

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
DANIEL JACOBS	:	
	:	
Appellant	:	No. 1073 MDA 2021

Appeal from the PCRA Order Entered May 19, 2021,
in the Court of Common Pleas of York County,
Criminal Division at No(s): CP-67-CR-0000989-1992.

BEFORE: PANELLA, P.J., KUNSELMAN, J., and COLINS, J.*

MEMORANDUM BY KUNSELMAN, J.: **FILED: JUNE 22, 2022**

Daniel Jacobs appeals *pro se* from the order denying his timely petition filed pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-9546. We affirm.

The pertinent facts and complex procedural history may be summarized as follows:

[Jacobs] and his girlfriend Tammy Mock lived in an apartment in York, Pennsylvania, with their seven-month-old daughter, Holly Jacobs. In February 1992, York police received a telephone call from Jacobs' mother, Delois Jacobs, in Virginia, who under a fictitious identity asked them to check on Tammy and Holly. This telephone call prompted the police to check the apartment, where they found Tammy and Holly dead in the bathtub. Tammy had been stabbed more than 200 times. Holly died from drowning and had no stab wounds or evidence of trauma.

* Retired Senior Judge assigned to the Superior Court.

The police tracked down Delois, who gave a statement that Jacobs had admitted in telephone conversations that he had killed both Tammy and Holly. Delois also testified at a preliminary hearing that Jacobs admitted killing Tammy and Holly.

In preparation for trial, counsel consulted with Dr. Robert Davis, a psychiatrist with a clinical and forensic practice. Dr. Davis conducted a mental health evaluation of Jacobs regarding his criminal responsibility and competency to stand trial. Counsel did not inform Dr. Davis that Jacobs was subject to the death penalty, and did not provide him with materials concerning Jacobs' background or the background of the offenses. Dr. Davis reported orally to counsel that he found no evidence of a major mental illness. At counsel's request, Dr. Davis did not prepare a written report.

Jacobs was tried before a jury in the York County Court of Common Pleas for the first[-]degree murders of Tammy and Holly. At trial, Jacobs denied killing Holly. He testified that Tammy killed Holly and that he stabbed Tammy to death after losing control at the sight of Holly dead in the bathtub. He presented a heat of passion and diminished capacity defense, *i.e.*, that he was incapable of forming a specific intent to kill [Tammy] given his mental state at the time of the killing. Delois testified that Jacobs admitted in his telephone calls that he killed Tammy, but that she could not remember whether he also admitted that he killed Holly. The Commonwealth presented Delois' pretrial statements that Jacobs admitted to killing both Tammy and Holly.

The jury found Jacobs guilty of murder in the first degree of both Tammy and Holly. Jacobs was sentenced to death for murdering Tammy and to life in prison for murdering Holly.

Jacobs v. Horn, 395 F.3d 92, 98 (3d Cir. 2005). On direct appeal, the Pennsylvania Supreme Court affirmed the judgments of sentence.

Commonwealth v. Jacobs, 639 A.2d 786 (Pa. 1994) ("***Jacobs I***").

On January 13, 1997, Jacobs filed a *pro se* PCRA petition. The PCRA court appointed counsel, and PCRA counsel filed a supplemental petition. Thereafter the PCRA court held hearings, at which the court permitted Jacobs to orally amend his petition to include additional issues. Following a final hearing, the PCRA court denied the petition.

Jacobs appealed to the Pennsylvania Supreme Court and raised fifteen issues. Among these issues, Jacobs asserted that “trial counsel was ineffective for failing to adequately investigate and present evidence supporting a diminished capacity defense.” ***Commonwealth v. Jacobs***, 727 A.2d 545, 548 (Pa. 1999) (“***Jacobs II***”). The PCRA court rejected this claim because the “record clearly revealed that trial counsel pursued such a defense on behalf of” Jacobs ***Id.***

The Pennsylvania Supreme Court agreed that Jacobs’ claim did not entitle him to post-conviction relief. The Court concluded that:

Based on the results of the psychiatric evaluation [which concluded that Jacobs was sane and knew what he was doing at the time of the alleged crimes], and given [Jacobs’] trial testimony, it [was] clear that trial counsel did investigate and pursue a diminished capacity defense on behalf of [Jacobs] to the best of his ability. Accordingly, as trial counsel had a reasonable basis for proceeding as he did, he cannot be deemed ineffective.

