IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CP-41-CR-0001553-2022;**
	:	**CP-41-CR-0000346-2023;**
	:	**CP-41-CR-0000347-2023**
vs.	**:**	
	:	
TYREE CLEVELAND,	**:**	
Defendant	**:**	

OPINION AND ORDER

This matter came before the court on the Post Conviction Relief Act (PCRA) petition filed on behalf of Tyree Cleveland (hereinafter "Petitioner").

By way of background, under Information 346-2023, the Commonwealth charged Petitioner with robbery, aggravated assault, person not to possess a firearm, firearm not to be carried without a license, theft by unlawful taking, possession of a weapon and recklessly endangering another person. These charges arose out of an armed robbery of the clerk at the Family Dollar Store on West Fourth Street on September 25, 2022.

Under Information 347-2023, the Commonwealth charged Petitioner with first-degree murder, two counts of aggravated assault, possession of a firearm prohibited, firearms not to be carried without a license, discharge of a firearm into an occupied structure, possession of a weapon, and recklessly endangering another person arising out of the shooting death of Heather Cohick at or about 6:23 a.m. on September 28, 2022 at her residence in the 800 block of West Fourth Street in Williamsport, Lycoming County, Pennsylvania. Ms. Cohick's body was discovered as a result of someone calling 9-1-1 after hearing two popping sounds and observing her toddler wandering outside the residence unattended. When the police arrived, they found the toddler covered in blood. Ms. Cohick had been shot twice in the

face/head.

Later that day, around noon, police were dispatched to a disturbance with a gun in the 1000 block of Vine Avenue, Williamsport, Lycoming County, Pennsylvania. A Penn College police officer arrived in the area and quickly located the suspect in a grassy area. The officer ordered the suspect to show his hands. The suspect fired shots at the officer, who dove onto the ground near his vehicle, and the suspect fled on foot. Several shots struck the officer's vehicle. Other officers captured the suspect near West Fourth Street and Park Street. The officers located two firearms in close proximity to the southwest corner of West Fourth Street and Park Street. The suspect gave a false name but was subsequently positively identified as Petitioner. As a result of this incident, the Commonwealth charged Petitioner under Information 1533-2022 with criminal attempt homicide, three counts of aggravated assault, two counts of person not to possess a firearm, firearm not to be carried without a license, discharge of a firearm into an occupied structure, possessing a weapon, recklessly endangering another person, criminal mischief, and false identification to law enforcement.

On March 23, 2023, Petitioner entered a guilty plea first-degree murder under Information 347-2023, robbery under Information 346-2023, and attempted homicide and two counts of person not to possess a firearm under Information 1533-2022. On the same date, the court sentenced Petitioner to life without parole for first-degree murder, a concurrent sentence of 78 to 156 months for robbery and consecutive sentences of 10 to 20 years for attempted homicide and 5 to 10 years for each person not to possess a firearm conviction in accordance with the negotiated plea agreement reached by the parties.

Petitioner did not file a post sentence motion or an appeal.

On or about April 12, 2024, Petitioner filed a pro se Post Conviction Relief Act

(PCRA) petition. The court appointed counsel to represent Petitioner and gave counsel the opportunity to file an amended PCRA petition. Counsel filed an amended PCRA petition on June 16, 2024 and a second amended PCRA petition on July 10, 2024.

In the amended petitions, Petitioner asserts three issues of ineffective assistance of trial counsel that may be summarized as follows: (1) his guilty plea was not knowingly, intelligently, and voluntarily entered because he did not give a sufficient factual basis for his guilty plea to first-degree murder; (2) his guilty plea was not knowingly, intelligently, and voluntarily entered because his attorneys did not properly advise him of the history of the death penalty in Pennsylvania including that there is a moratorium on executions and no one has been involuntarily executed in over 60 years; and (3) his guilty plea was not knowingly, intelligently, and voluntarily entered because he was not eligible for the death penalty; therefore, his plea in exchange for the Commonwealth not seeking the death penalty was in exchange for a "empty promise."

The Commonwealth filed an Answer on or about September 12, 2024, in which it disputed Petitioner's claims.

Counsel filed witness certifications in mid to late September 2024.

The court held an evidentiary hearing on November 18, 2024. Four witnesses were called on Petitioner's behalf: plea counsel, Nicole Spring, Esquire; Petitioner's wife, Whitney Taylor; Petitioner's father-in-law, Ishmail Taylor; and Petitioner. The Commonwealth called Brittany Alexander as a witness.

Attorney Spring testified that she and Jeana Longo represented Petitioner and they were aided by paralegal, Kelli Cervinsky. Attorney Spring testified that Petitioner was first charged with the attempted homicide of Sergeant Pletz of the Penn College Police

Department. The discovery in the attempted homicide case also mentioned the homicide and robbery. Attorney Spring spoke to Petitioner about all three cases before he was even charged with the homicide and robbery. She asked District Attorney Ryan Gardner for a plea offer to third-degree murder. DA Gardner rejected that suggestion and said homicide charges were inevitable and forthcoming. DA Gardner, however, sent an email with a plea offer for all three cases contingent on Petitioner pleading at his formal court arraignment. If Petitioner did not plead at arraignment, the Commonwealth would seek the death penalty and file a notice of aggravating circumstances. The plea offer was to plead guilty to first-degree murder of Heather Cohick for life without parole, plead to robbery for a concurrent sentence, and plead to attempted homicide of Sgt. Pletz for a consecutive term of ten to twenty years' incarceration and two firearm offenses for consecutive terms of five to ten years' incarceration for each firearm offense. The aggregate sentence would be life without parole and a consecutive term of twenty to forty years' incarceration.

Attorney Spring testified that Petitioner had health issues – bleeding varices- while he was incarcerated on the attempted homicide which resulted in Petitioner being hospitalized in the ICU for a period of time in December 2022. However, when asked whether Petitioner's physical and mental health issues affected his ability to address the charges and deal with her, Attorney Spring testified, "I did not see that."

