

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-41-CR-0000526-1996;
	: CP-41-CR-0000425-2016;
vs.	: CP-41-CR-0000827-2021;
	: CP-41-CR-0001127-2021
	:
JEFFREY COFFEY,	: 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 Allowance of Suitable Eligible Person as Participant in the State Drug Treatment Program (SDTP). The court treated Coffey's motion as a Post Conviction Relief Act (PCRA) petition. *See Commonwealth v. Johnson*, 803 A.3d 1291, 1293 (Pa. Super. 2002).

FACTUAL BACKGROUND

In case 526-1996, following a jury trial in 1996, Coffey was found guilty of involuntary deviate sexual intercourse by forcible compulsion (IDSI-forcible compulsion), aggravated assault, unlawful restraint, terroristic threats, and simple assault.¹ On or about September 13, 1996, the court sentenced Coffey to an aggregate sentence of 8 ½ to 30 years' incarceration in a State Correctional Institution (SCI). Following an appeal which vacated Coffey's sentences for unlawful restraint and terroristic threats, the court re-sentenced Coffey on February 2, 1998 to an aggregate sentence of 8 to 20 years' incarceration in a SCI followed by a consecutive term of 10 years' supervision under the Intermediate Punishment Program (IPP), consisting of five years each for unlawful restraint and terroristic threats. On or about December 21, 2004, Coffey was paroled and began registering as a lifetime sexual

¹ The court also found Coffey guilty of harassment, a summary offense, as he was not entitled to a jury trial on

offender.

In 426-2016, after multiple guilty pleas and withdrawals, Coffey ultimately pled guilty to person not to possess a firearm on March 13, 2019, and, on June 14, 2019, the court sentenced him to 2 ½ to 5 years' incarceration in an SCI. The court also revoked his IPP supervision with respect to his conviction for terroristic threats in 526-1996 and sentenced Coffey to 6 months to 5 years' incarceration in an SCI consecutive to the sentence imposed in 426-2016. Thus, the court imposed an aggregate sentence of 3 to 10 years' incarceration in an SCI.

In 2021, Coffey was charged with two separate driving under the influence (DUI) offenses. On November 1, 2021, he entered guilty pleas in both cases. In 1127-2021, Coffey entered a guilty plea to DUI-high rate of alcohol, a first offense in ten years, and he was sentenced to 14 days to 6 months' incarceration in the Lycoming County Prison (LCP). In 827-2021, Coffey entered a guilty plea to DUI-high rate of alcohol, a second offense within ten years, and he was sentenced to 30 days to 6 months' incarceration in the LCP consecutive to 1127-2021. The court awarded him credit for time served and immediately paroled him. As a result of these DUI convictions, the Pennsylvania Parole Board (PPB) revoked Coffey's parole, and he is currently incarcerated at SCI-Phoenix.

On or about August 9, 2022, Coffey filed his motion to make him eligible for SDTP, which the court treated as a PCRA petition. The court appointed counsel to represent Coffey and directed PCRA counsel to file either an amended PCRA petition or a *Turner/Finley*² "no merit" letter. Counsel filed a motion to withdraw with a no merit letter attached thereto.

that charge.

² *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988) and *Commonwealth v. Finley*, 379 Pa. Super.

Following an independent review of the record, the court finds that Coffey is not entitled to the relief requested.

There are several requirements an individual must meet to be eligible for relief under the PCRA including, but not limited to, currently serving a sentence of imprisonment, probation or parole for the crime and filing a timely petition. *See* 42 Pa. C.S.A. §§9543(a)(1)(i); 9545(b).

The court finds that Coffey is not eligible for relief with respect to his 2021 DUI cases, because he is not currently serving a sentence for those cases. The court awarded Coffey credit for time served and immediately paroled him. Even if there was some way to construe Coffey's sentences such that he had any county parole yet to serve after he completed his state sentence, he would not be eligible for SDTP on a county sentence.

The court also finds that Coffey is not eligible for relief with respect to his 1996 and 2016 cases. First, Coffey's petition is not timely.

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). Coffey has not pled any of the statutory exceptions.

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).

In 526-1996, Coffey was sentenced on September 13, 1996. He filed a motion for reconsideration of sentence, and an appeal. His appeal was decided on December 9, 1997. The Superior Court affirmed Coffey’s convictions but vacated his sentences for unlawful restraint and terroristic threats and remanded for re-sentencing. The court re-sentenced Coffey on February 2, 1998. Coffey did not file a post-sentence motion or an appeal. Therefore, his judgment of sentence became final on or about March 4, 1998. To be considered timely, he needed to file his motion on or before March 4, 1999. Therefore, in 526-1996, Coffey’s motion is untimely by more than two decades.

Similarly, in 425-2016, Coffey was sentenced on June 14, 2019. He did not file a post-sentence motion or an appeal. Therefore, his judgment of sentence became final on July 15, 2019, and his petition needed to be filed on or before July 15, 2020 to be considered timely.

As Coffey’s petition is patently untimely, the court lacks jurisdiction to hold a hearing or grant any relief.

Even if the court did not treat Coffey’s motion as a PCRA petition, he would not be entitled to relief. The definition of an eligible person for the SDTP specifically excludes a

person who has been convicted or adjudicated delinquent of any crime listed under 42 Pa. C.S. Ch. 97 Subch. H (relating to registration of sexual offenders) or I (relating to continued registration of sexual offenders).

In case 526-1996, Coffey was convicted of IDSI by forcible compulsion. IDSI is an offense requiring lifetime registration under Subchapter I. *See* 42 Pa. C.S.A.

§9799.55(b)(2)(i)(A). Although Coffey may not have committed his offenses in case 526-1996 on or after April 22, 1996, he is still subject to registration under Subchapter I, because he was subject to lifetime registration under Megan’s Law and his period of registration has not expired. More specifically, section 9799.54(a)(1) states:

- (a) **Registration.--** The following individuals shall register with the Pennsylvania State Police as provided in this subchapter:
 - (1) An individual who committed a sexually violent offense within this Commonwealth and whose period of registration with the Pennsylvania State Police, as specified in section 9799.55 (relating to registration), as of February 21, 2018, has not expired. The individual shall register for the period of time under section 9799.55 less any credit for time spent registered with the Pennsylvania State Police prior to February 21, 2018.

The term “sexually violent offense” includes “a criminal offense for which an individual was required to register with the Pennsylvania State Police under a former sexual offender registration law of this Commonwealth on or after April 22, 1996, but before December 20, 2012, whose period of registration has not expired.” 42 Pa. C.S.A. §9799.53 (definition of “sexually violent offense” paragraph (1)(ii)). Unlike other offenses that may render an offender ineligible for SDTP, there is no time limit associated with the disability that arises from a conviction or adjudication for an individual who is required to register as a sexual offender under either Subchapter H or Subchapter I. Therefore, Coffey’s conviction for IDSI renders him ineligible for the SDTP.

ORDER

AND NOW, this 5th day of July 2023, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the parties are hereby notified of this Court's intention to dismiss Coffey's petition without holding an evidentiary hearing. Coffey 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