Id. at 549.

The Pennsylvania Supreme Court in ***Jacobs II*** further noted that some of the issues Jacobs raised on appeal were waived because they were not raised before the PCRA Court. ***Jacobs II***, 727 A.2d at 547. “However,

because many of these claims [had] been raised in terms of PCRA counsel's ineffectiveness for failing to raise such issues, they [fell] within the purview of this court's examination." **Id.** (citing **Commonwealth v. Albrecht**, 720 A.2d 693, 708 (Pa. 1998)).

One such issue, was Jacobs' claim that "trial counsel and PCRA counsel were ineffective in failing to discover and present at the penalty phase evidence that [Jacobs suffered] from mental retardation, organic brain damage and the effects of a traumatic and neglectful childhood." **Id.**, at 550. Although Jacobs attached to his brief several supporting affidavits from medical experts, including Dr. Davis, our high court found this claim did not entitle Jacobs to post-conviction relief:

[A]ll of the evidence [trial] counsel knew of at [the time of the penalty hearing] indicated that [Jacobs] was not mentally incapacitated. Nevertheless, counsel raised [Jacobs'] mental state as a mitigating factor at the penalty phase and the jury found as a mitigating factor that [Jacobs] was under an extreme mental and emotional disturbance. Additionally, . . . trial counsel . . . presented other mitigating evidence at the penalty hearing.

Thus, as trial counsel [had] a reasonable basis for his course of conduct, we conclude that he was not ineffective in this regard. **See Commonwealth v. Appel**, 547 Pa. 171, 689 A.2d 891 (1997) (counsel will not be deemed ineffective for failing to conduct further investigation into a defendant's competency when qualified experts and available facts show him to be competent).

Id., 727 A.2d at 551-52.

Another issue our high court addressed was whether both trial and PCRA counsel were ineffective for not challenging the trial court's failure to apply

the *corpus delicti* rule regarding Holly's death. **Jacobs II**, 727 A.2d at 552. Specifically, Jacobs maintained that the trial court erred in permitting into evidence his mother's statements relating to killing Holly when there was no independent evidence to establish that Holly died from anything other than an accident. **Id.**

Our Supreme Court found Jacobs' claim to lack merit based upon the closely related crime exception to the *corpus delicti* rule:

An exception to the *corpus delicti* rule known as the closely related crime exception was specifically approved of by this Court in [**Commonwealth v. McMullen**, 681 A.2d 717, 723 (Pa. 1996).] This exception comes into play where an accused is charged with more than one crime, and the accused makes a statement related to all the crimes charged, but the prosecution is only able to establish the corpus delicti of one of the crimes charged. Under those circumstances where the relationship between the crimes is sufficiently close so that the introduction of the statement will not violate the purpose underlying the *corpus delicti* rule, the statement of the accused will be admissible as to all the crimes charged.

Jacobs II, 727 A.2d at 552 (footnote omitted; italics added).

Our high court then applied the exception to the facts of Jacobs case and concluded that no post-conviction relief was warranted:

[Jacobs] does not dispute that the Commonwealth established the *corpus delicti* regarding [Tammy's] death. Because Jacobs' mother's statement regarding [Jacobs'] confession related to both the death of [Tammy] and the death of [Holly], and as the Commonwealth established the *corpus delicti* as to the death of [Tammy], the closely related crime exception to the *corpus delicti* rule applied. Thus, neither trial counsel, nor PCRA counsel, was ineffective in failing to raise this issue.

Id. (italics added).

Rejecting all of Jacobs' claims, the Pennsylvania Supreme Court therefore affirmed the PCRA court's order denying him post-conviction relief.

Id. at 555.

