

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-41-CR-0001624-2012
	:
vs.	: CRIMINAL DIVISION
	:
	: Notice of Intent to Deny
WILLIAM WELLER,	: Weller's Petition Without Holding
Defendant	: An Evidentiary Hearing

OPINION AND ORDER

On or about September 19, 2025, William Weller (hereinafter “Weller”) filed a Petition for Writ of Coram Nobis and/or Habeas Corpus Ad Subjiciendum. In his petition, Weller contends that his challenge is not cognizable under the Post Conviction Relief Act (PCRA), because he is presenting it as a claim of breach of the plea agreement. The court cannot agree for several reasons.

Firstly, Weller did not file a petition to enforce plea agreement; he filed a petition for writ of coram nobis and/or habeas corpus. The PCRA is “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.*” 42 Pa.C.S.A. §9542 (emphasis added). Any petition seeking relief cognizable under PCRA must be treated as PCRA regardless how titled. *See Commonwealth v. Hromek*, 232 A.3d 881, 884 (Pa. Super. 2020).

Secondly, the court finds that his claims about his plea agreement would have been cognizable in a timely PCRA petition either as a claim that his guilty plea was not knowingly, voluntarily and intelligently entered, as a claim of ineffective assistance of counsel, or as a claim of an illegal sentence due to the failure to award credit for time served.

Thirdly, if treated as a PCRA petition, it is untimely. Any PCRA petition, including a second or subsequent petition must be filed within one year of the date the judgment becomes final or allege facts to establish one of the three statutory exceptions.

On February 13, 2015, Weller entered a guilty plea to Count 1, Possession With Intent to Deliver (PWID) over 1000 grams of cocaine and Count 5, Conspiracy to Possess With Intent to Deliver three grams of cocaine. On that same date, the court sentenced Weller to an aggregate sentence of 11 years to 22 years' incarceration¹ in a state correctional institution (SCI) to be served concurrently with the sentence that he received in Lackawanna County (CP-35-CR-0001722-2013). He was given credit for time served from August 12, 2012 to October 8, 2012, which was the date he was released on bail. He had ten days within which to file a post-sentence motion but none was filed. He had thirty days within which to file an appeal. Again, none was filed.

A judgment of sentence becomes final at the conclusion of direct review or the expiration of time for seeking the review. 42 Pa. C.S.A. §9545(b)(3). Therefore, Weller's judgment of sentence became final on or about Monday, March 16, 2015.²

To be considered timely, Weller had to file his petition by Tuesday, March 16, 2016 or allege facts to establish one of the statutory exceptions. Weller's petition was not filed until September 19, 2025, more than nine years late, and it did not allege any facts to establish one of the exceptions.

The time limits of PCRA are jurisdictional in nature. *See Commonwealth v. Laird*,

¹ The aggregate sentence consisted of 9 years to 18 years on Count 1 and a consecutive 2 years to 4 years on Count 5.

² The thirtieth day fell on Sunday March 15, 2015. However, when the last day falls on a weekend, the day is excluded from the computation. *See* 1 Pa.C.S.A. §1908.

331 A.3d 579, 594 (Pa. 2025); *see also Commonwealth v. Taylor*, 283 A.3d 178, 185 (Pa. 2023). Furthermore, 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). Since the petition is untimely, the court cannot hold an evidentiary hearing or grant Weller any relief.

Fourthly, Weller's issues are previously litigated or waived. A claim is previously litigated if the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue or it has been raised and decided in a proceeding collaterally attacking the conviction or sentence. *See* 42 Pa. C.S.A. §9544(a). An issue is waived if "the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal or in a prior state postconviction proceeding." 42 Pa. C.S.A. §9544(b).

On or about January 27, 2016, Weller filed a timely PCRA petition, which included claims that he was not given proper credit for time served and his sentence was to run entirely concurrent with the sentence from Lackawanna County. The court appointed counsel to represent Weller. Counsel filed a no merit letter and a petition to withdraw. In an Opinion and Order entered August 29, 2016, the court gave Weller notice of its intent to dismiss his PCRA petition without an evidentiary hearing and granted counsel's motion to withdraw. The court found that Weller's claims lacked merit and were belied by the record. The court issued a final order dismissing Weller's PCRA petition on November 10, 2016. Despite being notified of his appeal rights, Weller did not appeal this decision. Since these issues asserted and rejected in Weller's first PCRA petition, they are previously litigated.

