IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-50-2003**
vs.	**:**	
	:	**Opinion and Order re Defendant's**
RICHARD WAYNE ILLES, SR.,	**:**	**PCRA petition**
Defendant	**:**	

OPINION AND ORDER

This matter came before the Court on Defendant's Post Conviction Relief Act (PCRA) petition. The Court originally gave Defendant notice of its intent to dismiss Defendant's petition without an evidentiary hearing in an Opinion and Order dated June 17, 2008. Since this was a murder case, however, the Court gave Defendant more time to respond to the proposed dismissal than required by the Rules of Criminal Procedure. In response to the proposed dismissal, Defendant filed a second amended PCRA petition that corrected some of the problems with Defendant's pro se petition and the first amended petition. After reviewing the second amended petition, the Court granted evidentiary hearings on six issues.[1]

The first issue was whether the defense attorneys were ineffective for failing to call character witnesses at trial. To prevail on an ineffective assistance of counsel claim, the petitioner must plead and prove that the issue is of arguable merit; counsel had no rational or strategic basis for his alleged action or inaction; and Defendant was prejudiced as a result, i.e. but for counsel's act or omission there is a reasonable probability the outcome of the trial would have been different. ***Commonwealth v. Pierce***, 567 Pa. 186, 203, 786 A.2d 203, 213 (Pa. 2001). In Pennsylvania, character witnesses are not permitted to testify

1 The hearings were held on the following dates: October 24, 2008; March 20, 2009; April 7, 2009; June 3, 2009; June 9, 2009; and August 13, 2009.

regarding their opinion of Defendant's character; rather, their testimony is limited to Defendant's reputation in the community. ***Commonwealth v. Blount***, 538 Pa. 156, 170, 647 A.2d 199, 206 (Pa. 1994)("character evidence is not the opinion of one person or even a handful of persons, but must represent the consensus of the community").

Defense counsel called six individuals that Defendant claimed his attorneys should have been called as character witnesses at his trial: Duane Van Fleet; Susan Van Fleet; Ann Weston; Peggy Miller; George Manchester; and Brenda Terry Manchester. Defendant alleged in his petition that these individuals could testify regarding his character for peacefulness and nonviolence. When these individuals were called to testify at the PCRA hearing on October 24, 2008, it became readily apparent that most of them could not offer testimony about Defendant's reputation in the community for these character traits.

Duane Van Fleet, Susan Van Fleet, Ann Weston and Peggy Miller stated that they had not heard people in the community speak of Defendant's reputation for peacefulness or nonviolence. Therefore, they could not have provided character evidence at Defendant's trial.

George Manchester testified that Defendant did not have a reputation for hurting people. On cross-examination, the Commonwealth questioned Dr. Manchester about statements he made to the police prior to trial. The prosecutor asked Dr. Manchester if he told the police that 95% of people consider Defendant a son of a bitch. Dr. Manchester stated he would have used the term SOB and the statement would have related to Defendant's reputation related to the quality of care being rendered to his patients. The prosecutor also asked Dr. Manchester if he ever heard anyone say Defendant murdered the victim because he had to control everything. The witness recalled a discussion with someone

– he could not recall who- that if Defendant did it, it would be to control her.

Brenda Terry Manchester also testified that she heard the community speak about Defendant's reputation, but not using the terms peaceful or nonviolent. In his cross-examination of Ms. Terry Manchester, the prosecutor asked her whether she heard people saying that Defendant committed the murder or had it done. Ms. Terry Manchester replied that when the victim was killed, some people thought Defendant did it. She also acknowledged that she heard people say Defendant called the victim a bitch. The prosecutor also cross-examined this witness with a statement she made during an interview conducted by Trooper Henry that Defendant could not control his anger. The witness admitted Defendant was angry, but claimed she would not know whether he could control his anger or not. She also noted that the interview was not taped and she did not sign the statement.

At trial Defendant was represented by George Lepley and Craig Miller. Craig Miller testified that they interviewed the witnesses, reviewed the police reports and decided not to call character witnesses. In his opinion, given the police reports and the fact that introducing character evidence could open the door to the admission of other evidence in rebuttal, including evidence that the defense kept out of the Commonwealth's case in chief, it was not even a close call. Attorney Miller indicated he was worried about testimony regarding Defendant's anger in the operating room coming into evidence. He also thought that Mr. Manchester's statement that 95% of people would say Defendant was an SOB would be a dangerous statement to have in front of a jury. He also believed there was a statement in a police report regarding threats Defendant made to Katie Swoyer about putting a bullet in her head.

