

[J-088-99]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 0257 Capital Appeal Docket
	:	
Appellee	:	Appeal of Maria Pogrebivsky and Karolina
	:	Benchluch, as next friends to Antuan
	:	Bronshtein
v.	:	
	:	
ANTUAN BRONSZTEIN,	:	SUBMITTED: March 16, 1999
	:	
Appellant	:	
	:	

DISSENTING OPINION

MR. CHIEF JUSTICE FLAHERTY

DECIDED: April 16, 1999

The majority states:

A psychologist, Gerald Cooke, Ph. D., states in his affidavit that he evaluated Bronshtein and testified at his trial that Bronshtein suffered from Paranoid Personality Disorder with Persecutory and Grandiose Features and Depressive Disorder with history of suicide attempts. He adds, 'His paranoid disorder and depression shed light on the inability to trust and work with counsel which he is exhibiting, as well as on his apparent wish to be put to death.' Affidavit of Gerald Cooke, Ph. D., March 13, 1999 at 6.

Timothy J. Michals, a psychiatrist, did not evaluate Bronshtein, but testified at trial, for the Commonwealth, that Bronshtein suffered from Paranoid Personality Disorder and Antisocial Personality Disorder. In an affidavit, he notes that he reviewed Dr. Sadoff's evaluation, and '...that Mr. Bronshtein may be suffering from a depressive order. A depressive disorder can cloud a person's judgment, effect his ability to make knowing and rational life decisions, and could effect his other decision-making capacities.' Affidavit of Timothy J. Michals, M.D., March 15, 1999 at 2.

Another psychiatrist, Kenneth J. Weiss, M.D., reviewed Bronshtein's records, the transcripts from the PCRA hearings and Dr. Sadoff's report. He states that Bronshtein appears to be suffering from Major Depression. 'Thus, it is my recommendation that Mr. Bronshtein be placed in observation for an extended period of time so that an accurate assessment of his competency can be made and his motivations explored....It is my opinion, that this can only be accomplished through the development of a trusting relationship with a qualified therapist.' Affidavit of Kenneth J. Weiss, M.D., March 13, 1999 at 3.

Psychiatrist Robert A. Fox, M.D., reviewed the trial testimony of Drs. Cooke and Michals, the transcripts of the PCRA hearings on July 15, 1998 and January 26, 1999, and Dr. Sadoff's report. He also observed Bronshtein at the July 15, 1998 hearing. He states, 'I have reviewed Dr. Sadoffs report and concur in his assessment that further evaluation of Mr. Bonshtein is necessary to make an accurate and reliable assessment of the emotional appreciation of the conditions in which he finds himself and his ability to work effectively and rationally with counsel with respect to his wishes.' Affidavit of Robert A. Fox, M.D., March 15, 1999 at 2.

I would, thus, grant the application for a stay of execution pending further psychiatric assessment, for as aptly put by the majority, "The proscription against executing an insane person has a long history in the common law."