

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

vs.

JOSEPH SENTORE COLEMAN,
Defendant

: No. CP-41-CR-0000000-2017

: Notice of Intent to Dismiss PCRA

FILED
LYCOMING COUNTY
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HON. S.D. HEAR
LENA OF COURTS

OPINION AND ORDER

This matter came before the court on the Post Conviction Relief Act (PCRA) petition filed by Joseph Sentore Coleman, Jr. (hereinafter "Petitioner").

By way of background, following a trial held February 13-15, 2019, a jury convicted Petitioner of two counts of second-degree murder and related offenses for the October 2016 shooting deaths of Shane Wright and Kristine Kibler. The firearm offenses were severed from the jury trial and, following a waiver of his right to a jury trial, the trial court convicted Petitioner of persons not to possess firearms. On November 20, 2019, the trial court sentenced Petitioner to two consecutive terms of life imprisonment. Petitioner filed post sentence motions, which the trial court denied.

Petitioner filed an appeal in which he challenged the weight and sufficiency of the evidence and asserted that the trial court erred when it permitted the Commonwealth to amend the criminal information, denied his request for a *Franks*¹ hearing, denied his motion for a change of venue, instructed the jury on an offense not charged, and denied his motion

¹ *Franks v. Delaware*, 438 U.S. 154 (1978)(regarding holding a hearing when the defendant makes a preliminary showing that a false statement necessary to the finding of probable cause was included by the affiant in the warrant affidavit.).

for a new trial based on the Commonwealth's failure to disclose an interview. In a memorandum decision filed on July 7, 2021, the Pennsylvania Superior Court affirmed Petitioner's judgment of sentence.

On March 24, 2022, Petitioner filed a pro se PCRA petition. As this was Petitioner's first PCRA petition, the court appointed counsel to represent Petitioner and directed counsel to file either an amended PCRA petition or a *Turner/Finley*² no merit letter. PCRA counsel filed an amended PCRA petition in which he asserted three claims: (1) Petitioner was denied his constitutional rights where the trial court for his jury proceeding, in a hearing on January 30, 2019, clearly articulated his frustration with the local court system and attempted to engage in improper negotiations by telling defense counsel, "Well I suppose you could enter a plea and that would take care of that"; (2) Petitioner was denied his constitutional rights where the trial court for his jury proceeding failed to properly instruct the jury regarding corrupt source testimony; and (3) Petitioner was denied his constitutional rights where the trial court for his jury proceeding permitted an exhibit, which contained inadmissible information about a polygraph test, to be presented to the jury.

After conducting an independent review of the record, the court finds that Petitioner's claims either lack merit or he was not prejudiced or both.

To be eligible for relief, a petitioner must prove that his claims are not waived. 42 Pa.C.S.A. §9543(a)(3). An issue is waived if the petitioner could have raised it but failed to do so before trial, at trial, on appeal or in a prior state postconviction proceeding. 42 Pa. C.S.A. §9544(b). The court finds that Petitioner's first issue could have been raised before

² *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988); *Commonwealth v. Finley*, 379 Pa. Super. 390,

trial and his second and third issues could have been raised at trial but they were not.

Notably, Petitioner has not asserted these issues as ineffective assistance of counsel claims.

However, even if these issues had been presented as ineffectiveness claims, the court finds

Petitioner would not be entitled to relief.

Petitioner first claims that he was denied his constitutional rights where the trial court engaged in or attempted to engage in plea negotiations. This issue arises out of an exchange at the hearing held on January 30, 2019, on Petitioner's a motion to dismiss pursuant to Rule 600. This motion was heard by the Honorable J. Michael Williamson, a visiting senior judge. At the end of the hearing on that motion, Judge Williamson dictated an order denying the motion, finding that the Commonwealth was not responsible for the delay but rather there was a breakdown in the judicial system in Lycoming County which makes it impossible for cases to get tried. Transcript, 01/30/2019, at 42. After dictating the order, Judge Williamson stated, "You're on the record, sir. You can take it up with the Appellate Court." *Id.* Defense counsel replied, "Hope we won't have to." *Id.* Judge Williamson then stated, "Well, I suppose you could enter a plea and that would take care of that." *Id.*

Petitioner contends this last comment constituted the judge improperly participating in plea negotiations, which entitles him to a new jury trial. The court cannot agree. The court notes that the Pennsylvania Rules of Criminal Procedure no longer contain an absolute prohibition against any judicial involvement in plea discussions. See Pa. R. Crim. P. 590, cmt. Moreover, while Judge Williamson's comments following his decision on Petitioner's Rule 600 motion may have been imprudent, the court finds that they do not constitute

engaging in plea negotiations. Judge Williamson did not suggest the offenses to which Petitioner should plead guilty or the punishment he should receive. Petitioner did not plead guilty; therefore, Judge Williamson's imprudent comment did not induce Petitioner into an involuntary plea. Furthermore, the jury was not informed that this conversation ever took place. Petitioner also has not alleged any actual prejudice.

