

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

No. 102 EM 2018

JERMONT COX,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

COMMONWEALTH'S BRIEF FOR RESPONDENT

JOANNA H. KUNZ

Assistant District Attorney

GRADY GERVINO

Assistant District Attorney

MICHAEL ERLICH

Assistant District Attorney

PAUL M. GEORGE

Assistant Supervisor, Law Division

NANCY WINKELMAN

Supervisor, Law Division

LAWRENCE S. KRASNER

District Attorney of Philadelphia

Three South Penn Square
Philadelphia, PA 19107
(215) 686-5700
nancy.winkelman@phila.gov

July 15, 2019

TABLE OF CONTENTS

| | |
|--|----|
| STATEMENT OF THE QUESTIONS INVOLVED..... | 1 |
| INTRODUCTION | 2 |
| STATEMENT OF JURISDICTION..... | 9 |
| STATEMENT OF THE CASE: THE DAO STUDY..... | 10 |
| I. Death Sentences Overturned During Post-Conviction Review | 11 |
| A. Death sentences overturned due to ineffective assistance of counsel..... | 12 |
| B. Death sentences overturned on other grounds | 14 |
| C. Non-capital outcome of overturned death sentences | 15 |
| II. Cases Where a Philadelphia Defendant Remains Sentenced To Death..... | 16 |
| III. History of Funding and Training in Philadelphia for Court-Appointed Counsel in Capital Cases | 17 |
| IV. Other Considerations Affecting Capital Sentences..... | 19 |
| A. Our neighboring states | 19 |
| B. Changes in the law affecting death sentences..... | 21 |
| C. Racial makeup of Philadelphia defendants on death row | 22 |
| SUMMARY OF ARGUMENT | 24 |
| ARGUMENT | 27 |
| I. As It Has Been Applied, The Death Penalty Violates The Pennsylvania Constitution’s Prohibition Against Cruel Punishments. | 27 |
| A. The Pennsylvania Constitution prohibits the unreliable and arbitrary imposition of the death penalty..... | 27 |
| B. The DAO study supports the conclusion that the death penalty is applied in an unreliable and arbitrary manner. | 30 |

| | |
|---|----|
| II. Article I, Section 13 Of The Pennsylvania Constitution Independently Prohibits The Imposition Of The Death Penalty..... | 36 |
| A. Textual differences between Article I Section 13 and the Eighth Amendment demonstrate that the state provision has independent force..... | 38 |
| B. The history of the cruel punishments clause reveals that its independent application is appropriate here. | 39 |
| C. Related case law from other states demonstrates the propriety of independent state constitutional limits on death penalty regimes. | 41 |
| D. Policy considerations demonstrate that a state constitutional ruling is essential to determine the validity of the death penalty as applied..... | 43 |
| III. This Court Should Exercise Its King’s Bench Jurisdiction To Consider The Constitutionality Of The Administration Of The Death Penalty In Pennsylvania..... | 46 |
| A. King’s Bench jurisdiction is appropriate to address systemic challenges to the administration of justice such as this. | 46 |
| B. King’s Bench jurisdiction is appropriate in cases that require timely intervention such as this. | 48 |
| C. King’s Bench jurisdiction is appropriate because no additional fact-finding is necessary. | 49 |
| CONCLUSION..... | 51 |

TABLE OF AUTHORITIES

| | Page(s) |
|--|------------|
| Federal Cases | |
| <i>Atkins v. Virginia</i> , 536 U.S. 304 (2002) | 21, 30 |
| <i>Buck v. Davis</i> , 137 S. Ct. 759 (2017)..... | 35 |
| <i>Caldwell v. Mississippi</i> , 472 U.S. 320 (1985) | 28 |
| <i>Furman v. Georgia</i> , 408 U.S. 238 (1972) | passim |
| <i>Graham v. Collins</i> , 506 U.S. 461 (1993) | 29 |
| <i>Gregg v. Georgia</i> , 428 U.S. 153 (1976) | 44, 45 |
| <i>Jurek v. Texas</i> , 428 U.S. 262 (1976) | 45 |
| <i>Lockett v. Ohio</i> , 438 U.S. 586 (1978) | 2 |
| <i>Montgomery v. Louisiana</i> , 136 S. Ct. 718 (2016)..... | 38 |
| <i>Roper v. Simmons</i> , 543 U.S. 551 (2005) | 21, 22, 30 |
| <i>Rummel v. Estelle</i> , 445 U.S. 263 (1980) | 44 |
| <i>San Antonio Indep. Sch. Dist. v. Rodriguez</i> , 411 U.S. 1 (1973) | 44 |
| <i>Proffitt v. Florida</i> , 428 U.S. 242 (1976) | 45 |
| <i>Trop v. Dulles</i> , 356 U.S. 86 (1958) | 43 |
| <i>Wiggins v. Smith</i> , 539 U.S. 510 (2003) | 31 |
| <i>Williams v. Taylor</i> , 529 U.S. 362 (2000) | 31 |
| <i>Woodson v. North Carolina</i> , 428 U.S. 280 (1976) | 2, 27 |

State Cases

Commonwealth v. Baker,
78 A.3d 1044 (Pa. 2013)..... 39, 40

Commonwealth v. Baker,
511 A.2d 777 (Pa. 1986).....28

Commonwealth v. Batts,
163 A.3d 410 (Pa. 2017)..... 22, 37

Commonwealth v. Bradley,
295 A.2d 842 (Pa. 1972).....28

Commonwealth v. Carsia,
517 A.2d 956 (Pa. 1986).....50

Commonwealth v. Crispell,
193 A.3d 919 (Pa. 2018).....31

Commonwealth v. Cunningham,
81 A.3d 1 (Pa. 2013)..... 38, 39

Commonwealth v. Edmunds,
586 A.2d 887 (Pa. 1991)..... passim

Commonwealth v. Eisenberg,
98 A.3d 1268 (Pa. 2014).....39

Commonwealth v. Fahy,
CP-51-CR-0222831-1981.....10

Commonwealth v. Galloway,
574 A.2d 1045 (Pa. 1990).....50

Commonwealth v. Green,
151 A.2d 241 (Pa. 1959).....40

Commonwealth v. Heidnik,
CP-51-CR-0437091-1987.....3, 10

Commonwealth v. Irelan,
17 A.2d 897 (Pa. 1941).....40

Commonwealth v. King,
57 A.3d 607 (Pa. 2012)..... 30, 32

Commonwealth v. Lee,
206 A.3d 1 (Pa. Super. 2019) (en banc)22

Commonwealth v. Lewis,
598 A.2d 975 (Pa. 1991).....36

Commonwealth v. Martin,
5 A.3d 177 (Pa. 2010).....31

Commonwealth v. McGarrell,
77 E.M. 2011 (Pa. 2011) 17, 18, 19, 46

| | |
|--|--------------|
| <i>Commonwealth v. McKenna</i> , 383 A.2d 174 (Pa. 1978)..... | 27 |
| <i>Commonwealth v. Molina</i> , 104 A.3d 430 (Pa. 2014)..... | 36, 45 |
| <i>Commonwealth v. Moody</i> , 382 A.2d 442 (Pa. 1977)..... | 40 |
| <i>Commonwealth v. Murray</i> , 83 A.3d 137 (Pa. 2013)..... | 27 |
| <i>Commonwealth v. Onda</i> , 103 A.2d 90 (Pa. 1954)..... | 48 |
| <i>Commonwealth v. Porter</i> , CP-51-CR-0622491 | 10 |
| <i>Commonwealth v. Pursell</i> , 495 A.2d 183 (Pa. 1985)..... | 28, 29 |
| <i>Commonwealth v. Williams</i> , 129 A.3d 1199 (Pa. 2015)..... | 9, 46, 48 |
| <i>Commonwealth v. Zettlemyer</i> , 454 A.2d 937 (Pa. 1982)..... | 2, 6, 29, 40 |
| <i>District Attorney for Suffolk District v. Watson</i> , 411 N.E.2d 1274 (Mass. 1980)..... | 42 |
| <i>In re Bruno</i> , 101 A.3d 635 (Pa. 2014)..... | 9, 46, 47 |
| <i>In re J.V.R.</i> , 81 MM 2008 (Pa. Feb. 11, 2009) | 46 |
| <i>People v. LaValle</i> , 817 N.E.2d 341 (N.Y. 2004) | 41 |
| <i>Philadelphia Cmty. Bail Fund v. Bernard, et al.</i> , 21 EM 2019 (Pa. July 8, 2019)..... | 46 |
| <i>Rauf v. State</i> , 145 A.3d 430 (Del. 2016)..... | 41 |
| <i>Shoul v. Pa. Dep’t of Transp.</i> , 173 A.3d 669 (Pa. 2017)..... | 39 |
| <i>State v. Cline</i> , 397 A.2d 1309 (R.I. 1979)..... | 41 |
| <i>State v. Gregory</i> , 427 P.3d 621 (Wash. 2018)..... | 42, 43 |
| <i>State v. Santiago</i> , 122 A.3d 1 (Conn. 2015)..... | 43 |
| <i>Zauflik v. Pennsbury Sch. Dist.</i> , 104 A.3d 1096 (Pa. 2014)..... | 49 |

Statutes and Constitutional Provisions

42 Pa.C.S. § 502.....9
42 Pa.C.S. § 726.....48
42 Pa.C.S. § 9711.....29
Act of July 9, 1976, P.L. 586, No. 14241
Pa. Const. Art. I, § 13..... passim
Pa. Const. Art. V § 29
Pa. Const. Art. V § 10.....47
U.S. Const. amend. VIII.....38

Other Authorities

FBI, Uniform Crime Reporting, 2017 Crime in the United States, Table 4,
https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/additional-data-collections/federal-crime-data/table-4/at_download/file20

Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Judicial System (March 2003).48

Philadelphia’s Poor, Pew Charitable Trusts Report (Nov. 2017),
https://www.pewtrusts.org/-/media/assets/2017/11/pri_philadelphias_poor.pdf23

U.S. Census Bureau, QuickFacts Philadelphia County, Pennsylvania,
<https://www.census.gov/quickfacts/philadelphiacountypennsylvania#qf-head-note-a> 22, 35

STATEMENT OF THE QUESTIONS INVOLVED

I. Does the death penalty, as it has been applied in Pennsylvania, violate the state Constitution's ban on cruel punishments?

II. Does Article I, Section 13 of the Pennsylvania Constitution prohibit the imposition of the death penalty independently of the Eighth Amendment of the Federal Constitution?

III. Should this Court exercise its King's Bench jurisdiction to consider whether the death penalty, as applied, violates the Pennsylvania Constitution's ban on cruel punishments?

INTRODUCTION

When the United States Supreme Court approved the reinstatement of capital punishment in 1976, it did so with the cautionary recognition that, because “death is qualitatively different from a sentence of imprisonment, however long[,] . . . there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.” *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). Since that initial proclamation, the Court has consistently recognized that the “qualitative difference between death and other penalties calls for a greater degree of reliability when the death sentence is imposed.” *Lockett v. Ohio*, 438 U.S. 586, 604 (1978).

In 1978, in the wake of *Furman v. Georgia*, 408 U.S. 238 (1972), Pennsylvania enacted a new capital punishment statute. Four years later, this Court upheld that statute, determining that the legislation “diligently attempted” to prevent the “wanton and freakish, arbitrary and capricious” imposition of the death penalty. *Commonwealth v. Zettlemyer*, 454 A.2d 937, 949-51 (Pa. 1982). Significantly, when this Court decided *Zettlemyer*, Pennsylvania had limited experience with the new law.

Now, based upon the nearly forty years of ensuing capital litigation, this Court is well equipped to judge whether Pennsylvania’s death penalty, as it has been applied, violates the state Constitution’s ban on cruel punishments.

To assess whether Pennsylvania’s capital sentencing regime ensures the heightened reliability in capital cases required by our Constitution, there is no better place to start than Philadelphia—the jurisdiction that has sought and secured more death sentences than any other county in the state. In order to formulate its position in this case, the Philadelphia District Attorney’s Office (DAO) studied the 155 cases where a Philadelphia defendant received a death sentence between 1978 and December 31, 2017.¹

As will be detailed below, the DAO study revealed troubling information regarding the validity of the trials and the quality of representation received by capitally charged Philadelphia defendants—particularly those indigent defendants who were represented by under-compensated, inadequately-supported court-appointed trial counsel (as distinguished from attorneys with the Defender Association of Philadelphia). Our study also revealed equally troubling data regarding the race of the Philadelphia defendants currently on death row; nearly all of them are black. Most of these individuals were also represented by court-

¹ The DAO did not include three types of Philadelphia capital cases: (1) cases where the capital aspect was resolved *after* the current District Attorney assumed office on January 2, 2018; (2) a small number of cases where the capitally sentenced Philadelphia defendant died of natural causes before the resolution of his appeals; and (3) *Commonwealth v. Gary Heidnik*, CP-51-CR-0437091-1987, the only Philadelphia defendant who has been executed since 1978, after he filed no post-conviction appeals and volunteered for execution.

appointed counsel, often by one of the very attorneys whom a reviewing court has deemed ineffective in at least one other capital case.

