

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	CR-1328-2014
	:	
EDDIE JOHNSON,	:	
Petitioner	:	CRIMINAL DIVISION
	:	

ORDER

AND NOW, this 14th day of March, 2022, it is hereby **ORDERED** and **DIRECTED** that Petitioner’s Post Conviction Collateral Relief Petition shall be treated as his Second Post Conviction Relief Act (PCRA) Petition. Petitioner’s First PCRA Petition was filed on December 23, 2015, requesting this Court to credit him with time served for two hundred forty nine (249) days following his incarceration period prior to sentencing. Following appointment of counsel, Petitioner submitted a counseled Amended Petition for PCRA Relief on February 7, 2016. This Court granted Petitioner’s request and credited him with credit for time served between August 3, 2014 and April 8, 2015. This present PCRA Petition was filed on March 7, 2022.

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 April 9, 2015, Petitioner was sentenced to state incarceration for a minimum of three (3) years and a maximum of eight (8) years following his guilty plea to Persons Not to Possess a Firearm. After Petitioner’s initial PCRA was granted, Petitioner was credited with time served on April 18, 2016. However, that order dictated that the other respects of Petitioner’s sentence remained in full force and effect. Petitioner failed to take any appellate action, and therefore, his sentence became final on May 9, 2015. 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 9, 2016. Even under the unlikely assumption that Petitioner’s final sentence date changed after the Court’s granting of his First PCRA Petition, Petitioner would have needed to file his Second PCRA by May 18, 2017. Since Petitioner’s immediate PCRA was filed on March 7, 2022, it is patently untimely.

Additionally, Petitioner does not assert an exception to the filing requirement. Petitioner includes a vague reference to being informed of issues with the guilty plea process by a paralegal “within the Institution.” Second PCRA 3/7/2022, at 4. Petitioner relies on Commonwealth v. Bradley, 37 EAP 2020 (Pa. Oct. 20, 2021), claiming Bradley grants him the right to file the immediate petition. Upon a review of this case, the Pennsylvania Supreme Court considered the procedure for enforcing the right to effective counsel in a PCRA proceeding. The Court

examined when it was appropriate for a petitioner to raise the claims of ineffective PCRA counsel following a PCRA court's denial of relief. However, Bradley does not apply to Petitioner because he does not assert that his PCRA counsel during his First PCRA was ineffective. In the instant challenge, Petitioner argues that his guilty plea was unlawfully induced. Not only has this issue been waived for Petitioner's failure to raise it during his first PCRA Petition, but it is patently untimely. Therefore, this Court does not have jurisdiction to examine the merits of Petitioner's Second PCRA Petition.

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.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Eddie Johnson #LZ-3799
SCI Rockview
1 Rockview Pl
Bellefonte, PA 16823

NLB/jmh