

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-41-CR-0000790-2007
	:
vs.	:
	: Decision re Petition for Habeas Corpus
JIMMIE ROGER FIELDS,	:
Defendant	:

OPINION AND ORDER

Jimmie Fields (hereinafter “Fields”) filed a document entitled Petition for Writ of Habeas Corpus Pursuant to 42 Pa. C.S.A. §6503(a). In his Petition, Fields asserts three issues: (1) his conviction and sentence are illegal as the statute at the time of his conviction was unconstitutional; (2) his conviction and sentence are illegal due to mandatory minimums being unconstitutional; and (3) his Sexually Violent Predator (SVP) status was struck down as unconstitutional.

By way of background, Fields was charged with two counts of Involuntary Deviate Sexual Intercourse (IDSI) with a Child, IDSI with Complainant less than 16 years of age; Aggravated Indecent Assault of a Child; Aggravated Indecent Assault of Complainant less than 16 years of age, two counts of Indecent Assault without Consent, and Endangering the Welfare of Children. The charges were based on allegations that between May 1, 2005 and August 31, 2005, Fields performed oral sex on, digitally penetrated, and rubbed his penis all over the body of Child, who was 4 or 5 years old.

On November 30, 2007, following a nonjury trial before the Honorable Richard A. Gray, Fields was convicted of all counts. On June 18, 2008, Judge Gray conducted a hearing and found Fields to be an SVP. Judge Gray sentenced Fields to an aggregate term of incarceration in a state correctional institution of 20 to 40 years, consisting of consecutive

sentences of 7 to 14 years for each IDSI with a Child conviction and a consecutive 6 to 12 years for IDSI with a complainant less than 16 years of age.¹

On June 30, 2008, Fields filed a post-sentence motion, which Judge Gray denied in an Opinion and Order filed on September 4, 2008. No timely direct appeal was filed.

On March 17, 2009, Fields attempted to file an appeal *nunc pro tunc* in the Pennsylvania Superior Court. The Court denied that request on March 29, 2009.

On April 13, 2009, Fields filed his first Post Conviction Relief Act (PCRA) petition. Counsel was appointed to represent Fields and to file an amended petition on his behalf. Three issues were asserted in the amended first PCRA petition: (1) whether trial counsel was ineffective for failing to question witnesses about Mother permitting Fields to have contact with Child after the charges were filed; (2) whether trial counsel was ineffective for failing to call witnesses to testify that Mother told Child to say that Fields assaulted her; and (3) whether trial counsel was ineffective for failing to call character witnesses. A hearing was held on May 17, 2011. In an Opinion and Order entered on July 12, 2011, Judge Gray denied Fields' first PCRA petition. Fields appealed. The Superior Court affirmed Judge Gray's decision on March 23, 2012. Fields filed a petition for allowance of appeal, which the Pennsylvania Supreme Court denied on August 13, 2012.

On or about March 11, 2013, Fields filed a second PCRA petition. In his petition he sought reinstatement of his direct appeal rights. Judge Gray gave Fields notice of his intent to dismiss the petition without holding an evidentiary hearing. Fields filed an objection. On April 4, 2013, Judge Gray dismissed the petition as untimely. On April 25, 2013, Fields filed a notice of appeal. On November 6, 2013, the Pennsylvania Superior Court dismissed

¹ The remaining counts either merged or concurrent sentences were imposed.

Fields' appeal for failure to file a brief.

On August 9, 2017, Fields filed a third PCRA petition. In this petition, Fields challenged his registration requirements under SORNA. The court gave its notice of intent to dismiss in an Opinion and Order entered on June 22, 2018. Fields filed an objection/answer on July 13, 2018. This PCRA petition was dismissed on August 8, 2018. Fields filed a notice of appeal on August 29, 2018. On August 19, 2019, the Pennsylvania Superior Court dismissed Fields' notice of appeal for failure to file a brief.

Fields filed his current petition on July 12, 2023. In his Petition, Fields asserts three issues: (1) his conviction and sentence are illegal as the statute at the time of his conviction was unconstitutional; (2) his conviction and sentence are illegal due to mandatory minimums being unconstitutional; and (3) his Sexually Violent Predator (SVP) status was struck down as unconstitutional. Fields asserted that he was entitled to habeas corpus relief pursuant to 42 Pa. C.S.A. §6503. The court cannot agree.

Section 6503 states:

(a) General rule.--Except as provided in subsection (b), an application for habeas corpus to inquire into the cause of detention may be brought by or on behalf of any person restrained of his liberty within this Commonwealth under any pretense whatsoever.

(b) Exception.--Where a person is restrained by virtue of sentence after conviction for a criminal offense, the writ of habeas corpus shall not be available if a remedy may be had by post-conviction hearing proceedings authorized by law.

42 Pa. C.S.A. §6503.

Claims challenging convictions and sentence

Fields first two claims regarding the legality of his conviction and sentence are claims that are cognizable under the PCRA. Section 9542 states:

This subchapter provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief. The action established in this subchapter shall **be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis.** This subchapter is not intended to limit the availability of remedies in the trial court or on direct appeal from the judgment of sentence, to provide a means for raising issues waived in prior proceedings or to provide relief from collateral consequences of a criminal conviction. Except as specifically provided otherwise, all provisions of this subchapter shall apply to capital and noncapital cases.

