

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 961 - 2001
 :
 vs. : CRIMINAL DIVISION
 :
 ANTHONY WILLIAMS, :
 Defendant : PCRA

OPINION AND ORDER

Before the Court is Defendant’s Motion for Post-Conviction Collateral Relief, filed June 26, 2006.¹ A conference on the motion was held May 4, 2007. Defendant has raised three issues, none of which requires further hearing.

First, Defendant contends trial counsel was ineffective in failing to call Abdul Clark “to show doubt that the Defendant Williams was involved in any way with the murder of the victim.” Abdul Clark was called as a witness by the Commonwealth, directly implicated Defendant in the murder, and, in fact, said he and Defendant went to the victim’s residence and Defendant was the person who did the shooting. Defendant’s trial counsel thoroughly cross-examined Mr. Clark in an apparent effort to show that Mr. Clark had implicated Defendant to save his own life, he himself having been charged with first degree murder but having been allowed to plead to third degree murder in exchange for his testimony against Defendant. The Court believes defense counsel would have had no reason to call Mr. Clark as a defense witness, and in fact did everything he could to discredit Mr. Clark’s damaging testimony.

Next, Defendant contends that “based upon the medical examiner’s testimony, it was highly impossible that Defendant matched the description of the perpetrator.” This appears to be a weight of the evidence issue, and, as such, has been waived as it was not

¹ Defendant’s conviction for second degree murder, robbery, conspiracy and firearms violations was upheld on appeal.

raised on direct appeal. To the extent that Defendant is raising it as a claim of ineffective assistance of appellate counsel for having failed to do so, however, it is without merit as the claim itself is without merit. The medical examiner's testimony did not eliminate Defendant as a possible perpetrator. The medical examiner stated there were too many variables, such as footwear, and body proportion, to ascribe any particular height to the perpetrator, other than to say a person 5'7" or 5'8" could not have been the shooter, but that a person over 5'9" could not be ruled out.²

Finally, Defendant contends he should not have been charged with "multiple counts of murder in relation to one victim." This issue was raised on direct appeal, and was addressed in this Court's 1925(a) opinion, wherein it was determined to lack merit. Charges of first, second and third degree murder are not mutually exclusive and there is no inconsistency in convictions of more than one count. *See Commonwealth v. Meadows*, 787 A.2d 312 (Pa. 2001).

Inasmuch as none of the issues raised has merit, the motion will be dismissed without further hearing.

ORDER

AND NOW, this 9th day of May 2007, upon review of the record and pursuant to Rule 907(a) of the Pennsylvania Rules of Criminal Procedure, it is the finding of this Court that Defendant's Motion for Post-Conviction Collateral Relief raises no genuine issue of fact and Defendant is not entitled to post conviction collateral relief.

As no purpose would be served by conducting any further hearing, none will be scheduled and the parties are hereby notified of this Court's intention to dismiss the Motion. Defendant may respond to this proposed dismissal within twenty (20)

² A police officer testified that during the booking process, Defendant indicated his height was 6', and a paralegal working for defense counsel testified to having measured Defendant's height at 5'9 ¼".

days. If no response is received within that time period, the Court will enter an order dismissing the Motion.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Paul Petcavage, Esquire
Anthony Williams, GN-7356, Box A, Bellefonte, PA 16823
Gary Weber, Esq.
Hon. Dudley Anderson