In summary (as detailed *infra* in the statement of the case and accompanying appendix), the DAO study revealed the following:

- **Philadelphia Death Cases Overturned on Post-Conviction Review**

1. **72%** of the 155 Philadelphia death sentences (**112 out of 155**) were overturned at some stage of post-conviction review.
2. **66%** of the 112 overturned death sentences (**74 out of 112**) were overturned due to the ineffective assistance of trial counsel. (This brief will refer to such cases as “IAC cases”).
3. In **78%** of the 74 IAC cases (**58 out of 74**), the Philadelphia defendant was represented by court-appointed counsel—i.e., an attorney selected by the court to represent an indigent defendant.
4. In **51%** of the 74 IAC cases (**38 out of 74**), the reviewing court specifically based its ineffectiveness determination on trial counsel’s failure to prepare and present a constitutionally acceptable mitigation presentation.
5. In **82%** of the 38 IAC cases that were overturned because trial counsel failed to prepare and present mitigation (**31 out of 38**), the defendant was represented by court-appointed counsel.

- **The Outcome of Cases Overturned on Post-Conviction Review**

1. In **91%** of the 112 overturned Philadelphia death sentences (**102 out of 112**), the defendant ultimately received a final, non-capital disposition.
2. In **64%** of the of the 102 overturned death sentences where the defendant received a final, non-capital sentence (**65 out of 102**), the Commonwealth ultimately agreed to a final, non-capital disposition. (None of these agreements occurred during the administration of the current Philadelphia District Attorney.)

3. For the 112 defendants whose death sentences were overturned, the average length of time between arrest and the resolution of the capital aspect of their cases was **17 years**.
4. During those 17 years of litigation, nearly all of the professional participants—judges, prosecutors, and defense attorneys—were funded by tax dollars.

- **Philadelphia Defendants Who Remain on Death Row**

1. **45** Philadelphia defendants remain on death row.
2. **91%** of the Philadelphia defendants currently on death row (**41 out of 45**) are members of racial minority groups.
3. **82%** of the Philadelphia defendants currently on death row (**37 out of 45**) are black. Less than 45% of Philadelphia’s population is black.
4. **80%** of the Philadelphia defendants currently on death row (**36 out of 45**) were represented by court-appointed trial counsel—i.e., an attorney selected by the criminal justice system to represent an indigent defendant.
5. **62%** of the currently death-sentenced Philadelphia defendants (**28 out of 45**) were represented by an attorney whom a reviewing court found to be ineffective in at least one other Philadelphia capital case.

The DAO believes that these facts call into question the constitutionality of the death penalty as it has been applied in the county where it has been most actively employed. To be clear: the problem is not with the statute, but rather with its application. Despite the General Assembly’s efforts to craft a statute that comports with constitutional standards, a 72% reversal rate shows that death sentences have been applied “in a wanton and freakish, arbitrary and capricious manner.”

Zettlemyer, 454 A.2d at 949 (citing *Furman*, 408 U.S. at 310). This violates the state Constitution’s ban against cruel punishments.²

Where nearly three out of every four death sentences have been overturned—after years of litigation at significant taxpayer expense—there can be no confidence that capital punishment has been carefully reserved for the most culpable defendants, as our Constitution requires. Where a majority of death sentenced defendants have been represented by poorly compensated, poorly supported court-appointed attorneys, there is a significant likelihood that capital punishment has not been reserved for the “worst of the worst.” Rather, what our study shows is that, as applied, Pennsylvania’s capital punishment regime may very well reserve death sentences for those who receive the “worst” (i.e., the most poorly funded and inadequately supported) representation. Indeed, of the 155 Philadelphia death sentences studied here, **152 (98%)** were imposed during a period when court-appointed counsel received a flat fee described as “woefully inadequate” by a

² The DAO’s position in this litigation does not affect this DAO Administration’s policy for the review of death and death-eligible cases. The DAO’s policy is for a committee of highly experienced supervisory personnel to carefully review the facts and law with regard to death and death-eligible cases, and then to make a recommendation to the District Attorney whether to seek or continue to seek the death penalty in each particular case. The District Attorney, in turn, exercises the full and sole prosecutorial discretion afforded to him by law whether to seek the death penalty based on a careful, case-by-case review of each case.

Special Master this Court appointed to report on Philadelphia's capital case fee structure.

Our criminal justice system does not work by process of elimination. We do not over-convict and trust that justice will be done through the appeals process. Instead, at least in theory, our system strives for the opposite—it provides robust protections to criminal defendants throughout the pre-trial and trial stages and then gives deference to the outcomes obtained at trial. Hallmarks of the system include deference to the trial judge, to jury verdicts, to defense attorney strategy, and to prosecutorial discretion. For that deference to be appropriate, the trial process must be reliable. A 72% error rate is not.

Moreover, our system depends on the finality of judgments. Both the retributive and deterrent functions of the criminal justice system fail without that finality—with repeated negative impact on victims, their families, and society at large. In Pennsylvania, the protracted post-conviction process consumes incalculable public resources, resulting in a substantial number of non-death sentences (i.e., exactly where the cases would have been at the beginning, if they had never been capital) and leaving the existing sentences—all of which remain in some stage of active post-conviction review—under a cloud of unreliability. This runs contrary to the core missions of the DAO—to resolve criminal cases swiftly

and reliably, to increase public safety, and to protect victims from re-traumatization during the ensuing decades of post-conviction proceedings.

As this Court observed in *Zettlemyer*, our 1978 statute attempted to establish a reliable, non-arbitrary system of capital punishment. Decades of data from Philadelphia demonstrates that, in its application, the system has operated in such a way that it cannot survive our Constitution's ban on cruel punishment. Accordingly, the DAO respectfully requests this Court to exercise its King's Bench or extraordinary jurisdiction and hold that the death penalty, as it has been applied, violates the Pennsylvania Constitution.

STATEMENT OF JURISDICTION

This Court may exercise King’s Bench jurisdiction “to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King’s Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722.” 42 Pa.C.S. § 502; *see* Pa. Const. Art. V, § 2. “King’s Bench authority is generally invoked to review an issue of public importance that requires timely intervention by the court of last resort to avoid the deleterious effects arising from delays incident to the ordinary process of law.” *Commonwealth v. Williams*, 129 A.3d 1199, 1206 (Pa. 2015) (citing *In re Bruno*, 101 A.3d 635, 670 (Pa. 2014)). As will be more thoroughly discussed in Argument, Section III below, this is such an issue.

STATEMENT OF THE CASE: THE DAO STUDY

To determine how the death penalty has been applied, the DAO studied the 155 death sentences that were imposed in Philadelphia between 1978 and December 31, 2017. A small group of Philadelphia capital cases has been excluded from this survey: (1) cases where the capital aspect was resolved after the current District Attorney assumed office on January 2, 2018; (2) a small number of cases where the capital sentenced Philadelphia defendant died of natural causes before the resolution of his appeals; and (3) *Commonwealth v. Gary Heidnik*, CP-51-CR-0437091-1987, the only Philadelphia defendant who filed no post-conviction appeals and was executed.

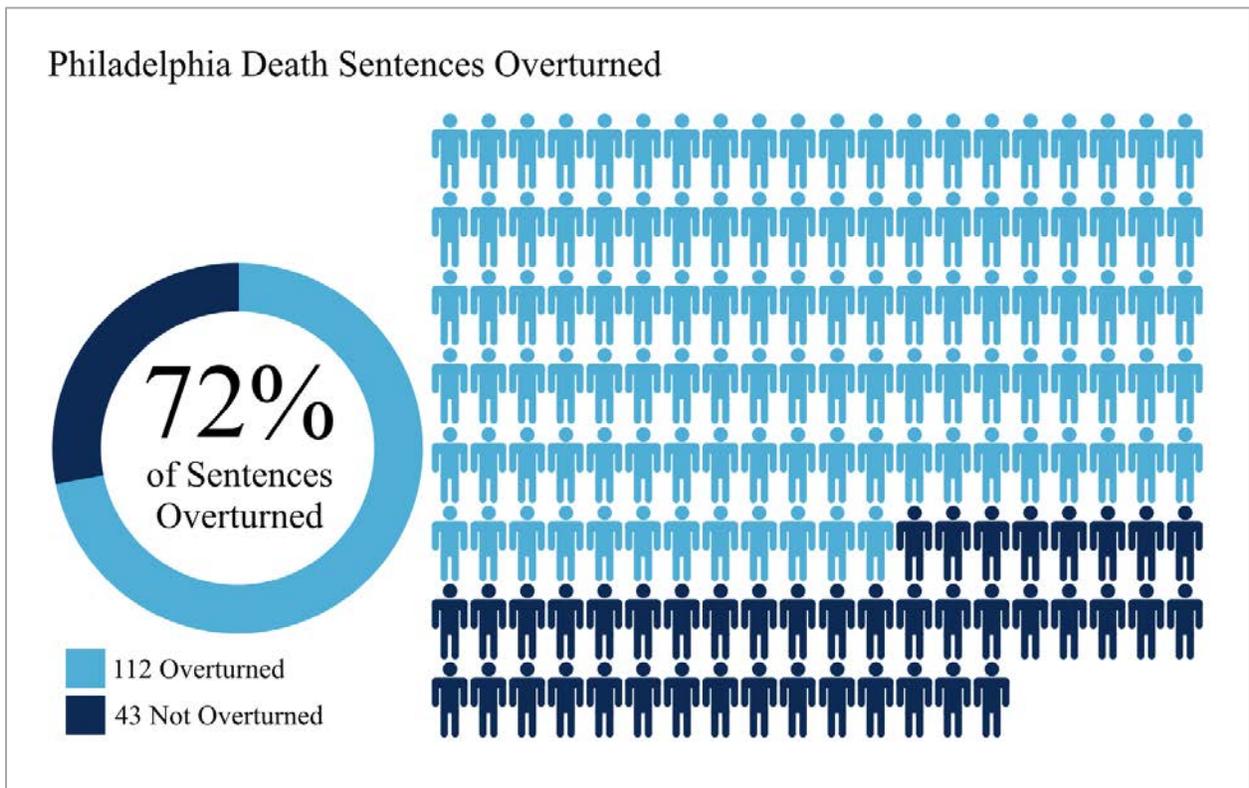
We divide our analysis of these 155 capital cases into two sections. Section I evaluates **112** cases (i.e., **72%** of the total) where a reviewing court overturned a Philadelphia defendant's death sentence prior to December 31, 2017. Section II addresses the **45** Philadelphia defendants who remain sentenced to execution.³ We then provide an overview of the history of funding for court-appointed counsel in

³ Although there are 112 overturned cases and 45 Philadelphia defendants housed on death row, the DAO Study analyzes a total of 155 cases, rather than 157. This is because in two Philadelphia cases, the defendant remains on death row even though a federal district court has ordered penalty phase relief. *Commonwealth v. Fahy*, CP-51-CR-0222831-1981 (Third Circuit Court of Appeals holding case in abeyance; cross-appeals pending); *Commonwealth v. Porter*, CP-51-CR-0622491-1985 (cross-appeals pending before Third Circuit Court of Appeals).

capital cases (Section III), as well as a brief discussion of other considerations affecting capital sentences (Section IV).

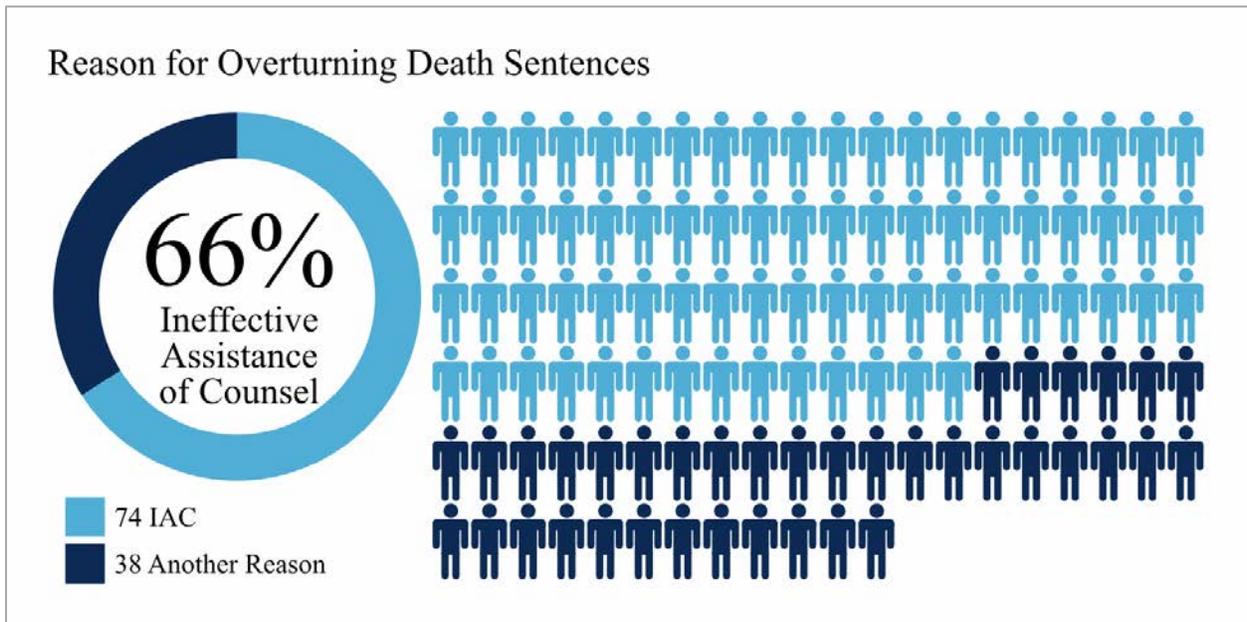
I. Death Sentences Overturned During Post-Conviction Review

During post-conviction proceedings, a reviewing court has overturned **112** (72%) of the 155 Philadelphia death sentences.



