

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

v.

GEORGE M. LAIL,

Appellant

No. 1620 WDA 2017

Appeal from the PCRA Order October 31, 2017  
in the Court of Common Pleas of Lawrence County,  
Criminal Division at No(s): CP-37-CR-0000462-2015,  
CP-37-CR-0000832-2014

BEFORE: GANTMAN, P.J., SHOGAN, J., and MUSMANNNO, J.

MEMORANDUM BY MUSMANNNO, J.:

FILED JUNE 15, 2018

George M. Lail (“Lail”) appeals from the Order denying his Petition for relief filed pursuant to the Post Conviction Relief Act (“PCRA”).<sup>1</sup> We affirm.

On August 14, 2014, a Criminal Complaint was filed against Lail at case number 832 of 2014 (“Number 832”). On May 14, 2015, a jury convicted Lail of possession of a controlled substance (heroin) with the intent to deliver (“PWID”), and possession of drug paraphernalia.<sup>2</sup> The jury acquitted Lail of possession of “crack” cocaine and marijuana, and PWID “crack” cocaine. On September 9, 2015, the trial court sentenced Lail to three to nine years in prison, with credit for 392 days already served. Lail did not file a post-

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<sup>1</sup> See 42 Pa.C.S.A. §§ 9541-9546.

<sup>2</sup> See 35 P.S. § 780-113(a)(30), (32).

sentence motion or a direct appeal of his judgment of sentence. Thus, Lail's judgment of sentence became final on October 9, 2015.

On May 11, 2015, a Criminal Complaint was filed against Lail, at case number 462 of 2015 ("Number 462"), charging him with delivery of a controlled substance<sup>3</sup> and criminal use of a communication facility.<sup>4</sup> On September 9, 2015, Lail pled guilty to PWID at that number, after which the trial court sentenced Lail to 18 months to 36 months in prison. The trial court imposed the sentence at Number 462 consecutive to the sentence imposed at Number 832. Lail did not file a post-sentence motion or a direct appeal of his judgment of sentence. Consequently, Lail's sentence became final on October 9, 2015.

On November 3, 2016, at Number 832, Lail filed a pro se PCRA Petition. Counsel was appointed to represent Lail. On February 21, 2017, counsel filed a Motion to amend Lail's pro se PCRA Petition at Number 832. On July 5, 2017, counsel filed a Motion to amend Lail's PCRA Petition at Number 462.<sup>5</sup> After a hearing, the PCRA court dismissed Lail's Petitions as untimely filed.

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<sup>3</sup> See 35 P.S. § 780-113(a)(30).

<sup>4</sup> See 18 Pa.C.S.A. § 7512(a).

<sup>5</sup> At that time, Lail had not filed a PCRA Petition at Number 462. It appears that the PCRA court considered Lail's Motion to Amend to be his PCRA Petition at Number 462.

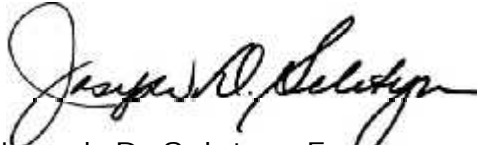
Thereafter, Lail filed the instant timely appeal, followed by a court-ordered Pa.R.A.P. 1925(b) Concise Statement of matters complained of on appeal.

In his appeal, Lail challenges “[w]hether [he] timely filed his PCRA [P]etition.” Brief for Appellant at v. In the Argument section of his brief, Lail acknowledges the law regarding timeliness of a PCRA petition, but provides nothing to support his claim of a timely-filed PCRA Petition. See *id.* at 4-6. Rather, Lail asserts that should the PCRA Petitions be deemed timely filed, the Court should remand for the PCRA court to address the merits of the issues raised by Lail in his PCRA Petitions. *Id.* at 5-6.

In its Opinion, the PCRA court set forth the relevant law, addressed the timeliness of Lail’s PCRA Petitions, concluded that they were untimely filed, and that Lail asserted no exception to the timeliness requirements. See PCRA Court Opinion, 7/21/17, at 4-7. We agree with the reasoning of the PCRA court, as set forth in its Opinion, and affirm on this basis with regard to Lail’s claim. See *id.*

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive, flowing style.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 6/15/2018

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS  
 VS :  
 GEORGE M. LAIL : LAWRENCE COUNTY, PENNSYLVANIA  
 : CRIMINAL DIVISION  
 : NO. 832 OF 2014  
 : OTN: T552999-6  
 : NO. 462 OF 2015  
 : OTN: T652514-2

APPEARANCES

For The Commonwealth: William J. Flannery, Esq.  
 Office of the District Attorney  
 430 Court Street  
 New Castle, PA 16101

For The Petitioner: Dennis W. McCurdy, Esq.  
 539 Main Street  
 Harmony, PA 16037

