

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

: No. CP-41-CR-0001442-2017

vs.

:

:

: Opinion and Order re PCRA Petition

RASHAWN D. WILLIAMS,
Defendant

:

:

OPINION AND ORDER

This matter came before the court on the Post Conviction Relief Act (PCRA) petition filed by Rashawn D. Williams ("Williams").

By way of background, Williams was charged with an open count of homicide, two counts of aggravated assault, possession of an instrument of crime (PIC), tampering with physical evidence, and obstruction of administration of law, arising out of the stabbing death of Scott Cole on June 22, 2017. Williams stabbed Cole thirty-five times. The issues for trial were whether Williams did so in self-defense or in the heat of passion or whether it was murder.

A jury trial was held October 15-22, 2018. At trial, Williams presented claims of self-defense/justification and argued that if those claims were rejected then he was guilty of no more than voluntary manslaughter. On October 22, 2018, the jury found Williams guilty of first-degree murder, both counts of aggravated assault, tampering with physical evidence and obstruction of administration of law. The Commonwealth withdrew the PIC charge.

On December 17, 2018, the trial court sentenced Williams to life in prison for first degree murder and imposed consecutive sentences of five to ten years for aggravated assault, one to two years for tampering with physical evidence and one to two years for obstruction of administration of law.

On December 19, 2018, Williams filed a post sentence motion, in which he sought a new trial and reconsideration of his sentence. The parties argued the post sentence motion on March 7, 2019. At the request of the defense, the deadline for deciding the post sentence motions was extended 30 days to allow time for the preparation of the trial transcripts. On or about May 20, 2019, the trial court issued an order denying the post sentence motion, and on June 3, 2019, the trial court issued an Opinion explaining the denial.

On June 4, 2019, Williams filed a notice of appeal. He asserted numerous issues of trial court error on appeal, including but not limited to, contesting the limitations the trial court placed on Dr. Scott Scotilla's and Dr. William Cox's expert testimony at trial. On October 8, 2020, the Pennsylvania Superior Court affirmed Williams' judgment of sentence. Williams did not file a petition for allowance of appeal with the Pennsylvania Supreme Court, and the record was remitted on November 17, 2020.

On April 19, 2021, Williams filed a memorandum in support of issues which the court treated as a Post Conviction Relief Act (PCRA) petition. The trial court appointed counsel for Williams and directed PCRA counsel to file either an amended petition or a no merit letter.

On July 19, 2021, PCRA counsel filed an amended petition asserting claims of ineffective assistance of counsel (IAC), primarily related to the limitations placed on the testimony of Dr. Scotilla and Dr. Cox.

On August 12, 2021, the trial court directed PCRA counsel to obtain witness certifications from Williams' trial attorneys and the expert witnesses. On September 9 and September 13, 2021, PCRA counsel filed petitions for funds to obtain witness certifications

and supplemental reports from Dr. Scotilla and Dr. Cox, which the trial court granted. On November 2, 2021, the trial judge retired.

On December 10, 2021, the court granted PCRA counsel an extension to obtain witness certifications. As PCRA counsel anticipated that it would take some time to obtain witness certifications and supplemental reports from the expert witnesses, the extension for the experts was 30 days prior to the next PCRA conference on June 13, 2022 and the extension for certifications from the attorneys was 30 days from the December 10, 2021 conference.

PCRA counsel filed a witness certification for one of Williams' trial attorneys, Nicole Spring, on January 6, 2022. PCRA counsel filed a witness certification for Dr. Scotilla on March 29, 2022.

Following the conference on June 13, 2022, the court gave PCRA counsel a second extension until July 22, 2022 to try to obtain a witness certification from Dr. Cox and the court scheduled an evidentiary hearing for August 22, 2022. Ultimately, no witness certifications were filed for trial attorney William Miele or Dr. Cox.

The court held an evidentiary hearing on August 22, 2022. At the hearing, PCRA counsel presented two witnesses—Nicole Spring and Dr. Scott Scotilla—and introduced four exhibits.

