### **NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
MICHAEL MCLAUGHLIN	:	
Appellant	:	No. 2723 EDA 2022

Appeal from the PCRA Order Entered September 30, 2022 In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0303571-2006

BEFORE: STABILE, J., KUNSELMAN, J., and STEVENS, P.J.E.\*

MEMORANDUM BY STEVENS, P.J.E.: FILED JANUARY 11, 2024

Appellant Michael McLaughlin appeals from the order entered in the Court of Common Pleas of Philadelphia County, which denied his serial petition filed pursuant to the Post-Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. §§ 9541-46, as well as his motion for post-conviction DNA<sup>1</sup> testing pursuant to Section 9543.1 of the PCRA. After a careful review, we affirm.

The relevant facts and procedural history are as follows: On September 4, 2007, after Appellant waived his right to counsel, he proceeded to a fourday trial in which he represented himself. The jury found Appellant guilty of

<sup>\*</sup> Former Justice specially assigned to the Superior Court.

<sup>&</sup>lt;sup>1</sup> "DNA" refers to "Deoxyribonucleic acid." 42 Pa.C.S.A. § 9543.1(h).

one count of stalking<sup>2</sup> as to his former girlfriend.<sup>3</sup> The trial court sentenced him to two to four years in prison followed by three years of probation. After filing an untimely direct appeal, which this Court quashed, Appellant's direct appeal rights were reinstated via a timely PCRA petition. On November 8,

<sup>2</sup> 18 Pa.C.S.A. § 2709.1.

<sup>3</sup> The PCRA court summarized the evidence presented at Appellant's jury trial as follows:

[During 2004 and 2005,] Appellant called [the victim] repeatedly, appeared at her car with photos of her, [told her he would humiliate her], left a letter for her at her parents' house, [stood across the street looking at her house], followed her as she walked around her neighborhood, and [knocked on the door of her house demanding she allow him inside but fled when she called the police]. N.T., 8/28/07, at 71-78, 96. In the spring of 2005, he followed her on a walk along Kelly Drive in Philadelphia [and demanded she speak to him]. *Id.* at 79-80. When she attempted to call the police, Appellant took her phone. As a result of this continued behavior, [the victim] filed for a restraining order against Appellant. *Id.* at 78-79.

[Moreover,] [i]n 2004 or 2005, [the victim] found pictures of herself on the windshield of her car and her brother's car. Appellant also sent at least thirty pictures of her to her parents' house, addressed to her in Appellant's handwriting. Some of these pictures depicted nudity. After [the victim] moved out of Philadelphia, she found pictures of herself on her car and her husband's car at their new home. **Id.** at 84-94.

Detective Mararita Castro executed a search warrant at Appellant's home on November 29, 2005. She seized 80 to 100 photos or copies of photos of [the victim], some of which were the same ones that [the victim] or her family had received; some depicted nudity. N.T., 8/27/07, at 9-16; 8/30/07, at 25-29.

[The victim testified that Appellant's behaviors in 2004 and 2005 scared her and made her feel like a prisoner. N.T., 8/30/07, at 45. She just wanted "to be left alone." *Id.* at 46.]

PCRA Court Opinion, filed 2/22/23, at 1-2.

2010, this Court affirmed Appellant's judgment of sentence,<sup>4</sup> and on April 7, 2011, our Supreme Court denied Appellant's petition for allowance of appeal. **See Commonwealth v. McLaughlin**, 3144 EDA 2009 (Pa.Super. filed 11/8/10) (unpublished memorandum), *appeal denied*, 20 A.3d 1210 (Pa. 2011).

Appellant filed a PCRA petition in April of 2012<sup>5</sup> and July of 2014,<sup>6</sup> which were dismissed by the PCRA court. He appealed the dismissal of the April 2012 petition, and this Court affirmed. **See Commonwealth v. McLaughlin**, 1965 EDA 2014 (Pa.Super. filed 12/8/15) (unpublished memorandum). Our Supreme Court denied Appellant's petition for allowance of appeal.

Thereafter, on April 19, 2016, the trial court conducted a violation of probation hearing after Appellant was arrested for another crime. The trial court revoked Appellant's probation and resentenced him to a term of eight months to twenty-three months in prison, with immediate parole, and one year of probation.

