

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-41-CR-0001225-1989
	: (89-11225)
vs.	: CRIMINAL DIVISION
	:
	:
JAMES NOTTINGHAM,	: Notice of Intent to Dismiss PCRA Petition
Defendant	:

OPINION AND ORDER

Before the court is the Post Conviction Relief Act (PCRA) petition filed by James Nottingham (hereinafter Petitioner) on or about June 2, 2022. The relevant facts follow.

On February 28, 1990, Petitioner pleaded guilty to aggravated assault, recklessly endangering another person (REAP) and various summary traffic offenses. On July 3, 1990, the court sentenced Petitioner to eight (8) months to twenty-three (23) months’ incarceration at the Lycoming County Prison. The court imposed an identical concurrent sentence for REAP and imposed fines on the summary traffic offenses. Petitioner did not file any post-sentence motions or an appeal.

Petitioner was paroled at the expiration of his minimum sentence on February 26, 1991. The parole application and order granting parole filed on February 27, 1991, indicated that Petitioner’s maximum date was May 26, 1992.

Petitioner mailed his PCRA petition to the Clerk of Court on or about May 31, 2022 and it was docketed on June 2, 2022. In his pro se petition, Petitioner alleges that his conviction in this case was used to “aggregate” (sic) his sentence of 8 ½ years to 21 years’ incarceration that commenced on January 10, 2017. He contends that a “fatal jurisdictional defect” is a constitutional right recognized by the Pennsylvania Supreme Court and are

retroactive rights. He also alleged that he was overcharged with 57 counts of aggravated assault which was an overreach of government officials only to ascertain a guilty verdict and is an abuse of authority.

As this was Petitioner's first PCRA petition, the court appointed counsel and directed PCRA counsel to file either an amended PCRA petition or a *Turner/Finley* no-merit letter. On August 1, 2022, PCRA counsel filed an amended PCRA petition in which he alleged that Petitioner was denied his constitutional rights where the prior defense team did not present a witness who could attest that no aggravated assault existed and that the officers entered knowingly inaccurate information in the affidavit of probable cause. He also contended that the availability of the witness and the extent of the witness's testimony was previously not known.

The court finds that it lacks jurisdiction to hold an evidentiary hearing or to grant any relief to Petitioner because his petition is patently untimely and he completed his sentence decades ago.

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 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).

A judgment becomes final at the conclusion of direct review or at the expiration of time for seeking the review. 42 Pa. C.S.A. § 9545(b)(3). The court sentenced Petitioner on July 3, 1990. He did not file a post-sentence motion. Petitioner had thirty (30) days within which to file an appeal. Pa. R.A.P. 903. Petitioner did not file an appeal. Therefore, Petitioner’s judgment of sentence became final on August 2, 1990. Petitioner did not file his PCRA petition until late May 2022. Therefore, his petition is facially untimely.

Petitioner attempts to assert the second and third exceptions. In his counseled PCRA petition, Petitioner asserts that the “availability of the witness and extent of the witness’ testimony was previously not known, thus providing the Court reason to grant consideration despite the time between sentencing and his request for relief.” The court cannot agree.

It is not enough to make a conclusory allegation that the witness’s testimony was previously not known. Rather, the exception requires that the facts were not known, the facts could not be discovered through the exercise of due diligence, and the petition was filed within one year of the date the claim could have been presented.¹ Petitioner has not alleged when he discovered the witness, what prompted the discovery and/or what efforts he took to

¹ The petitioner would have one year to file his petition if his claim arose on or after December 24, 2017. If his claim arose prior to December 24, 2017, he would only have 60 days within which to present his claim.

discover these facts. See *Commonwealth v. Stokes*, 598 Pa. 574, 959 A.2d 306, 310 (2008)(newly-discovered facts exception “requires a petitioner to plead and prove that the information upon which he relies could not have been obtained earlier, despite the exercise of due diligence”); *Commonwealth v. Breakiron*, 566 Pa. 323, 781 A.2d 94, 98 (1999)(PCRA petition found untimely where the appellant failed to set forth any evidence as to when or how he discovered the *Brady* material that the Commonwealth allegedly withheld from him and failed to offer a reasonable explanation as to why this information could not have been obtained earlier with the exercise of due diligence); *Commonwealth v. Yarris*, 557 Pa. 12, 731 A.2d 581, 590 (1999)(newly-discovered facts exception not satisfied where the defendant fails to explain why information, with the exercise of due diligence, could not be obtained earlier); *Commonwealth v. Bankhead*, 217 A.3d 1245, 1248 (Pa. Super. 2019)(“Bankhead failed to plead—much less prove—that he acted with due diligence to file a petition within 60 days of the cessation of the lockdowns”); *Commonwealth v. Vega*, 754 A.3d 714, 718 (Pa. Super. 2000)(newly-discovered facts exception not met when the defendant failed to provide date on which he learned of evidence giving rise to his claim).

In his pro se petition, Petitioner attempts to invoke the newly-recognized constitutional right exception. Generally, this exception is only applicable when the United States Supreme Court or the Pennsylvania Supreme Court not only recognizes a new constitutional right but also expressly holds that the decision recognizing the right will apply retroactively. Petitioner, however, fails to set forth any facts or any new case to support this exception. Petitioner makes a bare legal conclusion that a “fatal jurisdictional defect” right asserted is a constitutional right that is recognized by the Supreme Court of Pennsylvania and the United States that are retroactive rights.” This is insufficient to invoke the third

exception.

The time limits of the PCRA are jurisdictional in nature. *Commonwealth v. Howard*, 567 Pa. 481, 485, 788 A.2d 351, 353 (2002); *Commonwealth v. Palmer*, 814 A.2d 700, 704-05 (Pa.Super. 2002). When a PCRA petition is not filed within one year of the expiration of direct review, or not eligible for one of the three limited 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. 42 Pa. C.S.A. §9545(b); see also *Commonwealth v Gamboa-Taylor*, 562 Pa. 70, 77, 753 A.2d 780, 783 (2000).

Even if the petitioner were timely, Petitioner is not eligible for relief under the PCRA. Specifically, while he has been convicted of a crime under the laws of this Commonwealth, he is no longer serving a sentence of imprisonment, probation or parole for the crime. 42 Pa. C.S.A. § 9543(a)(1)(i). Petitioner completed his sentence in this case on or about May 26, 1992. Due process does not require the legislature to continue to provide collateral review when the offender is no longer serving a sentence. *Commonwealth v. Turner*, 622 Pa. 313, 80 A.3d 754, 765-66 (2013), *cert. denied*, 134 S. Ct. 1771 (2014). As soon as a sentence is completed, a petitioner becomes ineligible for relief under the Post-Conviction Relief Act. *Commonwealth v. Tinsley*, 200 A.3d 104, 107 (Pa. Super. 2018).

ORDER

AND NOW, this ___ day of December 2022, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, no purpose would be served by conducting an evidentiary hearing. The court hereby notifies the parties of its intention to

dismiss the 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

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