A. Death sentences overturned due to ineffective assistance of counsel

A reviewing court overturned **74** of the 112 overturned Philadelphia death sentences due to ineffective assistance of counsel (IAC). Put another way, **66%** (two out of every three) of the 112 overturned death sentences resulted from ineffective assistance.

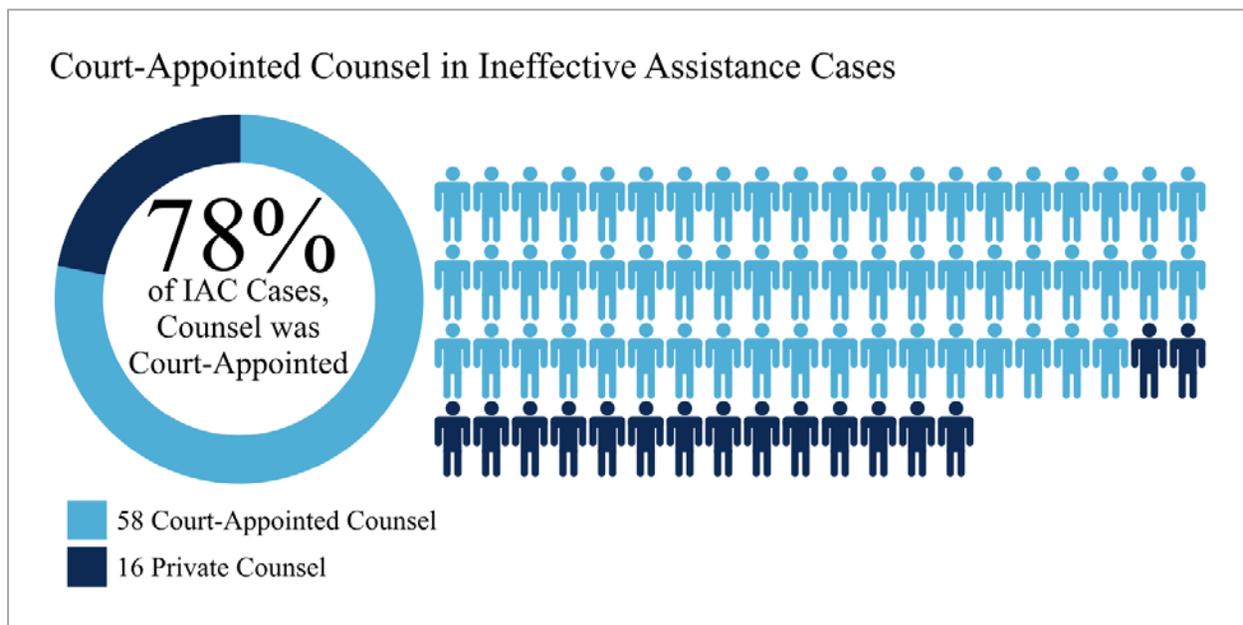


Accordingly, nearly half (**48%**) (74 out of 155) of the Philadelphia death sentences have been overturned as a result of ineffective assistance.⁴

⁴ Part I(A)(1) of the DAO Appendix lists the 74 cases where a reviewing court overturned a Philadelphia death sentence due to ineffective assistance of counsel (IAC). For each IAC case, Part I, Section A identifies:

- a. The nature of the ineffectiveness claim;
- b. The relief granted (new trial or new sentencing hearing);
- c. Whether the case ultimately had a non-capital outcome;

Court-appointed counsel represented the defendant in **58** of the 74 cases where a capital sentenced Philadelphia defendant received post-conviction relief due to ineffective assistance.⁵ In other words, in **78%** (three out of every four) of the IAC cases, the ineffective lawyer was an attorney selected by the court for an indigent defendant.⁶



- d. The duration of litigation from the date of arrest to non-capital resolution; and
- e. Whether court-appointed counsel represented the defendant at the trial stage.

⁵ Part I, Section A, Subsection 2 of the DAO Appendix lists the 58 IAC cases where a Philadelphia defendant had court-appointed counsel.

⁶ We note that attorneys from the Defender Association of Philadelphia did not represent any of the defendants in these 58 IAC cases. Prior to 1992, the Philadelphia Court of Common Pleas did not appoint Defender Association attorneys to capital cases. After that time, one out of every five capital charged

In **38** of the 74 IAC cases (**51%**), the sentence was overturned due to trial counsel's failure to prepare and present available mitigation evidence at the penalty phase.⁷ The defendant had court-appointed counsel in **31 (82%)** of these 38 cases.

B. Death sentences overturned on other grounds

In the **38** other of the 112 overturned cases, a reviewing court overturned a Philadelphia death sentence on grounds *other* than the ineffective assistance of counsel. These cases were overturned on the following grounds: (a) trial court error (*Total 16*); (b) prosecutorial misconduct (*Total 10*); (c) changes in the law (*Total 8*); (d) actual innocence (*Total 1*); and (e) reasons not specified in the available Docket Entries (*Total 3*).⁸

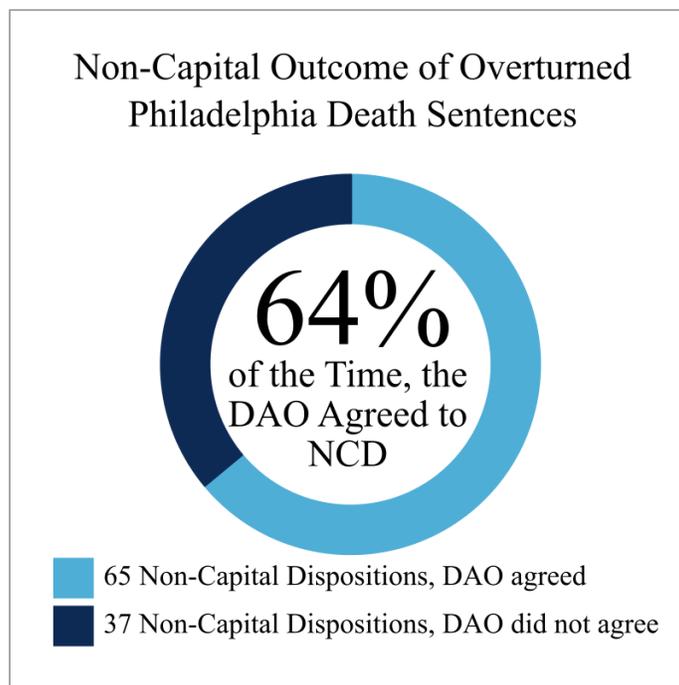
Philadelphia defendants receives representation from the Defender Association. None of the Defender Association defendants has received a death sentence.

⁷ Part I, Section A, Subsection 3 of the DAO Appendix lists the 38 IAC cases that were overturned due to trial counsel's failure to prepare and present available mitigation evidence.

⁸ Part I, Section B of the DAO Appendix, lists the 38 cases where a reviewing court overturned a Philadelphia death sentence on other grounds.

C. Non-capital outcome of overturned death sentences

After remand and subsequent proceedings, **none** of the 112 overturned Philadelphia death cases resulted in the execution of the defendant. To the contrary, **102 (91%)** of the 112 overturned cases ultimately resulted in a final, non-capital disposition.⁹ In **65** of these 102 cases (**64%**) the DAO **agreed** to a non-capital disposition, even though the DAO had the option of retrying the guilt and/or penalty phase of the defendant’s trial. (Again, none of the cases in the DAO study occurred under the current DAO administration.)¹⁰



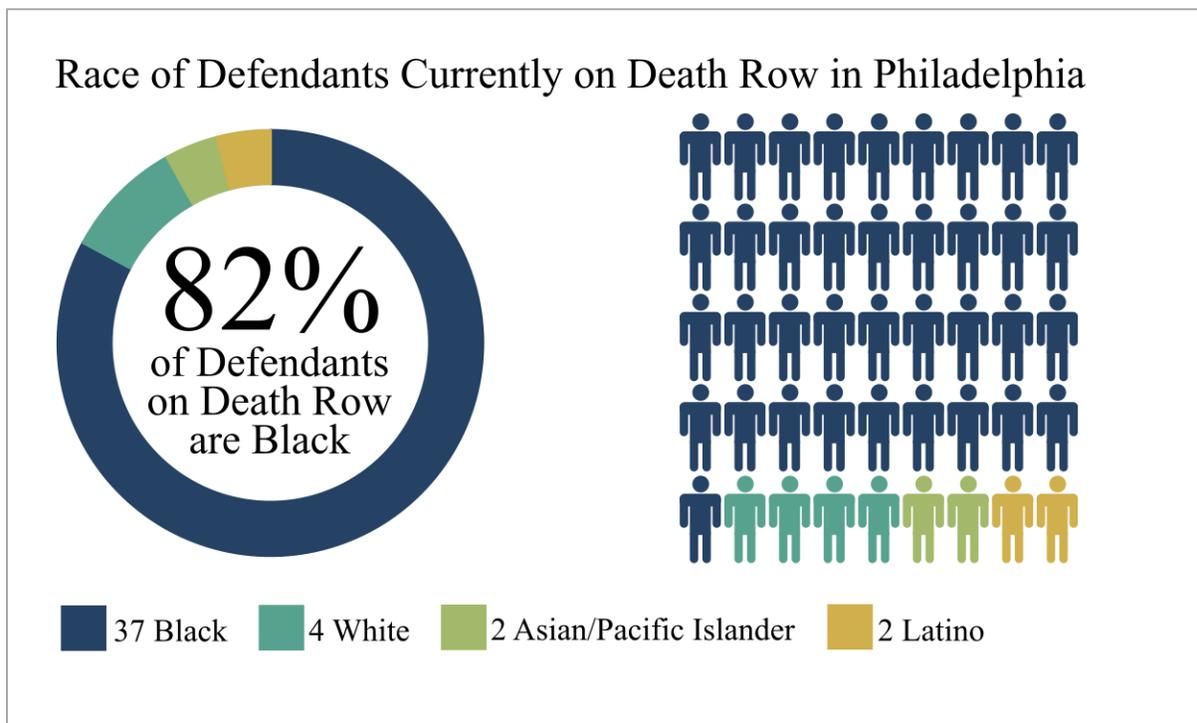
⁹ Part I, Section C of the DAO Appendix lists the 102 formerly capital cases that ultimately resulted in a non-capital disposition.

¹⁰ Part I, Section D of the DAO Appendix lists the 65 formerly capital cases where the Commonwealth ultimately agreed to a non-capital disposition.

The average length of time between arrest and the ultimate non-capital disposition was **17 years**.¹¹

II. Cases Where a Philadelphia Defendant Remains Sentenced To Death

There are currently 45 Philadelphia defendants on death row. **91% (41 out of 45)** of these defendants are members of a racial minority group. **37 (82%)** are black.¹²



¹¹ Part I, Section E of the DAO Appendix lists the length of time, for each of the formerly capital cases, between the time of arrest and the time of non-capital resolution.

¹² Part II, Section A of the DAO Appendix lists the race of the Philadelphia defendants who remain on death row. The Department of Corrections website lists the race of each defendant on death row under “Persons Sentenced to Execution in Pennsylvania as of November 1, 2018.”

36 (80%) of the 45 Philadelphia defendants currently on death row were represented by court-appointed trial counsel. **28 (62%)** of these defendants were represented by an attorney whom a reviewing court found to be ineffective in at least one other Philadelphia capital case.¹³

29 (78%) of the 37 black defendants currently sentenced to death were represented by court-appointed counsel.

III. History of Funding and Training in Philadelphia for Court-Appointed Counsel in Capital Cases

Between 1980 and 2012—the period during which 152 of the 155 Philadelphia capital convictions examined here occurred—the compensation for court-appointed counsel in Philadelphia was “woefully inadequate” and “unacceptably increase[d] the risk of ineffective assistance of counsel.” Report and Recommendations, *Commonwealth v. McGarrell*, 77 E.M. 2011, 2012 Pa. LEXIS 2854, at *2-*3, *17 (C.P. Phila. Cnty. Feb. 21, 2012) (“Lerner Report”).