To the extent that Weller asserts that his current petition asserts a different issue, it is waived. Weller was aware as of late October 2016, at the latest, from his DC16E Sentence Status Summary Version 6 dated October 20, 2016 (which is attached as an exhibit to his petition) that his sentences in his Lackawanna County case (CP-35-CR-0001722-2013) and his Lycoming County case (CP-41-CR-0001624-2016) were not running entirely concurrent to each other. The court had not entered a final order dismissing his first PCRA petition, yet. Weller could have sought leave to file an amended PCRA petition to assert this claim in his first PCRA petition or he could have filed a PCRA petition within 60 days of being notified of the DOC's computation of his sentences.³ He did not. Therefore, if this issue was not previously litigated, it was waived.

Finally, and most importantly, even if the court were to treat Weller's petition as one to enforce the plea agreement, it lacks merit. This is not a situation where the parties or the court failed to comply with the plea agreement but one where Weller's convictions resulted in state parole violations in earlier cases that resulted in the service of this sentence being delayed.

Neither credit for time served nor total concurrency were terms of the plea agreement nor could it have been given that the minimum sentence in the Lycoming County case exceeded the maximum sentence in the Lackawanna County case.

The terms of the plea agreement were that Weller would receive an 11-year to 22-year sentence concurrent to his current Lackawanna County case. *See* Transcript of Guilty Plea and Sentencing Hearing, 02/13/2015, at 4. The court imposed a sentence in accordance

³ In 2016, any claim had to be filed within 60 days of the date the claim could have been presented. The statute was amended in 2018 to expand that time limit to one year, but only to claims arising on or after December 24,

with the plea agreement. During the plea and sentencing hearing and in the sentencing order, the court explained that the effect would be that his sentence would be partially consecutive and partially concurrent with his Lackawanna County sentence. *See* Transcript of Guilty Plea and Sentencing Hearing, 02/13/2015, at 17.⁴ In other words, once Weller began serving the Lycoming County sentence, he would reach his maximum on his Lackawanna County sentence but continue serving his Lycoming County sentence. *See id.* at 18. Weller specifically asked if he would be getting credit for time served back to the date in 2013 when he was in court in Lackawanna County. The court explained that it gave him credit for the time he served in Lycoming County, and he would not receive credit for any time used by Lackawanna County. *See id.* at 18-19.

Weller was sentenced in Lackawanna County in case 1722-2013 on October 13, 2013. He was sentenced to five to ten years incarceration in a state correctional institution with credit for time served from July 26, 2013. He was eligible for a recidivism risk reduction incentive (RRRI) and his RRRI minimum was fifty months or four years and two months. He was not sentenced in Lycoming County case 1624-2012 until February 13, 2015. Therefore, he was serving his sentence in Lackawanna County from July 26, 2013 through February 12, 2015 and would not be entitled to any credit for that time.

Since Weller's Lackawanna County sentence of 4 years and 2 months to 10 years was significantly shorter than the agreed upon Lycoming County sentence of 11 years to 22 years and he had served approximately 18 months on that sentence before he was sentenced in Lycoming County, the Lycoming County sentence could never be totally concurrent to the

2017. *See* 42 Pa. C.S.A. §9545(b)(2).

⁴This was also stated in Weller's sentencing order.

Lackawanna County sentence.

When the court stated “although it is the intent of the Court that this sentence shall run entirely concurrent with that sentence of Lackawanna County”, the court misspoke. What it meant was that from February 13, 2015, its intent was that the Lackawanna County case would run entirely concurrent with the Lycoming County case until he maxed off the Lackawanna County case. That is what would have occurred if Weller’s convictions in these cases had not resulted in him again being recommitted by the Parole Board as a convicted parole violator in case CP-41-CR-0000590-1997.

Weller asserted this issue previously in his first PCRA petition filed on February 9, 2016. Attached as an exhibit to that PCRA petition was the initial computation of the Department of Corrections (DOC) to add the sentence in 1624-2012. Lackawanna County 1722-2013 was listed as Computation 2 and Lycoming County 1624-2012 was listed as Computation 3. The sentence computation date was March 27, 2015. However, Weller was still on parole for Lycoming County case CP-41-CR-0000590-1997.

