

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0001558-2015
:
vs. : CRIMINAL DIVISION
:
:
DEREK LEWIS YOUNG, : Notice of Intent to Dismiss PCRA
Defendant : Without Holding An Evidentiary Hearing

OPINION AND ORDER

This matter came before the court on a motion for modification of sentence filed by Derek Lewis Young (hereinafter “Petitioner”).

By way of background, on July 7, 2015, the Commonwealth filed a criminal complaint against Petitioner, charging him with delivery of a controlled substance (heroin), possession of a controlled substance (heroin), possession of drug paraphernalia, and driving under suspension related to a driving under the influence conviction (DUS-DUI related).

On November 13, 2015, Petitioner entered a negotiated guilty plea to delivery of a controlled substance, an ungraded felony, and DUS-DUI related, a summary offense in exchange for a sentence of 15-20 months’ incarceration in a state correctional institution to be served consecutively to any probation or parole violation. On that same date, the court accepted Petitioner’s guilty plea and sentenced him in accordance with the terms of the plea agreement.

On or about October 31, 2021,¹ Petitioner filed a motion for sentence modification, which the court treated as a Post Conviction Relief Act (PCRA) petition. As

¹The date Petitioner signed his motion is October 31, 2021. The motion was filed in the clerk of courts office on November 5, 2021. Due to the prisoner mailbox rule, the court will treat Petitioner’s motion as having been filed on or about October 31, 2021.

this was Petitioner's first PCRA petition, the court appointed counsel to represent Petitioner and directed PCRA counsel to file either an amended PCRA petition or a *Turner/Finley*² no merit letter.

On December 28, 2021, PCRA counsel filed a motion to withdraw, which contained (as Exhibit A) a *Turner/Finley* no-merit letter.

After conducting an independent review of the record, the court finds that it lacks jurisdiction to hold an evidentiary hearing or to grant Petitioner any relief.

To the extent Petitioner is challenging the court's imposition of a consecutive rather than a concurrent sentence, he is challenging the discretionary aspects of his sentence, which he was required to assert in a timely post sentence motion. *Commonwealth v. Wrecks*, 934 A.2d 1287, 1289 (Pa. Super. 2007)(requests for relief with respect to discretionary aspects of sentencing are not cognizable under the PCRA; therefore, the trial court properly denied the petitioner's motion as an untimely post sentence motion). A petitioner must file a post sentence motion within 10 days of the date the sentence was imposed. Pa. R. Crim. P. 720(A)(1). If the petitioner does not file an appeal within 30 days of the date the sentence is imposed, the sentence becomes final and the court loses jurisdiction to modify it. 42 Pa. C.S.A. §5505.

The court sentenced Petitioner on November 13, 2015. Petitioner filed his motion on or about October 31, 2021, nearly six years late. Therefore, the court lacks jurisdiction to grant relief to Petitioner.

To the extent Petitioner asserts that his sentence is illegal because the court

² *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)(en banc).

failed to state reasons for a consecutive sentence on the record, the court properly treated Petitioner's motion as a PCRA petition. *See Commonwealth v. Evans*, 866 A.2d 442, 443-444 (Pa. Super. 2005). Nevertheless, the petition is still untimely.

A petitioner must file a PCRA petition within one year of the date his judgment of sentence becomes final or the petitioner must plead and prove one of the three narrow statutory exceptions. 42 Pa. C.S.A. 9545(b); *Commonwealth v. Gamboa-Taylor*, 753 A.2d 780, 783 (Pa. 2000). The time limits of the PCRA are jurisdictional in nature. *Gamboa-Taylor*, supra; *see also Commonwealth v. Ali*, 86 A.3d 173, 177 (Pa. 2014). When the petition is not filed within one year of the date the judgment becomes final, is not eligible for one of the exceptions, or is eligible for one of the exceptions but not filed within one year of the date the claim could have been first brought, the court has no power to address the merits of a petitioner's PCRA claims. *Gamboa Taylor*, supra; *Commonwealth v. Beatty*, 207 A.3d 957, 962-963 (Pa. Super. 2019).

A judgment becomes final at the expiration of direct review or from the expiration of the time for seeking such review. 42 Pa. C.S.A. §9545(b)(3). The court sentenced Petitioner on November 13, 2015. Petitioner had 10 days within which to file a timely post sentence motion or 30 days within which to file a timely appeal. He did neither. Therefore, his judgment of sentence became final on December 14, 2015.³

For Petitioner's motion to be considered timely under the PCRA, Petitioner had to file it on or before December 14, 2016 or allege in his petition facts to support one of the three statutory exception. He did neither. Therefore, to the extent Petitioner's motion

³ As December 14, 2015 fell on a Sunday, Petitioner had until December 15, 2015 to file a timely notice of appeal. 1 Pa.C.S.A. §1908.

could be construed as a PCRA petition, it is patently untimely. As a result, the court lacks jurisdiction to hold an evidentiary hearing or to grant Petitioner any relief.⁴

ORDER

AND NOW, this ___ day of January 2022, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court notifies the parties of its intention to dismiss the Petition without holding an evidentiary hearing. Petitioner may respond to this proposed dismissal within twenty (20) days. Without a response from the Petitioner showing that the Petition is timely, the court will enter an order dismissing the petition.

By The Court,

Nancy L. Butts, President Judge

cc: District Attorney
Trisha Jasper, Esquire
Derek Lewis Young, #FN1173
SCI Benner Township
PO Box 33028
Saint Petersburg, FL 33733

NLB/laf

⁴Even if the court had jurisdiction, Petitioner would not be entitled to relief. Petitioner agreed to a consecutive sentence as part of his plea agreement. Moreover, Petitioner was not entitled to a volume discount for his various crimes in multiple counties.