In 2011, this Court appointed Judge Benjamin Lerner to study the issue of compensation for court-appointed counsel in Philadelphia capital cases. As his

¹³ Part II, Section B of the DAO Appendix lists the Philadelphia defendants on death row who were represented by court-appointed counsel. Part II, Section C lists the Philadelphia defendants currently on death row who were represented by a court-appointed attorney who was found to be ineffective in at least one other Philadelphia capital case.

subsequent report explained, during the period between 1980 and 2012, the Philadelphia Court of Common Pleas paid court-appointed attorneys \$1800 to prepare a capital case, and a per diem trial rate of \$400. *Id.* at *17. The pretrial compensation was a flat fee, which remained constant no matter how many—or how few—hours an attorney expended in preparation. *Id.* In other words, if counsel diligently researched mitigation and spent hours interviewing the defendant’s family, acquiring social history records, and consulting with experts, counsel received the same payment as an attorney who did nothing to prepare for the penalty phase. (As noted above, in **38 (51%)** of the 74 IAC cases, the subsequent ineffectiveness determination was specifically based upon trial counsel’s failure to prepare a constitutionally acceptable mitigation presentation. Court-appointed counsel represented the capital charged defendant in **31 (82%)** of the 38 IAC cases that were overturned because trial counsel failed to prepare and present constitutionally adequate mitigation.)

As Judge Lerner explained, Philadelphia’s “woefully inadequate” system for compensating capital defense counsel was “completely inconsistent with how competent trial lawyers work.” *Id.* In fact, the system actually “punishe[d]” counsel for properly handling death penalty cases. *Id.* at *27. Specifically, the Philadelphia compensation system provided a financial incentive for an attorney to engage in minimal pretrial preparation and encouraged the attorney to take the case to trial,

even though for most capitally charged defendants the best outcome is often a non-trial resolution. *Id.* at *17-*18, *27. In fact, if a capital case resulted in a negotiated guilty plea and life sentence, the court-appointed attorney would not only *not* receive any compensation beyond the original flat fee payment, but even that payment would be reduced by a third. *Id.* at *17.

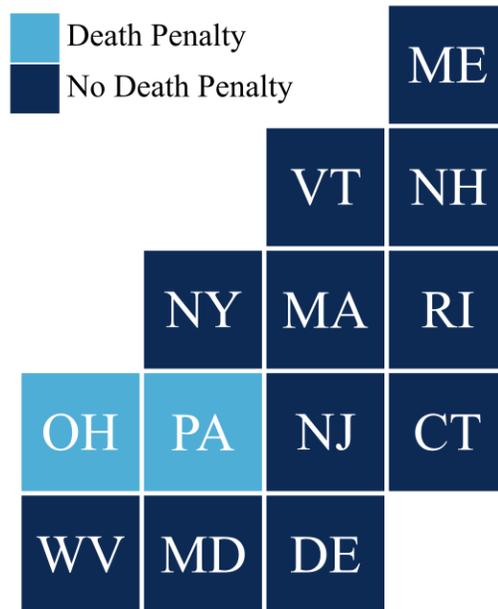
IV. Other Considerations Affecting Capital Sentences

Our study revealed other factors that enhance the risk of unreliability in the administration of capital punishment. These factors include changes in the law that affect eligibility for death sentences and the racial makeup of the Philadelphia defendants who are currently sentenced to death.

A. Our neighboring states

As a threshold matter, we note that simple geography demonstrates that there is no compelling penological justification for the death penalty. Of Pennsylvania's immediate neighbors, only one of them, Ohio, maintains the death penalty. All the northeastern states and all of the other states that border Pennsylvania prohibit the death penalty.

The Death Penalty in 13 States in Northeastern United States



Pennsylvania and Ohio stand alone among the 13 northeastern or Pennsylvania-contiguous states in still allowing the imposition of the death penalty.

Yet no one can seriously contend that, in any measurable way, Pennsylvania does a better job combatting crime and providing justice than most of its regional neighbors. *See, e.g.*, FBI, Uniform Crime Reporting, 2017 Crime in the United States, Table 4, https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/additional-data-collections/federal-crime-data/table-4/at_download/file (last visited June 17, 2019) (showing that in 2017, the last year for which statistics are

available, Pennsylvania had a higher homicide rate than eleven of its twelve regional neighbors, all but one of which do not have the death penalty).

B. Changes in the law affecting death sentences

Since 1978, the United States Supreme Court has determined that two classes of individuals—juveniles and the intellectually disabled—may not be executed. *Roper v. Simmons*, 543 U.S. 551 (2005); *Atkins v. Virginia*, 536 U.S. 304 (2002). Those newly recognized constitutional limits on capital punishment apply retroactively.

Several defendants have received the benefit of those retroactive changes because, fortuitously, their cases remained in post-conviction review when the United States Supreme Court recognized the new constitutional prohibition on capital punishment.¹⁴ But for those unrelated delays, several juvenile defendants and intellectually disabled defendants might have been executed before the high court determined that they were constitutionally ineligible for the death penalty. *See Furman*, 408 U.S. at 290 (Brennan, J., concurring) (“[W]e know that death has been the lot of men whose convictions were unconstitutionally secured in view of later, retroactively applied, holdings of this Court.”).

¹⁴ Six Philadelphia intellectually disabled defendants received penalty phase relief under *Atkins v. Virginia*, 536 U.S. 304 (2002). Two Philadelphia juvenile defendants received penalty phase relief under *Roper v. Simmons*, 543 U.S. 551 (2005). (DAO Appendix, Part I, Section B).

Future changes in the law might well further limit the class of individuals who are eligible for execution. For example, based upon the scientific studies relied upon in *Roper* and *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017), some have argued that defendants who were 18 or 19 years old at the time of their offenses are constitutionally ineligible. Indeed, in light of newly available research, our Superior Court has “urged” this Court to review the eligibility of adult teenagers for a mandatory life sentence. *See Commonwealth v. Lee*, 206 A.3d 1, 11 n.11 (Pa. Super. 2019) (en banc).

C. Racial makeup of Philadelphia defendants on death row

Less than 45% of Philadelphia’s population is black.¹⁵ 82% of the Philadelphians on death row are black. Of the remaining eight, half are from other minority groups. (DAO Appendix II, Section A).

In a system as complex as ours, isolating the exact reasons for this disparity may be impossible. At a minimum, we know that the vast majority of Philadelphia’s death row defendants were indigent and were assigned court-appointed counsel, including many of the same counsel deemed ineffective in other capital cases. (DAO Appendix, Part II, Section A). We also know that racial minorities make up the

¹⁵ U.S. Census Bureau, QuickFacts Philadelphia County, Pennsylvania, <https://www.census.gov/quickfacts/philadelphiacountypennsylvania#qf-headnote-a> (last visited June 17, 2019).

greatest share of Philadelphia's poor.¹⁶ Thus, at least one contributing factor may be that minorities have disproportionately depended on court-appointed counsel, who have, in turn, historically provided ineffective assistance at alarming rates in Philadelphia capital cases.

¹⁶ *Philadelphia's Poor*, Pew Charitable Trusts Report (Nov. 2017), https://www.pewtrusts.org/-/media/assets/2017/11/pri_philadelphias_poor.pdf (last visited June 17, 2019).

SUMMARY OF ARGUMENT

Today, this Court possesses decades of experience with modern-day capital punishment. The DAO study undertaken in connection with this litigation shows how Pennsylvania’s capital punishment system has been applied in Philadelphia—the county that has produced the most death sentences. That study reveals that the majority (72%) of Philadelphia death sentences have been overturned, most commonly because under-funded, inadequately supported court-appointed counsel failed to prepare a constitutionally acceptable mitigation presentation. Most of those overturned cases have resulted in final, non-capital dispositions, often with the agreement of the same prosecutor’s office that originally sought death. This results in a system that lacks reliability. Because of the arbitrary manner in which it has been applied, the death penalty violates our state Constitution’s prohibition against cruel punishments.

In addition, the vast majority of the Philadelphians who remain sentenced to execution are indigent members of racial minority groups, represented by “woefully” under-funded court-appointed trial counsel—many of whom have been found ineffective in at least one other capital case. Given the acknowledged inadequacy of the support and compensation historically provided to these court-appointed attorneys, it is difficult to ignore the connection between indigence, the quality of representation, and the racial composition of Philadelphia’s death row.

Moreover, all of the currently sentenced Philadelphia defendants' cases remain in active, post-conviction litigation, calling into question whether they, too, will someday join the ranks of overturned death sentences.

In this brief, we first show how, as it has been applied, the death penalty violates the Pennsylvania Constitution's prohibition against cruel punishments. More specifically, we establish that (1) the Pennsylvania Constitution prohibits the unreliable and arbitrary imposition of the death penalty, and (2) the DAO study supports the conclusion that the death penalty has been imposed in an unreliable and arbitrary manner.

We then discuss how Pennsylvania's Constitution functions to prohibit the imposition of the death penalty independently of the United States Constitution. The United States Supreme Court has encouraged independent state constitutional analysis, and this Court has increasingly voiced a desire to define the contours of Pennsylvania's cruel punishments clause. Under the factors set forth in *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991), compelling reasons exist for the Court to render an independent state constitutional ruling here.

Finally, we demonstrate why this Court should exercise its King's Bench jurisdiction to consider the constitutionality of Pennsylvania's capital punishment system as administered. The structural problems with the death penalty are matters of great public importance that require timely intervention by this Court to avoid the

delays that would occur through the ordinary process of law. These problems implicate the health of the entire capital system. They are not well-suited to resolution on a case-by-case basis. Because of its supervisory power over Pennsylvania's judicial system, this Court is uniquely situated to address these issues.

ARGUMENT

I. As It Has Been Applied, The Death Penalty Violates The Pennsylvania Constitution’s Prohibition Against Cruel Punishments.

Because of the unreliable manner in which it has been applied over many decades in Philadelphia, the DAO believes that the death penalty violates our state Constitution’s prohibition against cruel punishment. As described in the preceding Statement of the Case, the DAO reviewed the 155 Philadelphia capital sentences imposed between 1980 and 2017. 112 of them have been overturned. A 72% error rate—often dependent on who represented the defendant—can fairly be described in one word: *unreliable*. As such, it is unconstitutional.

A. The Pennsylvania Constitution prohibits the unreliable and arbitrary imposition of the death penalty.

As this Court has observed, the administration of capital punishment warrants “the closest scrutiny.” *See Commonwealth v. Murray*, 83 A.3d 137, 163 (Pa. 2013); *see also Commonwealth v. McKenna*, 383 A.2d 174, 181 (Pa. 1978) (“[I]t is imperative that the standards by which [a sentence of death] is fixed be constitutionally beyond reproach.”). This is because the death penalty is unlike any other punishment or even any other action that a government can undertake with respect to an individual. *McKenna*, 383 A.2d at 181. Because death is final and irrevocable, a heightened degree of reliability is required. *See Woodson*, 428 U.S. at 305 (because of “its finality . . . there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment”);

Caldwell v. Mississippi, 472 U.S. 320, 340 (1985) (underlining the “heightened need for reliability” in capital sentencing); *Commonwealth v. Baker*, 511 A.2d 777, 788 (Pa. 1986) (same).

In 1972, the United States Supreme Court held that the death penalty, as it was then applied, violated the constitutional ban on “cruel and unusual punishments.” *Furman*, 408 U.S. at 239-40.¹⁷ Because each of the five justices voting to strike down the death penalty wrote for himself, there was no majority opinion. Nevertheless, all five agreed that the death penalty was unconstitutional because it was applied in an unreliable and arbitrary manner. *Id.* at 256, 274, 309-310, 313, 364.

As this Court subsequently recognized in *Commonwealth v. Bradley*, 295 A.2d 842, 845 (Pa. 1972), Pennsylvania’s former capital sentencing statute did not pass the *Furman* test. This Court has also emphasized that “[a]ny challenge” to the capital sentencing scheme in Pennsylvania “must be evaluated in light of the requirements of *Furman*.” *Commonwealth v. Pursell*, 495 A.2d 183, 196 (Pa. 1985). This means that “[t]otal arbitrariness and capriciousness” must be “eliminated” in

¹⁷ Federal standards are relevant to the state constitutional analysis. First, Eighth Amendment jurisprudence provides the minimum level of protection applicable to Article I § 13 of the Pennsylvania Constitution. *See Edmunds*, 586 A.2d at 894. Second, in determining the scope of Pennsylvania’s cruel punishments clause, “an examination of related federal precedent may be useful . . . not as binding authority, but as one form of guidance.” *Id.* at 895.

capital sentencing. *Id.*; accord *Graham v. Collins*, 506 U.S. 461, 468 (1993) (“[A]s *Furman* itself emphasized,” states must “ensure that death sentences are not meted out ‘wantonly’ or ‘freakishly.’”).

In 1978, in the wake of *Furman*, Pennsylvania enacted a capital sentencing scheme designed to address the constitutional infirmities identified by the Court in *Furman*. To do so, our new statute identified specific factors that would permit a death sentence. The legislation also mandated automatic review of death sentences by an appellate court to ensure that they had not been handed out in an arbitrary fashion. 42 Pa.C.S. § 9711.

