

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-41-CR-0001190-2015
vs.	: CRIMINAL DIVISION
	:
	:
JAMES NOTTINGHAM,	: Notice of Intent to Dismiss PCRA Petition
Defendant	:

OPINION AND ORDER

Before the court is the Post Conviction Relief Act (PCRA) petition filed by James Nottingham (hereinafter Nottingham) on or about April 7, 2022. The relevant facts follow.

Nottingham was charged with aggravated assault -attempt or cause serious bodily injury, aggravated assault -attempting or causing bodily injury with a deadly weapon, unlawful restraint, endangering the welfare of children (EWOC), terroristic threats, possession of instrument of crime, simple assault, recklessly endangering another person (REAP), summary harassment, and person not to possess a firearm. The person to possess firearm charge was severed for trial from the remaining charges. On November 1, 2016, a jury found Nottingham guilty of person not to possess and firearm. On January 10, 2017, the court sentenced Nottingham to five to ten years' incarceration in a state correctional institution.

On or about June 29, 2017, the Commonwealth withdrew the aggravated assault charges and a jury found Nottingham guilty of unlawful restraint, EWOC, terroristic threats, possession of instrument of crime, simple assault and REAP. The court found him guilty of summary harassment. On July 11, 2017, the court sentenced Nottingham to an aggregate sentence of three to six years' incarceration to be served consecutive to his five to ten year

sentence for person not to possess a firearm.¹ Nottingham filed a post sentence motion, including a request to modify his sentence. The court denied his post sentence motion, and Nottingham filed a timely appeal. The Pennsylvania Superior Court affirmed Nottingham's judgment of sentence in a memorandum decision issued on June 11, 2018, and granted counsel's motion to withdraw. Nottingham did not file a petition for allowance of appeal with the Pennsylvania Supreme Court.

On or about April 7, 2022, Nottingham filed a Post Conviction Relief Act (PCRA) petition. As this was Petitioner's first PCRA petition, the court appointed counsel and directed PCRA counsel to file either an amended PCRA petition or a *Turner/Finley* no-merit letter. PCRA counsel had difficulty communicating with Nottingham. He tried to arrange telephone calls with Nottingham but was not successful. PCRA counsel's relationship with Nottingham deteriorated and, on or about January 26, 2023, the court appointed new counsel to represent Nottingham. New counsel filed an amended PCRA petition on Nottingham's behalf on March 29, 2023.²

The court finds that it lacks jurisdiction to hold an evidentiary hearing or to grant any relief to Nottingham because his petition is patently 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:

¹ The aggregate sentence consisted of the following sentences on each offense: one to two years for unlawful restraint, a consecutive one to two years for simple assault and a consecutive one to two years for REAP. The court imposed concurrent sentences of nine months to eighteen months for EWOC, terroristic threats, and possessing an instrument of crime.

² Since that time, Nottingham has attempted to file additional PCRA petitions without obtaining leave of court to do so and without obtaining the signature of his attorney on his filings.

(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).

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 Nottingham on January 10, 2017 and July 11, 2017. Nottingham filed post sentence motions, which the court denied. Nottingham filed an appeal, which the Superior Court decided on June 11, 2018. Nottingham had thirty (30) days within which to file a petition for allowance of appeal with the Pennsylvania Supreme Court but he did not file such a petition. Therefore, Nottingham’s judgment of sentence became final on July 11, 2018. To be considered timely, Nottingham had to file his petition by July 11, 2019 or allege facts to support one of the three statutory exceptions. Nottingham did not file his PCRA petition until April 7, 2022. Therefore, his petition is facially untimely.

In his pro se petition, Nottingham attempts to assert all three exceptions. For the governmental interference exception, Nottingham alleges that on July 17, 2015 Officer Blake Brown failed to appear for the preliminary hearing and the charges were dismissed by MDJ Jon

E. Kemp. The charges were reinstated by MDJ James H. Sortman, of a neighboring MDJ district and Nottingham was never rearrested or arrested for any of the charges after the dismissal on July 17, 2015. Furthermore, Nottingham never received notice of any court proceeding or had any pretrials which violates service of process and the courts were without jurisdiction to enter judgment.

