

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : CR-1969-2012  
:   
v. :   
: CRIMINAL DIVISION  
RAYMARR DAQUAN ALFORD, :   
Petitioner : PCRA

**OPINION AND ORDER**

On July 9, 2012, Kevan Connelly was shot in Flanagan Park in Williamsport, Pennsylvania. He died later that same day. On April 30, 2014, a jury found Raymarr Alford (Petitioner) guilty of First Degree Murder,<sup>1</sup> Conspiracy to Commit Murder,<sup>2</sup> Possession of a Weapon,<sup>3</sup> Recklessly Endangering Another Person,<sup>4</sup> and Firearms not to be Carried without a License.<sup>5</sup> For First Degree Murder, the Court under 18 Pa.C.S. § 1102.1 sentenced Petitioner to incarceration for a minimum of 50 years and a maximum of life. For Conspiracy to Commit Murder, the Court sentenced the Petitioner to incarceration for a minimum of 9.5 years and a maximum of 40 years. The sentence for conspiracy is to run consecutive to the sentence for murder.

Petitioner filed a timely appeal which was denied by the Superior Court on March 3, 2015. Petitioner filed a petition for Allocatur to the Pennsylvania Supreme Court on January 8, 2016 which was denied on August 3, 2016. Therefore, Petitioner's sentence became final on November 1, 2016. On June 13, 2017, Petitioner filed a timely *pro se* Post-Conviction Relief

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<sup>1</sup> 18 Pa.C.S. §§ 2501, 2502(a).

<sup>2</sup> 18 Pa.C.S. § 903(a)(1).

<sup>3</sup> 18 Pa.C.S. § 907(b).

<sup>4</sup> 18 Pa.C.S. § 2705.

<sup>5</sup> 18 Pa.C.S. § 6106.

Act (PCRA) petition. Trisha Hoover Jasper, Esq. was appointed to represent Petitioner on August 30, 2017.

Petitioner advances two issues in his petition. He alleges that the Trial Counsel was ineffective for failing to file a decertification petition to transfer his case for disposition in Juvenile Court; and, the Court's *de facto* life sentence was a violation of Petitioner's Eighth Amendment right against cruel and unusual punishments.

Incarcerated petitioners, or those on probation or parole for a crime, are eligible for relief under the PCRA when they have pled and proved by a preponderance of the evidence the following four components:

- 1) Petitioner has been convicted of a crime under the laws of PA and is at the time relief is granted currently serving a sentence of imprisonment, probation or parole for the crime.
- 2) Conviction or sentence resulted from one or more of the following
  - i. Violation of the U.S or PA Constitution that so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place.
  - ii. Ineffective assistance of counsel – same undermining the truth determining process standard as above “undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place”.
  - iii. Plea of guilty induced where inducement caused Petitioner to plead guilty when he is innocent.
  - iv. Improper obstruction by government officials of petitioner's appeal right where a meritorious appealable issue was properly preserved in the Trial Court.
  - v. The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial had it been introduced.
  - vi. Imposition of sentence greater than the lawful maximum.
  - vii. Proceeding in a tribunal without jurisdiction.
- 3) Allegation of the error has not been previously litigated or waived; and
- 4) Failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic, or tactical decision by counsel.

42 Pa.C.S. § 9543 (eligibility for relief).

To make a claim for ineffective assistance of counsel, a Petitioner must show 1) an underlying claim of arguable merit; 2) no reasonable basis for counsel's act or omission; and 3) prejudice as a result, that is, a reasonable probability that but for counsel's act or omission, the outcome of the proceeding would have been different. *Commonwealth v. Cooper*, 941 A.2d 655, 664 (Pa. 2007); *see Commonwealth v. Carpenter*, 725 A.2d 154, 161 (Pa. 1999). A failure to satisfy any prong of this test is fatal to the ineffectiveness claim. *Cooper*, 941 A.2d at 664; *see Commonwealth v. Sneed*, 899 A.2d 1067, 1076 (Pa. 2006).

**Trial Counsel was ineffective by failing to file a decertification petition that would have transferred Petitioner's case to juvenile court if successful.**

When deciding whether to transfer a criminal case to juvenile court, there are several factors that must be considered. As noted, “[u]nder the current statutory framework, a juvenile who commits first or second-degree murder must be charged as an adult. A Petitioner can then request that his or her case be transferred to the Juvenile Division” *Commonwealth v. Foust*, 180 A.3d 416, 428 (Pa. Super. 2018). Petitioner has the burden of proof and must show that transferring his first-degree murder case would serve the public interest. In determining whether such a transfer serves the public interest, 42 Pa. C.S. § 6355 provides the following factors for a court to evaluate:

- (A) the impact of the offense on the victim or victims;
- (B) the impact of the offense on the community;
- (C) the threat to the safety of the public or any individual posed by the child;
- (D) the nature and circumstances of the offense allegedly committed by the child;
- (E) the degree of the child's culpability;
- (F) the adequacy and duration of dispositional alternatives available under this chapter and in the adult criminal justice system; and

