

[J-108-2008]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 514 CAP
	:	
Appellee	:	
	:	Appeal from the Order entered on July 11,
	:	2006 at Nos. 2563-2565 May Term 1987
v.	:	in the Court of Common Pleas, Criminal
	:	Division of Philadelphia County
	:	
CRAIG WILLIAMS,	:	
	:	
Appellant	:	SUBMITTED: June 3, 2008

DISSENTING OPINION

MR. JUSTICE SAYLOR

DECIDED: October 2, 2009

I join Parts I, II, III, and VIII of the majority opinion, but I have differences with the reasoning contained in the other parts, and I do not support the affirmance of the dismissal and/or denial of all guilt-phase claims at this stage. Rather, I would remand for an evidentiary hearing concerning material factual matters implicated by Appellant's proffers.

Pervading several of Appellant's claims is the allegation that his trial counsel conducted no investigation of guilt or penalty, but rather, focused his efforts on the extraction of fees from those concerned about Appellant. Appellant alleges that he always admitted to having fired the shot that killed the victim, albeit without any intention of harming anyone, but that trial counsel unilaterally staged the defense that Erica Riggins was the shooter. Appellant's proffer includes his own declaration, see, Declaration of Craig Williams at ¶19 ("I admitted to [trial counsel] that when I came

around the corner and I saw Erica's car I was in a panic and fired the gun. I told [trial counsel] that I was not trying to hurt Mr. Pepper, Erica, or anyone else.”), as well as one from eyewitness Erica Riggins. See Declaration of Erica Riggins at ¶¶3-4 (indicating the witness told trial counsel that Appellant was the shooter and the killing was an accident). Ms. Riggins' declaration also supports the claim of a lack of a meaningful investigation, as, for example, it includes the following narrative:

[Trial counsel] and I met several times before the trial started when I would come by and give him money for Craig's case. We would speak very briefly as I gave him the money. I told him I knew Craig was not guilty of murder because I was there and it was an accident. But then he would not ask me any questions about what really happened. . . .

. . . From the time that I gave [trial counsel] money, I let him know that I wanted to testify for Craig, so I could explain what really happened. He would say that if I was to be a witness, he couldn't be Craig's lawyer and would have to give the money back. But I wanted to be a witness and tell what I knew for Craig. [Trial counsel] kept telling me to just get him paid. . . .

Declaration of Erica Riggins at ¶¶3-4.

Appellant offered a similar statement from his mother:

[Trial counsel] only wanted to talk about his fees and how Erica Riggins and Jean Hargrove were going to pay him several thousand dollars in addition to the \$5,000 he had already received from them. He told me I should also pay him, because there was some kind of “conflict” with him getting all his money from them. It did not make sense to me. Later, I would try to visit [trial counsel] to find out about my son's case, but [counsel] would not be around when I went to his office. I only saw [him] on one or two occasions. He never sat down and interviewed me about my son. He only seemed to want to talk about getting more money than what, by then, had been several thousand dollars he had gotten from Erica and Jean.

Not once during any of my visits to [trial counsel's] office did he or anyone working with him speak to me about Craig's case. . . . He did not ask me anything about Craig or about the situation and fights between Erica and Jean or about Craig's life.

Declaration of Joyce Carter at ¶17. The declaration of Jean Hargrove includes the following:

I paid [trial counsel] and Erica Riggins paid him, so [trial counsel] knew how to reach us. But he never interviewed us about the case before trial. At one point, I told him he needed to interview Erica. He said that Erica had paid him so he did not want Erica involved. I told him he should at least interview me about what happened. He said he would do this later, but as time went by it became clear he never intended to interview me. He would not take my phone calls or give me an appointment.

Declaration of Jean Hargrove at ¶16. Several other witnesses, including Appellant's father and other family members purporting to possess information relevant to the defense of guilt and/or penalty, submitted declarations indicating they were never interviewed by trial counsel.

Based on this line of information, Appellant argues, among other things:

It is believed and averred that when [trial counsel] was unable to squeeze anymore [sic] funds from Ms. Hargrove, Ms. Riggins or Appellant's family, he simply took the lines of least resistance. He raised a perfunctory defense, discussed below, which took the least amount of money, effort and work, rather than raising a real and appropriate defense which would have required his spending considerable time thoroughly interviewing all the witnesses well in advance of the trial, obtaining historical information and documentation about the Appellant and retaining experts. Counsel's only "tactic" was to avoid doing any work on this case in order to maximize the profit he ultimately received from the ever increasing fee that he was repeatedly

asking his client's mother, Ms. Hargrove and Ms. Riggins to pay.

Brief for Appellant at 33.

Notably, it is also indisputable that, on facts the PCRA court and this Court were and are required to accept at the pre-hearing stage, Appellant was substantially underrepresented in his direct appeal, since his appellate counsel submitted a declaration indicating that he did not investigate any extra-record claims such as ineffectiveness matters. See Affidavit of Appellate Counsel, at ¶¶3-6.¹

The standard which used to govern the availability of a post-conviction hearing, and the one I believe is embodied in our Rules of Criminal Procedure, distilled to whether the petitioner has proffered evidence which, if believed, would implicate relief. See Pa.R.Crim.P. 909(B). Although I recognize this standard has been supplanted in some cases with an appellate-level credibility assessment, see, e.g., Commonwealth v. Carson, 590 Pa. 501, 556-57, 913 A.2d 220, 251-52 (2006); Commonwealth v. Bryant, 579 Pa. 119, 154-57, 855 A.2d 726, 748 (2004), in the present case, I believe Appellant's proffer paints a sufficiently disturbing picture to warrant an evidentiary hearing.² I also maintain my belief that the PCRA courts should consistently err on the

¹ The law as of the time of Appellant's direct appeal required direct-appeal counsel to investigate and litigate extra-record claims on pain of waiver. See Commonwealth v. Grant, 572 Pa. 48, 66, 813 A.2d 726, 737 (2002) (explaining that, under the rule pertaining at the time of Appellant's trial, appellate counsel had the "burden of raising any extra-record claims that may exist by interviewing the client, family members, and any other people who may shed light on claims that could have been pursued before or during sentencing"). Thus, appellate counsel's declaration in the present case, if believed, demonstrates that his stewardship was clearly deficient.

² I do recognize that there are good reasons to question Appellant's version of the events, including that his primary witnesses are interested persons. Additionally, trial counsel is alleged to have done nothing in terms of investigation, yet he produced several witnesses from the local neighborhood at trial who testified that Erica Riggins was the shooter. See N.T., June 15, 1988, at 244-278 (testimony of Charlene (continued...))

side of hearing the evidence and rendering supported factual findings and legal conclusions. See, e.g., Carson, 590 Pa. at 616-18, 913 A.2d at 288-89 (Saylor, J., dissenting); Bryant, 579 Pa. at 162-64, 855 A.2d at 751-52 (Saylor, J., dissenting). The alternative is that the availability of hearings in post-conviction matters will depend on different judges' individual thresholds for making credibility assessments without actually hearing the witnesses, and thus, the administration of justice will be uneven.

(...continued)

McDaniels, Jamal Morrison, and Mary Morrison). There is thus a fair inference to be made that someone assisted counsel in identifying such witnesses. Such inferences, however, implicate basic matters of credibility which are properly resolved via fact finding.