George Lepley also indicated that he discussed the subject of calling character

witnesses with Defendant and in Mr. Lepley's opinion it was not a good idea. He noted Dr. Manchester's statement to the police about Defendant being an SOB, as well as Ms. Terry Manchester's statements in the police report (Commonwealth Exhibit #1, p. 174) where she said Defendant referred to the victim as a bitch in her presence and Defendant could not control his anger toward the victim. Mr. Lepley also indicated that the potential witnesses would not be good character witnesses either because they did not possess information that the defense wanted presented to the jury or they were subject to impeachment. Furthermore, he was concerned about other evidence of Defendant's bad character coming out during the trial. He noted the Commonwealth had a substantial amount of additional incidents of improper conduct toward the victim. Introducing evidence of Defendant's good character would open the door to that evidence and other thing the Commonwealth surprisingly did not introduce in the Commonwealth's case-in-chief.

The Commonwealth called Trooper Scott Henry to rebut Ms. Terry Manchester's testimony. Trooper Henry testified that he interviewed Brenda Terry Manchester on January 21, 1997. During the interview, she told him she overheard Defendant make statements that he could not take it anymore. She also said it was apparent to her that Defendant could not control his anger toward the victim. She also indicated that she was not aware of any physical abuse, but the victim suffered verbal and mental abuse from Defendant.

After considering all the testimony on this issue, the Court finds Defendant's trial attorneys were not ineffective for failing to call character witnesses in this case. The attorneys had rational and strategic reasons for not calling character witnesses in this case. Calling character witnesses was a risky proposition at best. The character witnesses would

have been subject to cross-examination with their statements to the police, and the Court finds this questioning would have been very harmful to the defense. The Court also agrees that introducing such evidence would have opened the door for the Commonwealth to introduce evidence in rebuttal that the Court precluded the Commonwealth from using in its case-in-chief. The Court also finds that the testimony of the character witnesses presented during these PCRA proceedings would not have changed the outcome in this case if it had been presented at trial. The Court finds the testimony of Susan Van Fleet, Duane Van Fleet, Ann Weston and Peggy Miller would not have been admissible at trial because they never heard people in the community speak about Defendant's reputation for peacefulness and nonviolence. The testimony of George Manchester and Brenda Terry Manchester would have been more harmful than helpful given their statements to the police.

The second issue was whether the trial attorneys were ineffective for failing to call Defendant as a witness at trial. Initially, the Court notes that Defendant knowingly, intelligently and voluntarily waived his right to testify in his own defense. N.T., 2/17/2004, at pp. 122-128. The Court explained to Defendant that his attorneys could advise him one way or the other but the decision to testify was his. The Court also explained to Defendant that if he were convicted, he could not come back later and say he wanted a new trial so he could testify; he was giving up his right to testify for all time. Defendant indicated he understood and he chose not to testify in this case.

In order to sustain a claim that counsel was ineffective for failing to call him as a witness, Defendant must "demonstrate either that counsel interfered with his right to testify, or that counsel gave specific advice so unreasonable as to vitiate a knowing and intelligent decision to testify on his own behalf." ***Commonwealth v. Uderra***, 550 Pa. 389,

402, 706 A.2d 334, 340 (Pa. 1998); see also ***Commonwealth v. Lambert***, 568 Pa. 346, 797 A.2d 232 (Pa. 2001); ***Commonwealth v. O'Bidos***, 849 A.2d 243 (Pa. Super. 2004).

Defendant claims that the only reason he did not testify was because counsel advised him against doing so. Relying predominantly on ***Commonwealth v. Breisch***, 719 A.2d 352 (Pa. Super. 1998), Defendant asserts the advice of his attorneys was unreasonable because he was the only one who could establish his defense and provide explanations for conduct the Commonwealth was interpreting as incriminating. The Court cannot agree with Defendant's assertion.