Attorney Spring testified that had Petitioner not pleaded guilty at arraignment, she would have requested the entire police file as well as mitigation analysis and a psychological evaluation of Defendant for the death penalty. The only medical records she had at the time of the plea were Petitioner's mental health records from the county jail and the paperwork from his admission to UPMC Williamsport hospital when he had the bleeding in his throat in

December of 2022.

Attorney Spring also testified regarding how the Commonwealth would seek the death penalty generally and about the status of the death penalty in Pennsylvania. She stated that the Commonwealth would usually give a notice of aggravating circumstances for the death penalty at arraignment or with a week of arraignment. She also testified that in 2017 former Governor Thomas Wolf lessened the restrictions on death row inmates such that they were no longer in lockdown twenty-three hours per day, but they still resided in a cell the size of a parking stall. He also imposed a moratorium[1] on the death penalty, which was extended by Governor Joshua Shapiro. She testified that she generally talks to clients about the change in incarceration restrictions for death row inmates; however, she did not believe that she spoke to Petitioner about commutation. She also testified that since the death penalty was reinstated in 1976, only three people have been executed and they volunteered for it.

She testified that she first spoke with Petitioner on February 10, 2023. He shocked her by confessing to shooting Ms. Cohick. He did not say that the shooting was accidental or in self-defense against an individual he knew as "Diego" at that time. She also noted that Petitioner made incriminating statements at his preliminary arraignment for the homicide. In the meantime, Petitioner was charged with homicide in Reading, Berks County, Pennsylvania but that was not a death penalty case.

Attorney Spring testified that Petitioner was looking to get out of the county prison for medical reasons, but his medical issues did not put Petitioner under duress or compulsion to accept the plea agreement. Instead, Petitioner told Attorney Spring that he would plead

[1] Both Governors refused to sign or issue warrants to execute individuals who received the death penalty and were commuting some, if not all, death sentences to life without parole while the death penalty in Pennsylvania

guilty for life imprisonment before such a plea was even offered by the Commonwealth. She did not believe that Petitioner's medical issues or hospitalization affected his decision to accept the plea offer. She noted that it was not uncommon for clients who had served time in a state correctional institution to be unhappy in county prison as there are restrictions at the county that are not present in the state correctional institution.

Initially, the potential aggravating factors in Petitioner's case were the killing of a potential witness and grave risk to another person.[2] Attorney Spring was not certain whether the other person was "Diego" or Ms. Cohick's child. When asked if the Commonwealth had a strong case for the death penalty, Attorney Spring replied that it was enough for the case to "get through" being a capital case.

The Commonwealth introduced the complaint and affidavit for the Berks County homicide case against Petitioner and the docket sheet for that Berks County case.[3] Petitioner's preliminary arraignment for the Berks County case was held on January 5, 2023, and he pleaded guilty and was sentenced on May 26, 2023 in that case. If Petitioner had not entered a guilty plea in his Lycoming County cases at arraignment on March 23, 2023, Attorney Spring acknowledged that the Berks County homicide conviction and Petitioner's prior robbery conviction in conjunction with it could have resulted in two additional aggravating circumstances.[4] Attorney Spring noted that the Berks County murder occurred on September 11, 2022 and Ms. Cohick's body was discovered on September 28, 2022, so

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was studied.
[2] *See* 42 Pa. C.S.A. §9711(d)(7), (15).
[3] *See* Commonwealth Exhibits 1 and 2.
[4] *See* 42 Pa.C.S.A. §9711(d)(9), (11).

the Berks County murder would have occurred prior to Ms. Cohick's murder.

Attorney Spring acknowledged that the death penalty is still "on the books" in Pennsylvania and that attorneys are still required to obtain Rule 801 capital credits to defend death penalty cases.

Petitioner's wife, Whitney Taylor, testified that she and Petitioner had two children together. Although she and Petitioner were separated a little bit, they still spoke on a regular basis. She did not recall what Petitioner was charged with when he was first incarcerated in Lycoming County in 2022; however, while he was incarcerated, they communicated by phone and by video visits. She testified that Petitioner kept saying he thought he was going to get the death penalty, which he said a lot. He said his lawyer told him he might receive the death penalty. Petitioner told his wife that if he didn't plead guilty he was automatically going to get the death penalty. Ms. Taylor testified that Petitioner's health was bad during this time and she did not think that he was in the right state of mind to plead guilty. She also testified that he was on medications in jail and she thought that the medications affected his mental health. She indicated that it affected his talking and he was tired a lot. She testified that he was very concerned he would get the death penalty or be killed and she believed that influenced his decision on how he approached the case.

Petitioner's father-in-law, Ishmail Taylor, testified that he was extremely close to Petitioner and they confided in each other. Mr. Taylor was aware from the news that Petitioner was charged with shooting at a police officer probably the day after the incident happened. He communicated with Petitioner only by telephone. He spoke to Petitioner about the officer shooting incident maybe a week after it happened. Mr. Taylor testified that Petitioner was concerned about the death penalty. Mr. Taylor was disappointed in Petitioner

and Petitioner explained to him that the weapon discharged. He felt bad about what happened and did not mean to do it. Sometimes their exchanges got acrimonious and Petitioner would start shouting he didn't mean it and it was an accident; he was very emotional about it.

In Mr. Taylor's opinion, Petitioner was too concerned about the death penalty and he wouldn't be reasonable about it. Petitioner kept saying that he talked to his attorney and his attorney kept saying that the death penalty was a possibility. Petitioner would then say he had children and he didn't want to die. Petitioner told him that they offered him a plea for life without parole. Mr. Taylor told Petitioner that if it was an accident, he should tell his attorney and the judge that. He also told him that if it was an accident, it was not first-degree murder. Mr. Taylor got legal books and talked to people in the legal profession. He tried to explain the elements of the offense to Petitioner and explain to him that if it was an accident, there was no intent, there was no malice and Petitioner could not get the worst penalty. He also told Petitioner on at least two occasions that there was no death penalty in Pennsylvania and that there was a moratorium on the death penalty in Pennsylvania. Petitioner's response was that Mr. Taylor was not a lawyer and he was not facing the death penalty. Petitioner was facing the death penalty. He was not dying; he was taking the plea agreement and at least he would be around for his children. Mr. Taylor believed that if his attorney had a similar conversation with Petitioner as what he told Petitioner about the death penalty, Petitioner might not have taken the plea for a life sentence.