<sup>&</sup>lt;sup>4</sup> On appeal, Appellant contended the trial court's waiver of counsel colloquy was deficient, and counsel was ineffective in failing to object to the deficient colloquy. This Court found Appellant's first issue to be waived and deferred the ineffective assistance of counsel claim to collateral review.

<sup>&</sup>lt;sup>5</sup> In the April 2012 petition, Appellant argued his initial counsel provided ineffective assistance by failing to object to the pre-trial waiver of counsel colloquy.

<sup>&</sup>lt;sup>6</sup> In the July 2014 petition, Appellant contended the trial judge was biased against him.

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On June 3, 2016, Appellant filed another PCRA petition,<sup>7</sup> which the PCRA court dismissed. Appellant appealed, and on November 21, 2018, concluding that Appellant was ineligible for PCRA relief since he was no longer serving a sentence for his stalking conviction, this Court affirmed. *Commonwealth v. McLaughlin*, 1249 EDA 2017 (Pa.Super. filed 11/21/18) (unpublished memorandum). Appellant did not file a petition for allowance of appeal with our Supreme Court.

On November 27, 2018, Appellant filed a petition, which he entitled "a petition for writ of *coram nobis.*"<sup>8</sup> Concluding the petition should be treated under the auspices of the PCRA, the PCRA court dismissed Appellant's petition. Appellant appealed, and on September 28, 2020, in a published opinion, this Court affirmed. *Commonwealth v. McLaughlin*, 240 A.3d 980 (Pa.Super. 2020). This Court agreed that Appellant could not use a writ of *coram nobis* as "an end run around the PCRA." *Id.* at 982. We further held Appellant was ineligible for PCRA relief since he was no longer serving a sentence of imprisonment, probation, or parole for his stalking conviction. *Id.* at 983. On March 9, 2021, our Supreme Court denied Appellant's petition for allowance of appeal.

<sup>&</sup>lt;sup>7</sup> In the June 2016 petition, Appellant again alleged that the trial judge was biased against him.

<sup>&</sup>lt;sup>8</sup> In this petition, Appellant once again alleged that the trial judge was biased against him.

While the appeal was pending regarding Appellant's November 2018 petition, on February 28, 2020, Appellant filed a *pro se* motion for post-conviction DNA testing pursuant to 42 Pa.C.S.A. § 9543.1, seeking DNA testing on photographs, which had been introduced into evidence at the jury trial. Therein, Appellant alleged he was innocent, and DNA testing on the photographs was in the interest of justice.

The PCRA court appointed D. Wesley Cornish, Esquire, who amended the motion for DNA testing on July 14, 2021. Therein, Appellant claimed if DNA evidence from the photographs was introduced at Appellant's trial, Appellant's actual innocence would be demonstrated. He averred the identity of the perpetrator was an issue raised at trial, and "DNA testing would have demonstrated [Appellant] was not the person who actually perpetrated the charged offenses." Motion for DNA Testing, filed 7/14/21, at 2.

Thereafter, Attorney Cornish filed a motion to withdraw his representation on the basis the attorney-client relationship had deteriorated to the point counsel could no longer effectively represent Appellant. The PCRA court granted Attorney Cornish's motion to withdraw and appointed new counsel, George Yacoubian, Esquire, as counsel. On January 20, 2022, Attorney Yacoubian filed a *Turner/Finley*<sup>9</sup> no-merit letter and a petition to withdraw as counsel. Specifically, counsel indicated DNA testing was available

<sup>&</sup>lt;sup>9</sup> Commonwealth v. Turner, 518 Pa. 491, 544 A.2d 927 (1988), and Commonwealth v. Finley, 550 A.2d 213 (Pa.Super. 1988).

in 2007, and thus, it was not newly discovered evidence. He also indicated that the absence of Appellant's DNA on the photographs was not dispositive of Appellant's innocence.

On February 2, 2022, Appellant filed a reply to Attorney Yacoubian's *Turner/Finley* no-merit letter and indicated DNA testing on the photographs would lead to exculpatory evidence establishing his innocence. He also raised claims of previous counsel's ineffectiveness and judicial misconduct. On March 4, 2022, the PCRA court granted Attorney Yacoubian's petition to withdraw his representation.