OPINION

MOTTO, P.J. July 21, 2017

Before the Court for disposition is the Petition For Post-Conviction Collateral Relief (hereinafter "PCRA Petition") filed by the petitioner, George M. Lail, which asserts that his trial counsel at Case Number 832 of 2014, C.R. was ineffective for the following:

- I. Defendant was denied due process as he was tried by an all white jury, which did not constitute a jury of his peers;
- II. Counsel was ineffective for not objecting to the Court trying the case when the trial court approved the search warrant creating a conflict of interest;
- III. Counsel was ineffective for failing to object to the jurors request to view the search warrant and the trial court's denial of that request;
- IV. Counsel was ineffective for failing to object to the confidential informant's statements being admitted at trial when the confidential informant did not appear at trial;

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V. Counsel was ineffective for failing to ask the questions which were requested by the Defendant and subsequently instructing the Defendant to file a PCRA Petition;

VI. Defendant was denied his requests for the removal of his trial counsel;

VII. Defendant contends the verdict of guilty for the charge of possession with intention to deliver heroin should have been overturned as the evidence demonstrated the presence of 1.45 grams of heroin, which is consistent with personal use and not possession with intent to deliver; and

VIII. Counsel was ineffective for failing to object to the jury pool only consisting of Caucasians as that is not a jury of the Defendant's peers as four percent of the Lawrence County population is comprised of African Americans.

At Case Number 462 of 2015, the Defendant alleges the existence of prosecutorial misconduct as the trials for manufacture, delivery or possession with intent to manufacture or deliver a controlled substance and criminal use of a communication facility should have been occurred within the same proceeding as they arose from a sequence of events sharing a logical relationship between the acts, sharing common issues of fact and law.

On August 14, 2014, a Criminal Complaint was filed against the Defendant at Case No. 832 of 2014, C.R., charging him with Persons Not to Possess Firearms<sup>1</sup>, 2 counts of Manufacture, Delivery or Possession with Intent to Manufacture or Deliver a Controlled Substance<sup>2</sup>, 3 counts of Possession of a Controlled Substance<sup>3</sup>, and Possession of Drug Paraphernalia<sup>4</sup>. The Defendant then filed an Omnibus Pre-Trial Motion for Relief consisting of a

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<sup>1</sup> 18 Pa.C.S.A. § 6105(a)(2).

<sup>2</sup> 35 P.S. § 780-113(a)(30).

<sup>3</sup> 35 P.S. § 780-113(a)(16).

<sup>4</sup> 35 P.S. § 780-113(a)(32).

Motion to Unseal Search Warrant, a Motion to Compel Discovery and a Motion for writ of Habeas Corpus. A hearing was held on the Defendant's Pre-Trial Motion for Relief on January 30, 2015, and the Motion to Unseal Search Warrant and Motion to Compel Discovery were resolved at that time. On March 5, 2015, the Honorable J. Craig Cox denied the Motion to Suppress Evidence and Motion for writ of Habeas Corpus. Trial then commenced on May 11, 2015, and concluded on May 14, 2015, with the jury rendering verdicts of guilty for the charges of Possession with Intent to Deliver-Heroin, Possession of a Controlled Substance-Heroin, and Possession of Drug Paraphernalia. The Defendant was acquitted on the charges of Possession with Intent to Deliver-Crack Cocaine, Possession of a Controlled Substance-Crack Cocaine and Possession of a Controlled Substance-Marijuana.

On September 9, 2015, the Defendant was sentenced to a term of incarceration of not less than 3 years nor more than 9 years with credit for 392 days already served from August 14, 2014 until the date of sentencing<sup>5</sup>. Following the imposition of sentence, the Defendant failed to file Post-Sentence Motions and no direct appeal was filed by the Defendant. As a result, the Defendant's sentence became final on October 9, 2015.

At Case No. 462 of 2015, C.R., a Criminal Complaint was filed on May 11, 2015, charging the Defendant with Delivery of a Controlled Substance<sup>6</sup> and Criminal Use of Communication Facility<sup>7</sup>.

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<sup>5</sup> On September 11, 2015, the Court issued an Amending Order of Court stating the charge of Possession of a Controlled Substance-Heroin merged with the sentence imposed for the charge of Possession of a Controlled Substance. The Court also issued a finding of guilty without further punishment for the charge of Possession of Drug Paraphernalia.

<sup>6</sup> 35 P.S. § 780-113(a)(30).

The Defendant entered a plea of guilty to the charge of Possession with Intent to Deliver a Controlled Substance and was sentenced to a term of incarceration of not less than 18 months nor more than 3 years on September 9, 2015. The sentence issued at Case No. 462 of 2015, C.R., was to be served on a consecutive basis with the sentence imposed at Case No. 832 of 2014, C.R. The Defendant did not file Post-Sentence Motions or a direct appeal. Similar to Case No. 832 of 2014, C.R., the Defendant's sentence became final on October 9, 2015.

