

[J-61-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA, : No. 509 CAP
: :
Appellant : :
: :
v. : Appeal from the order entered on 3/31/06
: in the Court of Common Pleas, Criminal
: Division of Berks County granting a new
: penalty phase hearing at No. CP-06-CR-
: 0002194-1989

DAVID ALLEN SATTAZAHN, :
: :
Appellee : :

COMMONWEALTH OF PENNSYLVANIA, : No. 510 CAP
: :
Appellee : :
: :
v. : Appeal from the order entered on 3/31/06
: in the Court of Common Pleas, Criminal
: Division of Berks County granting a new
: penalty phase hearing at No. CP-06-CR-
: 0002194-1989

DAVID ALLEN SATTAZAHN, :
: :
Appellant : :

COMMONWEALTH OF PENNSYLVANIA, : No. 511 CAP
: :
Appellee : :
: :
v. : Appeal from the order entered on 3/31/06
: in the Court of Common Pleas, Criminal
: Division of Berks County dismissing
: claims in Defendant's PCRA petition
: relating to convictions and entitlement to
: new trial at No. CP-06-CR-0002194-1989

DAVID ALLEN SATTAZAHN, :
: :
Appellant : :
: SUBMITTED: April 18, 2007

CONCURRING AND DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: July 24, 2008

I dissent from the portion of the majority's decision affirming the PCRA court's grant of a new penalty hearing based on trial counsel's ineffectiveness for failing to present mental health mitigation evidence. For the same reasons expressed in Commonwealth v. Romero, 938 A.2d 362, 387 (Pa. 2007) (at time of trial, Williams and Wiggins had not been decided, and degree of investigation required for capital counsel to not be deemed ineffective had not evolved to extent currently required), I believe counsel's stewardship should be evaluated by the standards in effect at the time of trial. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Romero, at 387 (citations omitted); see also Commonwealth v. Williams, J-122-2004, Nos. 430 & 431 CAP, Concurring Slip Op., at 2 (Eakin, J., concurring) ("Any other standard would require counsel to predict changes in the law and turn representation into prognostication").

Although Romero was a plurality, my view remains "that counsel's performance regarding mitigating evidence should be critiqued according to the law existing at the time of trial, not according to later-announced standards." Williams, at 2 (citing Commonwealth v. Hughes, 865 A.2d 761, 825 (Pa. 2004) (Castille, J., concurring and dissenting, joined by Eakin, J.)). Here, counsel testified Appellee's mother gave no indication of appellee's psychiatric history, Appellee's prison records gave no indication of any mental illness, and Appellee failed to provide counsel with names of potential witnesses and discouraged further investigation into his background, indicating he had been a troublemaker. Cf. Romero, at 388 (appellant showed no signs of mental illness, never gave counsel any useful information about his childhood or family when asked,

and prison records contained no indication of psychiatric problems, although counsel was aware appellant had done poorly in school and dropped out). Given these circumstances, counsel's decision not to pursue evidence of mental health mitigation was not unreasonable. See Commonwealth v. Carson, 913 A.2d 220, 266 (Pa. 2006) (in evaluating reasonableness of counsel's investigation, court must remember counsel's decisions may depend heavily on information his client provides to him). I would instead assess counsel's stewardship under the law at the time of Appellee's trial, by which standard one must conclude counsel was effective; accordingly, I would reverse the grant of a new penalty phase hearing.

In all other respects, I join the majority opinion.