On March 28, 2022, Appellant filed a *pro se* amended PCRA petition. Therein, he reiterated his request for DNA testing of the photographs pursuant to Section 9543.1. Additionally, he raised claims of prior counsel's ineffectiveness, prosecutorial misconduct, and judicial bias/misconduct.

On September 30, 2022, after a hearing,<sup>10</sup> the PCRA court denied the PCRA claims raised by Appellant, as well as his motion for DNA testing. With the assistance of new counsel, Appellant filed a timely appeal. The PCRA court

<sup>&</sup>lt;sup>10</sup> The notes of testimony from the September 30, 2022, hearing reveal Appellant spent most of the hearing attempting to convince the PCRA court to address issues of counsel's ineffectiveness, prosecutorial misconduct, and judicial bias/misconduct. Near the conclusion of the hearing, Appellant argued "Everything that is entered in evidence against me should be DNA tested. Period. Exclamation point. Three exclamation points." N.T., 9/30/22, at 57.

directed Appellant to file a Pa.R.A.P. 1925(b) statement, Appellant timely

complied, and the PCRA court filed an opinion on February 22, 2023.

On appeal, Appellant sets forth the following issues in his "Statement of

the Questions Involved" (verbatim):

- Whether the PCRA court erred by dismissing the PCRA petition when clear and convincing evidence was presented to establish that the PCRA court committed structural error by disallowing all claims challenging the trial court's lack of jurisdiction based on documented acts of judicial corruption by the trial judge. Appellant was entitled to relief pursuant to Section 9543(a)(2)(viii) of the PCRA.
- 2. Whether the PCRA court erred by dismissing the PCRA petition when clear and convincing evidence was presented to establish that Appellant was entitled to DNA testing on the photographs introduced at trial as evidence against him. Appellant satisfied all the requirements of the PCRA to establish the necessity of the DNA testing. Appellant established a *prima facie* case that the identity of the person that presented the photographs to the complainant was a central issue at trial, and that the exculpatory DNA testing would establish his actual innocence of the offense.
- 3. Whether the PCRA court erred by dismissing the PCRA petition when clear and convincing evidence was presented to establish violations of Appellant's Sixth Amendment and Due Process constitutional rights, including a **Brady**<sup>[11]</sup> violation that constitutes prosecutorial misconduct.
- 4. Whether the PCRA court erred by dismissing the PCRA petition when clear and convincing evidence was presented to establish that he was denied effective assistance of PCRA counsel as guaranteed by the Sixth Amendment of the United States Constitution and the analogous provisions of the Pennsylvania Constitution. Appellant was entitled to relief pursuant to Section 9543(a)(2)(ii) of the PCRA based on post-conviction counsels' ineffectiveness.
- 5. Whether the PCRA court erred by dismissing the PCRA petition when clear and convincing evidence was presented to establish

<sup>&</sup>lt;sup>11</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

structural error based on the PCRA court's judicial notice that the trial judge was actively engaged in criminal activity while serving in a judicial capacity.

Appellant's Brief at 9 (footnote added).

Initially, we note that while a motion for post-conviction DNA testing is considered under the rubric of the PCRA, it is "clearly separate and distinct from claims pursuant to other sections of the PCRA." **Commonwealth v. Perry**, 959 A.2d 932, 938 (Pa.Super. 2008) (quotation and quotation marks omitted). Accordingly, we initially address Appellant's first, third, fourth, and fifth claims, which present collateral claims outside Appellant's motion for DNA testing under Section 9543.1

As this Court has previously held, Appellant is statutorily ineligible for PCRA relief since he is not "currently serving a sentence of imprisonment, probation, or parole for the crime[.]" 42 Pa.C.S.A. § 9543(a)(1)(i). *See McLaughlin*, 240 A.3d at 983; *McLaughlin*, No. 1249 EDA 2017, at \*3-5. "Case law has strictly interpreted the requirement that the petitioner be currently serving a sentence for the crime to be eligible for relief."

Commonwealth v. Plunkett, 151 A.3d 1108, 1109 (Pa.Super. 2016).

