

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0001229-2015
:
vs. :
: Notice of Intent to Dismiss
DERRICK JERMAINE BOONE, :
Defendant :

OPINION AND ORDER

This matter came before the court on the “Motion for Modification of Sentence” filed on June 6, 2024 by Derrick Jermaine Boone (“Boone”). As will be explained in this Opinion, the court must treat this motion as a Post Conviction Relief Act (PCRA) petition, and the court lacks jurisdiction to hold an evidentiary hearing or to grant Boone any relief because his petition is untimely.

By way of background, on or about April 25, 2015, Boone was charged with one count of homicide, two counts of aggravated assault with a deadly weapon, one count of persons not to possess a firearm, one count of firearms not to be carried without a license, one count of possession of a weapon, two counts of simple assault, one count of voluntary manslaughter, two counts of aggravated assault, and one count of discharging a firearm into an occupied structure.

On November 28, 2017, Boone pled guilty to two counts of aggravated assault with a deadly weapon, felonies of the second degree; one count of persons not to possess firearms, a felony of the second degree; and voluntary manslaughter, a felony of the first degree. On that same date and in accordance with the negotiated plea agreement, the court sentenced Boone to an aggregate term 12 to 30 years’ incarceration in a state correctional institution, consisting of 6 ½ year to 17 years for voluntary manslaughter, 4 years to 10 years

for person not to possess a firearm, and 9 months to 1 ½ years for each aggravated assault with each sentence to be served consecutively.

Boone has filed at least three prior PCRA petitions. Each was dismissed as untimely.

The court must treat this motion for modification of sentence as Boone's fourth or subsequent Post Conviction Relief Act (PCRA) petition. The PCRA is the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies. 42 Pa. C.S.A. §9542; *Commonwealth v. Descardes*, 136 A.3d 493, 497-98 (Pa. 2016). The PCRA is the exclusive vehicle for obtaining post -conviction relief regardless of the manner in which the pleading or petition is titled. *Commonwealth v. Hromek*, 232 A.3d 881, 884 (Pa. Super. 2020); *Commonwealth v. Taylor*, 65 A.3d 462, 466 (Pa. Super. 2013); *Commonwealth v. Kutnyak*, 781 A.2d 1259, 1261 (Pa. Super. 2001). The court must treat any pleading filed after the judgment of sentence becomes final as a PCRA petition as long as the pleading falls within the purview of the PCRA. *Commonwealth v. Tedford*, 228 A.3d 891, 904 n.10 (Pa. 2020); *Commonwealth v. Torres*, 223 A.3d 715, 716 (Pa. Super. 2019).

The court intends to dismiss this fourth or subsequent PCRA petition without holding an evidentiary hearing because the petition is untimely and Petitioner relinquished this claim by failing to assert it in his prior PCRA petitions.

A petitioner must file any PCRA petition, including a second or subsequent petition, within one year of the date the judgment becomes final. 42 Pa. C.S.A. §9545(b)(1). A judgment becomes final "at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review." 42 Pa. C.S.A. §9545(b)(3). Otherwise, the petitioner must plead and prove one of the following three exceptions:

(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 petitioner who attempts to invoke these exceptions must do so “within one year of the date the claim could have been presented.” 42 Pa. C.S.A. §9545(b)(2). The PCRA time limitations are mandatory and jurisdictional in nature. *Commonwealth v. Natividad*, 650 Pa. 328, 200 A.3d 11, 25 (2019). No court may disregard these time limits in order to reach the merits of claims raised in an untimely PCRA petition. *Commonwealth v. Lambert*, 584 Pa. 461, 884 A.2d 848, 851 (2005).

Petitioner entered his guilty plea and was sentenced on November 28, 2017. On December 12, 2017, the court issued an amended sentencing order that clarified the period for which Petitioner would receive credit for time served. Petitioner did not file an appeal from the original sentencing order or the amended sentencing order. Therefore, his judgment of sentence became final on January 11, 2018. Petitioner did not plead any of the three statutory exceptions to the one-year time bar. Therefore, the court lacks jurisdiction to hear Petitioner’s claim.

Although legality of sentence is always subject to review within the PCRA, claims must still first satisfy the PCRA's time limits or one of the exceptions thereto. *Commonwealth v. Fahy*, 737 A.2d 213, 223 (Pa. 1999); *see also Commonwealth v. Armolt*,

294 A.3d 364, 377-78 (Pa. 2023); *Commonwealth v. Hromek*, 232 A.3d 881, 884 (Pa. Super. 2020); *Commonwealth v. Pew*, 189 A.3d 486, 488 (Pa. Super. 2018).

ORDER

AND NOW, this ___ day of June 2024, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court notifies the parties of its intent to dismiss Boone’s motion without holding an evidentiary hearing as it is untimely. Boone may respond to this proposed dismissal within twenty (20) days. Any response should state facts to show that his motion is timely. In other words, the response should state when and how Boone discovered that his sentences should allegedly merge and why, with the exercise of due diligence, he could not have discovered the information earlier. If no response is received within that time period, the court will enter an order dismissing the petition.

By The Court,

Nancy L. Butts, President Judge

cc: District Attorney
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Jerri Rook

NLB/laf