Having received no relief from the Pennsylvania Supreme Court, Jacobs raised his guilt and penalty phase claims in a federal *habeas corpus* petition he filed with the United States District Court for the Middle District of Pennsylvania. ***Jacobs v. Horn***, 129 F. Supp. 2d 390 (M.D. Pa. 2001). The District Court found no merit to Jacobs' ineffectiveness claims regarding the guilt phase of his trial. ***See id.*** at 409-23. However, as to the penalty phase, the District Court ruled:

[T]he sentence imposed on [Jacobs] is unconstitutional as it violates his Sixth Amendment right to counsel. Trial counsel performed deficiently by not conducting a mitigation investigation and uncovering facts regarding [Jacobs'] background. Further, counsel failed to discover that [Jacobs] is mentally retarded, and suffers from other psychological and cognitive disorders. Because trial counsel did not have this information to present to the jury. [Jacobs] was prejudiced by counsel's deficient performance because a reasonable probability exists that but for counsel's errors the result of the sentencing proceeding would have been different. Accordingly, the death sentence [for murdering Tammy] is unconstitutional and the petition for a writ of *habeas corpus* will be conditionally granted to allow the state court to resentence [Jacobs].

Id. at 423 (Italics added).

Jacobs then filed an appeal to the United States Court of Appeals for the Third Circuit, in which he challenged the district court's denial of *habeas corpus*

relief as to several guilty-phase claims, including: 1) trial counsel was ineffective for failing to challenge the court's *corpus delicti* jury instruction because the Commonwealth's evidence was insufficient, under Pennsylvania law, to prove that Holly was killed by criminal means; and 2) his assertion that trial counsel was ineffective for failing to adequately investigate and present mental health evidence in support of his diminished capacity defense. **Jacobs v. Horn**, 395 F.3d 92, 100 (3d Cir. 2005).

The Third Circuit found no merit to Jacobs' first challenge:

We agree [with the Pennsylvania Supreme Court and the District Court] that the closely related exception applies here. There is no question that the Commonwealth established the *corpus delicti* of [Tammy's] murder. Jacobs himself testified in court that he killed [Tammy] when he lost control upon discovering that she had drowned Holly. The police found the bodies of both Tammy and Holly in the bathtub several days later. Because the closely related exception applies the trial court was not required to instruct the jury that it must find the *corpus delicti* of Holly's murder beyond a reasonable doubt.

Id. at 114 (citation omitted).

Additionally, the Third Circuit concluded:

Even if [the closely related exception] did not apply, [Jacobs'] argument lacks merit. The circumstances of Holly's death are not equally consistent with an accident as with a crime. Indeed, Jacobs testified that Tammy killed Holly to get back at him, and that he killed Tammy when he lost control at finding his baby dead. No persuasive evidence was presented at trial to establish that Holly's death was anything but a homicide.^[18]

18. Common sense suggests that [a seven-month-old] infant of Holly's age did not climb into the bathtub on her own and drown accidentally.

For these reasons, we agree with the District Court that Jacob's claims based on the *corpus delicti* rule do not warrant federal *habeas* relief.

Id. at 115 (Italics added).

The Third Circuit, however, did find merit to Jacobs' second claim that counsel was ineffective during the guilt phase of his trial for failing to adequately investigate and present mental health evidence in support of his diminished capacity defense. The court first defined the precise issue to be resolved and found arguable merit to the claim:

As described previously, trial counsel pursued a heat of passion and diminished capacity defense to the murder of [Tammy]. Beyond his oral consultation with Dr. Davis, however, counsel took no further steps to discover evidence of Jacobs' mental retardation, brain damage, or other impairments. Trial counsel was thus unable to support Jacobs' diminished capacity defense with psychiatric evidence establishing that he suffered from any mental disorders which prevented him from formulating the specific intent to kill. Apparently the only evidence of heat of passion or diminished capacity presented at the guilt phase was Jacobs' own testimony that he "lost it," and stabbed Tammy repeatedly upon seeing their baby drowned in the bathtub.

Id. at 102. The court then concluded that, "[i]n light of all that was known or made available to counsel, . . . Jacobs has satisfied the first prong of the **[Strickland v. Washington, 466 U.S. 668 (1984)]** test." **Id.** at 103.

