

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0001830-2018  
:   
vs. : CRIMINAL DIVISION  
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:   
ROSIE TRAVERS, : Notice of Intent to Dismiss PCRA and  
Petitioner : Granting PCRA Counsel’s Motion to  
: Withdraw

**OPINION AND ORDER**

This matter came before the court on the Petition for Resentencing Under the RRRI Act filed by Rosie Travers (hereinafter “Petitioner”). In accordance with *Commonwealth v. Johnson*, 803 A.2d 1291, 1293 (Pa. Super. 2002), the court treated the petition as a Post Conviction Relief Act (PCRA) petition. The relevant facts follow.

On February 26, 2019, Petitioner pleaded guilty to Count 4, possession with intent to deliver a controlled substance (PWID); more specifically, possession with intent to deliver 14 grams of cocaine. On that same date, the court sentenced Petitioner, in accordance with the plea agreement, to two (2) to four (4) years’ incarceration in a state correctional institution. The court awarded Petitioner credit for time served from November 15, 2018 through November 29, 2018. The court also specifically noted that Petitioner was not eligible for a Recidivism Risk Reduction Incentive (RRRI) due to at least two disqualifying offenses: a simple assault conviction and a Uniform Firearms Act conviction.

On or about June 27, 2022,<sup>1</sup> Petitioner filed her PCRA petition in which she asked the

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<sup>1</sup> Petitioner is an inmate at SCI-Cambridge Springs. As Petitioner is currently incarcerated in a state correctional institution, she 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.”). It is unclear when Petitioner delivered her petition to prison authorities for mailing. The allegations in her petition to proceed in forma

court to re-sentence her to a RRRI minimum. As this was Petitioner's first PCRA petition, the court appointed counsel and directed counsel to file a motion to withdraw as counsel or a *Turner/Finley* no merit letter.

The court held a PCRA conference on September 26, 2022. At this time, PCRA counsel had not filed an amended petition or a no-merit letter, as he had hoped he could persuade the Commonwealth to waive Petitioner's ineligibility for RRRI in accordance with 61 Pa. C.S.A. §4505(b). However, the Commonwealth was not willing to do so. Therefore, on October 27, 2022, PCRA counsel filed a motion to withdraw which included a *Turner/Finley* no merit letter.

After an independent review of the record, the court intends to dismiss Petitioner's PCRA petition as untimely and lacking merit.

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.

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pauperis makes it appear as though she filled out her petition on or about June 23, 2022. The envelope in which the petitions were sent to the Clerk of Court is postmarked June 27, 2022. Her petition was docketed on June 29, 2022.

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 February 26, 2019. Petitioner did not file a post-sentence motion. Petitioner had thirty (30) days within which to file an appeal. Pa. R.A.P. 903. However, she also did not file an appeal. Therefore, Petitioner’s judgment of sentence became final on or about March 28, 2019. To be facially timely, Petitioner needed to file her petition on or before March 30, 2020.<sup>2</sup> Petitioner did not file her petition until on or about June 27, 2022 and she did not allege facts to support any of the three statutory exceptions.

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). Therefore, the court lacks jurisdiction to hold an evidentiary hearing or to grant Petitioner any relief.

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<sup>2</sup> The 30-day period would have expired on Saturday, March 28, 2020. 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 be filed on

Even if Petitioner had timely filed her petition, she would not be entitled to relief because her petition lacks merit. To meet the definition of an “eligible person,” the person must be an inmate convicted of a criminal offense who will be committed to the Department of Corrections (DOC) and must meet all of the eligibility requirements including but not limited to: has not been found guilty of or convicted of an offense under 18 Pa. C.S. Ch. 61 (relating to firearms and other dangerous articles); and has not been found guilty of or previously convicted of or adjudicated delinquent for a personal injury crime as defined in 18 P.S. §11.103. A “personal injury crime” is defined as an act, attempt or threat to commit an act which would constitute a misdemeanor or a felony under ... 18 Pa.C.S. Ch. 27 (relating to assault).

In case CP-41-CR-0000337-2013, Petitioner has a conviction for Person Not to Possess a Firearm, a second-degree felony offense under 18 Pa. C.S. Ch. 61 (more specifically, 18 Pa. C.S.A. §6105(c)(2)) and a conviction for simple assault, a misdemeanor of the second degree in violation of 18 Pa.C.S.A. §2701(a)(1), which is a personal injury crime. Therefore, Petitioner’s PCRA petition lacks merit because she has convictions which render her ineligible for RRRI.

**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 in this case. The court notifies the parties of its intention to dismiss the petition as untimely and lacking merit. Petitioner may respond to this

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or before Monday, March 30, 2020.

proposed dismissal within twenty (20) days. If no response is received within that time period, the court will enter an order dismissing the petition.

The court also grants PCRA counsel's motion to withdraw. Petitioner may hire private counsel or represent herself, but the court will not appoint counsel to represent her further in this matter.

By The Court,

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Nancy L. Butts, President Judge

cc: District Attorney  
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NLB/laf