Mr. Taylor also testified that Petitioner was absolutely not in his right mind during this time period. Petitioner was very emotional. He was despondent about the situation with Mr. Taylor's daughter, Petitioner's wife. Petitioner had cirrhosis of the liver and extremely

high enzyme levels. Petitioner would take his medications, and then he would stop taking his medications. He would drink when he was taking his medications but he wouldn't tell Mr. Taylor that he was drinking. Petitioner's mother passed away from COVID shortly before he was incarcerated in Lycoming County. Mr. Taylor was undergoing treatment for cancer. In Mr. Taylor's opinion, all of these things affected Petitioner's mental health. Mr. Taylor also noted that Petitioner had mental health issues in the past and had tried to commit suicide a couple or a few times. Mr. Taylor testified that Petitioner was logical but he also was emotional and rash.

Petitioner testified he was first charged on September 28, 2022, and he pleaded guilty to all of his Lycoming County cases on March 23, 2023. He met with Attorney Spring, her paralegal and Miss Jeana (Jeana Longo), who was a death penalty attorney. He testified that he met with Ms. Spring "quite often" and she was keeping him informed.

Petitioner testified that while he was incarcerated in the Lycoming County Prison (LCP) he was having health issues. He was throwing up blood. He was taken to the Infirmary and given Pepto Bismol and then taken back upstairs to his cell. He continued throwing up blood, was taken back to the Infirmary and the doctor said to take him to the hospital. When he arrived at the hospital, he was anemic. He was in the Intensive Care Unit (ICU). He passed out, and then woke up to hearing them saying that it didn't look like he was going to make it.

Counsel for both parties stipulated that Petitioner was hospitalized from December 20 through December 27, 2022, which was approximately three months prior to this guilty plea.

Petitioner testified that he also has had mental health issues since childhood. He had tried to commit suicide quite often. While he was incarcerated at LCP between September

28, 2022 and March 23, 2023, he was taking all kinds of medications including Gabapentin, medications for his mental health and some for his liver. Petitioner stated his esophagus was "exploding" and he did not receive adequate care at LCP. He felt like they didn't care about him due the nature of his charges, they were negligent, and that he was "fighting a losing battle."

Petitioner did not recall too much about the plea discussions. Once he was charged with homicide, he knew that the Commonwealth was going to seek first-degree murder. He also stated that he just knew first-degree murder automatically came with the death penalty. He said he had never seen the Commonwealth's email containing the terms of the plea agreement, which was admitted as Defendant's Exhibit #1.

Agent Brittany Alexander of the Williamsport Bureau of Police testified that she was the affiant on Petitioner's cases which consisted of his attempted homicide case for firing shots at a Penn College police officer, robbery of the Family Dollar and the killing of J.C. The affidavit of probable cause for the shooting death of J.C., which was admitted as Commonwealth Exhibit 4, indicates that on September 25, 2022 J.C. reported her vehicle stolen. She knew the individual as James or M, and also goes by the nickname Mamook. Agent Alexander obtained an arrest warrant for Petitioner on March 8, 2023. She was present when Defendant was preliminarily arraigned on the first-degree murder charge. Petitioner made certain utterances during his preliminary arraignment. Agent Alexander memorialized Petitioner's statements in a report, which was admitted as Commonwealth Exhibit #6. Agent Alexander testified that Petitioner said he was guilty of all of the charges and wished for a life sentence instead of the death penalty.

She testified that she also filed the charges against Petitioner for robbing the Family

Dollar store. The Commonwealth admitted those charges as Commonwealth Exhibit #5. The robber was seen leaving the scene of the robbery in a silver-colored Chevy Cobalt. The robbery occurred a few days before the homicide victim's death. The homicide victim called the police and reported her silver Chevy Cobalt had been stolen by James or M. She contacted him several times and he threatened her not to call the police. While she was speaking with the police, he contacted her, told her he observed the police vehicle, and that he parked the victim's car in the 900 block of West Third Street, which the police then located and recovered.

Agent Alexander also testified that she interviewed Petitioner on March 9, 2023 with counsel present. In addition to his admissions at his preliminary arraignment on the homicide, Petitioner admitted his involvement in the robbery in her interview of him.

Agent Alexander was present for Petitioner's guilty plea and sentencing. She recalled Petitioner admitting what happened and saying he was taking full responsibility for everything and just wanted to pay his debt to society. She also recalled him saying it was an accident. She could not remember exactly what he said but he did say the gun went off and he never specifically said he shot her. She believed that he said the gun didn't just go off on its own and that he said it was his reaction when the victim got in the middle of him and another individual. The victim was shot twice in the face and had a defensive wound to her right hand as if she would have been sticking her hand in front of the gun.

DISCUSSION

To be eligible for relief under the PCRA, the Petitioner must plead and prove that his conviction or sentence resulted from ineffective assistance of counsel which so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have

taken place, 42 Pa. C. S. §9543(a)(2), and that the allegation of error has not been previously litigated or waived. 42 Pa.C.S. §9543(a)(3). A claim is previously litigated under the PCRA if the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue. 42 Pa.C.S. § 9544(a)(2). An allegation is deemed waived "if the petitioner could have raised it but failed to do so before trial, at trial, on appeal or in a prior state post-conviction proceeding." 42 Pa.C.S. §9544(b).

