

G. Weber

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CP-41-CR-0001669-2014
	:	CP-41-CR-0001525-2018
vs.	:	CP-41-CR-0001537-2018
	:	CP-41-CR-0001538-2018
	:	
EDWARD JOSEPH BOWER, JR.,	:	Notice of Intent to Dismiss PCRA
Defendant	:	Petition Without Holding An
	:	Evidentiary Hearing

FILED
 LYCOMING COUNTY
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 THOMAS D. HEPP
 CLERK OF COURTS

OPINION AND ORDER

By way of background, in case 1669-2014, Edward Joseph Brown (Petitioner) entered a guilty plea to aggravated assault, a felony of the first degree. On February 3, 2015, the court sentenced Petitioner to 24 months to 48 months' incarceration in a state correctional institution followed by a consecutive 24 months' probation under the supervision of the Pennsylvania Parole Board. The court awarded Petitioner credit for time served from October 8, 2014 through February 2, 2015.

In September of 2018, Petitioner was arrested for new criminal offenses. On October 22, 2018, Petitioner entered guilty pleas to arson, a felony of the first degree, and burglary (home/no person present), a felony of the first degree in case 1537-2018; simple assault, a misdemeanor of the second degree in case 1525-2018; and simple assault a misdemeanor of the second degree in case 1538-2018. On that same date, the court sentenced Petitioner to an aggregate term of 7 to 14 years' incarceration, consisting of 66 to 132 months' incarceration for arson, a consecutive term of 18 to 36 months' incarceration for burglary, and concurrent terms of 6 to 12 months' incarceration for each simple assault. The court also awarded Petitioner credit for time served from September 25, 2018 through October 21, 2018.

On October 25, 2018, as a result of Petitioner's new criminal convictions, the court revoked Petitioner's probation in case 1669-2014 and sentenced him to 1 to 2 years' incarceration concurrent to any and all sentences he was presently serving.

Petitioner did not file any post sentence motions or appeals in any of these cases.

On or about October 27, 2022, Petitioner wrote a letter in which he claimed that his burglary sentence was being run consecutive in violation of his plea agreement, the Department of Corrections (DOC) was not giving him the credit that the court awarded to him in his sentencing order for his 2018 cases, and the DOC was miscalculating his minimum and maximum dates. This letter was received by the Lycoming County Clerk of Courts on November 2, 2022. Since Petitioner claimed that his sentence did not comply with the plea agreement, the court treated the letter (or at least a portion of it) as a Post Conviction Relief Act (PCRA) petition. The court appointed counsel to represent Petitioner and directed PCRA counsel to file either an amended PCRA petition or a no merit letter pursuant to *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988) and *Commonwealth v. Finley*, 379 Pa. Super. 390, 550 A.2d 213 (1988)(en banc).

PCRA counsel filed a motion to withdraw as counsel that included a no merit letter. In her no merit letter, PCRA counsel indicates that Petitioner did not timely file his PCRA petition, that none of the statutory exceptions apply and that, in any event, the claims contained in the petition lack merit.

After an independent review of the record, the court finds that Petitioner is not entitled to relief as a matter of law.

There are several requirements for a petitioner to be eligible for relief under the

PCRA, including but not limited to, the petitioner must be serving a sentence or awaiting to serve a sentence in the case and the petitioner must file a timely petition or satisfy one of the three statutory exceptions. 42 Pa.C.S.A. §§9543(a)(1), 9545(b).

Petitioner is not eligible for relief in case 1669-2014 because he completed his sentence in that case in 2020. 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). Therefore, Petitioner is not eligible for relief in case 1669-2014 because he is no longer serving a sentence in that case.¹

With respect to cases 1525-2018, 1537-2018 and 1538-2018, the petition is untimely.

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.

¹The petition in case 1669-2014 is also untimely.

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 22, 2018. He did not file post-sentence motions. He had 30 days within which to file an appeal, but he did not do so. Therefore, Petitioner’s judgment of sentence became final on or about November 21, 2018.

To be considered timely, Petitioner needed to file his PCRA petition on or before November 21, 2019 or he needed to assert facts to support one of the statutory exceptions. Petitioner did not file his petition until on or about October 27, 2022² and he did not allege any facts to support any of the 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

² Although the Clerk of Courts filed the petition on November 2, 2022, Petitioner dated his petition October 27, 2022 and the envelope in which it was mailed was postmarked October 28, 2022. As an incarcerated individual, Petitioner is entitled to the benefit of the prisoner mailbox rule. See *Commonwealth v. Betts*, 240 A.3d 616, 169 n.5 (Pa. Super. 2020)(Under the prisoner mailbox rule, PCRA filings submitted by an incarcerated litigant are deemed to be filed when deposited into the prison mailing system or handed over to prison officials for mailing).

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, Petitioner's petition is untimely and the court lacks jurisdiction to hold an evidentiary hearing to grant any relief.

Even if the petition had been timely filed, Petitioner would not be entitled to relief. The terms of the plea agreement on the coversheet of the guilty plea colloquy were as follows: "On 1537 Ct. 1 for 66-132 months, Ct. 3 for 18-36, run c/s; On 1538, SA for 6-12, c/c to 1537. On 1525, SA for 6-12, c/c to 1537. Total – 7-14 SCI." See Exhibit A, attached. In other words, the terms of the plea agreement were that Petitioner was to receive a sentence of 66 to 132 months for Count 1, arson, and a **consecutive** sentence of 18 to 36 months for Count 3, burglary in case 1537-2018; a concurrent sentence of 6 to 12 months for simple assault in case 1538-2108; and a concurrent sentence of 6 to 12 months for simple assault in case 1525-2018. Therefore, contrary to Petitioner's allegations, the terms of the plea agreement were for a consecutive sentence for burglary, and not a concurrent sentence. The court sentenced Petitioner in accordance with the plea agreement. Therefore, this claim lacks merit.

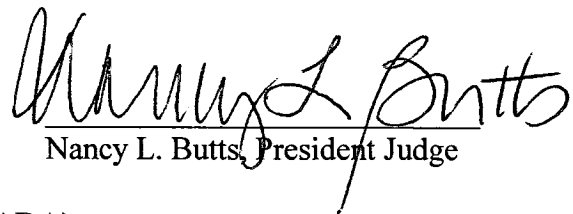
Petitioner also asserts claims that the DOC did not give him credit for time served and is incorrectly calculating his minimum and maximum dates. These claims are not cognizable under the PCRA, and the trial court has no authority over these matters. See *Commonwealth v. Wyatt*, 115 A.3d 876, 879-880 (Pa. Super. 2015)(defendant's claim that the DOC erred in computing his sentence were not cognizable under the PCRA or through a writ of habeas corpus to the trial court; rather, his claim was cognizable as an original action in the Commonwealth Court); *Commonwealth v. Heredia*, 97 A.3d 392, 395 (Pa. Super. 2014)(If

the alleged error is thought to be the result of an erroneous computation of sentence by the DOC, then the appropriate vehicle for redress would be an original action in the Commonwealth Court challenging the DOC's computation.); *Oakman v. Pa, Dep't of Corrections*, 903 A.2d 106 (Pa. Commw. 2006)(where sentencing court gives credit for time served, mandamus action would be available in Commonwealth Court to compel the DOC to carry out the court's sentence).

ORDER

AND NOW, this 10th day of February 2023, 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 intent to dismiss the petition without holding an evidentiary hearing. 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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