Nottingham's assertions are not supported by the record and would not establish an exception to the one-year time limit for filing a PCRA. According to the documents attached to the lower court (MDJ) docket transcript, the incident in question occurred at approximately 1:57 a.m. on July 13, 2015. Officer Brown made the sworn affidavit of probable cause supporting the criminal complaint before MDJ Sortman on July 13, 2015. During normal business hours, Nottingham had a preliminary arraignment before MDJ Kemp and bail was set at \$150,000. Nottingham was unable to post bail and was committed to the Lycoming County Prison. Nottingham's preliminary hearing was scheduled for July 17, 2015 before MDJ Kemp. Nottingham and his private attorney, Michael Morrone, waived the preliminary hearing and the charges were waived to the Court of Common Pleas.

Even if Nottingham's assertions were supported by the record, it would not establish an exception to the one-year time limit for filing a PCRA. Nottingham would have known about these alleged facts in 2015 and could have raised any issues regarding his arrest and the court's jurisdiction in pretrial motions. If his counsel failed or refused to file such motions, he could have raised a claim of ineffective assistance of counsel in a PCRA petition filed on or before July 11, 2019. Therefore, Nottingham's assertions do not satisfy the governmental interference exception.

For the newly discovered facts exception, Nottingham appears to allege that as a result of

a Right To Know Law (RTKL) request he discovered on July 9, 2020 that no 911 call existed. According to Nottingham, no Pennsylvania State Police (PSP) troopers were dispatched and that exculpatory evidence was destroyed. Nottingham also references but does not attach a January 8, 2022 letter from the Public Defender which he asserts equals fraud on the court. He contends no evidence exists in this case and was the act of fraud in bad faith that did cause prejudice and harm and injury. Had this been presented at trial then Nottingham would not have been convicted in a wholly frivolous case. These allegations also do not save Nottingham's petition from untimeliness. The exception requires that the facts were not known, the facts could not be discovered through the exercise of due diligence, and the petition was filed within one year of the date the claim could have been presented.³ If, as alleged, Nottingham discovered on July 9, 2020 that no 911 call existed, he had to file his PCRA petition on or before July 9, 2021. He did not file his petition until April of 2022; therefore, his PCRA petition is still untimely.

Finally, Nottingham attempts to invoke the newly-recognized constitutional right exception. Generally, this exception is only applicable when the United States Supreme Court or the Pennsylvania Supreme Court not only recognizes a new constitutional right but also expressly holds that the decision recognizing the right will apply retroactively. Nottingham, however, fails to set forth any citation to a case that was decided on or after

³ The petitioner would have one year to file his petition if his claim arose on or after December 24, 2017. If his claim arose prior to December 24, 2017, he would only have 60 days within which to present his claim.

April 7, 2021 to support this exception. Instead, he claims that the court lacked jurisdiction to enter a judgment against him due to a lack of valid service of process, citing civil cases from the Pennsylvania Superior Court from 1992 and 1996—one of which, the *Cintas Corp.* case was reversed by the Pennsylvania Supreme Court⁴—and that he was thrice put in jeopardy but he does not cite any cases for this position. Superior Court decisions do not satisfy the newly recognized constitutional right exception. *Commonwealth v. Brandon*, 51 A.3d 231, 235-236 (Pa. Super. 2012).

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).

ORDER

AND NOW, this 13th day of September 2023, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that it lacks jurisdiction to hold an evidentiary hearing in this matter because Nottingham's PCRA petition is untimely. Therefore, the court cannot hold an evidentiary hearing or grant Nottingham any relief. The court hereby notifies the parties of its intention to dismiss the

⁴ *Cintas Corp. v. Lee's Cleaning Service*, 700 A.2d 915 (Pa. 1997).

Petition. Nottingham 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