The law presumes counsel has rendered effective assistance, and to rebut that presumption, the petitioner must demonstrate that counsel's performance was deficient and that such deficiency prejudiced him. *Commonwealth v. Kohler*, 36 A.3d 121, 132 (Pa. 2012). "[T]he burden of demonstrating ineffectiveness rests on [the petitioner]." *Commonwealth v. Rivera*, 10 A.3d 1276, 1279 (Pa. Super. 2010). To satisfy this burden, a petitioner must plead and prove by a preponderance of the evidence that: "(1) his underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some reasonable basis designed to effectuate his interests; and (3) but for counsel's ineffectiveness, there is a reasonable probability that the outcome of the challenged proceeding would have been different." *Commonwealth v. Fulton*, 830 A.2d 567, 572 (Pa. 2003); *see also Commonwealth v. Dennis*, 597 Pa. 159, 950 A.2d 945, 954 (2008). Failure to satisfy any prong of the test will result in rejection of the petitioner's ineffective assistance of counsel claim. *Commonwealth v. Jones*, 811 A.2d 994, 1002 (Pa. 2002). "Generally, where matters of strategy and tactics are concerned, counsel's assistance is deemed constitutionally effective if he chose a particular course that had some reasonable basis designed to effectuate his client's interests." *Commonwealth v. Miller*, 819 A.2d 504, 517 (Pa. 2000) (citation omitted). A claim of ineffectiveness generally cannot succeed through comparing, in hindsight, the trial strategy

employed with alternatives not pursued. *Id.* In addition, we note that counsel cannot be deemed ineffective for failing to pursue a meritless claim. *Commonwealth v. Nolan*, 855 A.2d 834, 841 (2004) (superseded by statute on other grounds).

1. ***Was plea counsel ineffective for advising or allowing Petitioner to enter a guilty plea that was not knowingly, intelligently, and voluntarily entered because he did not give a sufficient factual basis for his guilty plea to first-degree murder***?

Petitioner first asserts that he did not give a sufficient factual basis for his guilty plea to first-degree murder because he said that first shot the gun discharged accidentally after the victim grabbed the gun and the second shot was "instinct." The court cannot agree.

Although it is true that Petitioner claimed that the initial discharge was an accident and that the second shot was instinct, counsel's argument focuses on Petitioner's conclusions and not the totality of the facts that he provided or acknowledged during the hearing. Petitioner admitted that he was familiar with the victim and he had been to her house previously. Transcript, 03/23/2023, at 8-9. He stated that he was not inside her residence but standing at the front door. He had her car and she was anxious to get more money for the car. Petitioner told her to be patient; he was bringing the car back. He said that he brought the car back and she had some guy named "Diego" there. Petitioner claimed that he and Diego were arguing because Diego wanted drugs, and he and the victim were arguing about the car. Diego went to reach for something. Petitioner could not see exactly what it was. Diego "reached" and was ducking behind the victim. The victim tried to grab the gun and that's when the gun went off and Petitioner had "an incident or whatever you want to say." Petitioner admitted that he shot twice and he ran off. *Id*. at 10. Petitioner admitted that if he went to trial, a jury could disbelieve his claim and find intent based on shots to vital organ.

Id. at 11. Petitioner agreed that he had a gun and it was loaded. He also agreed that he was ineligible to possess a firearm. *Id*. at 12. When asked if he agreed that a jury could infer from his use of the gun that the shooting was intentional, Petitioner said "yeah" and "I understand." *Id*. at 12-13. He agreed that he did not see Diego pull a firearm so he used deadly force to possible danger that did not involve deadly force. *Id.* at 13. He also agreed that the victim was struck twice in the head and the head is a vital part of the body which could result in death or serious bodily injury. *Id.* The Commonwealth noted that the autopsy report showed that the victim was struck in the forehead causing injuries to her skull and brain and she was struck in the chin causing injuries to her mandible and right internal jugular vein. *Id*. at 14. The Commonwealth stated that the second shot was not accidental; it was volitional. *Id*. Defense counsel noted that Petitioner had given a statement to Agent Alexander that the second shot was a trigger pull at a time when he had the gun raised at head level pointed in the victim's direction. *See Id*. at 14-15. The court then asked so the second shot was a direct trigger pull without a struggle? Petitioner replied in the affirmative and then tried to explain that his instincts made him pull the trigger for the second shot; he heard the first shot and he just pulled the second one. *Id.* at 15. The court then tried to clarify that although Petitioner described it as instinctual, there was no interference from anyone and it was an intentional act by him to pull the trigger and discharge the firearm. *Id*. at 16-17. Petitioner said, "Yes, I understand." The court then asked if that was what happened and Petitioner replied, "Yes. It happened. I take full responsibility for everything. I just want to pay my debt to society." *Id*. at 17. The court asked if he would agree that for the second shot when he discharged the weapon that it was close enough to her face and he said yes. *Id*. He also agreed that it would have caused the damage and injury that forensic pathologist

described and the District Attorney stated in court. *Id.*

To the extent that Petitioner's PCRA could be read as a direct claim that the guilty plea was not knowingly, voluntarily and intelligently entered or "unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent", see 42 Pa. C.S.A. §9543(a)(2)(iii), such a claim is waived. An issue is waived if the petitioner could have raised it but failed to do so before trial, at trial, on appeal or during a prior postconviction proceeding. 42 Pa. C.S.A. §9544(b). Petitioner could have challenged his guilty plea in a post-sentence motion and if that were unsuccessful, in a direct appeal, but he did neither. A petitioner is not eligible for relief if the claim is waived. 42 Pa. C.S.A. 9543(a)(3). Since Petitioner did not file a post sentence motion or an appeal and he could have challenged the legality of the guilty plea through these mechanisms, any direct claim is waived and Petitioner is not entitled to relief.

To the extent that this is raised as an ineffective assistance of counsel (IAC) claim, that is a separate issue which would not be waived. However, the court finds that this claim does not entitle Defendant to relief.

The court finds that this claim lacks merit. Petitioner admitted sufficient facts to show intent to kill. The facts stated by Petitioner do not support his conclusions that the shooting was accidental or in self-defense.