In case 590-1997, Weller was sentenced to incarceration in a state correctional institution (SCI) for six to twelve years as well as four years’ probation on two additional counts. *See* CP-41-CR-0000590-1997. The effective date of that sentence was February 20, 1997, and he was paroled in that case sometime in 2003. *See* DC16E-Sentence Status Summary Certified Version 5 Dated 9/22/2015, (which is attached as an exhibit to Weller’s Petition) at p.2 (specifically, Computation 3).

On or about May 26, 2005, Weller was recommitted as a convicted parole violator as a result of a new conviction in Lackawanna County (CP-35-CR-0001594-2004). His new sentence from Lackawanna County was lodged as a detainer sentence. *See* DC16E-Sentence

Status Summary Certified Version 5 dated 9/22/2015, at 1 (specifically, Remarks). Again, he was re-paroled.

On October 23, 2013, Weller entered a guilty plea to Manufacture, Delivery or Possession With Intent to Deliver a Controlled Substance and was sentenced to five to ten years confinement with credit for time served from July 26, 2013 in Lackawanna County (CP-35-CR-0001722-2013). This new criminal conviction resulted in Weller being recommitted as a convicted parole violator (CPV) in case 590-1997 and in Lackawanna County case CP-35-CR-0001594-2004. *See* DC16E Sentence Status Summary Certified Version 5 Dated 9/22/2015, which is attached as an exhibit to Weller's petition. He was serving "backtime" or a "PV hit" in case 590-1997 from April 14, 2015 through September 26, 2016. *See id.* at 2 (Computation 3 showing a custody for return date of 04/14/2015); *see also* DC16E Sentence Status Summary Certified Version 6 Dated 10/16/2016, Remarks ("Version 6 created to remove CP590-1997 Ct2 and Ct4 since they paroled 9/26/2016 and to add CP1624-2012 with an effective date of 9/27/2016 since CP590-1997 paroled 9/26/2016 and to remove corresponding detainers").

Despite the court sentencing Weller on February 13, 2015, this sentence was not effective until after Weller served his "backtime" in 590-1997 due to the statutory provisions regarding state parole. More specifically, 61 Pa. C.S.A. §6138(a)(5) states, in relevant part:

- (5) If a new sentence is imposed on the offender, the service of the balance of the term originally imposed by a Pennsylvania court shall precede the commencement of the new term imposed in the following cases:
 - (i) If a person is paroled from a State correctional institution and the new sentence imposed on the person is to be served in the State correctional institution.

This statute required Weller to serve his "backtime" in 590-1997 first and delayed the

effective date or start date of his 11- to 22-year sentence in this case until August 6, 2016.⁵

The August 6, 2016 date was calculated by adjusting the effective date from September 27, 2016 for Weller's credit for time served from August 18, 2012 to October 8, 2012.

Conclusion

Weller is not entitled to relief. The parties and the court complied with the plea agreement. He received an 11- to 22-year sentence in accordance with the plea agreement concurrent to his Lackawanna County case. Total concurrency was not a term of the plea agreement. There also was no agreement for Weller to receive credit for time served in Lackawanna County on his Lycoming County case. Weller received all the credit he was due. Weller was advised during the guilty plea and sentencing hearing that he would only receive credit for the pre-trial time he was in custody in Lycoming County. Weller was also informed that his Lycoming County sentence would be served partially concurrent and partially consecutive to his Lackawanna County sentence due to the fact that he would complete his Lackawanna County sentence before he would be eligible for parole on his Lycoming County sentence. The delay in the effective date of Weller's Lycoming County sentence was not due to the court or the parties failing to comply with the plea agreement. Rather, Weller's inability to successfully complete his parole supervision without committing new crimes resulted in him being required to serve "backtime" on case 590-1997 before he could begin serving his new Lycoming County sentence in this case (1624-2012).

⁵ It appears that the Board may have violated this statute when it ran Weller's sentence in the Lackawanna County case concurrent with his backtime. *See* DC16E Sentence Status Sheet Version 5 Dated 9/22/2015 (Computation 4). This is what resulted in the majority of Weller's minimum sentence in that case being served before the effective date of his 11- to 22-year sentence in this case. That worked to Weller's benefit, though, and resulted in Lackawanna County 1722-2013 being completed in 2023 rather than in 2025. It also likely made the computations simpler because the Lackawanna County case was always going to be an underlapping concurrent sentence with the Lycoming County case.

ORDER

AND NOW, this 15th day of October 2025, the court notifies the parties of its intention to deny Weller's Petition without holding an evidentiary hearing. Weller 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

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