The Third Circuit also concluded that trial counsel's failure to investigate and discover further evidence to support his chosen strategy of diminished capacity was unreasonable:

The question raised here is whether counsel was ineffective by failing to investigate and discover evidence to support the defense he pursued.

In our view, in light of all the circumstances present in this capital case, it was patently unreasonable for counsel to rely solely on Dr. Davis' uninformed opinion in deciding not to investigate Jacobs' mental health history further. The unreasonableness of counsel's decision is compounded by the fact that he pursued a diminished capacity defense without any expert evidence to support it[.]

Id. at 104, & n.7.

Finally, the circuit court concluded that Jacobs established that he was prejudiced by trial counsel's inaction, and that, in ruling otherwise on the merits of this claim, the Pennsylvania Supreme Court's decision "involved an unreasonable application of" ***Strickland, supra. Jacobs***, 395 F.3d at 107.¹ Thus, the court reversed the District Court's decision denying federal *habeas corpus* relief on this claim and remanded to that court to grant the writ

¹ Although the Circuit Court invalidated Jacobs' first-degree murder conviction of Tammy, it did not invalidate the murder conviction of Holly because, given Jacobs' denial of killing her, a diminished capacity defense was unavailable. ***See Jacobs***, 395 F.3d at 107-109.

“conditioned on the Commonwealth’s grant of a new trial, within a reasonable time, on the charge of murdering [Tammy].” *Id.* at 119.

Over the next decade following remand, Jacobs was represented by multiple attorneys and a series of examinations occurred regarding his mental health issues and competency. In September 2016, the trial court determined that Jacobs was competent to stand trial, but not to proceed *pro se*. Thereafter, counsel filed various motions, and trial was scheduled for November 13, 2018. On that date, Jacobs entered into a negotiated plea agreement in which he would enter an **Alford**² plea to involuntary manslaughter for the killing of Tammy. In return, the Commonwealth agreed to a concurrent ten to twenty-year sentence, which the trial court later imposed.

Jacobs did not file a direct appeal to this Court following the entry of his plea. On July 8, 2019, Jacobs filed a timely *pro se* PCRA petition. His pursuit of post-conviction relief plea was protracted due to “procedural missteps” which this Court previously summarized as follows:

On September 3, 2019, the PCRA court appointed PCRA counsel to represent [Jacobs], directed PCRA counsel to file an amended PCRA petition or a [no-merit” letter pursuant to **Commonwealth v. Turner**, 544 A.2d 927 (Pa. 1988), and **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en banc*)] and scheduled a hearing for November 27,

² **North Carolina v. Alford**, (400 U.S. 25 (1970)). In an **Alford** plea the defendant does not admit guilt, but waives trial, and voluntarily, knowingly, and understandingly consents to the imposition of punishment by the trial court.

2019. On October 15, and December 17, 2019, PCRA counsel filed and was granted requests for extension of time to file the amended petition. In its December 18, 2019 order, the court directed PCRA Counsel to file the amended petition within 60 days from the date of the order (on or before February 17, 2020), and scheduled a hearing for March 30, 2020. PCRA counsel did not comply, and on March 5, 2020, the PCRA court *sua sponte* denied the PCRA petition pursuant to Pa.R.Crim.P. 905(B).

On March 6, [2020], PCRA Counsel filed a third motion for extension of time to file an amended petition, which the PCRA court denied on March 10, [2020]; the PCRA court also issued an order canceling the March 30, 2020 hearing. On March 13, 2020, PCRA Counsel filed a petition to withdraw as counsel; the petition did not reference counsel's failure to file an amended petition, the court's denial of the PCRA petition with notice or a hearing, or cancellation of the PCRA hearing. Instead, it simply stated that PCRA Counsel had accepted a new position and was no longer available to presented criminal defendants. That same day, despite ostensibly being represented by counsel, [Jacobs] filed a *pro se* notice of appeal. On April 8, 2020, the PCRA court appointed Appellate Counsel to represent [Jacobs] on appeal.