In *Commonwealth v. Zettlemyer*, 454 A.2d 937, 969 (Pa. 1982), this Court determined that Pennsylvania’s new capital-sentencing scheme fulfilled these constitutional requirements. There, this Court concluded that the legislature had “diligently attempted” to design a capital sentencing system that complied with federal and state constitutional requirements. *Id.* at 951. Based on the text of the statute, it appeared that the legislature had succeeded in establishing such a system. *Id.* at 949-51.

That conclusion was not unreasonable in 1982, when our courts had only four years of experience with the new statute. On the available information, there was no reason to believe that, in actual practice, the new capital sentencing scheme would produce unreliable and arbitrary results and so be unconstitutional.

Over forty years have passed since the enactment of Pennsylvania's current capital punishment scheme. We now possess decades of experience with modern-day capital punishment, particularly as it has been applied in the county that has produced the most death sentences. *See Commonwealth v. King*, 57 A.3d 607, 636 (Pa. 2012) (Saylor, C.J., specially concurring) (observing that Philadelphia has “far and away [been] the largest contributor to Pennsylvania’s death row”). Based upon that experience, it is clear that Pennsylvania’s capital punishment regime, as it has been applied in Philadelphia, is fatally flawed.

B. The DAO study supports the conclusion that the death penalty is applied in an unreliable and arbitrary manner.

In considering whether Pennsylvania’s capital punishment system ensures reliability and eliminates arbitrariness, it is helpful to consider what a reliable, non-arbitrary sentencing scheme would look like. Such a system, at the very least, would be one in which a person who was convicted of first-degree murder would be sentenced to death solely because he or she was “the worst of the worst.” *See Roper*, 543 U.S. at 568 (“Capital punishment must be limited to those offenders who commit ‘a narrow category of the most serious crimes’ and whose extreme culpability makes them ‘the most deserving of execution.’”); *Atkins*, 536 U.S. at 319 (the Supreme Court’s death penalty jurisprudence “seeks to ensure that only the most deserving of execution are put to death”).

In particular, such a system would ensure that individuals charged with a capital crime received competent representation, especially in the most critical stage of preparation and presentation of penalty-phase mitigation evidence. *See, e.g., Wiggins v. Smith*, 539 U.S. 510, 524 (2003) (counsel cannot satisfy this obligation by relying upon “only rudimentary knowledge of [the defendant’s] history from a narrow set of sources”); *Williams v. Taylor*, 529 U.S. 362, 396 (2000) (counsel have an obligation to investigate thoroughly and prepare mental health and other mitigation evidence); *Commonwealth v. Crispell*, 193 A.3d 919, 951 (Pa. 2018) (“Trial counsel is obliged to obtain as much information as possible to prepare an accurate history of the client.”); *Commonwealth v. Martin*, 5 A.3d 177, 206 (Pa. 2010) (same).

In such a system, an individual would be sentenced to death only after receiving a penalty hearing free of any significant error and only after a jury determined that the prosecution had proven beyond a reasonable doubt that there was at least one aggravating circumstance and that the aggravating circumstance(s) outweighed any mitigating ones. Counsel for indigent defendants would not be paid an inadequate flat fee, but would be compensated and supported in a way that incentivized doing a thorough job—both by conducting a detailed mitigation investigation and by adequately preparing the case with the client. It would additionally be a system in which this Court and its federal counterparts—the

ultimate guarantors of our constitutional rights—would not find themselves obligated to overturn the majority of the sentences imposed.

An arbitrary and unreliable capital sentencing scheme would, in many ways, be the complete opposite. For example, it would be one in which the persons who were sentenced to death did not receive that penalty because they were “the worst of the worst.” Instead, whether one defendant received the death penalty and another did not would most often depend on whether that defendant received representation from a highly trained, adequately funded attorney or from a poorly supported court-appointed attorney compensated by an inadequate fixed fee, which, in fact, disincentivized the attorney from fully preparing and presenting critical mitigation evidence.

An arbitrary system might also be one where death sentence after death sentence would be overturned by reviewing courts due to ineffective assistance of counsel and, in particular, due to the failure to present mitigation evidence. *See King*, 57 A.3d at 636 (Saylor, C.J., concurring specially) (expressing inability “to agree with the suggestion that the presumption of effectiveness by and large reflects the actual state of capital defense representation in Pennsylvania”). It might be one in which scores of individuals who were originally sentenced to die would not only have their death sentences overturned, but would ultimately obtain a non-capital

disposition—often with the agreement of the very prosecutor who originally sought the capital sentence.

It might be a system in which the governor (the elected official responsible for signing and executing death warrants) would have such grave concerns about its fairness that he would impose a years-long moratorium. And it might be a system where the vast majority of the condemned were indigent members of a racial minority group, who were represented by “woefully” under-funded court-appointed attorneys.

As the DAO study demonstrates, Philadelphia’s capital cases exemplify the above-described features of an arbitrary, unreliable death penalty system, including in the following ways:

1. The quality of court-appointed representation

The quality of representation—and in particular the quality of representation for indigent defendants—claims first notice. Reviewing courts have overturned nearly half of the 155 Philadelphia death sentences due to ineffective assistance of counsel. (DAO Appendix, Part I, Section A, Subsection One). Disturbingly, in half of these IAC cases, defense counsel was ineffective specifically because counsel failed to prepare and present a constitutionally acceptable mitigation defense. (DAO Appendix, Part I, Section A, Subsection Three). Court-appointed counsel represented the defendant in three out of four of these 74 IAC cases. (DAO

Appendix, Part I, Section A, Subsection Two). In most of these cases, the court-appointed attorney received an inadequate flat fee, which discouraged mitigation preparation and encouraged trials, even in situations where the chances for acquittal were minimal. Indeed, in 152 of the 155 capital sentences studied here (i.e., 98%), the defendant received a death sentence before the 2012 changes in Philadelphia's court-appointment fee structure. (DAO Appendix, Part III).

2. The non-capital resolution of the majority of cases

Equally characteristic of an unreliable and arbitrary system is the ultimate, non-capital outcome of most of the cases where a Philadelphia defendant received the death penalty. After reversal, the vast majority of these cases resulted in a non-capital disposition. (DAO Appendix, Part I, Section C). Often this non-capital disposition occurred with the agreement of the Commonwealth. (DAO Appendix, Part I, Section D). On average, these cases took 17 years to become non-capital, i.e., to end up where they would have been if the Commonwealth had never filed a death notice in the first place. (DAO Appendix, Part I, Section E). Most of those years were consumed in protracted, expensive, taxpayer-funded, post-conviction litigation.

3. The race of Philadelphia defendants currently on death row

No discussion of the death penalty can be complete without addressing the manner in which capital punishment disproportionately affects minorities and

particularly black people. In Philadelphia, less than 45% of the population is black.¹⁸ Nevertheless, 37 of the 45 Philadelphia defendants on death row (82%) are black. Of the remaining eight, half are from other minority groups. (DAO Appendix, Part II, Section A).

Thus, 91% of the Philadelphia defendants currently on death row are members of a racial minority. Of these, 80% were indigent individuals represented by attorneys selected by the court. In 62% of these cases, the court selected an attorney who was found ineffective in at least one other capital case. Given the “woeful inadequacy” of the support and compensation historically provided to these court-appointed attorneys, it becomes difficult to deny the connection between indigence, the quality of representation, and the racial composition of Philadelphia’s death row. *See Furman*, 408 U.S. at 364 (Marshall, J., concurring) (“[A] look at the bare statistics regarding executions is enough to betray much of the discrimination.”). With respect to the application of the death penalty in Philadelphia, the “bare statistics” are equally troubling.

As the United States Supreme Court recently explained, “[d]iscrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.” *Buck v. Davis*, 137 S. Ct. 759, 778 (2017). This is particularly true

¹⁸ U.S. Census Bureau, QuickFacts Philadelphia County, Pennsylvania, <https://www.census.gov/quickfacts/philadelphiacountypennsylvania#qf-headnote-a> (last visited June 17, 2019).

when it comes to the death penalty. Even the appearance of discrimination in such cases is intolerable because, to many citizens, the state's very legitimacy is called into question when it appears to single out one group more than any other for the imposition of this severest of all penalties. Given our nation's well-documented history of racial discrimination, any system that results in the state executing its black citizens at a rate well beyond that of any other group is one that should draw the highest scrutiny from this Court.

II. Article I, Section 13 Of The Pennsylvania Constitution Independently Prohibits The Imposition Of The Death Penalty.

Compelling reasons support a determination that Pennsylvania's cruel punishments clause, independently of the Eighth Amendment, prohibits the Commonwealth's capital sentencing regime, as it has been applied. "The United States Supreme Court has repeatedly affirmed that the states are not only free to, but also encouraged to engage in independent analysis in drawing meaning from their own state constitutions." *Edmunds*, 586 A.2d at 894. In addition, "decisions based on Pennsylvania's Declaration of Rights [of which the cruel punishments clause is a part] 'ensure[] future consistency in state constitutional interpretation, since federal law is always subject to change.'" *Commonwealth v. Molina*, 104 A.3d 430, 484 (Pa. 2014) (quoting *Commonwealth v. Lewis*, 598 A.2d 975, 979 n.8 (Pa. 1991)).

Moreover, this is not a case in which extending protections under the state Constitution would potentially hamper law enforcement by restricting the methods

used to conduct criminal investigations and requiring police officers to master distinctions between competing sets of state and federal procedural requirements. Rather, the death penalty is imposed long after the underlying investigation is concluded. Further, there is no concern as to whether the state constitutional claim at issue here has been properly preserved for review because it goes to the legality of sentence, and, as such, is not subject to waiver. *E.g.*, *Commonwealth v. Batts*, 163 A.3d 410, 441 (Pa. 2017). Therefore, key considerations that might weigh against conducting an independent state constitutional analysis in other contexts are not implicated here.

To determine the individual rights that Pennsylvania’s Constitution protects, courts consider the four factors set forth in *Edmunds*:

1. text of the Pennsylvania constitutional provision;
2. history of the provision, including Pennsylvania case law;
3. related case-law from other states;
4. policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence.

Edmunds, 586 A.2d at 895. As already noted, in some instances, “an examination of related federal precedent may be useful as part of the state constitutional analysis, not as binding authority, but as one form of guidance.” *Id.*

Here, each of the four *Edmunds* factors weighs in favor of holding that, as it has been applied, capital punishment violates the Pennsylvania Constitution.

A. Textual differences between Article I Section 13 and the Eighth Amendment demonstrate that the state provision has independent force.

Pennsylvania’s Constitution provides, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.” Pa. Const. Art. 1 § 13. The Eighth Amendment provides, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. The difference in language was not coincidental.

The “cruel and unusual” language was proposed (but not yet adopted) for the federal Constitution *before* Pennsylvania’s “cruel punishments” provision was enacted. Aware of the prior proposal to guarantee that neither “cruel nor unusual punishments [be] inflicted,” Pennsylvania’s constitutional framers chose to prohibit the less restrictive category of “cruel punishments.” *See generally*, Brief of the Pennsylvania Prison Society and Legal Scholars as Amici Curiae. This supports the conclusion that Pennsylvania’s provision has independent force and meaning. *See Commonwealth v. Cunningham*, 81 A.3d 1, 15 (Pa. 2013) (Castille, C.J., concurring) (noting textual differences between Article I § 13 and the Eighth Amendment), *overruled on other grounds*, *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).

B. The history of the cruel punishments clause reveals that its independent application is appropriate here.

This Court has recognized that differences between the Eighth Amendment and Article I § 13 exist, and has increasingly sought to define the contours of our state’s cruel punishments clause. *See, e.g., Shoul v. Pa. Dep’t of Transp.*, 173 A.3d 669, 682 n.13 (Pa. 2017) (noting distinctions between the Eighth Amendment and Article I § 13); *Commonwealth v. Eisenberg*, 98 A.3d 1268, 1283 (Pa. 2014) (stating that Article I § 13 and the Eighth Amendment should not proceed in lockstep); *Commonwealth v. Baker*, 78 A.3d 1044, 1053 (Pa. 2013) (Castille, C.J., concurring, joined by Saylor and Todd, JJ.) (same); *Cunningham*, 81 A.3d at 15, 17-18, 22 n.5 (Castille, C.J., concurring, and Baer, J., dissenting, joined by Todd and McCaffery, JJ.) (four justices express a willingness to consider argument based on the Pennsylvania Constitution’s cruel punishments clause, but declining to do so because no party advanced the state constitutional argument in *Cunningham*).

Moreover, where separate state constitutional grounds for relief are presented, this Court conducts an independent state constitutional analysis. *Baker*, 78 A.3d at 1054-55 (Castille, C.J., concurring, joined by Saylor and Todd, JJ.) (noting instances both before and after *Edmunds* in which the Court conducted an independent state constitutional analysis under Article I § 13). Indeed, even if this Court determines that the federal and state provisions engender the same standard, independent analysis under the Pennsylvania Constitution is required: “two independent

jurisdictions, applying the same standard, easily could devise separate principles in application.” *Id.* Thus, a state constitutional analysis is appropriate here.

The Court has never decided whether Article I Section 13 is coextensive with the Eighth Amendment in the context of an as-applied challenge to the death penalty. In contrast to the defendant in *Zettlemyer*, Cox does not assert that the death penalty is *per se* unconstitutional. *See Zettlemyer*, 454 A.2d at 967. Rather, Cox’s petition raises only an as-applied challenge to the constitutionality of the death penalty.