42 Pa. C.S.A. §9542 (emphasis added); see also *Commonwealth v. Fantauzzi*, 275 A.3d 986, 994-995 (Pa. Super. 2022)(“[i]f an issue is cognizable under the PCRA, the issue must be raised in a PCRA petition and cannot be raised in a petition for writ of *habeas corpus*”). Therefore, the court must treat the first two claims in his petition as a fourth PCRA petition.

Any PCRA petition, including a second or subsequent petition must be filed within one year of the date the judgment becomes final or the petitioner must assert facts to support one of the three statutory exceptions. 42 Pa. C.S. § 9545(b)(1). 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). Fields post sentence motion was denied on September 4, 2008. Fields had thirty (30) days thereafter to file a notice of appeal to the Superior Court but he did not do so. Therefore, Fields judgment of sentence became final on October 6, 2008.² To be considered timely, Fields had to file his petition by October

²The thirtieth day fell on Saturday, October 4, 2008. Therefore, Fields had until the next business day, Monday, October 6, 2008, to file a timely notice of appeal. See 1 Pa. C.S.A. §1908 (“Whenever the last day of any such period shall fall on a Saturday or Sunday, or on any day made a legal holiday in this Commonwealth or of the

6, 2009 or allege facts to support one of the three statutory exceptions. Fields did not file his PCRA petition until July 12, 2023 and he has not alleged facts to support any of the exceptions. Therefore, his petition is untimely.

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 grant Fields any relief on these two claims.

Even if Fields' petition were timely, he waived these claims by failing to assert them in his prior PCRA petitions. To be eligible for relief, a petitioner's claims cannot be previously litigated or waived. 42 Pa. C.S.A. §9543(a)(3). A claim is waived if the petitioner could have asserted it but failed to do so at trial, on appeal or in a prior PCRA proceeding. 42 Pa. C.S.A. §9544.

Even if Fields' claims had not been waived, they lack merit. The IDSI statutes have

United States, such day shall be omitted from the computation.”).

not been found unconstitutional, and Fields was not sentenced to any mandatory minimum sentences. Rather, he was sentenced to consecutive guideline range sentences on his three IDSI convictions.

SVP claim

Fields' SVP claim also cannot be challenged through habeas corpus because it does not relate to his detention or restraint on his liberty. It relates to collateral consequences (registration, notification and counseling) of his convictions, *see Commonwealth v. Smith*, 240 A.3d 654, 658 (Pa. Super. 2020) (“a challenge to the requirements mandated by Subchapter I of SORNA II pertains to a collateral consequence of one's criminal sentence and does not fall within the purview of the PCRA”). Regardless whether Fields properly asserted his claim through a habeas corpus petition, he is not entitled to relief because his claim lacks merit. Since the conduct occurred in 2005, Fields is subject to Subchapter I of the Sexual Offender Registration and Notification Act (SORNA II), 42 Pa. C.S.A. §9799.54 et seq. The Pennsylvania appellate courts have found that Subchapter I is constitutional and so are SVP designations. *See Commonwealth v. Lacombe*, 234 A.3d 602 (Pa. 2020) (Subchapter I of SORNA II is nonpunitive and does not violate the constitutional prohibition against *ex post facto* laws); *Commonwealth v. Butler*, 226 A.3d 972 (Pa. 2020) (SVP procedure is constitutional and does not violate *Apprendi* or *Alleyne*); *Commonwealth v. Morgan*, 258 A.3d 1147, 1157 (Pa. Super. 2021) (SVP designations under Subchapter I of SORNA II are constitutional and do not violate the right to reputation under the Pennsylvania Constitution).

Conclusion

Fields is not entitled to relief. His challenges to his convictions and sentence are untimely, waived and lack merit. His SVP designation is constitutional, as are his registration, counseling and notification requirements. Accordingly, the following order is entered.

COMMONWEALTH

vs.

**JIMMIE ROGER FIELDS,
Defendant**

: No. CP-41-CR-0000790-2007

:

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: Decision re Petition for Habeas Corpus

:

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ORDER

AND NOW, this 23rd day of January 2024, it is hereby **ORDERED** and **DIRECTED** as follows:

1. The first two claims in Field's Petition for Writ of Habeas Corpus shall be treated as a PCRA petition. Fields is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure 907(1), that it is the intention of this Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.

2. Although the court has not treated his SVP claim as a claim under the PCRA, the court gives Fields notice that it finds that this claim lacks merit nonetheless. Fields may file any objection to the proposed dismissal of his SVP claim within twenty (20) days of today's date.³

3. Fields will be notified at the address below through means of certified mail.

By The Court,

Nancy L. Butts, President Judge

³ Although the court probably is not required to give Fields an opportunity to object to the proposed dismissal of his SVP claim, the court is doing this so that the time for filing any appeal will be consistent for all claims asserted in the Petition for Writ of Habeas Corpus. In other words, Fields will have an opportunity to respond on all claims. If no response is received or the response does not alter the court's view of the issues, the court will issue a separate order actually dismissing his petition which also will advise him of his appeal rights.

cc: District Attorney
Jimmie Roger Fields, #HQ4908 (certified mail)
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