## NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF

PENNSYLVANIA

٧.

Appellant

:

LATIF ALKHATIB

No. 583 EDA 2018

Appeal from the PCRA Order January 3, 2018
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-1201672-2002

BEFORE: LAZARUS, J., OLSON, J., and STRASSBURGER\*, J.

MEMORANDUM BY LAZARUS, J.: FILED FEBRUARY 06, 2019

Latif Alkhatib appeals, *pro se*, from the order entered in the Court of Common Pleas of Philadelphia County, dismissing his petition for collateral relief filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. After careful review, we affirm.

On February 7, 2005, a jury convicted Alkhatib of robbery and criminal conspiracy. On March 22, 2005, the Honorable Gary S. Glazer sentenced Alkhatib to five to ten years' imprisonment. Due to the ineffectiveness of appellate counsel, Alkhatib's right to direct appeal was twice reinstated *nunc pro tunc* before his judgment of sentence was affirmed by this Court on December 13, 2010.

On March 30, 2011, Alkhatib filed a PCRA petition challenging the effectiveness of trial counsel. After continuing Alkhatib's PCRA hearing on February 17, 2012, the PCRA court failed to reschedule his case. For reasons

<sup>\*</sup> Retired Senior Judge assigned to the Superior Court.

not apparent from the record, activity resumed on April 6, 2017, when the PCRA court appointed Trevan Borum, Esquire, as Alkhatib's PCRA counsel. On November 16, 2017, Mr. Borum determined the PCRA court lacked jurisdiction over Alkhatib's petition, and sought to withdraw. On January 3, 2018, Judge Glazer granted Mr. Borum's request and dismissed Alkhatib's petition as frivolous, as Alkhatib is not currently serving a sentence of imprisonment for his robbery or criminal conspiracy convictions. Pa.R.A.P. 1925(a) Opinion, 1/3/18, at 2. The instant appeal followed.

Though Alkhatib remains incarcerated pursuant to a life sentence from an unrelated case, he finished serving the sentence for the crimes at issue on March 22, 2015; consequently, he is ineligible for collateral relief. **See** 42 Pa.C.S.A. § 9543(a)(1)(i) (requiring, *inter alia*, proof that petitioner is "currently serving a sentence of imprisonment, probation or parole for the crime"); **see also Commonwealth v. Plunkett**, 151 A.3d 1108 (Pa. Super. 2016) ("the denial of relief to a petitioner who [is] no longer serving a sentence, even though the PCRA process had begun in a timely fashion, [is] not constitutionally infirm."); **see also Commonwealth v. Stultz**, 114 A.3d 865, 872 (Pa. Super. 2015) (finding *pro se* petitioner ineligible for relief on completed sentence, though still incarcerated on additional convictions).

Order affirmed.

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<sup>&</sup>lt;sup>1</sup> Alkhatib is not, in the instant petition, requesting collateral relief related to his conviction for murder in the first degree on docket number CP-51-CR-0203461-2005.

Judge Olson joins this Memorandum.

Judge Strassburger files a Concurring Memorandum in which Judge Lazarus joins.

Judgment Entered.

Joseph D. Seletyn, Eso

Prothonotary

Date: <u>2/6/19</u>