Nicole Spring testified that at the time of Williams' trial she was the First Assistant Public Defender. She and William Miele (the Chief Public Defender), represented Williams at trial. Mr. Miele was lead trial counsel. They divided up the trial work. Their expert witnesses were Dr. William Cox, a toxicologist, and Dr. Scott Scotilla, a psychologist. Ms.

Spring believed that she conducted the direct examination of Dr. Scotilla. She met with Williams' mother and collected numerous psychological records of Williams. The defense was aware from very early on that Williams had a background of trauma. They knew he had Post Traumatic Stress Disorder (PTSD) and believed he has several other diagnoses. It made sense to have an expert meet with Williams. They considered voluntary manslaughter and "heat of passion." They hired Dr. Scott Scotilla from State College. They provided Dr. Scotilla with the prior psychological evaluations of Williams and provided Dr. Scotilla with unlimited access to him. Dr. Scotilla met with Williams twice—on February 8, 2018 and April 13, 2018.

Ms. Spring also testified that there were pretrial hearings on April 16, 2018 and May 30, 2018. At the April pretrial hearing, Dr. Cox's report was primarily discussed. The Commonwealth was asserting issues regarding the lack of factual basis in Dr. Cox's report related to both the victim's use of controlled substances and Williams' factual account of the incident. Based on interviews of Williams by the trial attorneys, they had their paralegal type a document about the facts surrounding the incident and provided it to Dr. Cox, who incorporated the factual statement into an amended report. As a result of the deficiencies in Dr. Cox and the rule (Pa. R. Crim. P. 573 and Pa. R. E. 705), Ms. Spring was aware that expert reports need to disclose the facts upon which the expert relied. The May 30, 2018 pretrial hearing focused on the prosecutor's contention that the defense needed to provide a notice of mental infirmity defense. Although Dr. Scotilla had not yet provided his expert report, the trial judge ruled that the defense had to provide a notice of mental infirmity defense and had to provide the facts on which Dr. Scotilla would base his report. On June 8,

2018, Dr. Scotilla provided his expert report. His report, however, did not contain any facts from his interviews of Williams or the typed statement that was prepared for Dr. Cox regarding the incident. Ms. Spring believed they provided the statement of facts to Dr. Scotilla as well as to Dr. Cox. Ms. Spring testified that they did not have a strategic reason for not including the facts in Dr. Scotilla's report. She did not recall ever telling Dr. Scotilla to include or to not include facts in his report. When asked specifically "after May 30th when you had this discussion with the [c]ourt, did you call or communicate in some other way with [Dr.] Scotilla and say, hey you've got to put everything in there [his report]," Ms. Spring replied, "I'm sure that we did. I don't specifically recall it, but whenever we have an expert report coming there are several phone calls back and forth with us and the expert." Transcript, 08/22/2022, at 43-44. In response to questions from the court, Ms. Spring stated she did not recall. She thought she put in on the record at a hearing that Dr. Scotilla had the typed facts that Dr. Cox had, but she could not find it in any of the hearing transcripts when she reviewed this when Mr. Martino filed the PCRA, and she would have thought we provided it to him. Id. at 50.

At trial, Dr. Scotilla was present for Williams' trial testimony. The Commonwealth made a motion to preclude Dr. Scotilla from testifying about any facts that were not included in his report, which the trial court granted. Dr. Scotilla was permitted to testify about Williams' PTSD and heat of passion, but he was precluded from saying that Williams specifically acted because of his PTSD in the heat of passion. Ms. Spring testified that she believed that they were sufficiently able to present their heat of passion/voluntary manslaughter defense despite the limitations on Dr. Scotilla's testimony because Dr. Scotilla

was able to talk about Williams' prior records/trauma history, his PTSD and the legal concept of heat of passion. While it would have been important for Dr. Scotilla to be able to say his opinion that Williams acted in the heat of passion, it did not make or break the defense. She did not think the limitations hurt the defense as bad as she thought it was going to. They did not get in the final statement of Dr. Scotilla, but they argued it to the jury.

