

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ROBERT DA-JUAN GAINES,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1497 MDA 2013

Appeal from the PCRA Order July 15, 2013
In the Court of Common Pleas of Franklin County
Criminal Division at No.: CP-28-CR-0001303-2009

BEFORE: BENDER, P.J.E., MUNDY, J., and JENKINS, J.

DISSENTING STATEMENT BY JENKINS, J.

FILED JULY 14, 2014

Based on my analysis of ***Commonwealth v. Bryant***, 780 A.2d 646 (Pa.2001), I respectfully dissent from the order quashing this appeal. In my view, ***Bryant*** only applies to PCRA appeals in capital cases, not to non-capital cases such as this.

The defendant in ***Bryant*** was convicted of first degree murder and sentenced to death. The Supreme Court affirmed his judgment of sentence on direct appeal. He filed a PCRA petition seeking both a new trial due to alleged errors during the guilt phase and a new sentencing hearing. The PCRA court denied all claims of guilt phase error but granted a new sentencing hearing. Bryant filed an appeal challenging the denial of guilt

phase relief. The Superior Court quashed the appeal, but the Supreme Court granted allocatur.

The first sentence of the Supreme Court's opinion in ***Bryant*** states that the Court granted allocatur "to address the appropriate manner in which to seek appellate review of a *capital case* when a court of common pleas denies post-conviction relief of guilt phase issues but grants relief with respect to sentencing." ***Id.*** at 647 (emphasis added).

The fifth paragraph of the opinion states:

This Court has not addressed the issue of the correct procedure for a *capital defendant* to follow when the PCRA court grants his request for a new sentencing hearing, but denies his request for *guilt-phase relief*. By quashing the appeal in the instant matter, the Superior Court indicated that the trial court must first hold a hearing and impose a new sentence before an appellate court can consider the denial of guilt-phase relief by the PCRA court. For the reasons that follow, we disagree.

Id. (emphasis added).

The Court then reasons:

Rule 1510 of the Pennsylvania Rules of Criminal Procedure¹ provides, 'An order denying, dismissing, or otherwise finally disposing of a petition for post-conviction collateral relief shall constitute a final order for purposes of appeal.' Furthermore, Pennsylvania Rule of Appellate Procedure 341(b) defines a final order as one that 'disposes of all claims of all parties.' The Order of the PCRA court

¹ Rule 1510 has been renumbered as Pa.R.Crim.P. 910.

fully and finally disposed of all of issues before it. Accordingly, it was a final order that Bryant, the Commonwealth or both could have appealed. Had Bryant not filed a notice of appeal within thirty days of the entry of the Order, as required by Pa.R.A.P. 903, he would have waived future review of the decision of the PCRA court.

Because the Order of the PCRA court was appealable, we now consider whether the Superior Court erred in determining that review of the *guilt phase issues* must wait until the trial court imposes a new sentence. Bryant asserts that the procedure endorsed by the Superior Court prejudices a defendant because it significantly delays the review of the merits of his claim. Moreover, it requires the defendant to *endure the anxiety attendant to a capital re-sentencing procedure*, although the underlying conviction may be reversed because of the errors raised on appeal. Along with these concerns, which are unique to the defendant, there are also concerns regarding the efficient administration of justice. It would be wasteful of scarce judicial resources to *empanel a new sentencing jury, apprise it of the facts of the underlying crime, hold a full hearing, instruct the jury about sentencing in a capital case and then allow it deliberate and reach a decision, only to have the sentence rendered a nullity if the decision of the PCRA court regarding the guilt phase is reversed on appeal*.

Re-sentencing the defendant before engaging in appellate review of the denial of PCRA relief also results in piecemeal litigation, delay in the determination of *guilt phase issues*, and potential misuse of judicial resources if the new sentence is rendered moot by subsequent disposition of the *guilt phase issues*. For these reasons, the orderly administration of justice requires that review of the PCRA court's decision denying *guilt phase relief* should precede the imposition of a new sentence by the trial court.

Id. at 648 (emphasis added).

In my view, the **Bryant** court intended its decision to apply only to capital cases. The limiting language in the issue articulated in the first and fifth paragraphs so indicates, as does **Bryant's** repeated references to "guilt phase" and "guilt phase issues" – phrases not commonly associated with non-capital cases – and **Bryant's** description of the inefficiencies and inequities that attend empaneling a jury for a new penalty phase hearing prior to the appeal of guilt phase issues. None of these inefficiencies or inequities arise in non-capital cases because of vast differences in non-capital sentencing procedures. To the contrary, it is much more efficient in non-capital cases for sentencing to take place *before* the defendant appeals any alleged trial or ineffectiveness of counsel claims.

I acknowledge that in support of its decision, the **Bryant** court cites to former Pa.R.Crim.P. 1510 (now Rule 910), whose language applies to both capital and non-capital cases ("an order denying, dismissing, or otherwise finally disposing of a petition for post-conviction collateral relief shall constitute a final order for purposes of appeal"). In my view, **Bryant** merely construes Rule 1510 in the context of *capital* cases – that is, an order denying guilt phase issues is a final order only in capital PCRA cases. It is erroneous to extend **Bryant** to non-capital cases due to the significant differences between capital and non-capital procedures and due to our judicial system's preference for PCRA courts to resolve *all* issues -- whether

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pre-trial, trial, or sentencing issues – before allowing non-capital PCRA defendants to appeal.