

[J-91-2003]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 393 CAP
	:	
Appellee	:	Appeal from the Order entered on 8/28/02
	:	in the Court of Common Pleas, Criminal
v.	:	Division of Perry County denying PCRA
	:	relief at No. 318 of 1990.
PAUL DAVID CREWS,	:	
	:	
Appellant	:	SUBMITTED: May 21, 2003

CONCURRING OPINION

MR. JUSTICE BAER

DECIDED: December 22, 2004

I join the majority opinion in all respects save one. Appellant argues that the Commonwealth failed to provide him with exculpatory material pursuant to Brady v. Maryland, 373 U.S. 83 (1963). The majority acknowledges Appellant’s contentions that “severe mental and emotional problems make him a very poor self-historian.” Slip op. at 5. Nevertheless, the majority opines that “it is not the Commonwealth’s responsibility to assess and atone for a defendant’s shortcomings as a client.” Id.

While this may be so in cases where defendants do not suffer from mental infirmities and have access equal with the Commonwealth to alleged exculpatory material, the majority’s statement is too broad. Recently, in Commonwealth v. Santiago, 855 A.2d 682 (Pa. 2004), a plurality of our Court noted that a defendant could not waive averments of incompetency in recognition that the very state of incompetency could impair one’s ability to recognize and raise the issue. See also, Commonwealth v. Marshall, 318 A.2d 724 (Pa. 1974) (stating that it would be contradictory to argue that a

defendant may be incompetent, and yet knowingly and intelligently waive his right to have the court determine his capacity to stand trial). An analogous Catch 22 could be applicable in cases where the Commonwealth is aware of exculpatory information which a defendant cannot understand or articulate because of mental illness. In such situations, it is, in my view, the Commonwealth's responsibility "to assess a defendant's shortcomings as a client" to the extent such shortcomings arise from emotional or mental health disorders, and to make disclosures regarding defendant's history in recognition thereof. While in this case there is no indication of a Brady violation, under the circumstances referenced herein, there may, indeed, be.