

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| COMMONWEALTH | : No. CP-41-CR-0000410-2017 |
| | : |
| vs. | : CRIMINAL DIVISION |
| | : |
| | : |
| NATHANIEL L. HILL, | : Notice of Intent to Dismiss PCRA |
| Defendant | : Without Holding An Evidentiary Hearing |

OPINION AND ORDER

This matter came before the court on a motion for modification of sentence filed by Nathaniel Hill (hereinafter “Petitioner”).

By way of background, on February 22, 2017, the Commonwealth filed a criminal complaint against Petitioner, charging him with possession with intent to deliver a controlled substance-cocaine (PWID-cocaine), person not to possess a firearm, possession of a controlled substance, possession of a small amount of marijuana and possession of drug paraphernalia.¹

On March 20, 2017, Petitioner entered a guilty plea to PWID-cocaine for a minimum sentence of 30 months and to persons not possess a firearm for a minimum sentence of 60 months to be served consecutively to any state parole violation. On that same date, the court accepted Petitioner’s guilty plea and sentenced him to 30 months to 15 years’ incarceration for PWID-cocaine and a concurrent five years (or 60 months) to ten years’ incarceration for persons not to possess a firearm to be served consecutive to any state parole violation sentence.

¹ 35 P.S. §780-113 (a)(30); 18 Pa. C.S.A. §6105; 35 P.S. §§780-113(a)(16), (32) and (35).

On November 29, 2021, Petitioner filed a motion for sentence modification, which the court treated as a Post Conviction Relief Act (PCRA) petition. As this was Petitioner's first PCRA petition, the court appointed counsel to represent Petitioner and directed PCRA counsel to file either an amended PCRA petition or a *Turner/Finley*² no merit letter.

On February 1, 2022, PCRA counsel filed a motion to withdraw, which contained a *Turner/Finley* no-merit letter.

After conducting an independent review of the record, the court finds that it lacks jurisdiction to hold an evidentiary hearing or to grant Petitioner any relief.

To the extent Petitioner is seeking a modification or reconsideration of his sentence, he was required to do so in a timely post sentence motion. *Commonwealth v. Wrecks*, 934 A.2d 1287, 1289 (Pa. Super. 2007)(requests for relief with respect to discretionary aspects of sentencing are not cognizable under the PCRA; therefore, the trial court properly denied the petitioner's motion as an untimely post sentence motion). A petitioner must file a post sentence motion within 10 days of the date the sentence was imposed. Pa. R. Crim. P. 720(A)(1). If the petitioner does not file an appeal within 30 days of the date the sentence is imposed, the sentence becomes final and the court loses jurisdiction to modify it. 42 Pa. C.S.A. §5505.

The court sentenced Petitioner on March 20, 2017. Petitioner filed his motion

² *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)(en banc).

on or about November 29, 2021, more than four years late. Therefore, the court lacks jurisdiction to grant relief to Petitioner.

Even if the court treats the motion as a Post Conviction Relief Act (PCRA) petition, it is still untimely.

A petitioner must file a PCRA petition within one year of the date his judgment of sentence becomes final or the petitioner must plead and prove one of the three narrow statutory exceptions. 42 Pa. C.S.A. 9545(b); *Commonwealth v. Gamboa-Taylor*, 753 A.2d 780, 783 (Pa. 2000). The time limits of the PCRA are jurisdictional in nature. *Gamboa-Taylor*, supra; see also *Commonwealth v. Ali*, 86 A.3d 173, 177 (Pa. 2014). When the petition is not filed within one year of the date the judgment becomes final, is not eligible for one of the exceptions, or is eligible for one of the exceptions but not filed within one year of the date the claim could have been first brought, the court has no power to address the merits of a petitioner's PCRA claims. *Gamboa Taylor*, supra; *Commonwealth v. Beatty*, 207 A.3d 957, 962-963 (Pa. Super. 2019).

A judgment becomes final at the expiration of direct review or from the expiration of the time for seeking such review. 42 Pa. C.S.A. §9545(b)(3). The court sentenced Petitioner on March 20, 2017. Petitioner had 10 days within which to file a timely post sentence motion or 30 days within which to file a timely appeal. He did neither. Therefore, his judgment of sentence became final on April 20, 2017.

For Petitioner's motion to be considered timely under the PCRA, Petitioner had to file it on or before April 20, 2018 or allege in his petition facts to support one of the three statutory exception. He did neither. Therefore, to the extent Petitioner's motion could be construed as a PCRA petition, it is patently untimely. As a result, the court lacks

jurisdiction to hold an evidentiary hearing or to grant Petitioner any relief.

ORDER

AND NOW, this ___ day of February 2022, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court notifies the parties of its intention to dismiss the Petition without holding an evidentiary hearing. Petitioner may respond to this proposed dismissal within twenty (20) days. Without a response from the Petitioner showing that the Petition is timely, the court will enter an order dismissing the petition.

By The Court,

Nancy L. Butts, President Judge

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NLB/laf