The court finds that this situation is controlled by the Pennsylvania Supreme Court's decision in *Commonwealth v. Palmer*, 463 Pa. 26, 342 A.3d 387 (1975). In *Palmer*, the defendant complained that at the lunch recess during trial, the trial judge engaged in an *ex parte* communication with defense counsel suggesting that defense counsel have his client, plead guilty to either involuntary manslaughter or second-degree murder for a minimum sentence of not less than 5 ½ years. Defense counsel stated he would not recommend such a plea or sentence to this client. The trial continued and the jury found the defendant guilty. On appeal, the defendant asserted that this *ex parte* discussion violated his right to a fair trial. The defendant relied on *Commonwealth v. Evans*, 252 A.2d 689 (Pa. 1969) as Petitioner does here. The Court found that *Evans* was not applicable and the defendant was not entitled to relief unless he could show actual prejudice. The Court noted that the purpose of *Evans* and other similar decisions was to insure voluntary and intelligent pleas. Such a purpose is not served where the defendant does not enter a plea. The Court also noted that the jury was never informed that the conversation had taken place.

Based on the Pennsylvania Supreme Court's decision in *Palmer*, Petitioner's claim lacks merit and he has not alleged prejudice. Therefore, Petitioner is not entitled to relief.

Petitioner next asserts that his constitutional rights were violated where the trial court

failed to properly instruct the jury regarding corrupt source testimony. The court finds that the trial judge gave the suggested standard jury instruction regarding accomplice testimony and there simply is a typographical error in the trial transcript.

The trial judge gave the following instruction regarding accomplice testimony.

So let me define for you the term accomplice. A person is an accomplice of another person in the commission of a crime if he or she has the intent of promoting or facilitating the commission of the crime and solicits the other person to commit it or aids or agrees or attempts to aid such other person in planning or committing the crime. Put simply, an accomplice is a person who knowingly and voluntarily cooperates with or aids another person in committing an offense.

When a Commonwealth witness is an accomplice his or her testimony has to be judged by special precautionary rules, and that is with respect to Mr. Wilson. Experience shows that an accomplice, when caught, may often try to place the blame falsely on someone else. He or she may testify falsely in the hope of obtaining favorable treatment or for some corrupt or wicked motive.

On the other hand, an accomplice may be a perfectly truthful witness. The special rules that I will give you are meant to help you distinguish between truthful and false accomplice testimony.

You must decide whether Casey Wilson was an accomplice in the crime charged. If after considering all of the evidence you find that he was an accomplice, then you must apply the special rules to his testimony.

Again, an accomplice is a person who knowingly and voluntarily cooperates with or aids another in the commission of a crime. These are the special rules that apply to accomplice testimony.

First, you should view the testimony of an accomplice with this favor because it comes from a corrupt and polluted source. Second, you should examine the testimony of an accomplice closely and accept it only with care and caution. Third, you should consider whether the testimony of an accomplice is supported in whole or in part by other evidence.

Accomplice testimony is more dependable if supported by independent evidence. However, even if there is no independent supporting evidence, you may still find the Defendant guilty based solely on the basis of an accomplice's testimony if after using the special rules I just told you about you are satisfied beyond a reasonable doubt that the accomplice testified truthfully; and the Defendant is guilty beyond a reasonable doubt.

Pennsylvania Suggested Standard Jury Instruction 4.01 regarding accomplice

testimony states:

Before I begin these instructions, let me define for you the term accomplice. A person is an accomplice of another person in the commission of a crime if he or she has the intent of promoting or facilitating the commission of the crime and (1) solicits the other person to commit it, or (2) aids or agrees or attempts to aid such other person in planning or committing the crime. Put simply, an accomplice is a person who knowingly and voluntarily cooperates with or aids another person in committing an offense.

