

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0000847-1997  
: (97-10847)  
vs. : CRIMINAL DIVISION  
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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 7, 2022. The relevant facts follow.

On September 5, 1997, Petitioner pleaded guilty to two counts of driving under the influence of alcohol (DUI)— Count 1, DUI-incapable of safely driving; and Count 2, DUI-blood alcohol content (BAC) .10% or greater. On October 30, 1997, the court sentenced Petitioner to 24 months on the Intermediate Punishment Program (IPP) with the first five (5) days to be served at the Lycoming County Prison or the Pre-Release Center. Petitioner did not file a post-sentence motion or an appeal.

On May 17, 1999, Petitioner successfully completed the terms of his supervision and he was granted early release from IPP.

On or about June 7, 2022,<sup>1</sup> Petitioner filed a pro se Post Conviction Relief Act (PCRA) petition. In his petition, Petitioner alleges that his defense counsel conspired with

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<sup>1</sup> The petition was docketed on June 9, 2022, but the envelope in which Petitioner mailed it was postmarked and the date Petitioner indicated on his petition that it was mailed was June 7, 2022. As Petitioner is currently incarcerated in a state correctional institution on another case, he is entitled to the benefit of the prisoner mailbox rule. *Commonwealth v. DiClaudio*, 210 A.3d 1070, 1074 (Pa. Super. 2019)(“[T]he prisoner mailbox rule provides that a *pro se* prisoner’s document is deemed filed on the date he delivers it to the prison authorities for mailing.”).

the prosecution to convict the petitioner by dishonest service of process, which included “untruth about the level of the B.A.C.” He asserts that the conspirators stated that a DUI only requires a BAC of .04 when there is an accident. He alleges that the sentence was in violation of 75 Pa.C.S.A. §3802 through 3804, making the charge, sentence and convictions illegal. He also contends the Commonwealth was without jurisdiction and powerless to enter judgment in 2011 and/or use this to aggravate his current sentences in CP-41-CR-0001190-2015 & CP-41-CR-0001870-2015. He contends he is eligible for relief despite his petition being filed more than one year after the date of final judgment because of a jurisdictional defect.<sup>2</sup>

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 when he entered a plea to two DUIs, despite the fact that he could only be convicted of one per incident and he was not at a blood alcohol content (BAC) that indicated criminality.” He asserts that Petitioner was “not aware of the invalidity and illegality of his plea and sentence until very recently, thus providing the [c]ourt reason to grant consideration despite the time between sentencing and his request for relief.”

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.

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<sup>2</sup> Many of Petitioner’s assertions do not make sense and the court questions whether he intended to file this PCRA to a different case number. For example, Petitioner asserts that he was sentenced in the year 2011 to a term of nine months. He was sentenced in this case in 1997 and the affidavit of probable cause indicates that his BAC was .17%. Petitioner does have 2011 case number but in that case he pleaded guilty only to DUI-

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 October 30, 1997. 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 or about December 1, 1997.<sup>3</sup> Petitioner did not file his PCRA petition until late May 2022. Therefore, his petition is facially untimely.

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incapable of safely driving and was sentenced in 2012 to 6 months on IPP with the first 63 days to be served at the Lycoming County Prison. See *Commonwealth v. Nottingham*, CP-41-CR-0001178-2011.

<sup>3</sup> The 30-day period would have expired on Saturday, November 30, 1997. When the last day falls on a Saturday or Sunday, the day is omitted from the computation. 1 Pa. C.S.A. §1908. Therefore, any appeal had to

Petitioner attempts to assert the second exceptions. In his counseled PCRA petition, Petitioner asserts that the petitioner was “not aware of the invalidity and illegality of his plea and sentence until very recently, thus providing the [c]ourt reason to grant consideration despite the time between sentencing and his request for relief.” Amended PCRA petition, ¶10. In his pro se petition, Petitioner asserts that he never tried to seek relief prior to this PCRA petition because he believed the information he had been given was true and correct and he had no reason to challenge his convictions until diligent research efforts revealed the untruthfulness of his convictions. The court cannot agree.

It is not enough to make a conclusory allegation that the invalidity and illegality was not known until very recently. 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.<sup>4</sup> Petitioner has not alleged when he discovered the alleged invalidity and illegality, what prompted the discovery and/or what efforts he took to 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

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be filed on or before Monday, December 1, 1997.

<sup>4</sup>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.

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).

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 in 1999. 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,

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Nancy L. Butts, President Judge

cc: Ryan Gardner, Esq. (DA)  
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