(G) whether the child is amenable to treatment, supervision or rehabilitation as a juvenile

In this case, the impact on the victim and community is severe. Petitioner murdered the victim in front of the victim's younger brother, and the grief and suffering of the victim's family is immeasurable. Furthermore, Petitioner's actions have created tension and unease within the community. This brazen shooting of the victim in a popular public park has made local residents fear for their own safety and that of their children. Given the level of sophistication and planning involved as well as the violent and deadly nature of Petitioner's offenses, this Court does not believe Petitioner could prove that the transfer would have served the public interest. Although Petitioner may be amenable to treatment, the gravity of the other factors outweighs this consideration. This Court would not have approved the transfer of this case to juvenile court. Therefore, this Court cannot find that Petitioner has established that Attorney Martino was ineffective merely because he did not file the decertification motion, since that Motion would have most likely been unsuccessful. "A chosen strategy will not be found to have lacked a reasonable basis unless it is proven 'that an alternative not chosen offered a potential for success substantially greater than the course actually pursued.'"

*Commonwealth v. Williams*, 899 A.2d 1060, 1064 (Pa. 2006) (quoting *Commonwealth v. Howard*, 719 A.2d 233, 237 (Pa. 1998)). Since there was no guarantee of success had trial counsel filed a decertification petition, this issue has no merit.

**Petitioner's aggregate sentence of 62 ½ years to life constitutes a *de facto* life sentence without the possibility of parole and violates the Eighth Amendment of the U.S. Constitution.**

On November 10, 2014 the Court held the sentencing hearing. At the time of Petitioner's conviction, the mandatory sentence for the first degree murder charge was life imprisonment without the possibility of parole. However as a result of the decision in *Miller v.*

*Alabama*, 567 U.S. 460 (2012), the US Supreme Court held that mandatory life sentences without the possibility of parole (LWOP) for juveniles are unconstitutional because they do not permit judges to consider “the mitigating factors of youth,” such as decreased culpability and impulsivity, as part of the sentencing decision. *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) established that juvenile homicide offenders that are capable of rehabilitation cannot be given LWOP sentences. Pennsylvania statutory law complied with these changes in case law by providing in 18 Pa.C.S. § 1102.1 (a)(1) that a juvenile convicted of first-degree murder “who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 35 years to life.” 18 Pa.C.S. § 1102.1 (a)(1).

Here, the homicide sentence was 50 years to life. There is no definitive rule as to what constitutes a *de facto* LWOP sentence for juveniles, so the trial court must use its discretion when determining an appropriate sentence. In fashioning a sentence generally, the court must consider the statutory factors set forth in 42 Pa. C.S.A. § 9721 (b). A sentence must be “consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and the community, and the rehabilitative needs of the defendant.” *Commonwealth v. Walls*, 926 A.2d 957, 962 (Pa. 2007). With respect to the aggregate sentence, “[i]t is well settled that, in imposing a sentence, a trial judge has the discretion to determine whether, given the facts of a particular case, a given sentence should be consecutive to, or concurrent with other sentences being imposed.” *Commonwealth v. Rickabaugh*, 706 A.2d 826, 847 (Pa. Super. 1997); *see also* 42 Pa. C.S.A. § 9757. The Court in this case objectively weighed all of the considerations and imposed the sentence that it decided was appropriate under all of the circumstances. The sentence was consistent with the protection of the public

and reflected the substantial impact of the crime on the victims and the community. While the Court considered Petitioner's rehabilitative needs, it found the other interests to be far more compelling and sentenced Petitioner accordingly.

In *Commonwealth v. Foust*, the Pennsylvania Superior Court held that "we must consider the individual sentences, not the aggregate, to determine if the trial court imposed a term-of-years sentence which constitutes a *de facto* LWOP sentence." *Foust*, 180 A.3d at 438. In Petitioner's case, each individual sentence clearly meets the constitutional threshold when viewed independently. Petitioner's most recent PCRA petition cites to *Commonwealth v. Dodge*, 77 A.3d 1263 (Pa. Super. 2013), arguing that his sentence constitutes a *de facto* LWOP sentence. However, Petitioner would be parole eligible when he is 82, which is permissible according to the apparent holding in *Dodge* that for a sentence not to be considered *de facto* LWOP, the Petitioner must be parole eligible before age 90. *Dodge*, 77 A.3d at 1276. Furthermore, *Commonwealth v. Dodge* is also distinguishable from Petitioner's case because the offenses in *Dodge* involve non-violent property crimes. *Id.* at 1271.

Therefore, this Court finds that Petitioner's sentence is a constitutional term-of-years sentence and not a *de facto* life without parole sentence.

**ORDER**

AND NOW, this        day of August 2018, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the parties are hereby notified of this Court's intention to dismiss Petitioner's petition without holding an evidentiary hearing. Petitioner may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an order dismissing the petition. Petitioner, Raymarr Alford, shall be notified through means of certified mail at the address listed below.

By The Court,

Nancy L. Butts, President Judge

CC: DA;  
Trisha Hoover Jasper, Esq.  
Raymarr Alford LU6227 **by certified mail**  
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