

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH</b>	<b>: No. CR-838-2020</b>
	<b>:</b>
<b>vs.</b>	<b>: CRIMINAL DIVISION</b>
	<b>:</b>
<b>ROBERT BELTON,</b>	<b>: Notice of Intent to Dismiss PCRA</b>
<b>Defendant</b>	<b>: Without Holding An Evidentiary Hearing</b>
	<b>: and Granting Counsel's Motion to</b>
	<b>: Withdraw</b>

**ORDER**

AND NOW, this 17<sup>th</sup> day of December 2024, the court gives Robert Belton notice of its intent to dismiss his Post Conviction Relief Act (PCRA) petition as untimely.

On August 29, 2022, Belton entered a guilty plea to Count 1, Possession With Intent to Deliver Methamphetamine, an ungraded felony. Although the standard range for the minimum sentence for this conviction was 27 to 33 months, the court accepted Belton's plea and sentenced him in accordance with the plea agreement to a below-the-guidelines minimum of 9 months and a maximum of 6 years to run concurrent to his sentences in CR-1581-2021 and CR-1406-2012.

On May 1, 2024, Belton filed his PCRA petition. As this was Belton's first PCRA petition, the court appointed counsel and gave counsel the opportunity to file an amended PCRA petition or a no merit letter. Counsel initially filed an amended petition without having obtained or reviewed the transcript of Belton's guilty plea and sentencing hearing. After obtaining the transcript of the hearing, however, counsel filed a motion to withdraw and no merit letter, in which she noted that the PCRA petition was untimely and that the transcript showed that Belton and his counsel were aware of the co-defendant's

suppression motion as the Commonwealth indicated that the reason for the low minimum sentence and it being run concurrently to Belton's other cases was his attorney missed the window for filing an omnibus motion. Transcript, 08/29/22, at 22.

Once a judgment of sentence becomes final, the PCRA is the sole means of collaterally attacking one's conviction. See 42 Pa. C.S. §9542; *Commonwealth v. Descardes*, 136 A.3d 493, 498 (Pa. 2016). To be considered timely, a petitioner must file his PCRA petition within one year of the date his judgment of sentence became final or allege facts to support one of the three statutory exceptions. See 42 Pa. C.S.A. §9545(b).

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). The court sentenced Belton on August 29, 2022. He did not file any post sentence motion or appeal. Therefore, his judgment of sentence became final on September 28, 2022.

To be facially timely, he had to file his PCRA petition within one year, or by September 28, 2023. See 42 Pa. C.S.A. §9545(b)(1). His PCRA petition was not filed until May 1, 2024.

Belton also has not alleged sufficient facts to establish any of the three statutory exceptions to the one-year time limit. The three statutory exceptions are:

(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).

Belton alleges that: he was moved numerous times during his incarceration and was in restricted housing without access to phone calls; he did not have counsel; and he did not realize his co-defendant successfully litigated a suppression motion.

His allegations do not satisfy the governmental interference exception because Belton does not state when and where he was moved or explain how his prison moves interfered with his ability to file a PCRA petition. Typically, the state correctional institutions have form PCRA petitions available for inmates to request, complete and mail to the court. The fact that he did not have counsel is of no moment as the term “government official” does not include defense counsel, whether appointed or retained. 42 Pa. C.S.A. §9545(b)(4).

His allegations do not satisfy the newly discovered fact exception, because he has not alleged any new “facts.” Instead, he has asserted that he did not know that his co-defendant successfully litigated a suppression motion. Neither he nor his attorney filed a motion to suppress. The fact that he became aware of the judicial decision in his co-defendant’s case is not a fact; it is law. *See Commonwealth v. Watts*, 23 A.3d 980, 986-987 (Pa. 2011)(judicial determinations are law, not facts). Additionally, by entering a guilty plea, Belton waived any motions, claims or defenses that he had to the charges.

His allegations do not satisfy the third exception because (1) the trial court’s decision in his co-defendant’s case did not recognize a new constitutional right; (2) the decision was not issued by the United States Supreme Court or the Pennsylvania Supreme Court; and (3) the decision was not held to apply retroactively.

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 a hearing or to grant Belton any relief.

As no purpose would be served by conducting any further hearing, none will be scheduled and the parties are hereby notified of this Court's intention to dismiss the PCRA Petition. ***Belton 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.

The court GRANTS PCRA counsel's Motion to Withdraw. Belton may represent himself or hire counsel to represent him, but the court will not appoint counsel to represent him on an untimely petition.

By The Court,

---

Nancy L Butts, President Judge

cc: Phoebe Yates, Esquire (ADA)  
Krista Deats, Esquire  
102 W. Wellsboro Street, Mansfield PA 16933

Robert Belton, #QN6674 (**regular and certified mail**)  
189 Fyock Rd, Indiana, PA 15701