Petitioner admitted that he was ineligible to possess a firearm. This ineligibility was due to prior convictions for robbery and felony drug offenses. He also admitted that he used a firearm in the incident. He held the gun pointed at head level and pointed in the victim's direction because he saw Diego reach for something but he did not know what it was. He did not see Diego in possession of any firearm or other weapon capable of causing death or

serious bodily injury. He admitted that he fired two shots and fled. He admitted that the victim was shot twice in the head and agreed she suffered the injuries described in autopsy report, including injuries to her skull, brain and right jugular vein. In other words, he admitted the shots from his firearm, which he was illegally possessing, caused the death of the victim.

Section 6104 of the Crimes Code states:

> In the trial of a person for committing or attempting to commit a crime enumerated in section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), the fact that that person was armed with a firearm, used or attempted to be used, and had no license to carry the same, shall be evidence of that person's intention to commit the offense.

18 Pa. C.S.A. §6104. Murder is an enumerated offense in section 6105. *See* 18 Pa. C.S.A. §6105(b)("The following offenses shall apply to subsection (a): Section 2502 (relating to murder)"). Petitioner was armed with a firearm, and he shot the victim. Since he was ineligible to possess a firearm, he could not obtain a license to carry a firearm. He was not in his place of abode or his business; he was standing in the doorway of the victim's residence. He was aware that the victim was between him and Diego and that Diego had ducked behind the victim. Nevertheless, he held his firearm at head level pointed in the victim's direction. Had Petitioner not illegally possessed a firearm, the victim would not be dead. These facts show that Petitioner intended to commit the offense.

The facts also show that Petitioner was arguing with both Diego and the victim. He saw Diego reach for something. He held the firearm at head level pointed toward the victim and Diego. However, he did not see Diego in

possession of a firearm or other weapon capable of causing death or serious bodily injury. Petitioner seemed to indicate that he felt as though he were justified or acting in self-defense when he possessed a firearm at head level and pointed at other human beings due to Diego reaching for something. Such is not the case as a matter of law. Petitioner was in illegal possession of a firearm. Petitioner was not in his house or his business. As Petitioner was in unlawful possession of a firearm, he was not entitled to stand his ground and he had a duty to retreat. *See* 18 Pa. C.S.A §505(b)(2), (2.3); *Commonwealth v. Cannavo*, 199 A.3d 1282 (Pa. Super. 2018)(appellant's unlawful possession of firearm met definition of criminal activity under section 505(d) and rendered him not entitled to jury instruction regarding the Castle doctrine). Petitioner's actions show that he had intent. The circumstances admitted by Petitioner also show that he was not justified in using deadly force. *See Commonwealth v. Towles,* 208 A.3d 898, 995 (2019)(Even circumstances--Appellant admitted that he was not initially attacked with any weapons, the persons attacked did not possess any weapons, and Appellant could have retreated—as Appellant believed them to exist would not have legally justified the use of deadly force, even as unreasonable self-defense). The law shows that he was not acting in self-defense and he would not have been entitled to a stand your ground jury instruction if he had elected to go to trial. As previously noted, his unlawful possession of a firearm and his use or attempted use of it during the incident is evidence of his intent to commit the crime.

Petitioner's statements show that he intended to shoot Diego and that is the reason why he had his firearm at head level pointed in the direction of the

victim. The law transfers Petitioner's intent with respect to Diego to the victim. see 18 §303(b)(1); *Towles*, 208 A.3d at 992 (section 303(b)(1) embodies the criminal law doctrine of transferred intent); *Commonwealth v. Padilla*, 80 A.3d 1238, 1247 (Pa. 2013)("the intent to murder may be inferred where person actually killed is not the intended victim").

Petitioner's use of a deadly weapon on a vital part of the victim's body showed his malice and intent for first-degree murder. *see Commonwealth v. Anderson*, 323 A.3d 744, 754 (Pa. 2024)(shots to each of the victims' heads from a distance of three or four feet showed Appellant's malice and intent to kill), *cert. denied sub. nom. Anderson v. Pennsylvania*, 145 S.Ct. 2823 (2025).

Finally, Petitioner's categorization of his actions as accident or instinct do not render his plea invalid where he also acknowledged that a jury could infer from his use of the gun that the shooting was intentional. *See* Transcript, 03/23/2023, at 12-13. In *Commonwealth v. Fluharty*, 632 A.2d 312 (Pa. Super. 1993), the appellant made a similar argument with respect to his plea to an aggravated assault by attempting to cause serious bodily injury to a police officer. Because the crime was based on an attempt to cause serious bodily injury, it was a specific intent crime. The appellant, as here, asserted in his PCRA petition that his counsel was ineffective and he should be permitted to withdraw his guilty plea due to an insufficient factual basis to support the charge, more specifically he denied any intent to cause serious bodily injury to the police officer. During the appellant's guilty plea, the appellant stated, "I can't sit here in all honesty and say that I willfully tried to harm that police officer because I did not." *Id*. at 317. However, he agreed that a jury could infer what his state of mind was. In rejecting the appellant's claims, the Superior Court stated:

> After careful review, we are satisfied that appellant's denial that he intended to injure the police officer did not render his plea of guilty invalid. Although he denied that he had intended to injure the officer, appellant also said that he understood what he was agreeing to by pleading guilty and intended to be bound by that agreement. Appellant also conceded that a jury could infer the necessary intent from the testimony that would be given by the officer if he went to trial. Appellant was fully informed of and indicated that he understood the elements of the offenses, the potential penalties therefor, and the rights he would be surrendering by pleading guilty. Our review of the record of the extensive guilty plea colloquy, both written and oral, leads us to conclude that appellant's decision to plead guilty was a knowing and voluntary one, made with full appreciation of the consequences thereof. Therefore, we reject appellant's argument that his failure to admit all elements of the charge of aggravated assault rendered his plea of guilty to that charge unknowing and invalid.

Id. at 317-18. Here, as in *Fluharty*, Petitioner agreed that the jury could infer his intent from his use of the gun.

