

[J-3-99]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA ,	:	236 Capital Appeal Dkt.
	:	
Appellee	:	Appeal from the order entered on
	:	December 2, 1997 in the Court of
	:	Common Pleas of Dauphin County,
v.	:	Criminal Division at Nos. 2775, 2775A,
	:	2787 & 2787A C.D. 1992
	:	
JOSEPH DANIEL MILLER,	:	
	:	
Appellant	:	SUBMITTED: January 12, 1999

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: February 24, 2000

I join the majority opinion, but write to clarify my views concerning the entitlement of an indigent capital defendant to expert psychiatric assistance. The majority, in dicta, reaffirms this Court's interpretation in Commonwealth v. Christy that, pursuant to the United States Supreme Court's decision in Ake v. Oklahoma, government-funded assistance is mandated only in circumstances where it is required to rebut the Commonwealth's argument of future dangerousness. While Ake has been interpreted in a similar manner by some other courts, other jurisdictions have found that the federal constitutional due process principles at issue in Ake support the conferral of assistance in a broader array of circumstances. See, e.g., Starr v. Lockhart, 23 F.3d 1280, 1287 (8th Cir. 1994), cert. denied, 513 U.S. 995, 115 S. Ct. 499 (1994); Clisby v. Jones, 960 F.2d 925, 928-29 (11th Cir. 1992).

Nevertheless, and regardless of the constitutional dimension to the inquiry, this Court has found that the decision whether to appoint an expert is further subject to appellate review for an abuse of discretion, and that the nature of the case as a capital one is a significant factor in this review. See, e.g., Commonwealth v. Carter, 537 Pa. 233, 257, 643 A.2d 61, 73 (1994), cert. denied, 514 U.S. 1005, 115 S. Ct. 1317 (1995). In those cases where a legitimate component of the defense to the charge of murder or the Commonwealth's effort to obtain a sentence of death lies in demonstrating to the jury a claim concerning the defendant's mental condition, expert psychiatric assistance may be indispensable. In such instances, I believe that it would be an abuse of discretion for the trial court to deny a request for funding, even though the request would not implicate federal constitutional due process concerns as interpreted by Christy. I would thus enforce as mandatory what the majority posits is permissive so that, as the trial court appropriately ensured in the present case, an indigent defendant is provided core resources necessary to present a full and fair defense in all phases of capital litigation.