IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**No. CP-41-CR-1412-2014**
	:	
vs.	:	
	:	**Opinion and Order re Defendant's**
RASHAWN JEFFREY WILLIAMS,	:	**PCRA**
Defendant	:	

OPIINON AND ORDER

On September 29, 2021, the court held an evidentiary hearing on the following claims contained in Defendant's Post Conviction Relief Act (PCRA): (1) counsel's failure to present expert testimony of Dr. William Cox regarding the drugs and alcohol in the victim's system at the time of his death; (2) counsel's failure to call Sheriah Worthy as a witness; and (3) counsel's failure to properly discuss a plea offer with Defendant.

Counsel is presumed to be effective and the burden is on the defendant to prove otherwise. *Commonwealth v. Daniels*, 947 A.2d 795, 798 (Pa. Super. 2008)(citing *Commonwealth v. Begley*, 780 A.2d 605, 630 (Pa. 2001)); *Commonwealth v. McCauley*, 797 A.2d 920, 922 (Pa. Super. 2001). In order to prevail on a claim of ineffective assistance of counsel, a petitioner must plead and prove that the claim has arguable merit; counsel lacked a reasonable basis for his action or failure to act; and prejudice, i.e. but for counsel's action or failure to act there is a fair probability that the results of the proceeding would have been different. *Commonwealth v. Hairston*, 249 A.3d 1046, 1061-1062 (Pa. 2021); *Commonwealth v. Parker*, 249 A.3d 590, 595 (Pa. Super. 2021).

When the alleged ineffectiveness relates to an alleged failure to call a witness, the petitioner must plead and prove that: (1) the witness existed; (2) the witness was

available to testify for the defense; (3) counsel knew of, 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 petitioner a fair trial. *Commonwealth v. Selenski*, 228 A.3d 8, 16 (Pa. 2020).

According to the briefs of the parties, a component of the ineffectiveness claim for failure to present expert testimony from Dr. Cox regarding the levels of drugs and alcohol in the victim's system is a claim that counsel was ineffective for failing to file a "404(b) motion" to permit the defense to present bad acts evidence related to the victim's use of drugs and alcohol. The court rejects this claim because Rule 404(b) does not require the defense to file a 404(b) notice or motion; it only requires the Commonwealth to do so. Pa. R. E. 404(b)(3). The Rule permits a defendant to present evidence regarding a victim's pertinent trait subject to limits imposed by statute. Pa. R. E. 404(a)(2)(B). Furthermore, at trial Defendant was represented by William Miele (lead counsel) and Nicole Spring (co-counsel). No evidence was presented from either trial counsel regarding the reasons why such a motion was not filed. Therefore, this claim fails.

Dr. Cox testified at the PCRA hearing regarding the results of the victim's post mortem toxicology. He testified that the victim at the time of his death, had a blood alcohol content of .23% or 233 mg/dl. Such a result represented "a severe degree of alcohol poisoning", could disturb equilibrium, cloud thoughts and impair judgment. It would "not [be] uncommon" for an individual to have maladaptive or psychological behaviors. Some individuals could be passed out.

The victim also had metabolites of cocaine and marijuana in his system. The cocaine could cause hyperactivity, anxiety, grandiosity and impaired judgment. The marijuana could be associated with the development of psychosis particularly in individuals with a genetic predisposition. Dr. Cox, however, did not know whether the victim had such a genetic predisposition.

On cross-examination, Dr. Cox admitted that drugs and alcohol affect people differently. An individual's prior experience is a factor in how substances would affect them and he did not have any information regarding the victim's history and experience with alcohol and controlled substances. He acknowledged that Archie Bell's statements about the victim's behavior were consistent with the victim's alcohol and controlled substance levels. He opined that the victim's conduct of running towards and engaging in a confrontation when he had no understanding of the situation was inappropriate instead of approaching and advising Defendant to disengage. However, he also acknowledged that Defendant's acts of pulling a firearm and shooting the victim at point blank range could be indicative of drug and alcohol use by Defendant. In fact, such use would not surprise Dr. Cox, in light of the establishment that Defendant was coming from. From reviewing Defendant's testimony, he had been drinking but Dr. Cox did not know his levels. Without knowing his levels, Defendant could be in a state of euphoria or could be exhibiting inappropriate behaviors. Without knowing Defendant's levels he would not know where he would be on the spectrum.