Commonwealth v. Jacobs, 245 A.3d 1044 (Pa. Super. 2020), non-precedential decision at 3-5 (citations and footnotes omitted).

After being granted an extension of time, Appellate Counsel filed with this Court a petition to withdraw and a ***Turner/Finley*** letter. On December 3, 2020, this Court determined that Appellate Counsel did not fulfill the ***Turner/Finley*** requirements. ***Id.***, at 1-2. In addition, we concluded that Jacobs was abandoned by prior court-appointed counsel. This Court therefore denied Appellate Counsel's petition to withdraw, vacated the order denying post-conviction relief and remanded for further proceedings. ***Id.***

Following remand, Appellate Counsel filed a petition to withdraw and a “no-merit” **Turner/Finley** letter. On April 16, 2021, the PCRA court issued a Pa.R.Crim.P. 907 notice of its intent to dismiss Jacobs’ petition. Jacobs did not file a response.³ By order entered May 19, 2021, the PCRA court denied Jacobs’ petition and granted Appellate Counsel’s petition to withdraw. This appeal followed.⁴ Although the PCRA court twice directed Jacobs to file a Pa.R.A.P. 1925(b) statement of matters complained of on appeal, the PCRA court never received a [Rule 1925(b) statement]” from Jacobs. PCRA Court Opinion, 9/20/21, at 1. In its Pa.R.A.P. 1925(a) opinion the PCRA court therefore addressed the sole issue raised by Appellate Counsel in the Rule 1925(b) statement filed prior to this Court’s previous remand.⁵

³ Jacobs claims he did send a response but that it was “suppressed” by the PCRA court. **See infra.**

⁴ Jacobs filed a *pro se* notice of appeal from the Rule 907 notice, which this Court ultimately docketed at 669 MDA 2021. In the meantime, the PCRA court filed its order denying Jacobs’ PCRA petition. On June 21, 2021, Jacobs filed his docketing statement to which he attached a second notice of appeal from the PCRA court’s final order. We transferred the notice of appeal to the trial court, and, once returned, docketed the appeal at 1073 MDA 2021. This Court then sent Jacobs a rule to show cause why the appeal at 669 MDA 2021 should not be quashed as interlocutory. Jacobs replied, and agreed with the quashal, as long as the later appeal could proceed. By order entered September 23, 2021, we quashed Jacobs’ appeal at 669 MDA 2021.

⁵ Jacobs claims he has proof that he sent a Rule 1925(b) statement raising all of the issues he raises on appeal. No such document appears in the certified record. Because Jacobs first issue in this appeal alludes to the issue addressed by the PCRA court we will consider it preserved for review.

Jacobs raises the following four issues on appeal:

1. Was counsel ineffective in [failing] to raise [the] claim that [Jacobs'] infirm conviction, which was upheld by a corresponding firm conviction, lost its constitutionality where the firm conviction was later deemed unconstitutional on appeal and quashed?
2. Did the PCRA court err in governmentally interfering with [Jacobs'] right to appeal meritorious claims?
3. Was counsel ineffective in [failing] to raise [the] claim that the [trial] court's order on remand directing that [Jacobs] pay [\$67,000] plus in costs violated [Jacobs'] Sixth Amendment right to counsel where the remand would not have occurred but for the ineffectiveness of original trial counsel?
4. Did the PCRA court err in ruling in a matter over which it lacked jurisdiction?

Jacobs' Brief at vi (excess capitalization omitted).

This Court's standard of review for an order dismissing a PCRA petition is to ascertain whether the order "is supported by the evidence of record and is free of legal error. The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record." ***Commonwealth v. Barndt***, 74 A.3d 185, 191-92 (Pa. Super. 2013) (citations omitted).

The PCRA court has discretion to dismiss a petition without a hearing when the court is satisfied that there are no genuine issues concerning any material fact, the defendant is not entitled to post-conviction collateral relief, and no legitimate purpose would be served by further proceedings. To obtain a reversal of a PCRA court's decision to dismiss a petition without a hearing, an appellant must show that he raised a genuine issue of material fact which, if resolved in his favor, would have entitled him to relief, or that the court otherwise abused its discretion in denying a hearing.