For the foregoing reasons, Petitioner's claims that claim that the facts admitted or acknowledge in guilty plea hearing did not establish the intent element for first-degree murder lacks merit.

The court finds that counsel had a reasonable basis for proceeding with the guilty plea and not taking this case to trial or filing a motion to withdraw the guilty plea or an appeal to challenge it. It is clear that Petitioner wanted to plead guilty. From the inception of this case, Petitioner made statements indicating his willingness and desire to enter a guilty plea to murder for a life sentence. Plea counsel's actions were designed to effectuate Petitioner's desire to plead guilty. Counsel's efforts during the plea hearing helped to established the intent element so that the court accepted his guilty plea. It was not in Petitioner's interest to go to trial. As previously discussed, he did not have a valid claim for self-defense. He was not responding the use of deadly force by anyone and he did not see either the victim or "Diego" in possession of a deadly weapon. Furthermore, it was highly unlikely given his

unlawful possession of a firearm, his dispute with the victim regarding her car (which the Commonwealth asserted was the motive for the killing), his pretrial statements which could be used against him at trial, and his flight from the incident scene, that a jury would find credible Petitioner's claims that the shooting was accidental, instinctual, or in self-defense. To establish any of these defenses, Petitioner would have to testify at trial. If he testified at trial, the Commonwealth would likely introduce his *crimen falsi* convictions, including his prior conviction for robbery, in rebuttal to show that Petitioner was not credible.[5] Pa. R. E. 609. Finally, counsel believed that Petitioner's guilty plea was knowingly, intelligently and voluntarily entered. Transcript, 11/18/2024, at 30.

The court finds that Petitioner did not suffer prejudice. Petitioner did not want to go to trial. He admitted his guilt to multiple sources and wanted to accept a guilty plea. He was fully aware of what he was doing at the guilty plea hearing and admitted sufficient facts and inferences to satisfy all of the elements for first-degree murder. He did not wish to go to trial. He did not wish to face the possibility of the death penalty, regardless of what anyone told him about the status of the death penalty in Pennsylvania.

For the foregoing reasons, the court rejects Petitioner's claim that his counsel was ineffective and/or his guilty plea was not knowingly, voluntarily and intelligently entered due to an insufficient factual basis for the intent element of first-degree murder.

2. Was plea counsel ineffective for failing to properly advise him of the history of the death penalty in Pennsylvania including that there is a moratorium on executions and no one has been involuntarily executed in over 60 years

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[5]Petitioner's robbery conviction occurred on or about March 6, 2007. *See Commonwealth v. Cleveland*, CP-51-CR-1301227-2006. He pleaded nolo contendere and was sentenced to incarceration for 5 ½ years to 11 years followed by 7 years' probation. Although the conviction date is more than 10 years prior to Petitioner's guilty plea in this case, any time that Petitioner was incarcerated for the conviction must be excluded from the calculation of the 10-year period. *See* Pa. R.E. 609, comment and cases cited therein.

rendering his guilty plea to be not knowingly, intelligently and voluntarily entered?

Petitioner next contends that his counsel was ineffective and his guilty plea was not knowingly, voluntarily and intelligently entered because counsel failed to adequately inform him of the status and history of the death penalty in Pennsylvania. PCRA counsel argues that, due to the moratorium and the history of only executing three individuals who essentially volunteered for it means that the death penalty is an impossibility or virtual impossibility, which counsel should have advised him of prior to the entry of this guilty plea. Again, the court cannot agree.

The court finds that this claim lacks arguable merit. Plea counsel testified that she did not recall Petitioner expressing concerns to her with the death penalty. Transcript, 11/18/2024, at 17. Plea counsel testified that despite the moratoriums imposed by Governor Wolf and Governor Shapiro, the death penalty was still on the books, she was currently defending a death penalty case, and defense counsel was still required to take Rule 801 capital credits (continuing legal education credits) to defend death penalty cases. *Id*. at 29.

Although she did not recall specifics of the conversation with Petitioner, she testified that she generally talks about the status of the death penalty in Pennsylvania with her clients facing the possibility of the death penalty. *See id*. at 17. She generally talks about the status of the death penalty, including the reductions in restrictions that Governor Wolf made in November 2017, that the death penalty was reinstated in 1976, and that Pennsylvania executed three people and they pretty much volunteered for it. *Id*. She did not recall if she discussed the moratorium but she generally does because it was also Governor Wolf wo basically said we are not going to kill people in Pennsylvania. *Id*. She did not talk about

commutation with Petitioner. *Id*. She was aware that the current Governor (Shapiro) had extended the moratorium but she didn't know if she discussed that with Petitioner. *Id*. at 18.

Although Petitioner denied that counsel had these discussions with him and claimed that he was unaware of the moratorium or that only individual who had essentially volunteered had been executed since the death penalty was reinstated, his testimony was not credible. Petitioner's father-in-law testified that he told Petitioner about the moratorium but he would not listen to him. *Id.* at 51-52. Additionally, the Commonwealth cross-examined Petitioner with a recorded phone call between he and his father-in-law in which his father-in-law discussed the moratorium with him. *Id*. at 69. Petitioner admitted on cross-examination that Ms. Spring told him something like nobody had been killed in some odd years but nobody could convince him otherwise. *See id*. at 68. Additionally, the Commonwealth cross-examined Petitioner with the fact that the judge told him during the guilty plea hearing that the previous governor (Wolf) put a moratorium on the death penalty, the current governor (Shapiro) wished to abolish the death penalty, and there was no guarantee that a death sentence would come to pass. *Id*. at 70. Petitioner somewhat recalled the judge saying those things to him. *Id*. Instead, he claimed he did not become aware until he was "upstate" and that if Ms. Spring had told him, he would not have pleaded guilty to first-degree murder. *Id*. at 71. The court also does not find these assertions credible. Ms. Spring testified that she discusses the moratorium imposed by Governor Wolf with her clients, Petitioner's father-in-law testified that he told Petitioner that there was a moratorium and that there was no death penalty in Pennsylvania, and the judge told Petitioner about the moratorium and that there was no guarantee that a death sentence would be actually carried out, but he still entered a guilty plea. Petitioner did not attempt to withdraw his guilty plea after the judge's comments

during the plea and sentencing hearing, in a post sentence motion or in an appeal. In fact, he did not file anything concerning the death penalty until his counsel filed the amended PCRA petition on June 16, 2024.[6]

