

[J-69-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 316 CAP
	:	No. 317 CAP
Appellant	:	
	:	
v.	:	
	:	Appeal from the Order of the Court of
	:	Common Pleas, Criminal Division of
TYRONE MOORE,	:	Luzerne County entered on 9/22/00 at No.
	:	22 of 1983 granting PCRA petition in part
Appellee	:	& vacating death sentence
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Appellee	:	
	:	
v.	:	
	:	
TYRONE MOORE,	:	
	:	
Appellant	:	SUBMITTED: January 30, 2002

CONCURRING AND DISSENTING OPINION

MR. JUSTICE SAYLOR

DECIDED: October 21, 2004

I join the majority in affirming the PCRA court's decision to award a new sentencing hearing based on its finding of ineffective assistance of counsel both in the

development of mitigation evidence in the penalty phase of trial and in the presentation of such issue to this Court on direct appeal.¹

¹ I respectfully differ with the majority's approach to the penalty-phase claims in two respects. First, the majority expresses some reservation concerning whether the evidence of a traumatic, abused childhood would be perceived as a mitigating circumstance. See Majority Opinion, slip op. at 14. I would note, however, that given the requirement of unanimity attached to the imposition of the death penalty, it will require that only a single juror give weight to such life-history mitigation to render it a potentially dispositive factor in a capital sentencing determination. Additionally, the United States Supreme Court has fairly consistently recognized a likelihood that life-history mitigation on the order of that which was withheld from the jurors in this case by virtue of trial counsel's dereliction will carry substantial weight. See, e.g., Wiggins v. Smith, 539 U.S. 510, ___, 123 S. Ct. 2527, 2542 (2003) ("The [life-history] mitigating evidence counsel failed to discover and present in this case is powerful."). Accordingly, while I do not discount the possibility that there may be a strategic reason in some cases not to present such information to a sentencing jury, I do not view the reason that the majority hypothesizes (i.e., that some potential juror might not see this type of evidence as mitigating) as a sufficient one.

Second, I disagree with the majority's characterization of this Court's recent decision in Commonwealth v. Williams, ___ Pa. ___, 846 A.2d 105 (2004). See Majority Opinion, slip op. at 17 n.8 (summarizing Williams along the lines of "no relief due, where PCRA court did not find witnesses credible concerning appellant's claim of trial counsel's ineffectiveness for failing to investigate, develop, and present significant mitigating evidence"). In my view, the Williams court's holding is a good deal more complex, since the court was confronted with a PCRA court's failure to expressly consider the potential impact of life-history mitigation that the defendant's trial counsel had failed to develop at the penalty phase of trial pursuant to the appropriate provision of the death-penalty statute. See Williams, ___ Pa. at ___, 846 A.2d at 113 ("It is unclear whether the [PCRA] court specifically considered the (e)(8) mitigator."). In light of this deficiency, the Williams majority undertook to perform the necessary analysis on its own. See id. at ___, 846 A.2d at 114-15. Moreover, this Court separately recognized (despite contrary suggestions by the PCRA court) that the life-history evidence was, in fact, substantially mitigating. See id. at ___, 846 A.2d at 113. The relevant facet of the Williams decision, therefore, does not represent a straightforward application of general principles of deference applied by appellate courts to fact-finding determinations made by courts of original jurisdiction, as the present majority suggests.

I differ, however, with the majority's treatment of claims pertaining to the guilt phase of trial. First, although it appears that the majority is correct that a number of the claims should ultimately be deemed previously litigated, I believe that the same evaluative approach should apply in making such determination in relation to the guilt-phase claims as has been employed by the majority and the PCRA court with respect to the primary penalty-phase claim.

Further, while the PCRA court thoroughly addressed Appellant's central penalty-phase claim in its opinion, it failed to provide any reasons supporting the summary dismissal of the guilt-phase claims, including those which were not previously litigated. For example, in his amended post-conviction petition, Moore alleged, *inter alia*, that Ricardo Scott, a coconspirator in the underlying robbery, had since recanted with respect to material portions of his trial testimony as to the actual killing. In this regard, Moore attached to the petition an affidavit from Scott to the effect that:

I did not want to testify against [Appellant]. I was being forced by the district attorneys of Luzerne County. I was forced to lie against [Appellant]. I was forced to testify that [Appellant] shot [the victim]. They told me if I did not testify against [Appellant], they would give me the death penalty. I was afraid of them and felt that I had no choice. . . .

I know for a fact that [Appellant] did not shoot [the victim]. I told [the district attorney] that [Appellant] didn't shoot [the victim] . . .

The PCRA court, however, failed to analyze this recantation or its possible effect on the reliability of the first-degree murder guilty verdict.² In such circumstances, I

² The majority approves the PCRA court's summary dismissal of this claim, stating that the evidence does not tend to prove Moore's innocence of first-degree murder, but "only attempts to smear the Commonwealth's case." Majority Opinion, *slip op.* at 8. In the context of the underlying facts of this case, however, any doubt that Moore personally shot the victim could undermine the position that he harbored a specific intent to kill.

believe that the appropriate course is to remand to the PCRA court for the preparation of an adequate opinion. Indeed, this Court has specifically disapproved the practice of summary dismissal of such claims without sufficient explanation. See Commonwealth v. Williams, 566 Pa. 553, 568, 782 A.2d 517, 526 (2001) (explaining that “affirmance of the PCRA court’s disposition . . . is not appropriate in view of the absence of an adequate opinion”); see also Commonwealth v. Williams, 557 Pa. 207, 224-25, 732 A.2d 1167, 1176 (1999). Additionally, given the central role of credibility in the disposition of claims involving witness recantation, the Williams court directed the PCRA court to conduct an evidentiary hearing and render findings of fact and conclusions of law concerning the credibility of the witness and the impact, if any, upon the truth determining process. See id. at 233, 732 A.2d at 1181; accord Commonwealth v. D’Amato, ___ Pa. ___, ___, 856 A.2d 806, 825-26 (2004). Thus, at least with respect to this claim, I would craft a similar order here in connection with a remand.

Messrs. Justice Nigro and Baer join this concurring and dissenting opinion.