Ms. Spring also testified that she previously represented the victim. She represented him in 2009, about eight years before representing Williams. She believes she continued to have contact with the victim for about a year after that, because she believed he was on Drug Court and she was part of the Drug Court Program. Williams brought up her prior representation of the victim; he thought it was a conflict. Ms. Spring did not think so. Her response to him would have been that her loyalty was to her current client (Williams), the victim (her former client) was dead, and she did not feel that any relationship with him from six to eight years prior would impact her. She did not recall whether it came up with Williams pre-trial or post-trial. She filed a notice of appeal for Williams but did not represent him on appeal. At that point, she said she'd represent him or the court could remove her and appoint new counsel. She was "good either way." Williams was represented on appeal by Helen Stolinis, an attorney with no affiliation with the Public Defender's Office.

On cross-examination, Ms. Spring testified that Mr. Miele was lead trial counsel. She stated that she tries not to give the Commonwealth advance notice to what a defendant will testify or even whether he will testify as it is one advantage that the defense has. She admitted that if the Commonwealth has different versions from a defendant, it negatively

affects the defendant's credibility at trial. If the jury believes a defendant is lying, it is more likely the jury will convict. If the jury believed that Williams was lying, it would also affect the weight of Dr. Scotilla's testimony as well. To a large extent, the defense at trial depended on the jury believing Williams. She also admitted that there were discrepancies between Williams' statements to the police and his trial testimony. She also admitted that Williams continually changed his story on the events of the evening and it caused her concern. It caused her to have doubts about his trial testimony.

She acknowledged that Dr. Scotilla's report had facts about Williams' history and background, including information regarding wearing women's underwear when he was younger, having sexual contact with boys in his family, and having feminine tendencies. At trial, the Commonwealth presented evidence that Williams and the victim were in a boyfriend relationship, which Williams denied. The historical factual information in Dr. Scotilla's report would not have been introduced to the jury if Dr. Scotilla had not been called as a witness.

PCRA counsel admitted Dr. Cox's May 28, 2018 expert report as Defense Exhibit #1.

Dr. Scott Scotilla also testified at the PCRA hearing. He stated that he is a clinical psychologist who worked as an expert on Williams' case. He met with Williams twice. Williams had a history of trauma and psychological diagnoses. The records of the history, the psychological testing and his subjective opinion should all fit together, and in this case they did. Williams suffered from PTSD. Williams recounted to him what had occurred. Dr. Scotilla prepared a report dated June 8, 2018, which was admitted as Defense Exhibit #2.

For Dr. Scotilla, the request from the Public Defender in this case was unusual to him.

Typically, he is hired to address competency or sanity. He needed the trial attorneys to educate him on heat of passion in the legal sense. He also needed them to help him understand what Williams' psychological background meant in their working with him. He was tasked with looking for how Williams' diagnostic summary fit with heat of passion. He had discussion with the attorneys about what should be in the report. He had photocopies of legal texts that explained heat of passion. They did not tell Dr. Scotilla what portion of the information from Williams should be in the report. He did not receive any direction regarding what to do with that information. He was not asked to change his report or to add anything to it.

The typed statement of facts from the attorneys' interviews with Williams was admitted as Defense Exhibit #3. Dr. Scotilla did not recall seeing that document prior to his evaluation or his trial testimony. PCRA counsel provided that document to him, and he utilized the information contained in the document to produce an update to his original report. The updated report was signed on March 15, 2022. It added Williams' description of the situation on the day in question. It still explained heat of passion and still included Williams' PTSD diagnosis. He thought his original report included Williams' statements about the situation; he thought it was understood. The second or updated report just made it more literal. Although he starts with the general rule that he does not amend reports, but if someone had explained or asked if he could include the typed statement as part of what he talked about in the report, he would not have had any problem with that. The typed statement did not contain anything that Dr. Scotilla hadn't heard from Williams. He explained that Williams' described behavior was consistent with his diagnosis. He would be more reactive

than you or I due to experiencing a similar traumatic experience in the past. Williams also would be less likely to return to calm as quickly as you or I. His brain is doing its job of trying to protect him, but it is linking all of the past trauma with that event. Dr. Scotilla opined that Williams' behavior was consistent with someone acting in the heat of passion to a reasonable degree of medical certainty.

