

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-2259-2006
v.	:	
	:	
DWAYNE HALL,	:	
Petitioner	:	PCRA/WITHDRAWAL
	:	GRANTED

OPINION AND ORDER

On August 31, 2021, Counsel for Dwayne Hall (Petitioner) filed a Motion to Withdraw as Counsel pursuant to *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super.1988). After an independent review of the entire record, this Court agrees with Post Conviction Relief Act (PCRA) counsel and finds that Petitioner has failed to timely raise any meritorious issues in his PCRA Petition. Therefore, the Petition shall be dismissed.

Background

On December 18, 2007, Petitioner entered a guilty plea for the charge of Robbery.¹ On the same day, the Honorable Richard A. Gray sentenced him to a term of four (4) years minimum to twelve (12) years maximum. Petitioner did not file Post Sentence Motions so his judgement of sentence was final on January 18, 2008. On June 18, 2021, Petitioner filed a Petition for Post-Conviction Relief and/or Petition for Writ of Habeas Corpus. The Public Defender’s Office entered their appearance on June 22, 2021 to represent Petitioner but Trisha Hoover Jasper, Esq. was subsequently appointed by this Court on July 15, 2021 to represent the Petitioner. Assigned counsel reviewed the Petition and all documents pertaining to Petitioner’s guilty plea and sentencing prior to sending Petitioner a *Turner/Finley* letter and filing her Motion to Withdraw as Counsel. After an independent review of the record, this Court agrees with Attorney Jasper that Petitioner’s PCRA Petition is untimely and does not meet any untimeliness exceptions and this Court does not have jurisdiction to rule on his claims.

¹ 18 Pa. C.S.A. § 3701(a)(1)ii.

Whether Petitioner’s PCRA Petition is untimely pursuant to 42 Pa. C.S. § 9545(b)

Before determining whether a petitioner is substantively entitled to relief, the petitioner must establish jurisdiction. *Commonwealth v. Robinson*, 837 A.2d 1157, 1161 (Pa. 2003). 42 Pa. C.S. § 9545(b) requires that a PCRA petition be filed within one year of the date the judgment in a case becomes final, or else meets one of the timeliness exceptions, which are enumerated under 42 Pa. C.S. § 9545(b)(1). Those exceptions are as follows:

- (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).

A PCRA petition raising one of these exceptions must raise it “within one year of the date the claim could have been presented.” 42 Pa. C.S. § 9545(b)(2). If an exception is raised a petitioner is required to “affirmatively plead and prove” the exception, upon which he or she relies. *Commonwealth v. Taylor*, 933 A.2d 1035, 1039 (Pa. Super. 2007).

As such, when a PCRA is not filed within one year of the expiration of direct review, or not eligible for one of the 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.

Id. at 1039.

Petitioner’s judgment of sentence became final thirty (30) days after sentencing. Therefore, Petitioner’s sentence became final on January 18, 2008. Petitioner filed the immediate PCRA Petition on June 18, 2021, which is well beyond one year of the date his judgment of sentence became final.

Therefore, Petitioner must fall within one of the exceptions listed in 42 Pa. C.S. § 9545(b)(1) for his PCRA Petition to be deemed timely and for this Court to address the substantive merits of his PCRA Petition. A petition invoking one of these exceptions must be filed within sixty days of the date the claim could first have been presented. 42 Pa.C.S.A. § 9545(b)(2). Petitioner must also prove and plead specific facts that illustrate that his claim was raised within the 60 day time period. *Commonwealth v. Carr*, 768 A.2d 1164 (Pa. Super. 2001). The Court finds the Petitioner has not met his burden to establish an exception to the timeliness rule. Although he indicates that, due to COVID, he was not able to use the library, he has not proven to the Court that such a policy existed and it in fact prevented him from preparing this petition. Therefore, he does not qualify under the exception in Section 9545(b)(1)i.

Petitioner has not alleged any circumstances or facts that form the basis to establish the second exception. Petitioner claims at the time of his guilty plea he was not aware that he might “forfeit parole/back time” before Judge Gray. As part of his guilty plea hearing, Petitioner was required to complete a seven-page, forty-question guilty plea colloquy. Question number thirty-seven (37) on page six (6) states, “If you are now on probation or parole, do you realize that your plea of guilty will mean a violation of that probation or parole and that you could be sentenced to prison as a result of the violation caused by your guilty plea today?” Guilty Plea Colloquy, 12/18/2007, at 6. On this question, Petitioner wrote “n/a”. *Id.* The Court interprets this answer to mean that Petitioner was not on probation or parole at the time of his plea. Consequently, Petitioner could not have received a violation of his sentence in this case for his plea on that date because he was not yet on supervision to be eligible to receive a violation. Rather, since Petitioner was convicted of two subsequent offenses², it makes sense that he received a violation in this case for those convictions. Therefore, Petitioner’s plea and sentence on this case docket did not generate that violation, Petitioner was not misled into pleading guilty in this case and does not meet the exception under Section 9545(b)(1)ii. Finally, Petitioner has not alleged any facts to support a

² CP-41-CR-0001639-2015 on June 19, 2017 for the charge of Simple Assault for which he received a 1-2 year sentence of state incarceration and CP-41-CR-0002020-2015 on August 21, 2017 for which he received a 5-20 year state sentence for a plea of nolo contendere to the charge of Voluntary Manslaughter before this Court.

claim under Section 9545(b)(1)iii. The Court agrees with Attorney Jasper that no justification or exception exists to excuse the patently untimely filing of Petitioner's PCRA.

Conclusion

Based upon the foregoing, this Court finds no basis upon which to grant Petitioner's PCRA petition or to examine the substantive merits of his claim. Additionally, the Court finds that no purpose would be served by conducting any further hearing. As such, no further hearing will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this Court's intention to deny Petitioner's PCRA Petition. Petitioner 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.

ORDER

AND NOW, this 9th day of December, 2021, it is hereby **ORDERED** and **DIRECTED** as follows:

1. Petitioner is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure No. 907(1), that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.
2. The application for leave to withdraw appearance filed August 31, 2021, is hereby **GRANTED** and Trisha Hoover Jasper, Esq. may withdraw her appearance in the above captioned matter.
3. **Petitioner will be notified at the address below through means of certified mail.**

By the Court,

Nancy L. Butts, President Judge

xc: DA
Trisha Hoover Jasper, Esq.
Dwayne Hall QD1129
SCI Coal Township
P.O. Box 33028
St. Petersburg, FL 33733