

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

vs.

**DERRICK BOONE,
Defendant**

: No. CR-1229-2015

:

: CRIMINAL DIVISION

:

:

: Notice of Intent to Dismiss PCRA

: Without Holding An Evidentiary Hearing

OPINION AND ORDER

The matter before the court is what appears to be the fifth Post Conviction Relief Act (PCRA) petition or other motion that was required to be treated as a PCRA petition filed by Derrick Boone (“Boone”).

By way of background, the Commonwealth charged Boone with criminal homicide (which included first-, second-, and third-degree murder), two counts of aggravated assault, firearms offenses, two counts of simple assault, and recklessly endangering another person, which arose out of an incident in a bar on April 25, 2015 during which Boone shot and killed one individual and wounded two bystanders. The Commonwealth amended the Information to add a count of voluntary manslaughter-unreasonable belief of self-defense.

On November 28, 2017, Boone entered a guilty plea to voluntary manslaughter, two counts of aggravated assault, and persons not to possess firearm, and the court imposed an aggregate sentence of 12 to 30 years’ incarceration pursuant to the negotiated plea agreement. This sentence was to be served consecutively to the federal sentence that Boone was serving. On December 12, 2017, the court issued an order that clarified Boone’s credit for time served. Boone did not file a post sentence motion or an appeal.

On April 4, 2019, Boone filed his first PCRA petition in which he asserted that his

guilty plea was not knowingly, intelligently and voluntarily entered, which the court denied on February 4, 2019. Boone did not appeal, despite being advised of his right to do so.

On May 7, 2019, Boone filed his second PCRA petition again asserting that his guilty plea was not knowingly, intelligently and voluntarily entered and that his trial counsel and PCRA counsel were ineffective, which the court denied as untimely. Boone filed a notice of appeal. The Pennsylvania Superior Court affirmed the denial of Boone's second PCRA petition on July 6, 2020. *See Commonwealth v. Boone*, 239 A.3d 48 (Table), 2020 WL 3639929 (Pa. Super. 2020). Boone did not seek allowance of appeal from the Pennsylvania Supreme Court.

In early December 2020, Boone submitted a motion for modification of sentence, which the court treated as a third PCRA petition. On December 23, 2020, Boone submitted a third PCRA petition. The claims in both petitions were substantially similar, if not identical. The court considered these two petitions as Boone's third PCRA petition and denied them as untimely.

On June 6, 2024, Boone filed a motion for modification of sentence in which he asserted that his aggravated assault convictions should have merged with his conviction for voluntary manslaughter because they arose out of one continuous act (despite the fact that there were different victims for each offense). The court treated this motion as a PCRA petition and denied it as untimely.

On May 6, 2025, Boone filed his current, fifth PCRA petition. In this petition, he challenges the legality of his sentence. He claims that his petition is timely because he received a partial disability decision from the VA in December of 2024, which indicated that

he suffered from Post-Traumatic Stress Disorder (PTSD) as a result of his military service.¹ He contends that this evidence constitutes a newly-discovered fact that would show mitigating circumstances pursuant to 42 Pa. C.S. §9711(e)(5) and duress pursuant to 18 Pa. C.S. §309.

DISCUSSION

The PCRA contains time limits for filing petitions. The Act states:

(b) Time for filing petition.--

(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.A. §9545(b)(1). A judgment becomes final at the conclusion of **direct** review or the time for seeking such review. *See* 42 Pa. C.S.A. §9545(b)(3) (emphasis added).

The court sentenced Boone on November 28, 2017 and issued an amended order regarding credit for time served on December 12, 2017. Boone had thirty days from December 12, 2017 to file an appeal but he did not. Therefore, Boone's judgment of sentence became final on January 11, 2018.

¹ The VA decision indicates that Boone is a Veteran of the Gulf War Era who served in the Air Force from June 30, 1994 to January 5, 2000. The decision was on Boone's new claim for benefits that the VA received on

Boone's current petition was filed on May 6, 2025, more than seven years late. Boone contends that he has pleaded facts to establish the after-discovered facts exception to the one-year time limit. The court cannot agree.

This exception states requires not only that the facts upon which the claim is predicated were unknown to the petitioner but also that those facts could not have been ascertained by the exercise of due diligence. *See* Pa. C.S.A. §9545(b)(1)(ii). Boone has not alleged any facts to show that he could not discovered that he had PTSD prior to his trial. Boone served in the military from June 30, 1994 to January 5, 2000. The incident giving rise to his charges occurred on April 25, 2015, more than fifteen years after he left the military.