When asked why he did not include Williams' statements or information about the situation in his original report, he stated that he assumed since he was writing about Williams that it was unspoken. He would not normally describe all of the specifics of someone's self-report of an event, but he should have done that in this case the first time that he talked about heat of passion. He acknowledged that on page 21 of his second report he wrote "the statement quoted above may add further detail in some respects." He also admitted that although he performed work of a forensic psychologist, he was not certified as one. He explained that to be certified similar to board certification for a medical or surgical specialty, he would have to perform certain activities under the review of a certified forensic psychologist and there were none in the State College area; they were all in Philadelphia and Pittsburgh.

Dr. Scotilla's updated expert report was admitted as Defense Exhibit #4.

PCRA counsel did not call Attorney Miele or Dr. Cox as a witness at the PCRA hearing. PCRA counsel attempted to obtain an amended or supplemental report from Dr. Cox and to call him as a witness, but he never received a response from Dr. Cox.

PCRA counsel requested that the transcript of the PCRA hearing be prepared and that the parties file post-hearing briefs. The court granted that request and directed that the

Commonwealth file its brief within 30 days of receipt of the transcript and PCRA counsel file his brief within 20 days after receipt of the Commonwealth's brief.

The Commonwealth argued that Williams was not entitled to a new trial because: (1) the minor limitations put on Dr. Scotilla's testimony did not prevent Williams from presenting his defense to the jury and therefore, any alleged errors of trial counsel did not result in prejudice; (2) Williams has not proven that counsel made any error at all or that any purported errors with respect to the preparation of Dr. Cox's testimony caused him prejudice at trial; and (3) Williams failed to prove that trial counsel's prior representation of the victim deprived him of a fair trial or compromised his defense in any way.

PCRA counsel asserted that (1) trial counsel provided ineffective assistance of counsel by failing to properly preserve Dr. Scotilla's testimony through the submission of a complete expert report and this failure resulted in Williams being prohibited from presenting his defense to the jury; (2) trial counsel provided ineffective assistance of counsel by failing to properly preserve Dr. Cox's testimony through the submission of a complete expert report and this failure resulted in Williams being prohibited from presenting his defense to the jury; (3) Williams is entitled to a new trial due to the cumulative error stemming from the failure to properly present the testimony of Dr. Scotilla and Dr. Cox; and (4) trial counsel provided ineffective assistance of counsel by failing to acknowledge the conflict of interest created by prior representation of the victim and requesting withdraw to permit the appointment of new counsel.

DISCUSSION

Most, if not all, of Williams' claim sound in ineffective assistance of counsel (IAC).

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 IAC, a petitioner must plead and prove by a preponderance of the evidence 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). "A petitioner's failure to satisfy any prong of this test is fatal to the claim." *Commonwealth v. Reid*, 259 A.3d 395, 405 (Pa. 2021); see also *Commonwealth v. Housman*, 226 A.3d 1249, 1268 (Pa. 2020); *Commonwealth v. Alexander*, 296 A.3d 1, *4 (Pa. Super. 2023); *Commonwealth v. Thomas*, 270 A.3d 1221, 1226 (Pa. Super. 2022).

Williams first contends that his trial attorneys were ineffective by failing to properly preserve Dr. Scotilla's testimony through the submission of a complete expert report and this failure resulted in Williams being prohibited from presenting his defense to the jury. The court cannot agree.

While there may be arguable merit to Williams claim that his attorneys should have sought an amended or supplemental report from Dr. Scotilla, the failure did not prohibit Williams from presenting his defense to the jury. To the contrary, Williams was able to present his heat of passion/voluntary manslaughter defense to the jury, but it failed because it was dependent on the credibility of Williams with respect to what happened that evening.

During the trial prior to Dr. Scotilla testifying, the Commonwealth objected to Dr. Scotilla giving any opinion regarding the defendant's interaction with the victim on the night in question because Dr. Scotilla's report did not include any facts regarding the incident. To allow Dr. Scotilla to add those facts after listening to Williams' testimony would permit him to testify beyond the scope of his report and would prejudice the Commonwealth because without the factual basis in the report the Commonwealth was not able obtain an expert to refute Dr. Scotilla. There was a lengthy discussion on the record. Trial Transcript, 10/18/2018, at 115-139.

