

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

vs.

GARY WILLIAM CHESLAK

Defendant/Appellant

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Nos. CR 562-1996  
CR 309-1997

Brian B. Gazo, Esquire

Gary William Cheslak

Counsel for Commonwealth  
Assistant District Attorney  
Pro Se

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MEMORANDUM OPINION

Matika, J. - November 29, 2016

Defendant, Gary William Cheslak, has appealed from the Order entered by this Court on August 31, 2016 denying and dismissing Defendant's Motion to Stay Collection of Court Costs. In his Concise Statement of Matters Complained of on Appeal, Defendant raises four issues, the crux of which is principally that this Court erred in treating Defendant's Motion as a petition under the Post Conviction Relief Act ("PCRA"). This memorandum opinion is filed in accordance with Pennsylvania Rule of Appellate Procedure 1925(a).

**FACTUAL AND PROCEDURAL BACKGROUND**

On December 16, 1997, Defendant entered guilty pleas for the charges in the present cases. On May 29, 1998, Defendant was sentenced and ordered to pay the costs of prosecution. On July 2, 1999, the Superior Court vacated Defendant's sentence and ordered

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that Defendant be resentenced. Defendant was resentenced on October 22, 1999, and was again ordered to pay the costs of prosecution. After various appeals and post-conviction proceedings, Defendant was provided with a certificate of costs from the District Attorney's Office in 2010<sup>1</sup>. On March 14, 2013, Defendant filed a Petition for Writ of Mandamus, challenging certain costs and requesting that they be stricken. A non-jury trial on the matter was held on November 7, 2014. On January 30, 2015, this Court issued a "Decision and Verdict" for the Mandamus action. Defendant appealed this Court's "Decision and Verdict" on March 5, 2015. On April 30, 2015, the Superior Court dismissed Defendant's appeal on the basis that no issues had been preserved for appellate review.

On June 9, 2016, Defendant filed a Motion to Stay Collection of Court Costs. A hearing on the Motion was held on July 7, 2016. On August 31, 2016, this Court, after considering the testimony presented at the hearing as well as supplemental briefs submitted by both Defendant and the Commonwealth, issued an Order denying and dismissing Defendant's Motion for lack of jurisdiction. On September 12, 2016, Defendant filed a Motion for Reconsideration, which this Court denied on September 14, 2016. On September 30, 2016, Defendant filed the instant appeal. On October 3, 2016, this

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<sup>1</sup> 7/7/16 Tr. at 9, 11.

Court directed that Defendant file a Concise Statement of Matters Complained of on Appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). On October 24, 2016, Defendant filed a Concise Statement raising the following issues: "[Whether] (1) [t]he court erred in denying defendant's Motion to Stay Collection of Court Costs, [whether] (2) [t]he court erred in treating said motion as a P.C.R.A., [whether] (3) [t]he Court erred in stating that the court lacks jurisdiction, [and whether] (4) [t]he court erred in stating that said motion attacks the legality of sentence."

#### **DISCUSSION**

The principal issue Defendant has raised on appeal is that this Court erred when it treated Defendant's Motion to Stay Collection of Court Costs as a petition under the PCRA, and dismissed it for lack of jurisdiction on that basis.

Defendant's Motion challenged the costs imposed upon him by the sentencing court. "Like a challenge based on the contention an award of restitution is unsupported by the record is a challenge to the legality of the sentence, we analogously conclude this rationale can be applied to the imposition of costs." *Commonwealth v. Allshouse*, 924 A.2d 1215, 1229 n. 28 (Pa. Super. Ct. 2007) (*vacated on other grounds*). The PCRA "provides for an action by which . . . persons serving illegal sentences may obtain collateral relief." 42 Pa. Cons. Stat. § 9542. "We have repeatedly held that . . . any petition filed after the judgment of sentence becomes



final will be treated as a PCRA petition." *Commonwealth v. Johnson*, 803 A.2d 1291, 1293 (Pa. Super. Ct. 2002) (citation omitted). The fact that Defendant has attempted to frame his petition as a "Motion to Stay Collection of Court Costs" does not change the applicability of the PCRA. See *Commonwealth v. Guthrie*, 749 A.2d 502 (Pa. Super. Ct. 2000). Based on this caselaw, Defendant's Motion was properly treated as a petition under the PCRA.

Further, "[a]lthough 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 214, 223 (Pa. 1999). The time for filing petitions under the PCRA is described in 42 Pa. Cons. Stat. § 9545

(b)(1):

Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves that: (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.

This Court found that Defendant had failed, in either his Motion or in proof through testimony at the July 7, 2016 hearing

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on the Motion, to meet the requirements set forth above. Defendant's Motion raised no claims of "interference by government officials," nor were any raised at the hearing. There could be no claim of previously unknown facts, as Defendant brought a Mandamus action regarding his court costs in 2013. Finally, Defendant's Motion included a single bald assertion that the costs violated "his right to due process," but at the hearing he failed to prove or even raise that issue.

"If the petition is determined to be untimely, and no exception has been pled and proven, the petition must be dismissed . . . because Pennsylvania courts are without jurisdiction to consider the merits of the petition." *Commonwealth v. Perrin*, 947 A.2d 1284, 1285 (Pa. Super. Ct. 2008) (citation omitted). Defendant did not file his Motion in this case until June 6, 2016, approximately seventeen (17) years after the date of his sentencing. Therefore, Defendant's petition was demonstrably untimely and this Court does not have jurisdiction. "If an error exists in a sentence that is clearly erroneous such that a trial court could modify the order absent statutory authority under section 5505, the petitioner is afforded adequate time under section 9545 to discover the error during the course of the direct appeals process or within one year of the judgment of sentence becoming final. Beyond this time-period, courts are without jurisdiction to offer any form of relief." *Commonwealth v. Jackson*,

30 A.3d 516, 523 (Pa. Super. Ct. 2011).

Based upon the foregoing, this Court respectfully recommends that Defendant's issues raised on appeal be dismissed on the merits, as this Court was without jurisdiction to consider the merits of his Motion because it qualified as an untimely PCRA Petition. Accordingly, this Court respectfully recommends that its Order dated August 31, 2016, denying and dismissing Defendant's Motion to Stay Collection of Court Costs for lack of jurisdiction, be affirmed.

**BY THE COURT:**

  
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Joseph J. Matika, J.