

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0000866-2011
vs. :
: CRIMINAL DIVISION
: SHAKOOR TRAPP,
: Appellant : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This Opinion is written in support of this court’s order which dismissed the Post Conviction Relief Act (PCRA) petition filed by Shakoor Trapp.

The court would rely on its Opinion and Order entered on July 24, 2019, which gave Trapp notice of its intent to dismiss his PCRA petition. The court would supplement that decision with the following.

Trapp’s first PCRA claim focused on trial counsel’s failure to request, obtain and call an expert witness to rebut the Commonwealth’s DNA expert witness who concluded that a bloody sock found in Trapp’s residence contained DNA from both the victim and Trapp.

When an ineffective assistance of counsel claim is based upon a failure to call a witness, a petitioner must plead and prove that: (1) the witness existed; (2) the witness was available to testify for the defense; (3) counsel knew, or should have known of, the existence of the witness; (4) the witness was willing to testify for the defense; and (5) the absence of the testimony of the witness was so prejudicial as to have denied the defendant a fair trial.

Commonwealth v. Medina, 209 A.3d 992, 998 (Pa. Super. 2017). “In particular, when challenging trial counsel’s failure to produce expert testimony, the defendant must articulate what evidence was available and identify the witness who was willing to offer such evidence.” *Commonwealth v. Stahley*, 201 A.3d 200, 211 (Pa. Super. 2018)(internal quotation marks omitted).

Trapp never identified any witness who could have challenged the evidence presented by the Commonwealth’s DNA expert. Rather, Trapp was attempting to use his PCRA petition as a means to go on a fishing expedition to locate such a witness.

Trapp’s second and third PCRA claims related to allegations that trial counsel was ineffective for failing to seek DNA samples from third parties and/or request funds from the court to have third party DNA samples tested and analyzed. Despite requesting independent forensic analysis in the form of DNA testing, Trapp never filed a petition for DNA testing pursuant to 42 Pa. C.S.A. §9543.1. Trapp’s requests for “discovery” were, in reality, requests for DNA testing that were not labeled as such because the requests did not comply with the statutory requirements for postconviction DNA testing.

Furthermore, absent other evidence that would refute both the victim’s identification of Trapp as the perpetrator and the evidence that the victim’s and Trapp’s DNA were on the bloody sock found in Trapp’s residence, third party DNA testing would not prove Trapp’s actual innocence. Notably, the items sought to be tested and compared were not found at the victim’s residence; they were found in Trapp’s residence.

Trapp sought a court order to compel the production of DNA samples from third parties, to compel the Pennsylvania State Police (PSP) laboratory to create DNA

profiles from third party DNA samples, and to compel the PSP to send those profiles to Cybergenetics so that Cybergenetics could use its proprietary algorithm to see if any of those profiles could be found in the other minor contributor(s) of the DNA mixture from the bloody sock or on the hairs from the Timberland boots (which are the same boots that Trapp asserts in his fourth claim were irrelevant). Trapp seeks public funds to conduct all of this additional DNA testing despite the fact that the free screening performed by Cybergenetics confirmed the presence of the victim's DNA and Trapp's DNA on the bloody sock.

DATE: 01-15-2020

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Julian Allatt, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)