The trial court permitted Dr. Scotilla to testify about Williams' PTSD and how a person with PTSD would react to certain stimuli. However, the trial court precluded Dr. Scotilla from testifying that to a reasonable degree of psychological certainty this defendant is one who would meet the legal criteria of heat of passion in his reactions of stabbing his alleged attacker because he did not include any factual basis for that opinion in his report. See, Trial Transcript, 10/18/2018, at 136-138.

Dr. Scotilla testified at trial. Trial Transcript, 10/18/2018, at 147-211. He testified about Williams' history of abuse, including sexual abuse, and how that abuse caused Williams to suffer from Post Traumatic Stress Disorder (PTSD). He discussed his history of mental health issues and placements and how that supported the PTSD diagnosis. That history also showed that Williams was not making up a mental health problem just to create a defense in this case. Dr. Scotilla also talked about conducting testing on Williams and how that testing supported his conclusion that Williams suffered from PTSD, as well as other disorders.

Williams' version of what happened that night was that the victim entered his home unannounced in the middle of the night, and was trying to sexually assault him. The victim was grabbing at his genitals and groin area and refusing to leave saying things like he was not going to leave until he got what he came here for.

Attorney Spring specifically asked Dr. Scotilla how a person suffering from PTSD would react to someone entering a home in the middle of the night, putting their hands on them while they are sleeping, grabbing their genitals and refusing to leave when they were told to leave. Trial Transcript, 10/18/2018, at 186. Dr. Scotilla answered, "Especially if that harkens back to prior trauma, they could be much more vulnerable than would you or I in the exact same situation to emotionally acting out or an over—an overreaction." Id. at 186-187.

In closing arguments, Attorney Miele argued that Williams acted in the heat of passion, and that conclusion was supported by Dr. Scotilla's testimony. Trial Transcript, 10/22/2018, at 35-40. He noted how Williams had been sexually abused as a child and how sexual abuse affects people. He noted that Williams suffered from PTSD, how a similar situation or a smell can trigger the person with PTSD, and how the person will overreact as a result of the PTSD. He argued that situation and the overkill of the stabbing incident showed provocation and heat of passion.

The heat of passion/voluntary manslaughter defense was presented to the jury; the jury just didn't buy it because it was dependent on Williams' statements and testimony about his relationship with the victim and what happened that night, which were not consistent and not credible.

Dr. Scotilla acknowledged at trial that his conclusions to some extent were dependent

on Williams' honesty. Trial Transcript, 10/18/2018, at 189-190.

In his closing arguments, the prosecutor extensively and persuasively argued Williams' lack of credibility, and in particular his denial of being in a sexual relationship with the victim based on the number and length of phone calls and the content and number of text messages between them. He also notes how Williams' version of what happened is inconsistent with physical evidence and the testimony of disinterested witnesses. Trial Transcript, 10/22/2018, at 81, 87-89, 92-95, 98, 100-122.

In the PCRA hearing, Ms. Spring credibly testified that Williams was able to sufficiently present his defense even with the restrictions put on Dr. Scotilla's testimony at trial, because Dr. Scotilla was able to talk about Williams' prior mental health records and his PTSD. While it would have been helpful for Dr. Scotilla to say his opinion that Williams acted in the heat of passion; it did not make or break the defense. PCRA Transcript, 08/22/2022, at 23-24. Ms. Spring did not think that the limitation on Dr. Scotilla's testimony hurt them as bad as she thought it was going to. *Id.* at 24-25. Dr. Scotilla was able to testify about PTSD and heat of passion. They were not able to present the final statement of Scotilla, but it was argued to the jury. *Id.* at 56.