The death penalty is still a sentencing option for a first-degree murder conviction.[7] *Commonwealth v. Zieglar,* 322 A.3d 256 (Pa. Super. 2024). In *Zieglar*, the trial court prohibited the parties from conducting *voir dire* regarding the death penalty based on the moratorium. The Commonwealth appealed and the Superior Court reversed. The Court noted:

> Furthermore, we observe that the trial court relies upon ***Caldwell*** for the premise that it is unable to impanel a death jury. The trial court contends that the moratorium, imposed by Governor Shapiro as the chief executive of the Commonwealth, removes the decision regarding the death sentence from every potential juror in violation of ***Caldwell***. See Trial Court Opinion, 6/28/23, at 9, 18-21. Additionally, the trial court determined that, in light of the conflict between Governor Shapiro's moratorium and *Caldwell*, it would be impossible to appoint a jury that could properly consider the death penalty.
>
> We find this rationale to be premature. First, the citizens of this Commonwealth are not presumptively aware of Governor Shapiro's moratorium. Furthermore, even if potential jurors **were aware**, then the proper forum to discover that alleged taint would be **at *voir dire***. Here, as we discussed, the trial court's order prevents the parties from engaging in *voir dire* proceedings related to the death penalty, which would make it impossible to discern whether any taint exists or what effect, if any, it may have on potential jurors. Thus, the record before us is underdeveloped for review of this argument.
>
> We further observe that Governor Shapiro's moratorium is temporary in

[6] Although Petitioner asserted in his pro se PCRA petition filed on or about April 12, 2024 that he entered an unintelligent plea, the basis for his pro se claims revolved around his mental health and the lack of a mental health evaluation. It did not relate to the factual basis for his plea or the death penalty.

[7] Several bills were introduced in 2025 to alter the death penalty statute but, as of this date, none have passed. There were two bills to eliminate the death penalty – 2025 Pa. H.B. 99 and 2025 Pa. H.B. 888; one bill to add the mitigating circumstance of a service-connected mental health disability – 2025 Pa. H.B. 458; a bill to require aggravating outweigh mitigating beyond reasonable doubt – 2025 Pa. H.B. 166; and two bills to add aggravating circumstances – 2025 Pa. H.B. 1952 (desecrated/mutilated corpse of victim); 2025 Pa. H.B. 464 (the killing committed on premises of elementary or secondary school, college, place of worship, professional sports facility or government office).

> nature. Under the laws of this Commonwealth, Governor Shapiro will not hold his position in perpetuity and, thus, we cannot agree that the moratorium will presumptively taint potential jurors in making the difficult determination of death versus life. Furthermore, we note that Governor Shapiro stated that he was "granting a reprieve," not a pardon or commutation of sentence. ***See Commonwealth v. Williams***, 634 Pa. 290, 129 A.3d 1199, 1217 (2015) ("reprieve as set forth in Article IV, Section 9(a) means the **temporary suspension of the execution of a sentence**") (emphasis added, quotation marks omitted). Consequently, any reprieve granted by Governor Shapiro does not remove the decision of death from the jury, but merely delays the implementation of any such decision. Moreover, despite Governor Shapiro's moratorium, the Commonwealth's ability to pursue the death penalty is still the law. ***See*** 42 Pa.C.S.A. § 9711. Finally, we presume that our legislature is aware of Governor Shapiro's moratorium, just as the legislature was aware of then-Governor Wolf's moratorium. Nevertheless, the legislature has not amended our death penalty laws. Additionally, neither our Supreme Court nor the United States Supreme Court has declared the death penalty to be unconstitutional. Consequently, unless and until either the law changes or the death penalty is determined to be unconstitutional, this Court cannot affirm the trial court's order and we consider the ***Caldwell*** argument to be unpersuasive and premature.

Id. at 268 n. 13.

The court also finds that Petitioner was not prejudiced for the same reasons. He was told by multiple sources about the death penalty and he still entered a guilty plea. He admitted that nobody could convince him about odds of the death penalty being carried out. The court finds that statement credible. Petitioner was being stubborn and not listening to anybody. He was going to plead guilty no matter what anyone told him. He admitted his guilt at preliminary arraignment and in his police interview and wanted a guilty plea for life from the inception of the charges. Therefore, he was not prejudiced.

For the foregoing reasons, the court rejects Petitioner's contention that if he had been properly advised he would not have entered a guilty plea and would have gone to trial.

3. Was plea counsel ineffective for advising or allowing Petitioner to enter a guilty plea that was not knowingly, intelligently, and voluntarily entered because he was not eligible for the death penalty; therefore, his plea in exchange for the Commonwealth not seeking the death penalty was in exchange for a "empty promise?"

Petitioner's final contention is that his counsel was ineffective and his plea was not knowingly, voluntarily and intelligently entered because he was not eligible for the death penalty. The court cannot agree.

Petitioner has the burden to prove his claims by a preponderance of the evidence. The court finds that Petitioner has not met his burden of proof.

This claim lacks merit. Petitioner did not present any evidence to show that none of the eighteen aggravating circumstances listed in 42 Pa. C.S.A. §9711(d) applied. To the contrary, the evidence showed that there were at least two, if not more, aggravating circumstances that the Commonwealth could have sought in this case if Petitioner had not pleaded guilty at arraignment as required by the plea agreement.