On November 3, 2016, the Defendant filed a *pro se* Motion for Post-Conviction Collateral Relief at Case No. 832 of 2014, C.R., and counsel was appointed to represent him on November 10, 2016. Defendant's counsel then filed a Motion to Amend Post-Conviction Relief Act *Pro Se* Petition on February 21, 2017, regarding Case No. 832 of 2014, C.R., and on July 5, 2017, concerning Case No. 462 of 2015, C.R. The Defendant did not file a *pro se* Motion for Post-Conviction Collateral Relief at Case No. 462 of 2015, C.R. A hearing was held relating to the Defendant's PCRA Petition on July 10, 2017. At that hearing, the Commonwealth objected to the Defendant's PCRA Petition stating that the Court did not have jurisdiction to address the merits of the Defendant's claims as his Petition was untimely filed pursuant to 42 Pa.C.S.A. § 9545(b).

The Court must first address whether the Defendant filed a timely PCRA Petition at the above-captioned cases. A petition for post-conviction collateral relief must be filed within one

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<sup>7</sup> 18 Pa.C.S.A. § 7512(a).

year of the date of final judgment, unless one of the following exceptions applies:

(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)(i)-(iii).

It is well established that the PCRA's timeliness requirements are jurisdictional in nature, and a court may not address the merits of the issues raised if the petition is untimely filed. Commonwealth v. Copenhefer, 596 Pa. 104, 108, 941 A.2d 646, 648-649 (2007)(citations omitted). The timeliness period commences for PCRA purposes when the judgment of sentence becomes final at the conclusion of direct review or the expiration of the time for seeking such review. Commonwealth v. Wrecks, 931 A.2d 717, 720 (Pa. Super. 2007)(citing 42 Pa.C.S.A. § 9545(b)(3)). Also, a PCRA petition is untimely on its face if it is filed beyond one year of final judgment and the defendant fails to plead one of the three statutory exceptions to the PCRA's jurisdictional time-bar found in 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). Commonwealth v. Chester, 586 Pa. 468, 475, 895 A.2d 520, 524 (2006).

In the case *sub judice*, it is apparent that the Defendant's current PCRA Petitions were untimely filed as his judgment of



sentence in each case became final on October 9, 2015, when the appeal period expired without the filing of a direct appeal. As a result, the time period for filing a timely PCRA Petition expired on October 9, 2016. The Defendant's *pro se* PCRA Petition at Case No. 832 of 2014, C.R., was not filed until November 3, 2016. Clearly, the Defendant's PCRA Petition relating to Case No. 832 of 2014, C.R., was filed after the one-year timeframe established by 42 Pa.C.S.A. § 9545(b)(1) expired. Moreover, the Defendant failed to file a *pro se* PCRA Petition at Case No. 462 of 2015, C.R., at the same time as his Petition at Case No. 832 of 2014, C.R. In fact, the first document relating to post-conviction collateral relief filed at Case No. 462 of 2015, C.R., was the Motion to Amend Post-Conviction Relief Act *Pro Se* Petition on July 5, 2017. Therefore, the *pro se* PCRA Petition and Motions to Amend Post-Conviction Relief Act *Pro Se* Petition were untimely filed pursuant to 42 Pa.C.S.A. § 9545(b)(1).

Furthermore, the Defendant has not set forth any facts or circumstances to establish he is entitled to relief from the one-year timeframe based upon the exceptions set forth in 42 Pa.C.S.A. § 9545(b)(1)(i)-(iii). The Defendant was provided with an opportunity to testify at the hearing held by this Court on July 10, 2017, but failed to establish any grounds to apply the aforementioned exceptions. First, there was no mention of any interference by a government official, which prevented the Defendant from timely filing his PCRA Petition. Second, all of the facts and claims being asserted by the Defendant were known to him at the time of trial and/or sentencing. At the time of

trial, the Defendant was aware the jury and jury pool were composed of all Caucasian individuals and this Court was the presiding court for the trial, despite having approved the search warrant. Similarly, the Defendant was aware at trial of the questions being asked by his trial counsel and any objections that were not being made by trial counsel. As a result, the Defendant was aware of all facts and circumstances related to the claims contained within the Motion to Amend Post-Conviction Relief Act *Pro Se* Petition at the time of trial or upon the issuance of the verdict by the jury. There is no valid basis for the Defendant to claim he was unaware of those claims or could not have ascertained those facts through the exercise of due diligence. Third, the Defendant's claims for relief do not assert any constitutional right which was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the expiration of the time period set forth by 42 Pa.C.S.A. § 9545(b)(1). All of the Defendant's claims for relief are related to legal principles which were established prior to his trial and the imposition of his sentence. The Defendant failed to aver any claim for relief based upon novel constitutional law set forth by the Supreme Court of the United States or the Supreme Court of Pennsylvania.

Therefore, the Defendant's *pro se* Motion for Post-Conviction Collateral Relief and the Motions to Amend Post-Conviction Relief Act *Pro Se* Petition must be dismissed for being untimely filed and the Court lacks jurisdiction to address the substantive merits of the Defendant's claims for relief set forth therein.