In addition to Pennsylvania’s historical stance on punishment generally, this Court has historically anticipated federal law in death penalty cases. Long before the United States Supreme Court decided *Furman* or the General Assembly enacted our current death penalty statute, this Court held that the imposition of the death penalty *requires* consideration of the defendant’s individual personal characteristics, such as his youth, mental capacity, home environment, economic circumstances, and scholastic record. *Commonwealth v. Green*, 151 A.2d 241, 247-48 (Pa. 1959); *Commonwealth v. Irelan*, 17 A.2d 897, 898 (Pa. 1941). And, after *Furman*, this Court struck down the General Assembly’s first attempt at a revised death penalty statute because, though no United States Supreme Court case had addressed an identical statute, the prior statute unduly restricted the mitigating evidence the jury could consider. *Commonwealth v. Moody*, 382 A.2d 442, 449 (Pa. 1977),

superseded by revised death penalty statute, Act of July 9, 1976, P.L. 586, No. 142, effective June 27, 1978. This history supports independent consideration here.

C. Related case law from other states demonstrates the propriety of independent state constitutional limits on death penalty regimes.

Twenty-one states and the District of Columbia have abolished the death penalty, and four more currently have death penalty moratoria in place. Of Pennsylvania’s immediate neighbors, New York, New Jersey, Delaware, Maryland, and West Virginia prohibit the death penalty. All of the other northeastern states—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut—do the same. Of the states that have abolished the death penalty, three state supreme courts (Massachusetts, Washington, and Connecticut) have held that the death penalty violates their state constitutions for reasons instructive here.¹⁹

The Massachusetts Supreme Judicial Court held that it was “inevitable that the death penalty will be applied arbitrarily,” and that “experience has shown that

¹⁹ Other state supreme courts have invalidated their state death penalty schemes on other grounds. *Rauf v. State*, 145 A.3d 430 (Del. 2016) (death penalty statute violated Sixth Amendment by allowing sentencing judge, rather than jury, to find an aggravating factor); *People v. LaValle*, 817 N.E.2d 341 (N.Y. 2004) (death penalty statute violated state constitution because it impermissibly required judges to instruct juries that if they deadlocked on whether to impose death, defendant would be eligible for parole within 20 to 25 years); *State v. Cline*, 397 A.2d 1309 (R.I. 1979) (death penalty statute that made death mandatory for murder committed by inmate violated Eighth Amendment because it did not allow for consideration of mitigating factors).

the death penalty will fall discriminatorily upon minorities, particularly blacks.” *District Attorney for Suffolk District v. Watson*, 411 N.E.2d 1274, 1283 (Mass. 1980). Notably, although Massachusetts’ constitution prohibits “cruel *or* unusual punishments,” the court based its ruling on the cruel punishment prohibition. *Id.* at 1281.

The court held that “arbitrariness in sentencing will continue even under the discipline of a post-*Furman* statute like the one” it was considering. *Id.* at 1284. The court reasoned that the federal constitutional requirements constrain only “certain aspects of jury discretion.” *Id.* at 1285. They “do not address the discretionary powers exercised at other points in the criminal justice process. Power to decide rests not only in juries but in police officers, prosecutors, defense counsel, and trial judges.” *Id.* Because it determined that the death penalty was inevitably applied arbitrarily, the Massachusetts Supreme Judicial Court held the death penalty to be unconstitutional under its state constitution.

Washington also recently held that its state constitution barred the death penalty as applied. *State v. Gregory*, 427 P.3d 621, 633 (Wash. 2018). Like Pennsylvania’s, Washington’s constitution prohibits “cruel” punishments. Based on a statistical study showing that the death penalty was applied significantly more frequently to black defendants than non-black defendants, the court held that Washington’s death penalty was administered in an arbitrary, capricious, and

racially biased manner. *Id.* at 635. Therefore, the court held that it did not comply with the ““evolving standards of decency that mark the progress of a maturing society.”” *Id.* (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

In Connecticut, the state supreme court reviewed existing death penalties after the legislature abolished future death penalties. *State v. Santiago*, 122 A.3d 1, 9 (Conn. 2015). Connecticut’s constitution contains no explicit cruel and unusual punishments clause, but the court recognized as “settled constitutional doctrine that both of [Connecticut’s] due process clauses prohibit governmental infliction of cruel and unusual punishments.” *Id.* at 14. The court held, “following its prospective [legislative] abolition, this state’s death penalty no longer comports with contemporary standards of decency and no longer serves any legitimate penological purpose.” *Id.* at 10.

These state court decisions support this Court considering whether Pennsylvania’s death penalty, as applied, comports with the Article I Section 13’s cruel punishments clause and determining that it does not.

D. Policy considerations demonstrate that a state constitutional ruling is essential to determine the validity of the death penalty as applied.

An independent state constitutional ruling is the only way to protect against the arbitrary and unreliable application of the death penalty in Pennsylvania. This is in part because the United States Supreme Court’s Eighth Amendment

jurisprudence has been constrained by federalism concerns. *Rummel v. Estelle*, 445 U.S. 263, 282 (1980) (declining to invalidate on Eighth Amendment grounds Texas’ sentencing scheme imposing a life sentence for three minor theft offenses due to federalism concerns); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 44 (1973) (“Questions of federalism are always inherent in the process of determining whether a state’s laws are to be accorded the traditional presumption of constitutionality, or are to be subjected instead to rigorous judicial scrutiny.”).

As the Court explained in *Rummel*, even the harshest sentencing statute in the country might not violate the Eighth Amendment, because “our Constitution ‘is made for people of fundamentally differing views.’ . . . Absent a constitutionally imposed uniformity inimical to traditional notions of federalism, some State will always bear the distinction of treating particular offenders more severely than any other State.” *Rummel*, 445 U.S. at 282. Federalism concerns also formed part of the basis for the Court’s holding in *Gregg v. Georgia*, 428 U.S. 153, 186-87 (1976), that the Eighth Amendment does not categorically prohibit the death penalty. Thus, Eighth Amendment law has evolved to provide the lowest base level of protection, and to permit wide discretion among the states to determine the appropriateness of punishment within that minimal limit.

This Court, in interpreting Pennsylvania’s own Constitution, is not saddled with this federalism constraint. Indeed, as discussed above, the opposite is true—

the trend is towards increased state constitutional analysis (the “New Federalism”) to protect individual rights. *Edmunds*, 586 A.2d at 894-95; *Molina*, 104 A.3d at 484.

Such independent state constitutional protection is essential here, where the federal constitutional landscape has developed in such a way as to set the lowest bar on the harshest and only irreversible penalty, and so to tolerate the unreliability and arbitrariness produced by Pennsylvania’s capital system. Indeed, in the recent aftermath of *Furman*, the United States Supreme Court reviewed several revised statutory schemes similar to Pennsylvania’s and held them to be constitutional under the Eighth Amendment. *Gregg v. Georgia*, 428 U.S. at 206-07; *Proffitt v. Florida*, 428 U.S. 242, 259-60 (1976); *Jurek v. Texas*, 428 U.S. 262, 276 (1976).

As detailed above, the DAO study of Philadelphia capital cases reveals that the majority of death sentences imposed between 1978 and 2017 have been overturned. Those stark numbers show that the integrity of the system as a whole has been compromised for decades. The Philadelphia death sentences that remain were imposed under that same system, even with many of the same counsel previously deemed ineffective. All of those cases are still in active post-conviction review. Review here would allow the Court to determine whether our state Constitution can tolerate a system that exposes people to the harshest penalty available where years’ worth of data has shown that penalty to be unreliably and arbitrarily applied.

III. This Court Should Exercise Its King’s Bench Jurisdiction To Consider The Constitutionality Of The Administration Of The Death Penalty In Pennsylvania.

“King’s Bench authority is generally invoked to review an issue of public importance that requires timely intervention by the court of last resort to avoid the deleterious effects arising from delays incident to the ordinary process of law.” *Williams*, 129 A.3d at 1206 (citing *In re Bruno*, 101 A.3d at 670). This is such a case.

A. King’s Bench jurisdiction is appropriate to address systemic challenges to the administration of justice such as this.

Where problems implicating the judicial system beyond a single case or controversy have arisen in the past, this Court has exercised its King’s Bench power to rectify those systemic challenges. Two such challenges in fact have involved problems with the death penalty. *See Williams*, 129 A.3d at 1206-07 (exercising King’s Bench jurisdiction to review death penalty moratorium where petition raised “a forceful challenge to the integrity of the judicial process”); *Commonwealth v. McGarrell*, 77 E.M. 2011 (Lerner Report) (exercising extraordinary jurisdiction to consider challenge to Philadelphia’s system for compensating capital indigent defense counsel); *see also Philadelphia Cmty. Bail Fund v. Bernard, et al.*, 21 EM 2019 (Pa. July 8, 2019) (exercising King’s Bench jurisdiction to review alleged systemic failures in administering cash bail in Philadelphia); *In re J.V.R.*, 81 MM 2008 (Pa. Feb. 11, 2009) (per curiam) (exercising King’s Bench jurisdiction over the

“kids for cash” scandal); *In re Bruno*, 101 A.3d at 673-75 (listing cases in which the Court exercised King’s Bench jurisdiction to “conscientiously guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system”).

This case likewise challenges the “dignity, integrity, and authority of the judicial system.” A review of the administration of Pennsylvania’s death penalty system as a whole is peculiarly within the province of this Court, given this Court’s supervisory role over the judicial system. Pa. Const. Art. V § 10(a) (“The Supreme Court shall exercise general supervisory and administrative authority over all the courts.”); *id.* § 10(c) (“The Supreme Court shall have the power to . . . provide for . . . the administration of all courts and supervision of all officers of the Judicial Branch[.]”). “As part of its administrative responsibility, the Court oversees the daily operations of the entire Unified Judicial System, which provides a broad perspective on how the various parts of the system operate together to ensure access to justice, justice in fact, and the appearance that justice is being administered even-handedly.” *In re Bruno*, 101 A.3d at 664. “In short, King’s Bench allows the Supreme Court to exercise authority commensurate with its ‘ultimate responsibility’ for the proper administration and supervision of the judicial system.” *Id.* at 671.

The problems identified by the DAO study of the 155 Philadelphia death penalty cases raise important questions regarding many facets of the judicial system,

including the availability of and funding for quality defense representation, and racial bias within the system. Such potential structural flaws could not be apparent through the review of individual PCRA and appellate cases—indeed, such piecemeal review by definition would miss the forest for the trees. This Court, as the ultimate supervisor of the system, is best positioned to address this broad challenge to the administration of justice in the Commonwealth. *Cf. Commonwealth v. Onda*, 103 A.2d 90, 92 (Pa. 1954) (the exercise of King’s Bench jurisdiction is especially appropriate where it provides the only adequate remedy).²⁰

B. King’s Bench jurisdiction is appropriate in cases that require timely intervention such as this.

King’s Bench jurisdiction is appropriate for the additional reason that the petition requires “timely intervention . . . to avoid the deleterious effects arising from delays incident to the ordinary process of law.” *Williams*, 129 A.3d at 1206. The questions presented here have compromised our capital punishment system for too long. Even as early as 2003, this Court’s Committee on Racial and Gender Bias concluded that there were “strong indicators that Pennsylvania’s capital justice

²⁰ Alternatively, the Court could exercise its extraordinary jurisdiction under 42 Pa.C.S. § 726. Petitioners note that they, along with several other death row inmates, have filed PCRA petitions raising these claims in the lower courts. *See* Petitioner’s Brief at 5 n.3. However, the essence of this action is a broad challenge to the system as a whole. Therefore, King’s Bench jurisdiction is likely the more appropriate vehicle to address this challenge. *See Williams*, 129 A.3d at 1207 n.11.

system does not operate in an evenhanded manner.” *Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Judicial System* 201 (March 2003).

This Court’s review is urgent for the additional reason that the unreliability of Pennsylvania’s capital punishment system, and the years (even decades) of appellate and post-conviction proceedings it produces, exact a harsh toll on victims’ families. As *amici curiae* Murder Victims Family Members explain, given the high reversal rate of Pennsylvania’s death sentences, “in almost all cases, [the death penalty] is a hollow promise of a resolution that will never come.” Brief of Murder Victims, at 22.

C. King’s Bench jurisdiction is appropriate because no additional fact-finding is necessary.

Additional fact-finding in the lower courts is unnecessary for this Court to decide this case. The results of the DAO study of the 155 Philadelphia death sentences imposed between 1978 and 2017 are verifiable matters of public record. The facts in the Joint State Government Commission (JSCG) Report illustrating these same phenomena statewide are likewise verifiable in public court records. This Court has previously relied upon bipartisan, bicameral reports generated by the JSGC—the research agency of the General Assembly, “for the development of facts and recommendations.” *See, e.g., Zauflik v. Pennsbury Sch. Dist.*, 104 A.3d 1096, 1121 (Pa. 2014) (noting that Pennsylvania’s Tort Claims Act was passed after JSGC

Task Force conducted detailed study and issued report and recommendations); *Commonwealth v. Galloway*, 574 A.2d 1045, 1048 & n.1 (Pa. 1990) (looking to JSGC Task Force final report on Office of the Attorney General to determine breadth of Commonwealth Attorneys Act); *Commonwealth v. Carsia*, 517 A.2d 956, 958 (Pa. 1986) (same).