The aggravating circumstance for which the death penalty may be sought include the following: the victim was a prosecution witness to a murder or other felony committed by the defendant and was killed for the purpose of preventing his testimony against the defendant in any grand jury or criminal proceeding involving such offenses; in the commission of the offense the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense; the defendant has a significant history of felony convictions involving the use or threat of violence to the person; and the defendant has been convicted of another murder committed in any jurisdiction and committed either

before or at the time of the offense at issue. 42 Pa. C.S.A. §9711(d)(5), (7), (9), and (11).[8]

Plea counsel testified that the Commonwealth was going to seek the death penalty on the basis that Cohick had reported to the police that Petitioner stole her vehicle and that Petitioner killed her to keep her from testifying against him and on the basis that in committing the offense Petitioner created a grave risk to another person. Transcript, 11/18/2024, at 15. Counsel indicated that the other person was either "Diego" or the victim's child. *Id*. She testified that the Commonwealth had enough evidence for this case go to the jury as a capital case. *Id*. at 17. On cross-examination, counsel acknowledged that if Petitioner had not pleaded guilty at arraignment and had gone to trial, his guilty plea to murder in Berks County could be an aggravating factor because the Berks County murder occurred on September 11, 2022 and in this case the victim's body was discovered on September 28, 2022. *Id.* at 28-29. She also testified that the Berks County murder conviction in conjunction with Petitioner's prior conviction for robbery would potentially cause the aggravating factor for a history of convictions involving the use or threat of violence to be applicable. *Id.* at 29. The Commonwealth presented exhibits to show that the date of the Berks County murder was September 11, 2022 and Petitioner entered a guilty plea and was sentenced in the Berks County case on May 26, 2023. *See* Commonwealth's Exhibits #1 and #2. The Commonwealth also presented the affidavits of probable cause and criminal complaints for each case as exhibits.

Although the court questions the applicability or potential applicability of the

[8] In its brief, the Commonwealth also argued in its brief that aggravating circumstance (6) that "the defendant committed a killing while in the perpetration of a felony" also applied in this case. The Commonwealth argued that Petitioner entered the victim's residence with the intent to commit a felony inside. Therefore, Petitioner killed the victim while committing a burglary. See Commonwealth brief in opposition filed on 12/05/2024, at

aggravating factor that the defendant has a significant history of felony convictions involving the use or threat of violence to the person, see 42 Pa. C.S.A. §9711(d)(9), because the Berks County murder conviction did not occur prior to the commission of the current murder and a single conviction (robbery) involving the use or threat of violence to the person would not constitute a "significant history" as a matter of law. *See Commonwealth v. Holcomb*, 498 A.2d 833, 851 (Pa. 1985)(plurality)(this aggravating circumstance requires more than one prior conviction) superseded by statute on other grounds as stated in *Commonwealth v. Fears*, 836 A.2d 52, 69 n.17 (Pa. 2003), the evidence presented shows that there were aggravating factors in this case such that if Petitioner had not entered a guilty plea the case would have proceeded to trial as a death penalty case. Therefore, this claim lacks merit.

Counsel had a reasonable basis for her actions or failure to act as there were aggravating circumstances that the Commonwealth could have presented to a jury during a penalty phase if Petitioner were convicted of first-degree murder at trial. Counsel also had reason to believe that a jury would find that Petitioner intentionally killed the victim based on the use of a deadly weapon on a vital part of the victim's body, Petitioner's unlawful possession of a firearm, as well as the likelihood that the jury would not accept his statements or claims that the shooting was an accident, in self-defense or instinct. In fact, the court finds that his claim that the first shot was accidental and the second shot was instinct are inconsistent and not credible. If, as Petitioner claims, the firearm accidentally discharged because the victim grabbed the firearm, he would not instinctually fire his weapon thinking that Diego was shooting at him; he would have realized that the first shot was from the

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pp 6-7. This information was not discussed in the context of a potential aggravating factor and plea counsel was not questioned about its viability as a potential aggravating factor.

victim grabbing his own firearm.

Petitioner also was not prejudiced. The death penalty is still a potential verdict for first-degree murder. The facts justified the case being presented to the jury on two or more aggravating factors, and the moratorium is only a temporary reprieve that could change with any change in the Governor of Pennsylvania. Furthermore, regardless of whether counsel discussed the possibility of a commutation of his sentence, the court questions whether the Governor would commute Petitioner's sentence in light of Petitioner's first-degree murder in Berks County, robbery in Philadelphia County, and murder, attempted murder of a police officer, and robbery in these three Lycoming County cases.

CONCLUSION

Petitioner has not established any of his claims of ineffective assistance of counsel. He stated sufficient facts on the record to establish his intent to kill the victim for his first-degree murder conviction. Counsel had a reason for not challenging his first-degree murder conviction because the evidence clearly showed that Petitioner wanted to plead guilty to first-degree murder in exchange for life imprisonment from the inception of the case and counsel reasonably believed the Petitioner's entered a knowing, intelligent and voluntary plea to that claim. During the plea hearing, counsel assisted Petitioner in achieving his desired goal by having him admit to facts from which his intent to kill the victim could be found. He also was not prejudiced as it was clear that Petitioner was insistent on entering a guilty plea for life imprisonment and he would not listen to anybody including his father-in-law, his counsel, or the court regarding any practical or pragmatic issues with the death penalty.

The evidence also showed that if Petitioner had not entered a guilty plea at arraignment the Commonwealth was going to seek the death penalty, there were aggravating

circumstances that would apply to this case making Petitioner eligible for the death penalty and, despite the current moratorium, the death penalty continues to be a valid sentence for first-degree murder in Pennsylvania. Therefore, Petitioner did not satisfy any elements of an ineffective assistance of counsel claim with respect his assertions that he was not eligible for the death penalty or that he entered his plea in exchange for an empty promise.

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ORDER

AND NOW, this 11th day of December 2025, the court DENIES Petitioner's Post Conviction Relief Act (PCRA) petition.

Petitioner 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 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.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,

_____
Nancy L. Butts, President Judge

cc: Martin Wade, Esquire (ADA)
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