In the case *sub judice*, the following is not in dispute:

[Appellant's] original sentence would have expired on October 20, 2014; however, he was resentenced for a probation violation on April 19, 2016, to a term of eight to twenty-three months' imprisonment, with immediate parole, followed by one year probation....The probation intake unit confirmed [Appellant] completed serving his probationary sentence in the present case on June 17, 2018. *McLaughlin*, No. 1249 EDA 2017, at \*4-5 (footnote omitted).

Accordingly, as this Court has held on two prior occasions, since Appellant is no longer serving a sentence for his stalking conviction, he is ineligible for relief under the PCRA. Consequently, we need not address his first, third, fourth, and fifth claims further.

Turning to Appellant's second claim, Appellant avers he "satisfied each

of the requirements of Section 9543.1 and was entitled to DNA testing on the

photographs that the Commonwealth introduced as evidence at his trial."

Appellant's Brief at 17. Accordingly, Appellant contends the PCRA court erred

in denying his motion for DNA testing pursuant to 42 Pa.C.S.A. § 9543.1.

Initially, we note the following:

(a) **General rule.--**To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

(1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted:

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(iv) has completed a sentence of imprisonment, probation or parole for the crime and is seeking relief based upon DNA evidence obtained under section 9543.1(d) (relating to post-conviction DNA testing).

42 Pa.C.S.A. § 9543(a)(1)(iv).

In the case *sub judice*, as the PCRA court properly determined, although

Appellant completed his sentence for stalking, he was still eligible under the

PCRA to seek DNA testing and relief with regard thereto.<sup>12</sup>

This Court has explained:

Post-conviction DNA testing falls under the aegis of the PCRA, and thus, our standard of review permits us to consider only whether the PCRA court's determination is supported by the evidence of record and whether it is free from legal error. Additionally, where the resolution of this appeal involves statutory construction, which involves a pure question of law, we review that aspect of the trial court's decision *de novo*, and our scope of review is plenary. Moreover, the DNA testing statute, which was passed unanimously by the Pennsylvania General Assembly, should be regarded as a remedial statute and interpreted liberally in favor of the class of citizens who were intended to directly benefit therefrom, namely, those wrongly convicted of a crime.

In re Payne, 129 A.3d 546, 553-54 (Pa.Super. 2015) (en banc) (footnote

and citations omitted).

The pertinent statutory language at issue is as follows:

# § 9543.1. Post-conviction DNA testing

#### (a) Motion.--

(1) An individual convicted of a criminal offense in a court of this Commonwealth may apply by making a written motion to the

<sup>&</sup>lt;sup>12</sup> We also note the PCRA's one-year time bar does not apply to motions requesting DNA testing under 42 Pa.C.S.A. § 9543.1. *Commonwealth v. Brooks*, 875 A.2d 1141 (Pa.Super. 2005). Rather, timeliness is determined on a case-by-case basis by looking at all the circumstances. *See Commonwealth v. Schaeffer*, No.64 MDA 2021 (Pa.Super. filed 10/25/21) (unpublished memorandum) (citing *Commonwealth v. Edmiston*, 65 A.3d 339 (Pa. 2013), *rev'd on other grounds by Commonwealth v. Small*, 238 A.3d 1267 (Pa. 2020)).

We note we cite to **Schaeffer** for its persuasive value. Pa.R.A.P. 126(b) (indicating unpublished non-precedential decisions of the Superior Court filed after May 1, 2019, may be cited for their persuasive value).

sentencing court at any time for the performance of forensic DNA testing on specific evidence that is related to the investigation or prosecution that resulted in the judgment of conviction.

(2) The evidence may have been discovered either prior to or after the applicant's conviction. The evidence shall be available for testing as of the date of the motion. If the evidence was discovered prior to the applicant's conviction, the evidence shall not have been subject to the DNA testing requested because the technology for testing was not in existence at the time of the trial or the applicant's counsel did not seek testing at the time of the trial in a case where a verdict was rendered on or before January 1, 1995, or the evidence was subject to the testing, but newer technology could provide substantially more accurate and substantially probative results, or the applicant's counsel sought funds from the court to pay for the testing because his client was indigent and the court refused the request despite the client's indigency.