Remand to the PCRA court at this point would only waste judicial resources and indefinitely delay the resolution of this matter. Therefore, the DAO respectfully requests that the Court exercise its King's Bench jurisdiction over this matter.

CONCLUSION

Because the death penalty has repeatedly been handed out in an unreliable and arbitrary manner, it cannot survive the state Constitution's ban on cruel punishments. The DAO respectfully requests this Court to exercise its King's Bench or extraordinary jurisdiction and hold that the death penalty, as it has been applied, violates the Pennsylvania Constitution's ban on cruel punishments.²¹

Dated: July 15, 2019

Respectfully submitted,

/s/ Lawrence S. Krasner

JOANNA H. KUNZ

Assistant District Attorney

GRADY GERVINO

Assistant District Attorney

MICHAEL ERLICH

Assistant District Attorney

PAUL M. GEORGE

Assistant Supervisor, Law Division

NANCY WINKELMAN

Supervisor, Law Division

LAWRENCE S. KRASNER

District Attorney of Philadelphia²²

²¹ The DAO gratefully acknowledges the substantial contributions of our colleagues, Diane Adamchak, Michael Hollander, Wes Weaver, and Henry Woods in the preparation of this Brief, its graphics, and the Appendix.

²² First Assistant District Attorney Carolyn Temin was a member of the Advisory Committee to the June 2018 Joint State Government Commission Report on Capital Punishment in Pennsylvania. In accordance with the DAO's Conflict Resolution Protocol, First Assistant Temin has been screened from all participation in this matter.

CERTIFICATION OF COMPLIANCE WITH RULE 2135

Pursuant to Rule 2135 of the Pennsylvania Rules of Appellate Procedure, I certify that, based on a word count by the word processing system used to prepare it, Respondent's brief contains less than 14,000 words, exclusive of the cover of the brief and the pages containing the table of contents, tables of citations, proof of service, and any addendum.

/s/ Paul M. George _____
Paul M. George
Assistant Supervisor, Law Division

CERTIFICATION OF SERVICE

I, Paul M. George, hereby certify that on this 15th day of July, 2019, I filed the foregoing *Respondent's Brief* through the Court's PACFile electronic filing system and thereby served the following:

Shawn Nolan
Timothy Kane
Stuart Lev
Helen Marino
Federal Community Defender Office
Suite 545 West, The Curtis Center
601 Walnut St.
Philadelphia, PA 19106-3314
(215) 928-0520
shawn_nolan@fd.org
timothy_kate@fd.org
stuart_lev@fd.org
Counsel for Petitioner, Jermont Cox

Joshua D. Shapiro
Ronald Eisenberg
Hugh J. Burns, Jr.
Amy Zapp
Office of the Pennsylvania Attorney General
Strawberry Sq. Fl. 15
Harrisburg, PA 19120
(717) 705-3833
josh@attorneygeneral.gov
azapp@attorneygeneral.gov
Counsel for the Respondent, Commonwealth of Pennsylvania

Mary Catherine Roper
Nyssa E. Taylor
American Civil Liberties Foundation of Pennsylvania
P.O. Box 60173
Philadelphia, PA 19102
(215) 592-1513
mroper@aclupa.org
ntaylor@aclupa.org
Counsel for ACLU of Pennsylvania, Amicus Curiae

Witold J. Walczak
American Civil Liberties Union of Pennsylvania
247 Fort Pitt Boulevard
Pittsburgh, PA 15222
(412) 901-0290
vwalczak@aclupa.org
Counsel for ACLU of Pennsylvania, Amicus Curiae

Marc Bookman
Atlantic Center for Capital Representation
1315 Walnut St. Suite 1331
Philadelphia, PA 19107
(215) 732-2227
mbookman@atlanticcenter.org
Counsel for Atlantic Center for Capital Representation, Amicus Curiae

Brian T. Feeney
Greenberg Traurig, LLP
2700 Two Commerce Square
2001 Market St.
Philadelphia, PA 19103
(215) 988-7812
feeneyb@gtlaw.com
Counsel for The Innocence Network and Witness to Innocence, Amici Curiae

Farbod Faraji
Jessica L. Hunter
Lawrence S. Lustberg
Gibbons P.C.
One Gateway Center
Newark, NJ 07102
(973) 596-4500
jhunter@gibbonslaw.com
Counsel for Justices, Judges, and Prosecutors, Amici Curiae

Marsha L. Levick
Juvenile Law Center
1315 Walnut St. Suite 400
Philadelphia, PA 19107-4719
(215) 625-0551
mlevick@jlc.org
Counsel for Juvenile Law Center and Youth Sentencing and Reentry Project, Amici Curiae

David Richman
Pepper Hamilton, LLP
3000 Two Logan Sq.
Philadelphia, PA 19103-2799
(215) 981-4412
richmand@pepperlaw.com
Counsel for NAACP Legal Defense & Educational Fund, Inc., Amicus Curiae

Quintes D. Taglioli
Markowitz & Richman
121 N. Cedar Crest Blvd. Fl.2
Allentown, PA 18104
(610) 820-9531
qdtaglioli@markowitzandrichman.com
Counsel for Pennsylvania Lodge Fraternal Order of Police, Amicus Curiae

Jennifer Allison Merrigan
Phillips Black, Inc.
1901 S. 9th St. 510
Philadelphia, PA 19148
(816) 695-2214

j.merrigan@phillipsblack.org

Counsel for The Pennsylvania Prison Society and Legal Scholars, Amici Curiae

Jules Epstein
Temple University Beasley School of Law
1719 N. Broad Street
Philadelphia, PA 19122
(215) 204-6288

Counsel for Social Scientists and Researchers Catherine M. Grosso, Jules Epstein, et al., Amici Curiae

I further certify that I served the following via First Class Mail:

Anna Arceneaux
Cassandra Stubbs
ACLU Capital Punishment Project
201 W. Main Street
Durham, NC 27701
(919) 682-5659

aarceneaux@aclu.org

cstubbs@aclu.org

Counsel for ACLU Capital Punishment Project, Amicus Curiae

Keith Hammeran
Caroline Heller
Greenberg Traurig, LLP
MetLife Building
200 Park Ave.
New York, NY 10166
(212) 801-2165

Counsel for The Innocence Network and Witness to Innocence, Amici Curiae

Elliot H. Scherker
Greenberg Traurig, P.A.
333 Southeast Second Ave.
Miami, FL 33131
(305) 579-0500
Counsel for The Innocence Network and Witness to Innocence, Amici Curiae

Justin Anderson
Ayelet Evrony
Carter Greenbaum
Mary Spooner
Paul, Weiss, Rifkind, Wharton & Garrison, L.L.P.
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3916
Counsel for Murder Victims' Family Members, Amici Curiae

John R. Mills
Phillips Black, Inc.
836 Harrison St.
San Francisco, CA 94107
Counsel for the Pennsylvania Prison Society and Legal Scholars, Amici Curiae

David Rudovsky
Kairys, Rudovsky, Messing, Feinberg & Lin, LLP
718 Arch St. Suite 501
Philadelphia, PA 19106-1530
(215) 925-4400
davidrudovsky@krlawphila.com
Counsel for The Pennsylvania Prison Society and Legal Scholars, Amici Curiae

Catherine M. Grosso
Michigan State University College of Law
648 N. Shaw Lane #417
East Lansing, MI 48824
(517) 432-6962

*Counsel for Social Scientists and Researchers Catherine M. Grosso, Jules Epstein,
et al.*

Date: July 15, 2019

/s/ Paul M. George
Paul M. George
Assistant Supervisor, Law Division

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

No. 102 EM 2018

JERMONT COX,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

APPENDIX TO THE BRIEF FOR RESPONDENT

JOANNA H. KUNZ

Assistant District Attorney

GRADY GERVINO

Assistant District Attorney

MICHAEL ERLICH

Assistant District Attorney

PAUL M. GEORGE

Assistant Supervisor, Law Division

NANCY WINKELMAN

Supervisor, Law Division

LAWRENCE S. KRASNER

District Attorney of Philadelphia

Three South Penn Square
Philadelphia, PA 19107
(215) 686-5700
nancy.winkelman@phila.gov

July 15, 2019

TABLE OF CONTENTS

INTRODUCTION

PART I: 112 Philadelphia Death Sentences Overturned During Post-Conviction Review

| | | |
|------|--|-----------|
| A. | 74 Cases Overturned Due to Ineffective Assistance of Counsel..... | A-001 |
| 1. | Summary of 74 IAC cases..... | A-002-161 |
| 2. | IAC cases where counsel was court-appointed (<i>Total 58</i>)..... | A-162-169 |
| 3. | IAC cases where counsel failed to prepare and present constitutionally acceptable mitigation (<i>Total 38</i>)..... | A-170-181 |
| B. | 38 Capital Cases Overturned on other Grounds..... | A-182 |
| 1. | Sentences overturned due to trial court error (<i>Total 16</i>)..... | A-183-188 |
| 2. | Sentences overturned due to prosecutorial misconduct (<i>Total 10</i>)..... | A-188-191 |
| 3. | Sentences overturned due to changes in the law (<i>Total 8</i>)..... | A-191-193 |
| 4. | Sentences overturned due to actual innocence (<i>Total 1</i>)..... | A-193 |
| 5. | Sentences overturned for unspecified reasons (<i>Total 3</i>)..... | A-193-194 |
| C. | Non-Capital Outcome of 102 Overturned Cases on Remand..... | A-195 |
| 1. | Non-capital outcome of IAC cases (<i>Total 67</i>)..... | A-196-204 |
| 2. | Non-capital outcome of cases overturned on other grounds (<i>Total 35</i>) | A-205-210 |
| CI. | Commonwealth Agreement to Non-Capital Outcome in 65 cases..... | A-211 |
| 1. | DAO agreement in IAC cases (<i>Total 50</i>)..... | A-212-221 |
| 2. | DAO agreement in cases overturned for other reasons (<i>Total 15</i>)..... | A-222-224 |
| CII. | Overturned Philadelphia Death Sentences – Duration of Litigation Between Arrest and Non-Capital Resolution (<i>Average 17 years</i>)..... | A-225 |
| 1. | Duration of IAC cases prior to non-capital disposition..... | A-225-234 |
| 2. | Duration of cases overturned for other reasons prior to non-capital resolution..... | A-235-239 |

PART II: 45 Philadelphia Defendants Who Remain Sentenced to Death.....A-240

A. Race of Philadelphia Defendants
Currently Sentenced To Death.....A-240-242

B. Death Row Defendants Represented at Trial
By Court-Appointed Counsel.....A-243-246

C. Death Sentenced Defendants Represented at Trial by Attorneys Who Have Another
Death Sentence Overturned on Grounds of Ineffective Assistance.....A-246-252

PART III: Philadelphia Death Sentences Imposed Before and After February 2012..A-253

A. Death Sentenced Imposed Before February 2012 (*Total 152*).....A-253-268

B. Death Sentences Imposed After February 2012 (*Total 3*).....A-268-269

INTRODUCTION

This Appendix identifies 155 cases, decided since 1978, where a Philadelphia Common Pleas Court sentenced a defendant to death.¹ It does *not* include any death cases that have been resolved by the current administration of the Philadelphia District Attorney's Office, i.e., any matters resolved after December 31, 2017.²

The Appendix divides the 155 capital cases into three parts. Part I addresses **112** cases (**72%** of the total) where a reviewing court **overturned** a Philadelphia defendant's death sentence prior to January 2, 2018. Part II evaluates **45** Philadelphia cases where the defendant remains on death row.³ Part III separates the 155 cases into two groups: those decided before and those decided after February 2012. All defense counsel are identified solely by a letter code.

¹ In 1978, the Pennsylvania legislature enacted this state's current capital punishment statute. *See* 42 Pa.C.S.A. § 9711(a)(1) (effective 9/13/78).

² This study also does not include Commonwealth v. Gary Heidnik, CP-51-CR-0437091-1987 and a small number of cases where a death-sentenced Philadelphia defendant died of natural causes before the resolution of his appeals, i.e., before a final appellate decision either overturning or affirming the death sentence.

³ Although there are 112 overturned cases and 45 Philadelphia defendants housed on death row, this Appendix analyzes a total of 155 cases, rather than 157. This is because, in two Philadelphia cases, the defendant remains on death row even though a federal district court has ordered penalty phase relief. Commonwealth v. Fahy, CP-51-CR-0222831-1981 (Third Circuit Court of Appeals holding case in abeyance; cross-appeals pending); Commonwealth v. Porter, CP-51-CR-0622491-1985 (cross-appeals pending before Third Circuit Court of Appeals). As a result, these two cases appear in both Part I of this Appendix (listing cases where the death sentence has been overturned) *and* Part II (listing the individuals currently housed on death row).

