

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1185-2005
v.	:	
	:	
HAROLD HOSKINS,	:	
Petitioner	:	PCRA/WITHDRAWAL
	:	GRANTED

OPINION AND ORDER

On January 18, 2022, Counsel for Harold Hoskins (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 his PCRA Petition. Therefore, the Petition shall be dismissed.

Background

Following a trial before this Court on February 2, 2007, Petitioner was found guilty of two (2) counts of Criminal Attempt Homicide, two (2) counts of Robbery, one (1) count of Possession of Firearm Prohibited, one (1) count of Firearms Not to be Carried without a License, one (1) count of Possession of a Weapon, one (1) count of Possession of a Controlled Substance, and one (1) count of Terroristic Threats. Petitioner absconded until he was eventually detained in 2011. On April 7, 2011, Petitioner was sentenced to twenty-two (22) to fifty (50) years. Through counsel, Petitioner filed Post-Sentence Motions, which were subsequently denied. Petitioner filed a Notice of Appeal to the Pennsylvania Superior Court, but his judgment of sentence was affirmed and his Allowance of Appeal was also denied.

Petitioner filed a *pro se* PCRA petition on November 19, 2012, and a counseled amended petition on July 9, 2013. On June 6, 2014, this Court denied Petitioner's first PCRA. Petitioner filed an appeal of this denial with the Superior Court that was denied on June 25, 2018. On February 16, 2021, Petitioner sent a letter to this Court asking for his charges to run concurrent and alleging that this Court had informed him at sentencing that something in his case was incorrect. This letter was treated as Petitioner's Second PCRA. On November 22, 2021, the Court appointed Trisha Hoover Jasper, Esquire, to represent

Petitioner. Assigned counsel reviewed the Petition and all documents pertaining to Petitioner's case 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 his claims.

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 on the day his Petition for Allowance of Appeal was denied by the Pennsylvania Supreme Court on October 12, 2012. Therefore, Petitioner's sentence became final on October 12, 2013. Petitioner filed the immediate PCRA Petition on February 16, 2021, which is well beyond one year of the date his judgment of sentence became final. Therefore, Petitioner must fall within one of the exceptions listed in 42 Pa. C.S. § 9545(b)(1) for his PCRA Petition to be deemed timely and for this Court to address the substantive merits of his 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). The Court finds the Petitioner has not met his burden to establish an exception to the timeliness rule. Petitioner does not allege any facts or circumstances that demonstrate his case falls under either of the timeliness exceptions. Petitioner's discontent with his sentence not running concurrently without any asserted support that this was done in error or violated his rights does not grant him the relief he seeks, nor does it allow this Court to consider his petition. 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 his 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 27th day of June, 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 he files an objection to that dismissal within twenty (20) days of today's date.
2. The application for leave to withdraw appearance filed January 18, 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
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