

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-1302-2019
	:	CR-1356-2019
vs.	:	
	:	
NOAH STROUP,	:	
Defendant	:	

OPINION AND ORDER

This matter came before the court on the PCRA petition filed on May 6, 2024 by Petitioner, Noah Stroup.

By way of background, in case 1302-2019, the Commonwealth charged Petitioner with homicide, criminal attempt homicide, conspiracy to commit robbery, two counts of robbery, and two counts of aggravated assault related to Petitioner and his co-defendant conspiring to rob the Uni-Mart in the Newberry section of Williamsport and the co-defendant shooting the clerk seriously injuring her and shooting a customer who died as a result.

In case 1356-2019, the Commonwealth charged Petitioner with robbery (F1), conspiracy to commit robbery (F1), persons not to possess a firearm, simple assault, robbery (F2), conspiracy to commit robbery (F2), firearm without a license, theft by unlawful taking, receiving stolen property, conspiracy to receive stolen property and recklessly endangering another person related to other robberies in Lycoming County committed by Petitioner as part of a conspiracy with the same co-defendant in case 1302-2019.

On March 9, 2022, Petitioner entered guilty pleas to one count from each case of conspiracy to commit robbery, felonies of the first degree, in exchange for a negotiated aggregate sentence of 10 to 20 years' incarceration in a state correctional institution, consisting of 6 to 12 years for conspiracy to commit robbery in case 1302-2019 and 4 to 8

years for conspiracy to commit robbery in case 1356-2019.¹ On that same date, the court sentenced Petitioner in accordance with the plea agreement. No post sentence motion or appeal was filed in either case.

On May 6, 2024, Petitioner filed his pro se Post Conviction Relief Act (PCRA) petition asserting that plea counsel was ineffective for failing to file a requested post sentence motion. Petitioner acknowledges that his PCRA petition is untimely but asserts that he falls within the newly discovered facts exception to the one-year filing requirement. Petitioner alleges that he requested his plea counsel to file a post sentence motion five days after sentencing, but counsel failed to file such a motion. He wrote to the court about his post sentence motion and, on July 22, 2022, the court's former law clerk informed him that no post sentence motion had been filed. The law clerk informed Petitioner that the court could not give Petitioner legal advice and forwarded his correspondence to plea counsel. Petitioner alleges that he believed plea counsel still represented him and would file his post sentence motion (despite the fact that he also acknowledges that his post sentence motion had to be filed with 10 days of the date the court sentenced him). One year later, Petitioner spoke to a legal clerk at SCI-Houtzdale, who informed him that the court only had 120 days within which to respond to a post sentence motion. On September 9, 2023 Petitioner contacted the Records Department at Houtzdale. Petitioner subsequently wrote to plea counsel again but did not receive a response. On June 15, 2023, Petitioner asserts that he wrote to the Court and plea counsel.

As this was Petitioner's first PCRA and he was indigent and requested the appointment of counsel, the court appointed counsel to represent Petitioner and directed

¹ The court awarded Petitioner credit for time served from August 15, 2019 through March 8, 2022.

PCRA counsel to file either an amended PCRA petition or a *Turner/Finley*² no merit letter.

On July 29, 2024, PCRA counsel file an Amended PCRA petition, which was similar to Petitioner’s pro se petition. In this petition, PCRA counsel sought reinstatement of Petitioner’s right to file post sentence motions nunc pro tunc and a modification of his sentence so that his sentences would run concurrent rather than consecutive to each other. The court held a conference on the Amended PCRA petition on August 9, 2024.

Following a review of the record, the court finds that the petition is untimely and that Petitioner’s claim lacks merit.

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).

² *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988)(*en banc*).

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). Stroup pleaded guilty and was sentenced on March 9, 2022. No post-sentence motion was filed. He had thirty (30) days to appeal. No appeal was filed within that time period. Therefore, Stroup's judgment of sentence became final on Friday, April 8, 2022.

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).

Stroup did not file his PCRA petition until May 6, 2024. He claims that his petition is timely under the after-discovered facts exception because he did not know that his counsel had abandoned him and failed to file post-sentence motions until he was told by SCI staff that a court only had 120 days within which to decide post-sentence motions. The court cannot agree.

Stroup was aware when he received the letter dated July 26, 2022 (which is attached to his petition) that counsel had not filed a post sentence motion on his behalf. Therefore, his PCRA petition filed on May 6, 2024 was filed more than one year after he discovered that no post sentence motion had been filed. Since Stroup's petition is untimely, the court lacks jurisdiction to hold an evidentiary hearing or to grant him any relief.

Even if Stroup's petition were timely, he would not be entitled to an evidentiary or relief because his issue lacks merit. Counsel is presumed effective and the burden is on petitioner to prove otherwise by a preponderance of the evidence. *See Commonwealth v. Kohler*, 36 A.3d 121, 132 (Pa. 2012); *Commonwealth v. Rivera*, 10 A.3d 1276, 1279 (Pa. Super. 2010). In order to establish an ineffective assistance of counsel claim, the petitioner must plead and prove that: (1) the claim has arguable merit; (2) counsel had not rational or strategic reason for his act or omission; and (3) prejudice, i.e., but for counsel's act or omission there is a reasonable probability that the results of the proceeding would have been different. *Commonwealth v. Fulton*, 830 A.2d 567, 572 (Pa. 2003). Failure to satisfy any prong of the test will result in rejection of the petitioner's ineffective assistance of counsel claim. *Commonwealth v. Jones*, 811 A.2d 994, 1002 (Pa. 2002). In addition, counsel cannot be deemed ineffective for failing to pursue a meritless claim. *See Commonwealth v. Johnson*, 289 A.3d 959, 1034 (Pa. 2023); *Commonwealth v. Anderson*, 327 A.3d 273, 291 (Pa. Super. 2024).

Stroup's claims lack merit. The Commonwealth could not argue that Stroup should get a longer sentence and neither Stroup nor his attorney could argue that he should get a shorter sentence. *See Commonwealth v. Parsons*, 969 A.2d 1259, 1268 (Pa. Super. 2009)(when the parties enter a plea agreement that calls for a specific sentence, and the court accepts and approves the plea, then the parties and the court must abide by the terms of the agreement). The plea agreement was for consecutive sentences. This was noted on the coversheet of the written guilty plea colloquy and noted on the record during the guilty plea and sentencing hearing. Thus, even if Stroup or counsel filed a post sentence motion seeking to have his sentences run concurrently, the court could not grant it. Stroup, his attorney, the

Commonwealth's attorney and the court were all bound by the terms of the plea agreement, which required consecutive sentences.

This was a very favorable agreement for Stroup. The Commonwealth dismissed homicide and attempted homicide and other serious charges against Stroup in exchange for his plea agreement. Although Stroup was not the shooter, as an accomplice and/or conspirator of the shooter he could have been found guilty of second-degree murder and sentenced to life in prison without the opportunity for parole as his co-defendant Fogan was.

For the foregoing reasons, the court intends to dismiss Stroup's PCRA petition without holding an evidentiary hearing.

ORDER

AND NOW, this 10th day of March 2025, Stroup 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.

By The Court,

Nancy L. Butts, President Judge

cc: Martin Wade, Esquire (ADA)
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