First, the Court finds ***Breisch*** distinguishable. Initially, it is not clear that the court conducted a colloquy with Breisch to establish a knowing and intelligent waiver of her right to testify. Although Breisch and her attorney spoke about her right to testify, Breisch indicated she did not know until the defense rested that she was not going to be called to the stand. 719 A.2d at 355. If the court had conducted a colloquy with Breisch, she should have known that she was not going to testify. More importantly, Breisch's defense was that she did not have the intent to defraud because she was authorized to commit the acts in question, and she was the only one who could provide that testimony. Here, Defendant was not the only one who could establish his defense. The defense in this case was alibi. Defendant provided a taped statement to the police informing them of his activities on the night the victim was killed. The Commonwealth played this tape for the jury. Therefore, Defendant's own statements regarding his whereabouts were before the jury without him being subjected to cross-examination. Furthermore, the defense presented testimony from employees of the Lewisburg McDonalds and employees of Harrisburg area hotels to establish his alibi that he was on his way to visit his sister on the night in question.

Defendant contends his attorneys should have called him as a witness to testify regarding his state of mind and the rationale for many of his actions that the Commonwealth argued demonstrated consciousness of guilt. Again, the Court cannot agree. Based on the testimony presented at the hearings, the Court finds Defendant's attorney's advice not to testify was reasonable. The Court agrees with defense counsels' testimony that Defendant's explanations would hurt his defense, potentially open the door to harmful information that the Commonwealth chose not to introduce, and/or were not necessary because other evidence provided the explanation without subjecting Defendant to cross-examination.

The Court will not reiterate every explanation Defendant wanted to provide, but rather will list only a few for illustrative purposes.

The most glaring example that would have been harmful to the defense and hurt the credibility of Defendant's case is Defendant's explanation for Norma Ulmer's testimony that she overheard Defendant state "I wish the bitch were dead." Ms. Ulmer's testimony regarding this statement can be found at N.T., January 21, 2004 at p. 209. The defense combated this testimony in several respects without calling Defendant as a witness. Ms. Ulmer was not a party to the conversation, but she was upstairs in Dr. Zama's house eavesdropping. ***Id.*** The defense brought out the fact that in her preliminary hearing testimony Ms. Ulmer did not recall the context of the conversation and she did not recall what else was said. ***Id.*** at p. 213. She also initially told the police that she thought this conversation occurred around Christmas or New Years, but the residence Dr. Zama was living in around Christmas or New Year's did not have an upstairs. ***Id***. at 214-215. Moreover, Dr. Zama's testimony was Defendant was just generally complaining about what

he was going through in the divorce and he said something about the bitch is just making my life miserable, I wish she would just go away. N.T., January 30, 2004, pp. 44-45. The defense brought out that the conversation was so inconsequential to Dr. Zama that despite speaking to the police a half-dozen times, Dr. Zama did not tell them about this conversation. It was only after Corporal Bramhall had received this information from Norma Ulmer and asked Dr. Zama about it that Dr. Zama made any mention of the conversation. ***Id***. at 64-69. The defense also elicited that when Defendant said he wished she would just go away, Dr. Zama took that to mean he wished she would move out of town. ***Id***. at 70.

Rather than rely on defense counsel's minimization of this alleged statement, Defendant contends they should have called him as a witness so he could testify that Miriam had been pestering him so much about the location of a castle from Richie's fish tank that the statement he actually made at Dr. Zama's was "I wish the fish were dead." Defendant's attorneys testified that they believed Defendant's explanation would lend credence to Ms. Ulmer's testimony since it was so similar to the statement "I wish the bitch were dead," and would undercut the credibility of the defense. The Court agrees with the assessment of the defense attorneys. Defendant's explanation seemed contrived and utterly incredible.

Defendant routinely claimed his statements were misunderstood or taken out of context. Some examples of this are:

(1) Gordon Butler testified Defendant said to Miriam "You could die" as a threat. N.T., January 30, 2004, at pp. 29-30. Defendant indicated he may have said these words but it was in the context of a discussion about their respective risk factors for heart attack or premature death.

(2) James Swann testified Defendant told him if Defendant were going

through the things Mr. Swann was going through in his divorce he would "take her out." N.T., January 21, 2004, at p. 84. Defendant testified it was Mr. Swann who made the statement about taking his wife out and Defendant sarcastically responded to the effect "Go ahead James; that's real smart."