Commonwealth v. Blakeney, 108 A.3d 739, 750 (Pa. 2014) (citations omitted).

In his first issue, Jacobs raises a claim of ineffective assistance of counsel. To obtain relief under the PCRA premised on a claim that counsel was ineffective, a petitioner must establish by a preponderance of the evidence that counsel's ineffectiveness so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place. **Commonwealth v. Johnson**, 966 A.2d 523, 532 (Pa. 2009). "Generally, counsel's performance is presumed to be constitutionally adequate, and counsel will only be deemed ineffective upon a sufficient showing by the petitioner." **Id.** This requires the petitioner to demonstrate that: (1) the underlying claim is of arguable merit; (2) counsel had no reasonable strategic basis for his or her action or inaction; and (3) the petitioner was prejudiced by counsel's act or omission. **Id.** at 533. A failure to satisfy any prong of the test for ineffectiveness will require rejection of the claim. **Commonwealth v. Martin**, 5 A.3d 177, 183 (Pa. 2010).

Jacobs claims that Appellate Counsel was ineffective for failing to amend his PCRA petition⁶ to include the claim "that original trial counsel's established

⁶ Because this Court vacated the order denying Jacobs' PCRA petition, Appellate Counsel could have amended the petition rather than file a **Turner/Finley** letter.

ineffectiveness regarding conviction for Tammy's death prejudiced [his] entire defense." Jacob's Brief at 7-8.⁷ According to Jacobs:

As the statement by [his mother] was the only substantive evidence that a crime actually occurred pertaining to Holly's death, and the conviction under which the statement was admitted has since been invalidated, there stands no valid record of *corpus delicti* establishment for [his] conviction regarding Holly's death.

Jacobs' Brief at 7 (Italics added).

In his counseled Rule 1925(b) statement, Jacobs phrased this issue as follows:

- I. Whether the [PCRA] court erred by denying [Jacobs'] PCRA Petition as trial counsel on re-trial rendered ineffective assistance by inducing [Jacobs] to plead guilty to voluntary manslaughter rather than pursuing dismissal of Count 3 of the Indictment (Murder of Holly Jacobs) because when the Court of Appeals for the Third Circuit vacated his conviction of First Degree Murder of Tammy Mock (Count 1), the basis for conviction of Count 3 became legally invalid under the "closely related rule."

PCRA Court Opinion, 9/20/21, at 7.⁸

⁷ In ***Commonwealth v. Bradley***, 261 A.3d 381 (Pa. 2021), our Supreme Court abandoned the previous procedure for preservation of PCRA counsel's ineffectiveness claims and held that a petitioner may, after PCRA court denies relief and after obtaining new counsel or acting *pro se*, raise claims of ineffectiveness at the first opportunity to do so, even if on appeal. Thus, we will consider the claim.

⁸ As noted above, the PCRA court addressed only this issue. **See** n. 12, ***supra***. Although Jacobs claims he sent a *pro se* Rule 1925(b) statement, the document he attached to his brief has no timestamp and no such statement (*Footnote Continued Next Page*)

The PCRA court found no merit to Jacobs' ineffectiveness claim:

[Jacobs] misconstrues the "closely related rule," an exception to the *corpus delicti* rule, which addresses the admissibility of extra-judicial inculpatory statements made by defendants. Further, only the conviction for the murder of [Tammy] was overturned on appeal – [Jacobs'] conviction for the murder of [Holly] was affirmed.

In the instant matter, the record indicates [Jacobs] knowingly, voluntarily, and intelligently elected to enter an [**Alford**] plea for voluntary manslaughter of [Tammy] rather than proceed to trial. The sentence recommended by the Commonwealth, and subsequently ordered by [the trial court], neither enhanced nor reduced the life sentence [Jacobs] was already serving for the murder of [Holly]. As the *corpus delicti* rule, and its exception, the closely related rule, contemplates the admissibility of extra-judicial inculpatory statements by the accused, it was impertinent to the proceeding at issue. Further, the closely related rule as explained above would have no meaningful application to a hypothetical retrial; the purpose of the proceeding in question was to resolve the charges of murder of [Tammy], not to re-try the conviction for the murder of [Holly] that was affirmed on appeal. It follows that counsel was not ineffective for assisting with the entrance of an [**Alford**] plea rather than raising an argument regarding an inapplicable [evidentiary] rule.

