

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0002027-1997
:
vs. :
:
:
HILTON MINCY, :
Petitioner :

OPINION AND ORDER

Before the court is Petitioner’s Motion for Reconsideration with respect to his Sixth Post Conviction Relief Act (PCRA) petition and his supplemental PCRA petitions.

Procedural History

The Pennsylvania Superior Court summarized the extensive procedural history in Petitioner’s PCRA filings.

On May 14, 1998, a jury convicted Appellant of attempted murder and related charges. The trial court sentenced him to an aggregate term of seventeen to forty years of imprisonment. In an unpublished memorandum filed on February 27, 2001, this Court affirmed Appellant’s judgment of sentence. Commonwealth v. Mincey, [sic] 776 A.2d 1007 (Pa. Super. 2001). Appellant did not file a petition for allowance of appeal with our Supreme Court.

Appellant filed a timely *pro se* PCRA petition on October 22, 2001. Counsel was appointed and filed an amended petition. On December 12, 2002, the PCRA court entered an order dismissing Appellant’s petition. In an unpublished memorandum filed on January 9, 2004, this Court affirmed the PCRA court’s dismissal, and on September 16, 2004, our Supreme Court denied Appellant’s petition for allowance of appeal. Commonwealth v. Mincy, 847 A.2d 759 (Pa. Super. 2004), *appeal denied*, 859 A.2d 768 (Pa. 2004).

On February 21, 2007, Appellant filed a second, counseled PCRA petition, in which he asserted that after-discovered evidence rendered his petition timely. By order dated February 22, 2007, the PCRA court stayed consideration of the petition until a federal appellate ruling was made regarding Appellant’s pending motion for writ of habeas corpus. On June 20, 2007, PCRA counsel filed a supplemental PCRA petition that the PCRA court again stayed pending a ruling from the United States Supreme Court on Appellant’s petition for *certiorari*.

On April 18, 2008, the PCRA court issued its notice of intent to dismiss Appellant's PCRA petition, pursuant to Pa.R.Crim.P. 907, because it was untimely and the issues raised therein were either previously litigated, waived, or lacked merit. PCRA counsel filed a response to this notice on May 6, 2008. By order dated July 1, 2008, the PCRA court dismissed Appellant's petition. Appellant timely appealed to this Court¹. In an unpublished memorandum filed on June 9, 2009, this Court affirmed the PCRA court's order denying post-conviction relief. Commonwealth v. Mincy, 981 A.2d 317 (Pa. Super. 2009).

On July 27, 2009, Appellant filed a *pro se* petition for habeas corpus in which he raised myriad claims regarding his trial, sentence, and continued incarceration. On August 19, 2009, Appellant filed an amended petition for writ of habeas corpus. By order dated August 24, 2009, the PCRA court denied Appellant's petition without prejudice to Appellant's ability to re-file a petition under the PCRA. In addition, the PCRA court noted that, because his counsel had filed a petition for allowance of appeal with regard to the dismissal of Appellant's second PCRA petition, Appellant's petition was premature. On September 9, 2009, the PCRA court denied Appellant's motion for reconsideration. Appellant filed an appeal from this order which was quashed by order of this Court dated December 16, 2009, as not being from a final order.

On December 28, 2009, Appellant filed another petition for writ of habeas corpus in which he claimed he was being "illegally detained." By opinion and order dated September 22, 2010, the PCRA court issued its Rule 907 notice of intent to dismiss Appellant's petition. Treating the habeas corpus petition as a PCRA petition, the PCRA court found it to be untimely. Appellant filed his response on October 18, 2010. By order dated October 25, 2010, the PCRA court dismissed Appellant's petition.

Commonwealth v. Mincy, No. 1933 MDA 2010 (Pa. Super. July 27, 2011).

The Superior Court upheld the dismissal of Petitioner's Fourth PCRA petition.

On May 22, 2012, Petitioner filed his Fifth PCRA petition alleging ineffective trial counsel. The PCRA court dismissed that petition as untimely on December 17, 2012 and the Superior Court affirmed the dismissal holding that Petitioner failed to properly assert any of the PCRA timeliness exceptions.

¹ "On October 14, 2008, Appellant filed a *pro se* third PCRA petition. By order of court dated October 29, 2008, the PCRA court dismissed this petition without prejudice because Appellant's appeal from the dismissal of his second PCRA petition was still pending." Commonwealth v. Mincy, No. 1933 MDA 2010 (Pa. Super.

Petitioner filed his Sixth PCRA petition with this Court on September 27, 2021. The Court gave Petitioner notice of its intent to dismiss his Sixth PCRA petition as untimely on October 5, 2021. On December 15, 2021, the Court issued another opinion and order advising Petitioner that his PCRA petition was untimely and advising him of his appeal rights. On December 16, 2021, Petitioner filed a supplemental PCRA petition. On December 27, 2021, Petitioner filed a motion for reconsideration and, on March 17, 2022, Petitioner filed another supplemental PCRA petition.