No testimony was presented from lead trial counsel to explain why he did not obtain a supplemental expert report from Dr. Cox and call him as a witness regarding the

victim's toxicology. No testimony was presented from Dr. Cox whether he could have provided a satisfactory pre-trial report if trial counsel had requested a supplemental report. As Dr. Cox's current report and testimony were based in part on the trial transcripts, perhaps he could not.

The court also finds that Defendant did not satisfy his burden of proof to show prejudice. The court cannot find that there is a fair probability that the Dr. Cox's testimony would change the outcome of the proceedings for several reasons. First, alcohol and controlled substances affect people differently and Dr. Cox admittedly had no information regarding the victim's prior history and experience with the substances found in his system at the time of his death.

Second, the Commonwealth conceded at trial that the victim was the initial aggressor. The eyewitness testimony may have varied somewhat between whether the victim was about to punch Defendant, punched Defendant or "jumped" Defendant, but the testimony was consistent that the victim ran toward Defendant and initiated the altercation. Rather, the key issues seemed to be whether the victim was wielding a knife at the time and then, after he was shot, he folded the knife and placed it in his pocket; whether Defendant reasonably believed he was in imminent danger of death or serious bodily injury; and whether Defendant violated a duty to retreat in light of his illegal firearm possession.

Third, Dr. Cox testified that the victim manifested inappropriate behavior by initiating an altercation rather than merely asking Defendant to disengage with the female. If that is "inappropriate behavior," what is shooting someone at point-blank range with a

firearm that one is precluded from even possessing, rather than retreating or asking the victim to disengage?

Fourth, and perhaps most significantly, the court agrees with the Commonwealth that Dr. Cox's testimony about the impact that the drugs and alcohol could or would have had on the victim's judgment and abilities would have undercut the defense theory at trial that the victim folded up the knife and placed it into his pocket after he was shot.

Defendant next contends trial counsel was ineffective for failing to call Sheriah Worthy as a witness at trial. The court cannot agree.

Nicole Spring testified that the trial team (her, Mr. Miele, and Ms. Frankel, a paralegal) decided not to call Ms. Worthy as a witness because they were concerned about her credibility. Ms. Spring noted that in her original interview with law enforcement, Ms. Worthy indicated that she did not see anything, she did not know anything, and she was intoxicated. When she was interviewed by the defense team, Ms. Worthy indicated that she saw Defendant being attacked by the victim. The defense team was concerned that the jury would view Ms. Worthy's testimony as "made up after the fact." Based on Ms. Spring's testimony, the court finds that counsel had a reasonable basis for not calling Ms. Worthy as a witness.

The court also finds that counsel's concerns were well-founded. Ms. Worthy was not a good witness at the PCRA hearing. She was evasive, had a selective memory, had a motive to lie, and was not credible. She did not testify to half of the items contained in her

witness certification. For example, in her certification, she indicated that she saw the victim with a knife at the time of the altercation. In her testimony, however, she testified that she did not see a knife. This testimony would have been damaging to the defense theory at trial.

Ms. Worthy also claimed to have seen Defendant attacked by the victim and his friends, but she testified that Defendant was behind her and she was walking away from the victim. Therefore, it appears that the altercation would have been occurring behind Ms. Worthy and, if so, it would have been difficult for her to see anything, which would have made her original statement seem more truthful than her later statements to the defense team.

Ms. Worthy also would have been effectively impeached at trial on cross-examination. While Defendant was incarcerated pre-trial, he and Ms. Worthy had phone conversations, which were recorded. During the PCRA hearing, the prosecutor confronted Ms. Worthy with a particular conversation from July 7, 2014. In the call, Defendant said to Ms. Worthy, "you better fix this shit." He also told Ms. Worthy that there were a couple of things that he needed her to do, but he would not say them over "this phone." Ms. Worthy allegedly did not recall this conversation. Defendant's statements in these phone calls would have only reinforced to the jury that Ms. Worthy's original statement to law enforcement was truthful and that her contrary statements about seeing Defendant being attacked by the victim and his friends were made up to "fix" the situation for Defendant in accordance with their phone conversation.