(3) A request for DNA testing under this section shall be by written petition and shall be filed with the clerk of courts of the judicial district where the sentence is imposed.

(4) DNA testing may be sought at any time if the motion is made in a timely manner and for the purpose of demonstrating the applicant's actual innocence and not to delay the execution of sentence or administration of justice.

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6) The motion shall explain how, after review of the record of the applicant's trial, there is a reasonable possibility if the applicant is under State supervision, or there is a reasonable probability if the applicant is not under State supervision, or after review of the record of the applicant's guilty plea there is a reasonable probability, that the testing would produce exculpatory evidence that would establish:

(i) the applicant's actual innocence of the offense for which the applicant was convicted[.]

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(c) **Requirements.--**In any motion under subsection (a), under penalty of perjury, the applicant shall:

(1)(i) specify the evidence to be tested;

(ii) state that the applicant consents to provide samples of bodily fluid for use in the DNA testing; and

(iii) acknowledge that the applicant understands that, if the motion is granted, any data obtained from any DNA samples or test results may be entered into law enforcement databases, may be used in the investigation of other crimes and may be used as evidence against the applicant in other cases.

(2)(i) in a sworn statement subject to the penalties under 18 Pa.C.S. §§ 4902 (relating to perjury) and 4903 (relating to false swearing), assert the applicant's actual innocence of the offense for which the applicant was convicted and that the applicant seeks DNA testing for the purpose of demonstrating the applicant's actual innocence; and

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(3) present a *prima facie* case demonstrating that the:

(i) identity of or the participation in the crime by the perpetrator was at issue in the proceedings that resulted in the applicant's conviction and sentencing; and

(ii) DNA testing of the specific evidence, assuming exculpatory results, would establish:

(A) the applicant's actual innocence of the offense for which the applicant was convicted[.]

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# (d) Order.--

(1) Except as provided in paragraph (2), the court shall order the testing requested in a motion under subsection (a) under reasonable conditions designed to preserve the integrity of the evidence and the testing process upon a determination, after review of the record of the applicant's trial, that the:

(i) requirements of subsection (c) have been met;

(ii) evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been altered in any material respect; and

(iii) motion is made in a timely manner and for the purpose of demonstrating the applicant's actual innocence and not to delay the execution of sentence or administration of justice.

(2) The court shall not order the testing requested in a motion under subsection (a) if, after review of the record of the applicant's trial, the court determines that there is no reasonable possibility for an applicant under State supervision, or there is no reasonable probability for an applicant not under State supervision, or after review of the record of the applicant's guilty plea, the court determines that there is no reasonable probability, that the testing would produce exculpatory evidence that:

(i) would establish the applicant's actual innocence of the offense for which the applicant was convicted[.]

42 Pa.C.S.A. § 9543.1(a)(1)-(4), (6), (c)(1)(i)-(iii), 2(i), 3(i)(ii)(a), (d)(1)(i)-

(iii), (2)(i) (bold in original) ("DNA Statute").

Here, the PCRA court held that, assuming, arguendo, "Appellant's

motion [for DNA testing] met the procedural...requirements under the [DNA]

Statute, [Appellant] failed to demonstrate a *prima facie* case for actual

innocence." PCRA Court Order filed 2/22/23, at 10.

Relevantly, in interpreting the DNA Statute, this Court has held the

following:

[Regarding] the application of the standard set forth in [the DNA Statute]...[the] provisions require that DNA testing "shall not" be ordered by the PCRA court if there is "no reasonable probability that the testing would produce exculpatory evidence" that "would establish...actual innocence of the offense for which the applicant was convicted."

Section 9543.1 frequently incorporates, yet fails to define, the term "actual innocence." In [*Commonwealth v.*] *Conway*, 14 A.3d [101,] 109 [(Pa.Super. 2011) (*en banc*)], this Court applied a definition of 'actual innocence' taken from the "United States Supreme Court in its Opinion in *Schlup v. Delo*, 513 U.S. 298 (1995), namely, that the newly discovered [DNA] evidence must make it 'more likely than not that no reasonable juror would have found [the appellant] guilty beyond a reasonable doubt."

In re Payne, 129 A.3d at 555-56 (some quotation marks and quotation

omitted) (footnote omitted).

