IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Alton D. Brown, Appellant	:	
v.	:	No. 2321 C.D. 2010
	:	Submitted: June 24, 2011
P.A. ODDO, Robert Bowman, Richard D. Romano, Mark A. Schmelzen, Michael Muccino, Officer Lander, Officer Marshall, Sergeant Lipscomb, Clyde Haught	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: August 4, 2011

Alton D. Brown appeals *pro se* from the September 3, 2010, order of the Court of Common Pleas of Greene County (trial court) denying his motion for a new trial based on after-discovered evidence. We affirm.

Brown is incarcerated at the State Correctional Institution at Graterford. In 2002, Brown filed suit against a number of Department of Corrections (DOC) employees for an alleged assault that occurred on June 14, 2000, in the parking lot of a magisterial district court. In 2006, the case proceeded to a jury trial against one DOC defendant and resulted in a defense verdict. Brown's subsequent appeals from the verdict were unsuccessful.

On July 27, 2009, Brown filed the instant motion for a new trial, claiming that he recently became aware that he suffered from post-traumatic stress disorder (PTSD) due to the alleged assault at the time of the trial. Brown claims, however, that the DOC defendants knew of and exploited his mental condition in order to sabotage the jury selection process. On September 3, 2010, the trial court denied Brown's motion.

On appeal, Brown argues that the trial court abused its discretion in denying his motion without an evidentiary hearing. We disagree.

A motion for a new trial based on after-discovered evidence will only be granted if the evidence: (1) is new; (2) could not have been obtained at the time of the trial in the exercise of due diligence; (3) is relevant and non-cumulative; (4) is not for the purposes of impeachment; and (5) is likely to compel a different result. *D'Emilio v. Board of Supervisors, Township of Bensalem*, 628 A.2d 1230, 1233 (Pa. Cmwlth. 1993).

In his motion, Brown asserts that he did not become aware of his PTSD until after the trial. We agree with the trial court that Brown's claim of PTSD is entirely self-serving. In his motion, Brown fails to allege how or when he came to realize this diagnosis, whether a medical professional can support the diagnosis, or how such a diagnosis would have impacted the outcome of his trial.[1] Brown's claim

[1] Brown alleges that his PTSD was "only recently discovered" and that the disorder is recognized in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision* (*DSM-IV-TR*). (Motion for New Trial, ¶¶ 3, 13.)

of PTSD appears to be nothing more than his own self-diagnosis three years after the trial and nine years after the alleged traumatic event.

Furthermore, Brown asserts that, at the time of jury selection, he "was completely unable to function mentally or emotionally, and barely physically." (Motion for New Trial, ¶ 7.) Thus, even without an exact medical diagnosis, the facts that formed the basis of Brown's motion were indeed known to him at the time of the trial and could have been raised or addressed then.[2] This evidence is not "new."

Finally, the trial judge, who also presided over Brown's trial, extolled Brown's advocacy skills:

> Whatever [Brown's] emotional condition [at the time of the trial], he conducted his case with competence and insight. He researched, filed and argued motions. He skillfully presented witnesses and cross-examined opposing witnesses. He argued his case eloquently to the jury. If he did all this while suffering some sort of permanent mental disorder, he is remarkable indeed.

(Trial Ct. Op., 1/4/11, at 3.) The trial judge's observations of Brown's behavior throughout the trial directly contradict Brown's claimed lack of competence and inability to function.

[2] The trial court noted that Brown, who represented himself at the trial, never requested the appointment of a guardian on his behalf. (Trial Ct. Op., 1/4/11, at 3.)

Accordingly, because we conclude that the trial court properly denied Brown's motion for a new trial, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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O R D E R

AND NOW, this 4th day of August, 2011, we hereby affirm the September 3, 2010, order of the Court of Common Pleas of Greene County.

ROCHELLE S. FRIEDMAN, Senior Judge