

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CR-356-1996</b>
v.	:	
	:	
<b>KELLEY O'DONNELL,</b>	:	
<b>Petitioner</b>	:	<b>PCRA/WITHDRAWAL</b>
	:	<b>GRANTED</b>

**OPINION AND ORDER**

On March 17, 2022, counsel for Kelley O'Donnell (Petitioner) filed a Motion to Withdraw as Counsel 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, this Court agrees with Post Conviction Relief Act (PCRA) counsel and finds that Petitioner has failed to timely raise any meritorious issues in her PCRA Petition. Therefore, the Petition shall be dismissed.

***Background***

On July 14, 1997, Petitioner entered a guilty plea for two (2) counts of Simple Assault<sup>1</sup> and two (2) counts of Harassment—Physically Strike<sup>2</sup>. On the same day, this Court sentenced Petitioner to a minimum of three (3) months to twelve (12) months maximum state incarceration on Counts 1 and 3. Each sentence was to run concurrently to each other but consecutive to any additional sentence Petitioner was serving. Petitioner did not file Post Sentence Motions or a direct appeal and nothing was filed on her behalf. On December 27, 2021, Petitioner filed a *pro se* Petition for Post-Conviction Relief asserting a defective colloquy, an illegal arraignment, an unlawful sentence, and ineffective assistance of counsel. Trisha Hoover Jasper, Esq. was appointed by this Court on January 7, 2022 to represent the Petitioner. Assigned counsel reviewed the Petition and Petitioner's case file prior to sending Petitioner a *Turner/Finley* letter and filing her Motion to Withdraw as Counsel. After an independent review of the record, this Court agrees with Attorney Jasper that Petitioner's PCRA Petition is untimely and does not meet any untimeliness exceptions and this Court does not have jurisdiction to rule on her claims.

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<sup>1</sup> 18 Pa.C.S. § 2701(a).

<sup>2</sup> 18 Pa.C.S. § 2709(1).

***Whether Petitioner’s PCRA Petition is untimely pursuant to 42 Pa. C.S. § 9545(b)***

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

- (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).

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

As such, 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.

Petitioner’s judgment of sentence became final thirty (30) days after sentencing. Therefore, Petitioner’s sentence became final on August 14, 1997. Petitioner filed the immediate PCRA Petition on December 27, 2021, which is well beyond one year of the date her judgment of sentence became final. Therefore, Petitioner must fall within one of the exceptions listed in 42 Pa. C.S. § 9545(b)(1) for her

PCRA Petition to be deemed timely and for this Court to address the substantive merits of her PCRA Petition. A petition invoking one of these exceptions must be filed within sixty (60) days of the date the claim could first have been presented. 42 Pa.C.S.A. § 9545(b)(2). Petitioner must also prove and plead specific facts that illustrate that his claim was raised within the sixty (60) day time period.

Commonwealth v. Carr, 768 A.2d 1164 (Pa. Super. 2001). The Court finds the Petitioner has not met her burden to establish an exception to the timeliness rule. Petitioner merely alleges that, a few days prior to filing the immediate petition, she became aware of another inmate with the same name who was the true perpetrator of the crimes Petitioner plead guilty to. Counsel for Petitioner has determined that these assertions are baseless and that no other individual with Petitioner's name is incarcerated in the same state prison, nor is there a person incarcerated in that prison that goes by the additional name Petitioner provided in her petition. Petitioner has not alleged any other facts or circumstances that would qualify her petition as timely under the enumerated exceptions to the filing requirements.

The Court agrees with Attorney Jasper that no justification or exception exists to excuse the patently untimely filing of Petitioner's PCRA.

***Conclusion***

Based upon the foregoing, this Court finds no basis upon which to grant Petitioner's PCRA petition or to examine the substantive merits of her claim. Additionally, the Court finds that no purpose would be served by conducting any further hearing. As such, no further hearing will be scheduled. 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.

**ORDER**

**AND NOW**, this 14th day of July, 2022, it is hereby **ORDERED** and **DIRECTED** as follows:

1. Petitioner is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 907(1), that it is the intention of the Court to dismiss his PCRA petition unless she files an objection to that dismissal within twenty (20) days of today's date.
2. The application for leave to withdraw appearance filed March 17, 2022, is hereby **GRANTED** and Trisha Hoover Jasper, Esq. may withdraw her appearance in the above captioned matter.
3. **Petitioner will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge

xc: DA  
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