(3) The prosecutor argued that Defendant had access to drugs that could knock his son out the night his wife was killed. The Commonwealth presented the testimony of Katherine Fostick that when she took Richie to get a crew cut in the summer of 1999, the beautician noticed there was a spot in the underneath the front of Richie's hair where it appeared Richie had cut his own hair. When discussing this with Defendant, he brought up that maybe Miriam's family had it cut so it could be drug tested. Ms. Fostick did not understand what Defendant was talking about. Defendant explained that Richie was inconsolable the night he found out his mother was killed, so he gave him something to help him sleep. She knew he mentioned controlled substances and she thought Defendant told her he gave Richie Darvocet and Valium. N.T., January 28, 2004, at pp. 129-133. Defendant testified Katy had been drinking and misunderstood him. He stated he told Katy he was glad he didn't give Richie narcotics, because it was clear they took the hair for testing. He also stated he only gave Richie some children's cough medicine to calm him after he found out about his mother's death, because he knew there was no safe dosage of narcotics for a child.

One of the biggest problems with these explanations is they admit that Defendant made statements or had conversations on this subject matter, which would not be helpful to the defense. This problem is aggravated with each additional explanation. The more frequently Defendant tries to explain everything away, the more it makes him look guilty. When such explanations are utilized once or twice, it may be simply a

misunderstanding. However, the more it occurs, the more it appears everyone else is right and Defendant is making things up to get himself out of a jam.

Defendant's testimony also would have opened the door to other evidence that would not have been helpful to the defense. For example, Defendant wanted his attorneys to call him as a witness so he could explain that he was writing the manuscript, hoping it would be published and lead to new information that would result in the arrest and prosecution of Miriam's killer. When Defendant was arrested in Washington, however, he made statements to the police that he thought he knew who the person was who was responsible for Miriam's death. There also were several statements of witnesses other than Gordon Butler and Leslie Smith that the Court ruled the Commonwealth could present but it did not. The belief of the defense attorneys, which the Court shares, is that the Commonwealth was saving some of this information for cross-examination of Defendant in the event he testified.

Given the testimony on this issue as a whole, the Court finds that the defense attorneys' advice for Defendant not to testify was reasonable; therefore, they were not ineffective for failing to call him as a witness.

The third issue on which the Court granted an evidentiary hearing was whether the trial attorneys were ineffective for failing to call Steven Smith as a witness at trial. This issue was withdrawn by the defense.

The fourth issue was whether the defense attorneys were ineffective for failing to call Carol Chaski as an expert witness. The Court denies this claim for the reasons set forth in its Order dated June 29, 2009.

In the fifth issue, Defendant claimed Attorney Miller was so ill during closing arguments that it prejudiced Defendant. Craig Miller testified that he did not recall being ill

during closing arguments. He acknowledged that he had a cold on and off during the trial, but he was not vomiting, feverish, up all night the night before closings or anything like that. Furthermore, he indicated that if he had felt too ill to conduct closing arguments he would have asked for a continuance or asked Mr. Lepley to give the closing. He noted that District Attorney Dinges asked for and received a continuance during trial because he was ill. Mr. Miller did not feel a continuance was necessary. The Court finds Mr. Miller's testimony credible. The Court does not recall Mr. Miller being sick during closing arguments. The Court also finds Defendant did not suffer any prejudice. In the Court's opinion, Mr. Miller gave a good closing argument. Moreover, Defendant has not specified any issue or subject that Mr. Miller should have addressed in his closing that was not addressed.

The sixth issue concerns media rights. Defendant claims Attorney Lepley obtained media rights for this case in violation of Rule 1.8(d) of the Rules of Professional Conduct. Rule 1.8(d) states: "Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation." Defendant also contends that because he and Mr. Lepley had a media rights agreement prejudice is presumed and he is entitled to a new trial. The Court cannot agree.

Defendant testified that he had two fee agreements with Mr. Lepley. The first fee agreement was signed in February 2003 and media provisions were not part of the deal. Mr. Lepley then came to see him in the summer or spring of 2003 and he demanded media rights to this case. The conversation was solely between Mr. Lepley and Defendant, and it seemed to Defendant that Mr. Lepley didn't want anybody to know about their conversation. According to Defendant, Mr. Lepley said if we got a good outcome, he wanted the rights to

the story. Defendant did not want to give Mr. Lepley 100%, so he replied what about 50% to you and 50% to me and my family. Mr. Lepley's response was "Fine. If you get convicted I get 100% anyway. You can't get any if you are convicted. Defendant testified that months later Mr. Miller found out about it and asked why he wasn't a part of the media rights agreement. According to Defendant, Mr. Lepley told Mr. Miller "don't worry about it; you'll get yours." Defendant filed a complaint against Mr. Lepley with the Disciplinary Board after he was convicted. At the PCRA hearing, Defendant introduced Exhibits 1 and 1-A. Defendant's Exhibit 1 was a letter to Defendant from George Lepley dated March 14, 2006. The body of the letter stated:

