

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-0001174-2016**  
 v. : **CP-41-CR-0001363-2015**  
 : **CP-41-CR-0001027-2016**  
 : **CP-41-CR-0001365-2015**  
 : **CP-41-CR-0001367-2015**  
 :  
 **DENVER MILLER,** : **PCRA**  
 **Petitioner** :

**OPINION AND ORDER**

On January 27, 2022, Counsel for the Petitioner filed a Motion to Withdraw as Counsel along with a Motion to Dismiss 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, the Court agrees with PCRA Counsel and finds that the Petitioner has failed to raise any meritorious issues in his PCRA Petition, and his petition should be dismissed.

**Background**

On October 17, 2016, Denver Miller (Petitioner) pled guilty before the Honorable Richard A. Gray<sup>1</sup>, pursuant to a negotiated plea agreement to two (2) counts of Burglary, felony of the first degree on informations 1363-2015 and 1365-2015. The plea agreement also included a plea to one (1) count of Burglary a felony of the first degree on informations 1174-2016, 1027-2016 and 1367-2015. On the same day, Petitioner was sentenced to the plea agreement of an aggregate seven (7) to fourteen (14) years to be served in a state prison. This sentence would also run consecutive to a sentence Petitioner had received from Clinton

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<sup>1</sup> Judge Gray retired from active service on June 30, 2018.

County of six (6) to twenty-four (24) months. No post sentence motion or direct appeal was filed, thus Petitioner's Judgment of Sentence became final on November 17, 2016.

On July 26, 2021, Petitioner filed a *pro se* Post Sentence Motion to Modify Sentence which this court considered as a first petition pursuant to the Post-Conviction Relief Act<sup>2</sup>. The Court issued an Order appointing counsel, Trisha Hoover Jasper, Esq., in accordance with Pa.R.Crim.P. 904(C) and scheduled a court conference initially for November 23, 2021, January 4, 2022 and then for February 3, 2022. Following the conference and after thorough review, this Court finds that Petitioner's filing is untimely, and the Court does not have jurisdiction to rule on his claim.

***Is Petitioner's PCRA Petition untimely pursuant to 42 Pa. C.S. § 9545(b)***

Before determining whether a petitioner is substantively entitled to relief, a 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:

(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

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<sup>2</sup> Commonwealth v. Jackson, 30 A.3d 516, 521 (Pa. Super. 2011) (holding that any petition filed after the judgment of sentence becomes final will be treated as a PCRA petition.)

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

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.

Since no appeal was filed, Petitioner’s judgment of sentence became final thirty (30) days after this Court imposed sentence on November 17, 2016. 42 Pa. C.S. §9545 (b)(1). Therefore, Petitioner had until November 17, 2017 to file a timely PCRA Petition. Petitioner filed the immediate Petition on July 26, 2021 which is well beyond one year of the date his judgment of sentence became final. Therefore, Petitioner’s claim 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. Petitioner has not alleged that his issue meets one of the timeliness exceptions listed above and therefore this Court has no jurisdiction to address his claim.

Even if this Court had jurisdiction to consider his claim, Petitioner’s claim is without merit. Petitioner raises the claim that since he has successfully completed all of the programs that he was directed to complete while in the custody of the Department of Corrections, the Court should consider this information and modify his sentence to make him Boot Camp

eligible. Under 61 Pa.C.S.A. § 3903, an eligible inmate to be considered for the Motivational Boot Camp program in pertinent part is

under the jurisdiction of the Department of Corrections who is serving a term of confinement, the minimum of which is not more than two years and the maximum of which is five years or less, or an inmate who is serving a term of confinement, the minimum of which is not more than three years where that inmate is within two years of completing his minimum term, and who has not reached 40 years of age at the time he is approved for participation in the motivational boot camp program...

First, the Petitioner's length of sentence and remaining sentence exceeds the eligibility requirements under 61 Pa.C.S.A. Section 3903. Second, Judge Gray neither indicated in his order that he was Boot camp eligible nor was it discussed at sentencing. Lastly, Judge Gray did not receive a request to make him eligible from the Department of Corrections so there is no guarantee that the DOC would accept him.

### ***Conclusion***

Based upon the foregoing, this Court finds no basis upon which to grant Petitioner's PCRA petition or any merit to Petitioner's claim. Additionally, the Court finds that no purpose would be served by conducting any further hearing. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this Court's intention to deny the Defendant's PCRA Petition. The Defendant 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 26th day of July, 2022, it hereby ORDERED and DIRECTED as follows:

1. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1) and for the reasons discussed in the foregoing opinion, the Petitioner is hereby notified that this Court intends to dismiss his PCRA petition, which was filed on July 26, 2021. The Petitioner may respond to the proposed dismissal within twenty (20) days of the date of the notice.
2. The Petition to Withdraw from Representation, filed on January 27, 2022, is hereby **GRANTED**, and Trisha Hoover Jasper, Esq. may withdraw from the above-captioned case.

By the Court,

Nancy L. Butts, President Judge

/nlb

cc: Trisha Hoover Jasper, Esq. (PCRA Counsel)  
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