021, it is hereby **ORDERED** and **DIRECTED** that Petitioner’s Motion for Post Conviction Collateral Relief shall be treated as his Second Post Conviction Relief Act (PCRA) Petition. Petitioner’s First PCRA Petition was dismissed on December 13, 2017. Petitioner appealed that dismissal to the Pennsylvania Superior Court, which was also subsequently dismissed. This present PCRA Petition was filed on December 6, 2021.

After an independent review of the entire record, this Court finds that Petitioner has failed to timely file his Second PCRA Petition, and therefore his petition should be dismissed as this Court does not have jurisdiction to preside over the merits of his claims. 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).

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). A petitioner must “affirmatively plead and prove” the exception, upon which he or she relies. Commonwealth v. Taylor, 933 A.2d 1035, 1039 (Pa. Super. 2007).

On October 30, 2014, Petitioner was convicted following a jury trial of a number of offenses, including Statutory Sexual Assault, Aggravated Indecent Assault, Indecent Assault, and Sexual Assault. Petitioner was sentenced on April 9, 2015 to state incarceration for seven and a half to sixteen years. Petitioner filed timely post sentence motions that were denied by this Court on August 14, 2015. Petitioner filed a timely appeal to the Pennsylvania Superior Court, which affirmed the judgment of sentence in a memorandum opinion filed April 26, 2016. Petitioner failed to take any further appellate action, and therefore his sentence became final on May 26, 2016. 42 Pa. C.S. § 9545(b)(3); *see also* Pa. R.A.P. 541. Petitioner was required to file his Second PCRA Petition by May 26, 2017. Since the PCRA Petition is facially untimely, Petitioner contends that his assertions in the instant PCRA are immune to any timely filing requirements because the Commonwealth provided false information and “played the role of a forensic expert.” Second PCRA 12/6/2021, at 3. However, Petitioner’s claim of immunity is patently false. Newly discovered facts or the revelation of withheld information by the government must be filed in a timely manner. Specifically, these exceptions to the filing requirement mandate a PCRA petition be filed within sixty (60) days of the date the claim could have been presented. Commonwealth v. Chmiel, 173 A.3d 617 (Pa. 2017). In his second PCRA, Petitioner fails to mention when he discovered the information allegedly withheld from the Commonwealth. In particular, Petitioner takes issue with laboratory results and DNA analysis presented at his trial. These materials were entered as matters of stipulation at trial and would

have been available for Petitioner's review well within the required time for filing. Petitioner's failure to raise issues with these items of evidence several years after the fact remove the immediate PCRA from this Court's jurisdiction. Petitioner failed to file within the requisite time period and his petition does not fall into either of the filing exceptions articulated in 42 Pa. C.S. § 9545(b)(1).

Furthermore, even if Petitioner had raised these issues in a timely manner, the Court finds no merit in his claims. Petitioner argues that the Commonwealth's attorney testified about the forensic laboratory results without being an expert and believes that the Commonwealth withheld the fact that DNA from another individual was found pursuant to the test results. However, upon review of the trial transcript, the lab results from Wyoming Regional Laboratory and the DNA analysis conducted by the Pennsylvania State Police were entered as matters of stipulation. Attorney Aaron Biichle notified the court that sperm was identified on the victim's underwear but "no interpretable result" of DNA could be determined following the testing of said sperm. N.T. 10/30/2014, at 74. The lab report provided by Petitioner in his instant PCRA also noted that the Y-chromosome DNA obtained from the sperm found on the underwear was consistent with a mixture of at least two (2) individuals. The Commonwealth did not withhold any of this information nor did they conceal the identity of an individual discovered pursuant to the lab results because none could be made. In fact, Attorney Biichle stated to the jury that no identification was determined based on the DNA evidence. Therefore, Petitioner's argument fails and is patently untimely.

Since Petitioner's PCRA Petition is untimely, 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. Additionally Petitioner filed a Motion for Leave to Proceed *in Forma Pauperis* and an Application for Appointment of Counsel. As for Petitioner's Motion for Leave to Proceed *in Forma Pauperis* the Motion is **GRANTED**, Petitioner may be permitted to file *in forma pauperis*. As for Petitioner's Application for Appointment of Counsel, the Motion is **DENIED**. See Pa. R. Crim. P. 904 cmt. ("the rule now limits appointment of counsel on second or subsequent petitions so that counsel should be appointed *only* if the judge determines that an evidentiary hearing is required").

By the Court,

Nancy L. Butts, President Judge

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NLB/jmh