

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

FRANCO BADINI

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1495 WDA 2012

Appeal from the Order July 11, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0015625-1993

BEFORE: GANTMAN, J., OTT, J., and FITZGERALD, J.*

MEMORANDUM BY OTT, J. FILED: May 20, 2013

Franco Badini appeals *pro se* from the order entered July 11, 2012, in the Court of Common Pleas of Allegheny County denying him relief on his petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541 *et seq.* On appeal, Badini contends: 1) he is entitled to relief because his plea was not made voluntarily with understanding of the nature of the charge and the consequences; and 2) every exception to the timeliness requirement applies in this case. Because the PCRA court lacked jurisdiction, we affirm the order denying Badini relief.

On April 18, 1994, [Badini] pled guilty to one count each of possession with the intent to deliver a controlled substance and possession of a controlled substance. On May 18, 1994, this

* Former Justice specially assigned to the Superior Court.

Court sentenced [Badini] to two (2) years of probation for the charge of possession with the intent to deliver with no further penalty as to the charge of possession of a controlled substance. [Badini] has served his sentence.

On March 30, 2010, [Badini] was indicted [by a federal grand jury] and charged with conspiracy to distribute and possess with intent to distribute 5 kilograms or more of Cocaine. On August 9, 2011, [Badini] proceeded to trial with jury before the Honorable Terry McVerry, J. Petitioner was found guilty of the charge on August 16, 2011. On January 27, 2012, Judge McVerry sentenced [Badini] to twenty (20) years of incarceration. It was not until [Badini] was sentenced in federal court that he chose to file a petition pursuant to the Post Conviction Relief Act, which was filed on February 7, 2012.

Counsel was appointed and counsel filed a motion to withdraw as counsel along with a no-merit letter. This Court issued a Notice of Intention to Dismiss on May 9, 2012 and granted counsel's motion to withdraw. [Badini] filed a motion to extend time to file a response and an amended PCRA petition. This Court issued an order on May 30, 2012 granting [Badini's] request for extension of thirty (30) days to file an amended PCRA petition. On or about June 29, 2012, [Badini] filed an Amended PCRA petition.

PCRA Court Opinion, 7/11/2012 at 1-2.

On July 11, 2012, the PCRA court dismissed Badini's PCRA petition pursuant to Rule 907 stating,

this Court finds that it has no jurisdiction because [Badini] is no longer serving a sentence. See 42 Pa.C.S. § 9543(a)(1). Additionally, this Court does not have jurisdiction because [Badini's] PCRA petition is untimely pursuant to 42 Pa.C.S. § 9545(b) and no exceptions to the time bar provision are applicable to [Badini's] case. This Court also finds that counsel did not provide ineffective assistance and the claims raised are frivolous.

PCRA Court Opinion, 7/11/2012 at 2.

Thereafter Badini filed a notice of appeal on August 1, 2012 to the July 11, 2012 order.¹ On August 13, 2012 Badini filed a “motion for withdraw of guilty plea and vacate conviction” which was denied by this Court *per curiam* on August 29, 2012. The PCRA court filed a Pa.R.A.P. 1925(a) opinion on December 5, 2012, explaining its rationale for the July 11, 2012 order.²

“This Court’s standard of review regarding an order dismissing a petition under the PCRA is whether the determination of the PCRA court is supported by evidence of record and is free of legal error.” ***Commonwealth v. Burkett***, 5 A.3d 1260, 1267 (Pa. Super. 2010). The PCRA court’s findings will not be disturbed unless there is no support for the findings in the certified record. ***Commonwealth v. Carter***, 21 A.3d 680, 682 (Pa. Super. 2011).

To be eligible for relief under the PCRA, the petitioner must plead and prove beyond a preponderance of the evidence that he has been convicted of a crime under the laws of this Commonwealth and is, at the time relief is

¹ On August 20, 2012 the Department of Court Records, Criminal Division of the Court of Common Pleas of Allegheny County sent notice to Badini stating because his appeal lacked the requisite proof of service, and petition to proceed *in forma pauperis* the appeal had not yet been forwarded to this Court. Badini completed the necessary filings on August 30, 2012 and September 12, 2012.

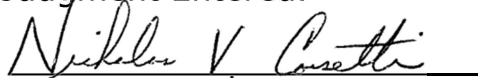
² The PCRA court did not direct Badini to file a Rule 1925(b) concise statement, nor did he file one.

granted, "(i) [c]urrently serving a sentence of imprisonment, probation or parole for the crime." 42 Pa.C.S. § 9543(a)(1)(i). This provision precludes "PCRA relief where the petitioner is no longer serving a sentence for the crime at the time the PCRA court renders a decision." **Commonwealth v. Smith**, 17 A.3d 873, 904 (Pa. 2011). Furthermore, "the enactment of the PCRA precludes post-conviction relief . . . where the petitioner's sentence of imprisonment, probation or parole has expired prior to filing for relief." **Commonwealth v. Hayes**, 596 A.2d 195, 200 (Pa. Super. 1991).

Badini completed his sentence of probation on or about May 18, 1996. He filed his PCRA petition on February 7, 2012. The petition does not include a claim that Badini is currently serving a sentence of imprisonment, probation, or parole **in this matter**. As the petition does not satisfy the requirements of the PCRA statute, specifically, 42 Pa.C.S. § 9543(a)(1)(i), the claims therein are meritless. **Smith**, 17 A.3d. at 904.

Order affirmed.

Judgment Entered.



Deputy Prothonotary

Date: 5/20/2013