

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1691-2019
v.	:	
	:	
LINDSEY GRUSS,	:	
Petitioner	:	PCRA/WITHDRAWAL
	:	GRANTED

OPINION AND ORDER

On June 10, 2022, counsel for Lindsey Gruss (Petitioner) filed a Motion to Withdraw as Counsel 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 her PCRA Petition. Therefore, the Petition shall be dismissed.

Background

On May 12, 2020, Petitioner entered a guilty plea for two (2) counts of Possession of Drug Paraphernalia¹. Petitioner was sentenced by this Court in accordance with her plea agreement to one (1) year of probation on each charge to run consecutively for a total of two (2) years on probation. Petitioner did not file post-sentence motions or a direct appeal, nor did counsel file on her behalf. On February 11, 2022, Petitioner filed a *pro se* PCRA petition asserting ineffectiveness of counsel for failure to file an appeal and specific issues with her probation. This Court appointed Trisha Hoover Jasper, Esquire, to represent Petitioner on February 23, 2022. Assigned counsel reviewed the Petition and Petitioner’s case file prior to sending Petitioner a *Turner/Finley* letter and filing her Motion to Withdraw as Counsel. After an independent review of the record, this Court agrees with Attorney Jasper that Petitioner’s PCRA Petition is untimely and does not meet any untimeliness exceptions and this Court does not have jurisdiction to rule on her claims.

¹ 35 Pa.C.S. § 780-113(a)(32).

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’s judgment of sentence became final thirty (30) days after sentencing. Therefore, Petitioner’s sentence became final on June 12, 2020. Petitioner filed the immediate PCRA Petition on February 11, 2022, which is well beyond one year of the date her judgment of sentence became final.

Therefore, Petitioner must fall within one of the exceptions listed in 42 Pa. C.S. § 9545(b)(1) for her PCRA Petition to be deemed timely and for this Court to address the substantive merits of her PCRA Petition. A petition invoking one of these exceptions must be filed within sixty (60) days of the date the claim could first have been presented. 42 Pa.C.S.A. § 9545(b)(2). Petitioner must also prove and plead specific facts that illustrate that his claim was raised within the sixty (60) day time period.

Commonwealth v. Carr, 768 A.2d 1164 (Pa. Super. 2001).

Petitioner has not alleged any circumstances or facts that form the basis to establish any of the timeliness exceptions. Petitioner merely asserts that she was unaware that she agreed to special probation. This particular objection from Petitioner does not qualify her Petition as timely. The Court agrees with Attorney Jasper that no justification or exception exists to excuse the patently untimely filing of Petitioner's PCRA.

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 her 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 13th day of July, 2022, 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 she files an objection to that dismissal within twenty (20) days of today's date.
2. The application for leave to withdraw appearance filed June 10, 2022, 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.
Petitioner
111 Fair Avenue
Johnstown, PA 15904