> In light of recent events and after a review of the Rules of Professional Responsibility, I am hereby releasing and relinquishing any and all interest and rights I have or the law firm of LEPELY, ENGELMAN & YAW has in any media rights with regards to your matter. Please be advised that to date, I have not received any compensation form any media or ay source other than you personally. If anyone contacts me regarding this matter, I will immediately refer him or her to you.
>
> Hopefully this will resolve the matter at hand.

A copy of this letter was sent to the disciplinary counsel handling Defendant's complaint. Defendant's Exhibit 1-A was a letter to Defendant from disciplinary counsel dated March 29, 2006, informing Defendant that in light of Mr. Lepley's letter dated March 14, 2006, "we have determined that no disciplinary sanction is warranted for his apparent violation of RPC 1.8(d). Therefore, we have dismissed your complaint and intend to take no further action with regard to it." Defendant did not introduce a copy of the agreement containing the media rights provision. He indicated Mr. Lepley never gave him a copy. He also testified Mr. Lepley told the Disciplinary Board that he (Lepley) did not have a copy.

Mr. Lepley admitted he had a discussion with Defendant about media rights.

He also acknowledged that he initiated the conversation. He said any funds were to be used to fund Dr. Illes' defense and to hire additional experts if needed. There was a clause in an agreement about media rights and it either provided that the media rights would be shared or would go to the expenses of trial, but his best recollection was that the funds would go to the defense of the case. Mr. Lepley testified he did not think the agreement created a conflict of interest because the contract was to fund the defense and he was not going to personally gain or profit from the media rights. He testified he provided a copy of the agreement to Defendant and there was a copy of the agreement in Defendant's file that was turned over to Mr. Miller and then to current counsel Mr. Manchester. He noted there was never a hint or glimmer that any funds would actually be realized. There were some discussions with media early in the case to see if they were interested in the case, but no one was interested in paying any money. There was never any contract with any media outlet nor were there any active negotiations with the media to secure a contract.

Defendant testified that Mr. Lepley's statements that the funds from the media rights would go to the defense were not true. He indicated Mr. Lepley told him it was a requirement that he sign the media agreement. He also testified Mr. Lepley brought the contract over at the last minute and they made changes, which were initialed by both of them, but Mr. Lepley never gave him a copy of the media agreement with the initialed changes. Defendant testified that after he filed his disciplinary complaint, the Disciplinary Board told Mr. Lepley to provide Defendant with a copy of the agreement and Mr. Lepley said he did not have a copy.

Craig Miller testified that he never saw Defendant's Exhibit 1. He saw Exhibit 1A, but not until just before the first PCRA hearing. He became aware that Mr.

Lepley and Defendant discussed media rights and that Defendant filed a complaint against Mr. Lepley but he found out about this information after he represented Defendant. He further testified media rights did not affect his representation of Defendant, as he was neither involved in the agreement nor got any benefit from it.

The Court finds Mr. Miller's testimony credible. All the testimony indicated that the discussions regarding media rights occurred solely between Mr. Lepley and Defendant. Defendant filed a complaint with the disciplinary board against Mr. Lepley in or around March 2006. Notably, Defendant did **not** file a complaint against Mr. Miller. The jury trial in this case was held in January and February of 2004. Based on the evidence presented, the Court concludes that Mr. Miller was not a party to the media rights agreement and he was not aware of it during Defendant's trial.[2] As the Court indicated in its notice of intent to dismiss Defendant's PCRA, since Defendant was represented by two attorneys and Mr. Miller did not have a conflict of interest, Defendant would not be entitled to a new trial. See ***Commonwealth v. Wakeley***, 433 Pa. 159, 162, 249 A.2d 303, 304 (1969)("It would perhaps be enough to answer that appellant was represented at trial by attorneys, and had one of them a conflict, the other was in a position to protect appellant's interests").