1. When a Commonwealth witness is an accomplice, his or her testimony has to be judged by special precautionary rules. Experience shows that an accomplice, when caught, may often try to place the blame falsely on someone else. [He or she may testify falsely in the hope of obtaining favorable treatment, or for some corrupt or wicked motive.] On the other hand, an accomplice may be a perfectly truthful witness. The special rules that I will give you are meant to help you distinguish between truthful and false accomplice testimony.

2. [In view of the evidence of [name of accomplice]'s criminal involvement, you must regard [him] [her] as an accomplice in the crime charged and apply the special rules to [his] [her] testimony.] [You must decide whether [name of accomplice] was an accomplice in the crime charged. If after considering all the evidence you find that [he] [she] was an accomplice, then you must apply the special rules to [his] [her] testimony, otherwise ignore those rules. Use this test to determine whether [name of accomplice] was an accomplice: [Again, an accomplice is a person who knowingly and voluntarily cooperates with or aids another in the commission of a crime].]

3. These are the special rules that apply to accomplice testimony:

First, you should view the testimony of an accomplice with disfavor because it comes from a corrupt and polluted source.

Second, you should examine the testimony of an accomplice closely and accept it only with care and caution.

Third, you should consider whether the testimony of an accomplice is supported, in whole or in part, by other evidence. Accomplice testimony is more dependable if supported by independent evidence. [However, even if there is no independent supporting evidence, you may still find the defendant guilty solely on the basis of an accomplice's testimony if, after using the special rules I just told you

about, you are satisfied beyond a reasonable doubt that the accomplice testified truthfully and the defendant is guilty.]

Pa.SSJI §4.01.

The charge given by the trial judge is virtually identical to the standard charge. There does, however, appear to be a typographical error in the transcript. Instead of typing the word "disfavor" in the first special rule, the court reporter typed the words "this favor." The court does not believe that this entitles Petitioner to a new jury trial. It is clear to the court that the trial judge was reading from the standard jury instruction and that the court reporter simply made a typographical error when preparing the transcript.

Petitioner also contends that he was denied his constitutional rights where the trial court permitted an exhibit which contained inadmissible information about a polygraph test to be presented to the jury. The court finds that the record does not support Petitioner's contention.

Prior to trial, Casey Wilson was interviewed by police and given a polygraph test. During Mr. Wilson's trial testimony, defense counsel attempted to impeach Mr. Wilson with a statement or statements that he made during his polygraphed interview that he lies. More specifically, Trooper Rob Reeves asked Wilson if he ever told a lie to get himself out of trouble and Wilson said yes. Trooper Reeves asked if he ever told a serious lie and Wilson said yeah and he makes a statement to the effect "everybody knows that I lie." Transcript, 02/13/2019, at 188-190. Throughout this questioning, the interview was referred only as a fourth interview

that occurred on November 11, 2016. The interview was not referred to as a polygraph. Defense counsel marked the transcript as Defendant's Exhibit 6. Defense counsel admitted this exhibit into evidence. Transcript, 02/14/2019, at 155. This exhibit, however, did not go out with the jury. The attorneys agreed that written statements of various people, the gun and objects that people used gloves to handle and the report would not go out with the jury. Transcript, 02/15/2019, at 41-43. They agreed that photographs and an exhibit about blood would go out with the jury. *Id.* at 42. They also agreed that items that were not testified to fully and were just "bits and pieces" would not be submitted to the jury. *Id.* In fact, defense counsel described the exhibits that went out with the jury as "[p]redominantly all photographs." *Id.* at 43. Since the interview of Casey Wilson was a witness statement and it was not testified to fully (only two pages were referenced by defense counsel during Wilson's testimony), by agreement of counsel for both parties it was not submitted to the jury during their deliberations. Therefore, this claim lacks merit.

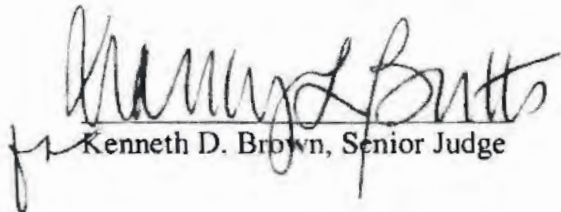
For the foregoing reasons, the court intends to dismiss Petitioner's PCRA petition without holding an evidentiary hearing.

ORDER

AND NOW, this 14th day of January 2023, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court notifies the parties of its intent to dismiss the PCRA petition without holding an evidentiary hearing. Peititioner 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.

By The Court,


Kenneth D. Brown, Senior Judge

cc: ~~Martin Wade, Esquire (ADA)~~

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KDB/laf