Ms. Spring also acknowledged the following: (1) if the Commonwealth has different versions from a defendant, it negatively affects the defendant's credibility at trial; (2) if the jury believes the defendant is lying, they are more likely to convict; (3) if Williams was lying, it would affect the weight of Dr. Scotilla's testimony as well; (4) to a large extent, the defense at trial depended on the jury believing Williams; (5) there were significant discrepancies between Williams' trial testimony and his statements to the police on the night of his arrest;

(6) Williams continually changed his story on the events of the evening and it caused Ms. Spring to have doubts about his trial testimony; and (7) there were contradictions between Williams' trial testimony about his childhood experiences and what he told Dr. Scotilla about his childhood experiences. *Id.* at 34, 36, 48.

The trial court's statements at sentencing also support the conclusion that the defect in the defense was Williams' lack of credibility. The trial court stated:

He [the victim] obviously didn't deserve to die, but he certainly didn't deserve to die like that. You didn't have to go back up the stairs, and the jury saw through that. You didn't have to go across the road and continue stabbing him while he was pleading for his life. The jury saw that. To claim that it was self defense is incredible. It just begs logic under the facts that you admitted.

Sentencing Transcript, 12/17/2018, at 19. He also noted the following:

I don't know if you could have gotten a fairer trial. I mean the jury spoke. The jury heard what you had to say and—number one, and number two, I think their observations are correct. I see not one ounce, not one iota of remorse. If you truly cared about this man who you claimed you did, if he was your friend, which you claimed he was, and I think you might have described him as even a better friend than that, you could (sic) sit her during this and lean back like this, put your head back like this, fold your arms and turn to the side like you did the entire trial. I see—I don't see a killer, I see a butcher. Cold hearted butcher who cut out the souls of so many people because you were concerned about one person and one person only, and that's you and your alleged reputation.

Id. at 21.

Based on the foregoing, the court finds that Williams has not established that he was prejudiced due to his trial attorneys' failure to obtain a supplemental expert report from Dr. Scotilla. His trial attorneys presented a heat of passion/voluntary manslaughter defense, but the jury did not accept them due to Williams' lack of credibility.

Williams also asserts that his trial attorneys were ineffective for failing to properly preserve Dr. Cox's testimony through the submission of a complete expert report and this failure resulted in Williams being prohibited from presenting his defense to the jury. With respect to this claim, Williams did not sustain his burden of proof with respect to any of the prongs of an IAC claim.

The trial court prohibited the trial attorneys from eliciting an opinion from Dr. Cox, a toxicologist, that the victim was acting aggressively during the incident in question due to the substances in his system, because his opinion depended on the victim's use history. The trial court permitted Dr. Cox to say whether certain actions or reactions were consistent with the levels of substances in the victim's system. See, Trial Transcript, 10/19/2018, at 34-60. This limitation was upheld on appeal. In fact, Dr. Cox testified that just looking at the values, he could not tell whether the person would be unconscious or in a hyperactive, aggressive state. *Id.* at 58-59. He then testified that his opinions were based on facts provided by Williams regarding how the victim behaved. *Id.* at 59-60.

The trial attorneys could not provide additional information to Dr. Cox regarding the victim's use history, because they did not have that information and the victim was deceased. PCRA counsel's arguments that the trial attorneys should have obtained an amended or supplemental report on this issue is pure conjecture. PCRA counsel attempted to obtain such a report from Dr. Cox and was unable to do so. Furthermore, Dr. Cox did not testify at the PCRA hearing.

Attorney Miele stated at the April 2018 pretrial hearing that he would obtain

a supplemental report from Dr. Cox regarding Williams' statements of what occurred that night and he did so. Attorney Miele was not called as a witness at the PCRA hearing to discuss what discussions, if any, he had with Dr. Cox regarding the victim's substance use history.

Williams did not testify at the PCRA hearing about the victim's substance use history. If he did so, however, it might further damage his credibility about the nature of his relationship with the victim.

For these reasons, the court finds that Williams has not proven that his claim has arguable merit or that counsel lacked a reasonable basis for failing to obtain another supplemental report from Dr. Cox.