PCRA Court Opinion, 9/20/21, at 9-10 (Italics added). Our review of the record supports the PCRA court's conclusions.

The *corpus delicti* rule is a rule of evidence. As this Court has explained:

appears in the certified record. Additionally, while Jacobs claims his statement was intentionally suppressed, the absence of the statement in the record prevents us from addressing his remaining issues. **See infra.**

The *corpus [delicti]* rule places the burden on the prosecution to establish that a crime has actually occurred before a confession or admission of the accused connecting him to the crime can be admitted. The *corpus [delicti]* is literally the body of the crime; it consists of proof that a loss or injury has occurred as a result of the criminal conduct of someone. The criminal responsibility of the accused for the loss is not a component of the rule. The historical purpose of the rule is to prevent a conviction based solely upon a confession or admission, where in fact no crime has been committed.

The *corpus delicti* rule in a homicide case consists of proof that the person for whose death the prosecution was instituted is in fact dead and that the death occurred under circumstances indicating that it was criminally caused by someone. The Commonwealth need not prove the existence of a crime beyond a reasonable doubt as an element in establishing the *corpus delicti* of a crime, but the evidence must be more consistent with a crime than with [an] accident.

Commonwealth v. Dupre, 866 A.2d 1089, 1097-98 (Pa. Super. 2005) (formatting altered; footnote and citations omitted). The closely related crime exception to the *corpus delicti* rule was explained by our Supreme Court in ***Jacobs II, supra***.

As noted above, the Third Circuit overturned Jacobs' first-degree murder conviction for killing Tammy because trial counsel inadequately presented Jacobs' diminished capacity defense. The Third Circuit also agreed with our Supreme Court that the trial court properly admitted Jacobs' statement regarding his killing of Holly under the closely related crime exception to the *corpus delicti* rule. ***Jacobs***, 395 F.3d at 114. Indeed, the court concluded that, even without applying the exception, "no persuasive evidence was

introduced that Holly's death was anything but a homicide." **Id.** at 115.⁹ Thus, the application of the closely related exception to the *corpus delicti* rule in Jacobs' original trial—to permit into evidence Jacobs' inculpatory statement regarding Holly's murder—was not affected in any way by the Third Circuit's overturning Jacobs' conviction and death sentence imposed for Tammy's murder. Jacobs' argument to the contrary is baseless.

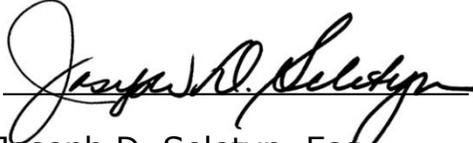
Indeed, Jacobs' first-degree murder conviction for killing Holly became final in 1994 and was not disturbed by the federal courts. Thus, although Jacobs asserts that he filed a *pro se* PCRA petition "concerning the Holly offense" with the PCRA court on July 8, 2019, **see** Jacobs' Brief, Appx. 1, at 5, that petition was untimely, and, absent an exception, the PCRA court lacked jurisdiction to consider its merits. **See generally**, 42 Pa.C.S.A. § 9545(b).

As noted above, Jacobs raised one claim in the only Rule 1925(b) statement that appears of record. Thus, Jacobs' remaining issues inappropriately are being raised for the first time on appeal and are waived. **See generally**, Pa.R.A.P. 302(a). We therefore do not consider their merits.

Order affirmed.

⁹ In his brief, Jacobs suggests that Holly's death could have been caused by an accidental drowning; the jury "could have reasonably determined that if Tammy was injured and Holly had begun to cry, Tammy could have lifted Holly into the tub to comfort her and became unexpectedly weak and lost control of Holly." Jacobs' Brief at 2. This scenario is contrary to Jacobs' trial testimony. **See** N.T., at 660-61; 683-85.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 06/22/2022