The time limits of the PCRA are jurisdictional in nature and no court may entertain an untimely petition. *Commonwealth v. Laird*, 331 A.3d 579, 594 (Pa. 2025); *see also Commonwealth v. Taylor*, 283 A.3d 178, 185 (Pa. 2023). The time limits are not subject to equitable tolling; instead, the time for filing a PCRA petition can be extended only by operation of one of the statutorily enumerated exceptions to the PCRA time-bar. *See Commonwealth v. Robinson*, 635 Pa. 592, 139 A.3d 178, 185 (2016).

For these reasons, the court finds that Boone has not alleged sufficient facts to show that his petition is timely. Therefore, the court lacks jurisdiction to hold an evidentiary hearing or to grant Boone any relief.

Even if the petition were timely, Boone would not be entitled to relief because his claims were waived or forfeited. To be eligible for relief, a petitioner

must plead and prove that the claim was not previously litigated on waived. 42 Pa. C.S.A. §9543(a)(3). A claim is waived if it the petitioner could have asserted it but failed to do so before trial, at trial, on appeal, or in a prior postconviction proceeding.

Boone waived his claims that he was acting under duress by entering his guilty plea. Duress is a defense. When a defendant enters a guilty plea, he waives all defenses to charges. *See Commonwealth v. Eisenberg*, 626 Pa. 512, 98 A.3d 1268, 1275 (2014)(upon entry of a guilty plea, a defendant waives all claims and defenses other than those sounding in the jurisdiction of the court, the validity of the plea, and the legality of the sentence imposed); *Commonwealth v. Jones*, 593 Pa. 295, 929 A.2d 205, 212 (2007)(a plea of guilty constitutes a waiver of all nonjurisdictional defects and defenses).

His claim that his sentence was illegal was lost or forfeited by failing to assert it in his first PCRA petition. *See Commonwealth v. Fahy*, 558 Pa. 313, 737 A.2d 214, 222 (1999)(although legality of sentence is subject to review under the PCRA, claims must still satisfy the PCRA's time limits or one of the exceptions thereto); *Commonwealth v. Infante*, 63 A.3d 358, 365 (Pa. Super. 2013)(a claim regarding the legality of sentence can be lost by failing to raise it in a timely manner under the PCRA).

Even if Boone's claims are not untimely or waived, they lack merit. The VA decision does not establish that Boone was acting under duress on April 25, 2015. It only states that he is 50% disabled effective from August 3, 2023, more than eight years after the incident giving rise to his charges.

With respect to his sentencing claim that his PTSD would be admissible to show mitigating circumstances, 42 Pa. C.S.A. §9711(e)(5) does not apply to this case. Section 9711 only applies to sentencing proceedings for a first-degree murder conviction when a fact-finder is deciding whether to impose the death penalty. Boone was charged with first-degree murder, but that charge was dismissed when Boone entered his guilty plea and he was sentenced for voluntary manslaughter and the related offenses. Additionally, the disability determination was “50 percent effective August 3, 2023.” As the VA determination does not indicate that Boone suffered from PTSD at the time of the incident or at the time of his guilty plea and sentencing, it does not show that his sentence is illegal.

Finally, none of Boone’s individual consecutive sentences exceeded the statutory maximum. Boone entered guilty pleas to Count 10, Voluntary Manslaughter, a felony of the first degree; Count 4, Person Not to Possess a Firearm, a felony of the second degree; and Counts 2 and 3, Aggravated Assault, felonies of the second degree. The statutory maximum sentence for a felony of the first degree is 20 years, and the statutory maximum for felony of the second degree is 10 years. *See* 18 Pa. C.S.A. §1103. The court imposed the following consecutive sentences: 6 ½ to 17 years on Count 10; 4 to 10 years on Count 4; and 9 months to 1 ½ years each on Count 2 and Count 3. Since the maximum sentence on Count 10 was less than 20 years and the maximum sentences on the other counts were less than or equal to 10 years, none of Boone’s sentences were illegal.

ORDER

AND NOW, this 24th day of September 2025, the court notifies the parties of its intention to deny Boone's fifth PCRA petition without holding an evidentiary hearing. Boone 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 denying the petition.

By The Court,

Nancy L Butts, President Judge

cc: Martin Wade, Esquire (1st ADA)
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