Dr. Cox's only factual basis for the victim's behaviors on the night in question came from Williams. As previously discussed with respect to Dr. Scotilla's testimony, Williams was not prejudiced by the failings of his counsel or the experts; his defense was not successful because his testimony was not credible when compared to the physical evidence, the testimony of disinterested witnesses and his prior statements. Therefore, Williams also has not established prejudice.

Williams also claims that he is entitled to a new trial due to the cumulative error stemming from the failure to properly present the testimony of Dr. Scotilla and Dr. Cox. There is no cumulative error in this case because Williams has not satisfied his burden of proof to show that there was any error with respect to Dr. Cox. Furthermore, both Dr. Cox's and Dr. Scotilla's testimony was dependent on the jury believing Williams' testimony about what happened that night. See, PCRA

Transcript, 08/22/2022, at 33, 36, 39. As pointed out by the prosecutor in his closing argument, however, Williams' testimony was not credible. Therefore, Williams is not entitled to a new trial based on cumulative error.

Finally, Williams asserts that he is entitled to a new trial because Ms. Spring had a conflict of interest in that she represented the victim in his 2009 cases, which occurred six to eight years prior to her representation of Williams in this case.

Initially, the court believes that this issue is waived. Under the PCRA, an issue is waived the petitioner could have raised it but failed to do so before trial, at trial, on appeal or in a prior state postconviction proceeding. Williams was represented by different counsel on appeal. He did not assert this issue on appeal. Therefore, this issue is waived. *See Commonwealth v. Simon*, 285 A.2d 861, 862 (Pa. 1971); *see also Commonwealth v. Weiss*, 986 A.2d 808, 817 (Pa. 2009); *Commonwealth v. Jones*, 570 A.2d 1338, 1344 (Pa. Super. 1990).

Even if this issue is not waived, Williams has not satisfied his burden of proof. To be entitled to a new trial, Williams must establish that an actual conflict of interest burdened Ms. Spring. To do so, he must show "that counsel actively represented conflicting interests, and the actual conflict adversely affected counsel's performance." *Commonwealth v. Rivera*, 108 A.3d 779, 801 (Pa. 2014).

At the PCRA hearing, Ms. Spring testified that the issue came up with Williams at some point but she could not recall whether it was pre-trial or post-trial. He suggested that she had a conflict of interest, but she did not agree. She testified that her response would have been that her loyalty as to her client right now (i.e.,

Williams); the victim, Mr. Cole was dead; and she did not feel that she had any relationship developed with him from six to eight years ago that would impact her representation of Williams. PCRA Transcript, 08/22/2022, at 29-30, 52.

Mr. Williams did not testify at the PCRA hearing, and no testimony was presented at that hearing to show how Ms. Spring's prior representation of the victim inhibited her representation of Williams in this case.

Since there is nothing in the record to show that Ms. Spring actively represented the victim and Williams at the same time and there also is nothing in the record to show how any alleged conflict adversely affected Ms. Spring's performance, Williams has not shown that Ms. Spring had a conflict of interest that entitles him to a new trial in this case.

ORDER

AND NOW, this ____ day of September 2023, the court **DENIES** Williams' PCRA petition.

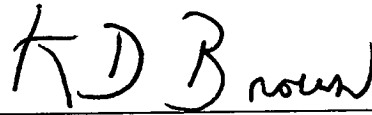
Williams is advised that he has a right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the Lycoming County courthouse, and sending a copy to the trial judge, the court reporter and the prosecutor. The form and contents of the Notice of Appeal shall conform to the requirement set forth in Rule 904 of the Rules of Appellant 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.App.P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, Williams may lose forever his right to raise these

issues.

Williams has a right to counsel to assist him with this appeal. PCRA counsel will continue to represent Williams. Williams should promptly consult with his attorney to discuss what issues, if any, he desires to assert on appeal.

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

By The Court,

A handwritten signature in black ink, appearing to read "K D Brown". The signature is written in a cursive, somewhat stylized font.

Kenneth D. Brown, Senior Judge

cc: Martin Wade, Esquire (ADA)
Donald Martino, Esquire
Rashawn D. Williams, #NR4059 (certified mail)
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Gary Weber, Esq.

KDB/laf