The Court notes that Petitioner did not seek or obtain leave of court to file any “supplemental” petitions. A party must seek leave of court to amend a PCRA petition, as amendments (or supplements) are not self-authorizing. *Commonwealth v. Porter*, 613 Pa. 510, 523-524, 35 A.3d 4, 12 (2012); see also *Commonwealth v. Fears*, 250 A.3d 1180, 1194 (Pa. 2021). In any event, Petitioner’s PCRA petitions are untimely and previously litigated.

The Court does not have jurisdiction to hold an evidentiary hearing or to grant Petitioner any relief because his PCRA petitions are untimely. 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

July 27, 2011).

by that court to apply retroactively.

42 Pa. C.S. § 9545(b)(1) (emphasis added). 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).

Following his conviction after a jury trial, Petitioner’s sentence was affirmed by the Superior Court on February 27, 2001. Petitioner failed to appeal his sentence to the Pennsylvania Supreme Court, therefore his judgment of sentence became final on or about March 29, 2001. 42 Pa. C.S. § 9545(b)(3). As previously noted, Petitioner’s Sixth PCRA petition and his supplemental petitions were filed in late 2021 and early 2022. Therefore, these petitions are untimely by over 20 years.

Petitioner attempts to forego the time-bar by asserting the second and third exceptions to the PCRA timeliness requirements. 42 Pa.C.S. § 9545(b)(1)(ii), (iii). Neither exception applies in this case.

Petitioner asserts that the Commonwealth violated *Brady* in that it failed to disclose deals and benefits that the victim received in exchange for changing his testimony to obtain a higher conviction. Petitioner claims that the victim in this case was released from prison on the condition that he testify falsely against Petitioner in order to assist the Commonwealth in obtaining a conviction on a more serious charge. He alleges that any alleged justification that the victim was released so that he could have a surgery or a medical procedure was either a “pretext” or grossly exaggerated. Petitioner argues that the victim’s testimony differed greatly at trial than what the victim testified to at the preliminary hearing. Petitioner believes it falls under the second exception to the timeliness requirement because he was not sure how

the victim was able to get released from incarceration in order to testify at trial, but he “knew” that something underhanded occurred.

Petitioner’s argument fails on this particular exception because, if the victim’s trial testimony actually varied from the testimony given at the preliminary hearing, Petitioner would have been aware of this on the day of trial in May of 1998, not twenty-three (23) years after the fact. Furthermore, Petitioner was aware at or before the time of his trial that the victim had been released from prison and he had suspicions about how or why that had been done. Petitioner alleged in his sixth PCRA petition filed on September 27, 2021, the following:

- (i) That when I had been incarcerated in Lycoming County Prison the victim had (sic) incarcerated multiple times;
- (ii) That when I was released from Lycoming (sic) Prison on Rule 600, the victim was still in the Lycoming (sic) Prison;
- (iii) Soon thereafter (sic) my release from Lycoming County Prison the victim had been released, and had contacted me through Juay Brockenbaugh Mincy to meet at the residence of Crystal Sessoms (on 2nd Street), where he wanted to negotiate financial terms in exchange for him not to testify;
- (iv) I was made aware through the victims (sic) cousin that the victims (sic) aunt had contacted the County D.A.’s Office in complaint (sic) of my being out of prison and the victim being locked up. Soon thereafter he was released;
- (v) I could not figure out how he got (sic) of prison, but I knew something underhanded had been done.

Sixth PCRA petition, filed 09/27/2021, at 4. Petitioner then explains that he used the RTKL to get all of the victim’s dockets; the dockets confirmed that no motions were filed by the victim’s lawyer and the victim just mysteriously appeared before the court and was released; and the opinion of the court in denying his previous

PCRA on this issue as untimely had filled in the rest of the puzzle.² It is clear that prior to or at the time of trial, Petitioner and the victim had been released from prison and the Petitioner had reason to inquire about the facts and circumstances surrounding the victim's release.

Moreover, Petitioner raised this claim in his counseled second PCRA petition filed on February 21, 2007. More specifically, in paragraphs 40 and 41 of his second PCRA petition, Petitioner alleged the following:

40. Particularly valuable for impeachment purposes is the fact that [the victim] had been arrested and charged with terroristic threats, harassment and disorderly conduct in April 1997 which charges were resolved in February 1998, before the May 1998 trial in this case. Had the jury known that he had been arrested for a violent crime, it is likely that the jury would have disbelieved [the victim], accepted the Defendant's alibi, and found the Defendant not guilty of all charges.

41 Suspicious also are the periods of incarceration of [the victim] in the Lycoming County Prison around the time of the Defendant's jury trial in Williamsport. According to records, he was incarcerated during the following times:

- a) June 24, 1997 to August 1, 1997;
- b) August 25, 1997;
- c) February 12, 1998 to February 26, 1998;
- d) March 7, 1998 to March 12, 1998;
- e) April 14, 1998 to April 27, 1998; and
- f) June 5, 1998 to February 2, 1999.