After a careful review, we conclude the PCRA court's holding in the case *sub judice* is supported by the record and free of legal error. *See In re Payne, supra*. That is, assuming, *arguendo*, the photographs did not contain Appellant's DNA and/or contained a different person's DNA, there is "no reasonable probability that the testing...would establish [Appellant's] actual innocence of the offense for which [he] was convicted[.]" 42 Pa.C.S.A. § 9543.1(d)(2)(i).

Appellant was convicted of one count of stalking the victim under 18 Pa.C.S.A. § 2709.1, which relevantly provides that a person commits the crime of stalking when the person "engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person[.]" 18 Pa.C.S.A. § 2709.1(a).

Further, the stalking statute defines the following relevant terms:

"Course of conduct." A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct. The term includes lewd, lascivious, threatening or obscene words, language, drawings, caricatures or actions, either in person or anonymously. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.

**"Emotional distress."** A temporary or permanent state of mental anguish.

18 Pa.C.S.A. § 2709.1(f) (bold in original).

Here, as the Commonwealth notes, the photographs "comprised only a fraction of the evidence of [Appellant's] guilt." Commonwealth's Brief at 9. The victim testified at length about Appellant's actions in 2004 and 2005. Specifically, the victim testified Appellant repeatedly approached her at her car threatening to humiliate her, left her letters, stood across the street from her house, knocked on the door of her house demanding she let him inside, and followed her as she walked around her neighborhood. N.T., 8/28/07, at 71-78, 96. She indicated that he followed her on the street and, as she walked faster, he would walk faster. *Id.* at 80. On one occasion, when she was walking on Kelly Drive, he followed her and demanded that she speak to him. *Id.* She "took out [her] cell phone" and tried to call the police; however, he "took [her] cell phone from [her]." *Id.* 

The victim testified Appellant's conduct caused her to fear for her safety, as well as caused her substantial emotional distress. Specifically, she indicated the following:

It [has] really affected me. I just want to get on with my life. I just want my life back. I just want him to leave me alone. It's affected me at first when all this started happening in 2004, 2005. I was scared because I knew from the start that this was a reoccurrence and some of the, some things were happening again only they were getting worse..., so it was really scary at first.

And on a daily basis you kind of feel like you don't have a life, like you're a prisoner in jail because you're afraid to go out. You have to leave for work like two hours early because you don't know what's going to happen and you don't want to be late for work. It's hard to have a job because you have to go to court a lot and be to court numerous times. When you're at work, it's hard to function.

When all this bad stuff is going on you have to muster up every ounce of energy to be a smiling person and just have to go on. You never live in the present. You can never enjoy the moments of the present because you also have a court date to go to, and you try to look to the future, you go, I can never wait till this day comes I finally go to court, and I can get on with my life. You never live in the past. The past is so scary you never want to relive it.

It's kind of like you're in limbo. You just don't know what to do. Just want to be left alone. You just want to get on with your life and start the new chapter of your life. Big events in your life—big events in my life haven't been joyous. When I graduated from college...and received my diploma up on stage, I was scared there was someone watching me, just get paranoid, I never know where he's going to appear.

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[W]hen I got married,...[I worried] what if he wants to do more than just mentally abuse me....What if I got shot? What if my husband got shot at the altar?

N.T., 8/30/07, at 45-48.

In the case *sub judice*, assuming, *arguendo*, the photographs did not contain Appellant's DNA and/or contained some other person's DNA, and the jury was made aware of the DNA results, the PCRA court did not err in concluding the DNA results would not establish Appellant's "actual innocence" of stalking the victim. 42 Pa.C.S.A. § 9543.1. Simply put, newly discovered DNA evidence on the photographs would not "make it more likely than not that no reasonable juror would have found [Appellant] guilty beyond a reasonable doubt." *In re Payne*, 129 A.3d at 556 (quotation marks and

quotation omitted). Accordingly, the PCRA court properly denied Appellant's motion for DNA evidence on this basis.

For all of the foregoing reasons, we affirm.

Affirmed.

Judgment Entered.

D. Kohla mira

Benjamin D. Kohler, Esq. Prothonotary

Date: 1/11/2024