Finally, Defendant contends that counsel was ineffective in failing to properly advise him regarding a plea offer. The Commonwealth offered Defendant an open guilty

plea to third-degree murder. Defendant's attorneys relayed the offer to Defendant both via letter and in person. They advised Defendant that if he was convicted of first-degree murder it would be a life sentence. Defendant always knew that life was a possibility. In fact, Ms. Spring testified that they started with life as a possibility as part of the initial interview.

Although a first-degree murder conviction and life sentence were always a possibility, Ms. Spring thought that the most likely outcome would be a verdict of third-degree murder and, in that event, the sentence would be open anyway. With a verdict, Defendant would have appeal rights with respect to his conviction that he would not have with a plea. Although counsel did not discuss specific jail calls with Defendant, they explained to Defendant that such calls are "never an optimum situation."

Ms. Spring testified that it was Defendant's decision to reject the plea with "our input." Ms. Spring also testified that Defendant was interested in a plea offer to voluntary manslaughter and persons not to possess a firearm.

Defendant testified that he was "more or less" advised by his attorneys not to take the plea offer. He claimed that he was told that he would "only get [found] guilty of third-degree" and there was no reason to plea and not have appeal rights. Defendant also testified that he was acting in self-defense; he was attacked. Defendant also claimed that he was not sure what the July 7, 2014 call referred to, but he did not think that it was about his case.

The court rejects Defendant's claim that he was misadvised regarding the plea offer. In order to prove ineffectiveness, a defendant who rejects a plea offer must show that

but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that were in fact imposed. *Lafler v. Cooper*, 132 S.Ct. 1376, 1385 (2012); *Commonwealth v. Steckley*, 128 A.3d 826, 832 (Pa. Super. 2015).

The court cannot ignore the fact that Mr. Miele was never called as a witness at the PCRA hearing. Ms. Spring's testimony establish that Defendant was seeking a plea to voluntary manslaughter and persons not to possess firearms. Additionally, in his testimony, Defendant was still claiming that he was attacked and acting in self-defense. There is no testimony from Defendant that he would have accepted an open plea to third-degree murder if his attorneys had discussed the offer and his case with him in more detail. It is Defendant's burden of proof to show ineffective assistance of counsel. In light of the above circumstances, the court is not convinced that Defendant would have accepted an open plea to third-degree murder. Therefore, Defendant cannot satisfy the *Lafler* standard.

Moreover, counsel's advice was reasonable at the time and in light of the arguments the defense intended to make and did make at trial. The victim was the initial aggressor, the victim had a knife in his possession, and Defendant testified that he was acting in self-defense. Everything happened very quickly. Any pre-mediation would have occurred within a split second in this case. Under the facts and circumstances of this case, a verdict of

third-degree murder was much more likely than first-degree murder. In trials, however, as with most things in life, there are no guarantees. A first-degree murder conviction was possible and Defendant was aware of that possibility when he rejected the plea offer. Defendant rolled the dice and lost. Hindsight regret for his decision, however, does not prove ineffectiveness.

ORDER

AND NOW, this 27th day of October 2021,for the reasons set forth above and in the court's order dated July 28, 2021, the court DENIES Defendant's PCRA petition.

Defendant is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the Lycoming County courthouse, and sending a copy to the trial judge, the court reporter and the prosecutor. The form and contents of the Notice of Appeal shall conform to the requirements set forth in Rule 904 of the Rules of Appellate Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa.R.A.P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, Defendant may lose forever his right to raise these issues.

The Clerk of Courts shall mail a copy of this order to the defendant by certified mail, return receipt requested.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Robert Hoffa, Esquire
Rashawn J. Williams, #MN4830
SCI Frackville, 111 Altamont Blvd, Frackville PA 17931
Judge Marc F. Lovecchio
Gary Weber, Esquire

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