

[J-100-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 468 & 469 CAP
	:	
Appellee	:	Appeal from the Order entered on August
	:	27, 2004 in the Court of Common Pleas,
	:	Criminal Division, Philadelphia County
v.	:	dismissing the application for PCRA relief
	:	at No. 9004 1967-1972
	:	
MICHAEL RAINEY,	:	
	:	
Appellant	:	SUBMITTED: May 23, 2006

CONCURRING AND DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: July 18, 2007

I join the majority opinion, with the exception of Section V(C), which remands to the PCRA court for testimony about trial counsel’s consideration of Appellant’s potential mental health problem. Majority Slip Op., at 37.

As the majority indicates, this Court’s standard of review after the denial of PCRA relief is limited to determining whether the PCRA court’s ruling is supported by the record and free of legal error. Id., at 6; see also Commonwealth v. Jones, 876 A.2d 380, 384 (Pa. 2005). The PCRA court reviewed Appellant’s claim he had a mental health problem and determined “[Appellant’s] affidavits from friends and family members alleging [he] suffered mental problems do not establish mitigation. The allegations contained in these affidavits are of questionable accuracy and are without medical corroboration.” PCRA Court Opinion, 7/26/04, at 10. The PCRA court concluded

Appellant failed “to show how testimony to this effect would have swayed the jury to impose a different sentence.” Id. This conclusion is supported by the record. Likewise, I find no legal error. Accordingly, under our well defined standard of review, the order below should be affirmed. I see no reason why the PCRA court should receive testimony about trial counsel’s investigation when the PCRA court has justifiably determined there is no merit to the alleged mitigating mental health issue in the first place. Under our limited standard of review, I would affirm the PCRA court.