The significance is that just before the Defendant's May 1998 jury trial, [the victim] was released from prison on April 27, 1998 and testified against him in May 1998; however, just following the May 1998 trial, he was reincarcerated on June 5, 1998 where he remained in jail until February 2, 1999, a period of nearly nine months. This strongly suggests that the Commonwealth afforded him favorable treatment in order to gain his cooperation and assistance against the Defendant by releasing him from jail for some five or six weeks. It also allowed him to testify that he was not in jail during his trial testimony should he be asked on cross-examination. None of this information was made available to the Defendant or to his

²In its Order entered on April 18, 2008, in which the court provided Petitioner with notice of its intent to dismiss his second PCRA petition as untimely, the court noted that the victim was released from prison in April 1998 because he needed surgery. Order, 4/18/2008, at 6 and Attachment A.

counsel prior to or during trial.

Had the jury known that he had been released from prison for the sole purpose of testifying against the Defendant at trial, it is likely that the jury would have disbelieved Johnson, accepted the Defendant's alibi, and found the Defendant not guilty of all charges.

Second PCRA petition, filed 02/21/2007, at pp. 8-9. Since Petitioner was aware of this claim no later than February 21, 2007, his current petitions are untimely. The Court also notes that the focus of the second exception is on newly discovered facts, not on a newly discovered source or newly willing source for previously known facts. *Commonwealth v. Lopez*, 259 A.3d 993, 999 (Pa. 2021). Therefore, Petitioner's PCRA petition does not fall under the newly discovered facts exception.

Petitioner also contends that his petition is timely under the third exception, which is commonly referred to as the "newly-recognized constitutional right" exception. He asserts that the Pennsylvania Supreme Court abolished the public record presumption on October 1, 2020 in *Commonwealth v. Small*, 238 A.3d 1267 (Pa. 2020) and he filed his sixth PCRA petition on September 27, 2021, within one year of that decision; therefore, his petition is timely. The Court cannot agree.

The newly-recognized constitutional right exception has two requirements: (1) the right asserted by the petitioner must be a constitutional right recognized by the United States Supreme Court or the Pennsylvania Supreme Court after the one-year time period for filing a timely PCRA petition; and (2) the right was held by "that court" to apply retroactively. *Commonwealth v. Taylor*, 283 A.3d 178, 187 (Pa. 2022). In *Small*, the Pennsylvania Supreme Court overruled its previous interpretation of the newly-discovered facts exception in the Post Conviction Relief Act. In other words, *Small* involves a new

statutory interpretation, not the recognition of a new constitutional right. In prior decisions, the Court had held that the “newly discovered facts” exception was limited by a presumption related to public records such that a court could find that information available to the public was not a fact that was unknown to the petitioner. The Court disavowed the public records presumption in *Small*. Nowhere in *Small* does the Court state that it is recognizing a constitutional right nor does the Court expressly state that the *Small* decision will apply retroactively. Therefore, contrary to Petitioner’s assertions, the Pennsylvania Supreme Court’s decision in *Small* does not qualify for the “newly recognized constitutional right” exception and it does not render timely his sixth PCRA petition or any supplements filed more than two decades after his judgment of sentence became final.

In addition to being untimely, Petitioner’s claims are previously litigated. To be eligible for relief, the petitioner must plead and prove that the allegation of error has not been previously litigated or waived. 42 Pa. C.S.A. §9543(a)(3). An issue has been previously litigated if: the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue; or it has been raised and decided in a proceeding collaterally attacking the conviction or sentence. 42 Pa. C.S.A. §9544(a)(2), (3).

Petitioner raised this issue in his second PCRA petition filed on February 21, 2007. The trial court found that the petition was untimely and the issues asserted therein were previously litigated or waived and lacked merit. See Order entered on 04/18/2008. Petitioner appealed. The Pennsylvania Superior Court affirmed the trial court in a memorandum decision filed on June 9, 2009. *Commonwealth v. Mincy*, 981 A.2d 317 (Pa. Super. 2009). Petitioner filed a petition for allowance of appeal, which the Pennsylvania Supreme Court denied on December 9, 2009. *Commonweatlth v. Mincy*, 985 A.2d 971 (Pa.

2009).

As Petitioner's petitions are untimely and his claims were previously litigated, the Court will dismiss his petitions and deny his motion for reconsideration.

ORDER

AND NOW, this 7th day of December 2022, after previously giving notice of its intent to dismiss Defendant's PCRA petition filed on September 27, 2021 and after review of Defendant's supplemental petition filed thereafter and his Motion for Reconsideration, the Court DISMISSES Defendant's PCRA petition and DENIES Defendant's Motion for Reconsideration.

Defendant is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the Lycoming County courthouse, and sending a copy to the trial judge, the court reporter and the prosecutor. The form and contents of the Notice of Appeal shall conform to the requirement set forth in Rule 904 of the Rules of Appellant Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa.R.App.P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, Defendant may lose forever his right to raise these issues.

The Clerk of Courts shall mail a copy of this order to the defendant by certified mail, return receipt requested.

By The Court,

Nancy L. Butts, President Judge