Appellant complains ***Wakeley*** was decided prior to the enactment of Rule 1.8(d) and the quoted language is merely dicta. However, none of the cases cited by Defendant in his petition involve media rights, or even Rule 1.8 of the Rules of Professional

2 Although Mr. Miller also represented Defendant on appeal, the Court notes that Mr. Miller was being paid by Lycoming County, because Defendant was incarcerated and the Court granted his request for in forma pauperis status. The Court also notes that the Pennsylvania Superior Court affirmed Defendant's conviction in a memorandum decision filed March 2, 2006, a date before the dates of the letters admitted as Defendant's Exhibits 1 and 1A. Based on the testimony presented it was clear to the Court that Mr. Miller did not know anything about the media rights agreement until sometime after Defendant filed his complaint against Mr. Lepley, which also would have been after Mr. Miller briefed and argued Defendant's appeal before the

Conduct. The cases cited in Defendant's brief that involve media rights are from the federal circuit courts of appeal. Therefore, these cases are not binding precedent.

The Commonwealth cited a case involving Rule 1.8, but not media rights, *see* ***Commonwealth v. Williams***, 980 A.2d 510 (Pa. 2009). In ***Williams***, in addressing whether trial counsel was ineffective due to an alleged conflict of interest under Rule 1.8(f), the Pennsylvania Supreme Court stated:

> In ***Mickens v. Taylor***, 535 U.S. 162, 122 S.Ct. 1237, 152 L.Ed.2d 291 (2002), the United States Supreme Court held that until a defendant demonstrates that his counsel actively represented conflicting interests, he had not established the constitutional predicate for his claim of ineffective assistance of counsel under the Sixth Amendment. ***Id***. At 175. The Court defined "actual conflict of interest" for Sixth Amendment purposes as a conflict of interest that adversely affects counsel's performance. ***Id***. at 171.

980 A.2d at 522.

Even the nonbinding federal cases require Defendant to show an actual conflict of interest which adversely affected the defense attorney's performance. For example, in ***United States v. Marrera***, 768 F.2d 201 (7th Cir. 1985), the Seventh Circuit stated:

> "In most ineffective assistance cases, the defendant has the burden of affirmatively proving prejudice. Where, however, an alleged conflict of interest predicates the ineffectiveness claim the defendant bears a lighter burden. That is, where a defendant puts a trial judge on notice of the alleged conflict before or during trial and the trial court fails to inquire into the conflict, a reviewing court will presume prejudice upon a showing of possible prejudice; on the other hand, if the defendant fails to put the trial court on notice of the alleged conflict, a reviewing court will presume prejudice upon a showing that the potential conflict developed into an actual conflict which adversely affected the defense lawyer's performance.

Id. at 205-206. Here, Defendant never brought the alleged conflict to the Court's

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Pennsylvania Superior Court.

attention prior to or during trial. Therefore, even under one of the cases he cites, he would have to show an actual conflict which actually affected the defense lawyer's performance. The Court finds Defendant has not made such a showing. Defendant has neither alleged what Mr. Lepley did nor failed to do that furthered his own interests to the detriment of Defendant's interests at trial. Mr. Lepley testified that no one was interested in paying for Defendant's story and there were never any negotiations. In ***Marrera*** defense counsel took the defendant to Hollywood to discuss the defendant's case with movie producers, but the court did not find the potential conflict developed into an actual conflict of interest that negatively impacted trail counsel's performance. Similarly, in ***Zamora v. Dugger***, 834 F.2d 956 (11th Cir. 1987), another case cited by Defendant, the court found the defendant had not shown an actual conflict of interest. In fact, the Magistrate in that case noted that the defense attorney's interests would have been more advanced by a successful defense rather than a loss. ***Id***. at 961. The same can be said for the case at bar.

In summary, the Court finds Defendant is not entitled to a new trial on the media rights issue because Defendant had a second attorney who did not know about the media rights agreement at the time of Defendant's trial, and Defendant has not shown that Mr. Lepley's alleged conflict of interest developed into an actual conflict which adversely affected the defense lawyer's performance.

For any issue that the Court did not grant an evidentiary hearing, the Court denies Defendant's claims for the reasons set forth in the Opinion dated June 17, 2008.

O R D E R

AND NOW, this ____ day of December 2009, the Court DENIES Defendant's Post Conviction Relief Act (PCRA) petition.

By The Court,

_____
Kenneth D. Brown, President Judge

cc: R. Bruce Manchester, Esquire
Kenneth Osokow, Esquire (ADA)
Gary Weber, Esquire (Lycoming Reporter)
Work file