DAO APPENDIX - PART I
112 PHILADELPHIA CASES
OVERTURNED DURING POST-CONVICTION REVIEW

PART I, SECTION A, SUBSECTION ONE

74 CASES OVERTURNED DUE TO INEFFECTIVE ASSISTANCE

Part I, Section A, Subsection One of the DAO Appendix lists 74 cases where a reviewing court overturned a Philadelphia death sentence due to ineffective assistance of counsel. This Appendix refers to such cases as “IAC cases”. For each IAC case, Subsection One identifies:

- a. The nature of the ineffectiveness claim;
- b. The relief granted (new trial or new sentencing hearing);
- c. Whether the case ultimately had a non-capital outcome;
- d. The duration of litigation from the date of arrest to non-capital resolution; and
- e. Whether court-appointed counsel represented the defendant at the trial stage.

1. Commonwealth v. Lawrence Baker, CP-51-CR-0629891-1981

a. Claim of Ineffectiveness

Defendant claimed ineffectiveness when counsel failed to object to the ADA's penalty phase argument. Commonwealth v. Baker, 511 A.2d 777, 787 (Pa. 1986).

b. Relief Received by the Defendant

Although the Court agreed that counsel was ineffective, Defendant received appellate relief pursuant to the relaxed waiver rule. Baker, 511 A.2d at 790 n.10 ("Hence, we need not specifically rule on Appellant's contention that trial counsel was ineffective in not objecting to the Assistant District Attorney's comments").

c. Outcome – Life Sentence

On remand, the Defendant received a life sentence pursuant to the version of the statute governing sentencing procedure for murder of the first degree then in effect. Baker, 511 A.2d at 791; *see* 42 Pa.C.S. § 9711(h)(2) (stating that a court "shall either affirm the sentence of death or vacate the sentence of death and remand for the imposition of a life imprisonment sentence") (repealed effective 12/21/88). Defendant resentenced to Life. Online Docket Entry, p.3, 7/30/86

d. Duration of Litigation Prior to Resolution

Arrest date: April 8, 1981 – Resentenced: July 30, 1986 = **5 yrs, 3 mos, 22 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel RRR. Baker, 511 A.2d at 780-781.

2. **Commonwealth v. Lee Baker, CP-51-CR-0405062-1984**

a. Claim of Ineffectiveness

Defendant claimed that trial counsel failed to object to improper jury instructions. Baker v. Horn, 383 F. Supp. 2d 720, 764-765 (E.D. Pa. 2005).

b. Relief Received by the Defendant

The federal district court held that trial counsel's failure to object to defective jury instructions constituted ineffective assistance of counsel. Baker, 383 F. Supp. 2d at 765, 777-779 ("The instructions at times flatly contradicted Pennsylvania law on first-degree murder and accomplice liability and at other times were ambiguous in critical ways").

c. Outcome – *Commonwealth Agreement to a Different Sentence*

Defendant entered a negotiated guilty plea before the Homicide Calendar Judge and received a term of years sentence:

Negotiated guilty plea. Defendant waived formal arraignment, plead and was adjudged guilty.

Online Docket Entry, pp.3, 6, 5/23/2008.³

d. Duration of Litigation Prior to Resolution

Arrest: March 8, 1984 – Resentenced: May 23, 2008 = **24 yrs, 2 mos, 15 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel Z. See Docket Entries, at p.3 (attached); Z was court-appointed. CPCMS, Secure Docket.

³ In Philadelphia, pursuant to Local Rule 605, the Homicide calendar Judge addresses pretrial matters, including negotiated guilty pleas.



COURT OF COMMON PLEAS
OFFICE OF COURT ADMINISTRATION
APPEALS DIVISION
ROOM 601 CITY HALL
PHILADELPHIA, PA. 19107

EDWARD J. BRADLEY
PRESIDENT JUDGE

DOCKET ENTRIES

COMMONWEALTH

VS.

LEE BAKER

AKA:

HERBERT BAKER, JR.

1984 April

516 - Possessing Instruments of Crime
Generally, Possessing Instruments of
Crime, Concealed Weapon

517 - Robbery

518 - Criminal Conspiracy

520 - Murder, First Degree

April 6, 1984

-D-1 - Pro Se Application for Reduction
of Bail, filed.

April 25, 1984

- Court Room 253
The defendant, Lee Baker, has been
arraigned under Penna. Criminal Code
Section 303-306 as to all bills.
Sabo, J.

May 31, 1984

-D-2 - Notice of Joint Trial, filed.

June 18, 1984

-D-3 - Motion to Suppress Statement of
Defendant, Motion to Suppress In Court
Identification of the Commonwealth
Witness, [REDACTED], Motion to
Suppress In Court Identification
of the Commonwealth Witness, [REDACTED]
[REDACTED] Motion to Suppress In Court
Identification of the Commonwealth
Witness, [REDACTED], Motion to
Suppress In Court Identification of
Commonwealth Witness, [REDACTED]
filed. Omnibus PreTrial Motion for
Relief returnable 6-18-84.

June 19, 1984

- Court Room 253
Motion to Suppress Identification and
statements begun.

- Sept. 24, 1984 - Court Room 253
Presiding Honorable Albert F. Sabo
Defendant present with counsel, [REDACTED]
ADA Thomas Bello
Court Reporter, William Falcone
- Defendant pleads Not Guilty.
Jury trial requested.
- Sept. 25, 1984 - Testimony taken, cont'd 9-28-84 defense
Sept. 26, 1984 request. Co-defendant's counsel, M.
Strutin to observe Jewish holiday on
9-27-84
- Sept. 24, 1984 - Juror #2 was excused by agreement for
medical reason (HBP) and alternate #13
becomes Juror #2.
- Sept. 28, 1984 - Juror #4 excused by agreement, husband
gravely ill, alternate #13 becomes Juror
4.
- Oct. 1, 1984 - Commonwealth rests.
- Demurrer overruled.
- Oct. 2, 1984 - Defense motion for mistrial denied.
- Oct. 3, 1984 - As to Bill 517 April 1984, Commonwealth's
motion to have bill amended to add victim,
[REDACTED] granted.
- Defense rests, Arguments heard, charge by
Judge.
- EoDie - 4:50 pm jury begins deliberation to 6pm.
- Oct. 4, 1984 - Jury continues to deliberat.
12:15 pm. After due deliberation the
Jury returned with a VERDICT:
516 - Guilty
517 - Guilty
518 - Guilty
520 - Guilty as to Murder, 1st degree
- Oct. 5, 1984 - Jury deliberates further as to penalty.
- Oct. 5, 1984 - Jury has returned and fixed the penalty
at Death. Motions to be filed, Sentence
deferred to 12-3-84. Presentence and
psychiatric reports ordered. Deft. in
custody, bail revoked.

Sabo, J.

3. Commonwealth v. Billa, CP-51-CR-0136311-1987

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing to request a limiting instruction regarding prior bad acts evidence. Commonwealth v. Billa, 555 A.2d 835, 842 (Pa. 1989).

b. Relief Received by the Defendant

The Pennsylvania Supreme Court agreed that Defendant was entitled to penalty phase relief on these grounds:

[A]ppellant asserts, *inter alia*, that counsel was constitutionally ineffective in failing to request a limiting instruction on the jury's consideration of the evidence of the prior sexual assault. Under the circumstances, we agree.

Billa, 555 A.2d at 842.

c. Outcome – *Commonwealth Agreement to Different Sentence*

On remand, Defendant entered a guilty plea and received a life sentence. Online Docket Entry, p.3, 1/11/90.

d. Duration of Litigation Prior to Resolution

Arrest Date: January 17, 1987 – Resentenced: January 11, 1990 =
2 yrs, 11 mos, 25 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel QQ. Defendant's Motion for Post-Conviction Relief, 6/13/12, at p.5 (attached). QQ was court-appointed. Petition for Leave to Withdraw as Counsel, at p.1 (“[QQ], was appointed trial by the Honorable Nelson Diaz, on January 2, 1987”).



COURT OF COMMON PLEAS
 OFFICE OF COURT ADMINISTRATION
 APPEALS DIVISION
 ROOM 101 CITY HALL
 PHILADELPHIA, PA. 19107

EDWARD J. BRADLEY
 PRESIDENT JUDGE

DOCKET ENTRIES

COMMONWEALTH

1987 March

VS.

1469 Attempted Involuntary Deviate Sexual Intercourse

1470 Rape

1471 Aggravated Assault

1472 Robbery

LOUIS BILLA

DATE

DOC. #

DOCUMENT DESCRIPTION

2/19/87

D-1

- Notice of Mandatory Minimum Sentence Case, filed.

4/10/87

D-2

- Commonwealth's Motion for Consolidation, filed.

4/13/87

-

- Court Room 232

Defense Counsel Defender Association
 Honorable Stanley Kubacki, Presiding

-Defender Association permitted to withdraw as counsel. [REDACTED], Esquire, appointed as counsel of record. Continued for C/W to consolidate with CP 87-01-3631. Defender Association turns over discovery to counsel. List for consolidation 4-16-87. List for trial 5-26-87, Room 232, E.P.D. Kubacki, J.

COMMONWEALTH OF PENNSYLVANIA : SUPREME COURT OF PENNSYLVANIA
APPELLEE : EASTERN DISTRICT
VS. : NO. 164E.D. APPEAL DOCKET
LOUIS BILLA : 1987
APPELLANT

PETITION FOR LEAVE TO WITHDRAW AS COUNSEL
AND APPOINTMENT OF NEW COUNSEL

And now comes, [REDACTED], ESQUIRE, attorney for the above appellant and avers:

1. [REDACTED], ESQUIRE, was appointed trial counsel in the above matter by the Honorable Nelson Diaz, Court of Common Pleas, Philadelphia County on January 2, 1987.

2. Following trial, appellant was found guilty of murder in the first degree and sentenced to death on June 12, 1987.

3. Petitioner, herein, argued Post-Verdict Motions which were denied.

4. Petitioner subsequently filed a timely appeal on behalf of appellant.

5. Petitioner also filed a brief on behalf of appellee.

6. Petitioner has just learned that appellant has filed a

pro-se motion for new counsel alleging ineffective representation of petitioner.

7. Since this is a death penalty matter, the interests of justice may best be served if new counsel is appointed to continue the representation of appellant.

8. It is Petitioner's belief that the financial status of appellant has not changed.

WHEREFORE, Petitioner requests this Honorable Court enter an Order removing him as counsel and appointing new counsel for appellant.

 ESQUIRE

4. Commonwealth v. John M. Blount, CP-51-CR-0124901-1990

a. Claim of Ineffectiveness

Defendant claimed that trial counsel failed to object to improper penalty phase jury instructions. Commonwealth v. Blount, 647 A.2d 199, 209-210 (Pa. 1994)

b. Relief Received by the Defendant

The Supreme Court granted penalty phase relief. Court-appointed trial counsel failed to object when the trial court gave an erroneous instruction that “improperly infringed upon the sole province of the jury to weigh aggravating and mitigating circumstances.” Blount, 647 A.2d at 209-210 (“Given the seriousness of the trial court’s action in this instance we can discern no reasonable basis why trial counsel failed to object”).

c. Outcome – Life Sentence

After a new sentencing hearing, Defendant was sentenced to life imprisonment. Blount v. Wetzel, 2015 WL 851855, at *2 (E.D. Pa. Feb. 27, 2015); Online Docket Entry, p.12, 7/24/96.⁴

d. Duration of Litigation Prior to Resolution

Arrest: October 25, 1989 – Resentenced July 24, 1996 = **6 yrs, 8 mos, 29 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel Y. Order, 2/9/90, Clarke, J. (attached); CPCMS, Secure Dockets.

⁴ Defendant was seventeen years old at the time of the offense. Blount, 2015 WL 851855, at *2. Accordingly, he ultimately would have received relief under Roper v. Simmons, 543 U.S. 551 (2005).

COMMONWEALTH

: COURT OF COMMON PLEAS
: PHILADELPHIA COUNTY

VS.

: C.P. 90-01-2490-2501
:

JOHN M. BLOUNT

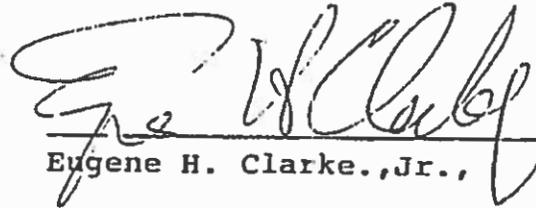
: Homicide
:

O R D E R

AND NOW, this 9th day of February, 19 90

the Court Orders the appointment of ~~XXXXXXXXXXXXXXXXXXXX~~ Esquire,
to represent the above-captioned defendant.

BY THE COURT:



Eugene H. Clarke., Jr., Judge

Date: February 9, 1990

5. Commonwealth v. Aquil Bond, CP-51-CR-0502971-2004

a. Claim of Ineffectiveness

Defendant claimed that court-appointed penalty phase counsel failed to prepare and present available mitigation evidence.

b. Relief Received by the Defendant

The PCRA court granted summary relief based on the existing record:

Petitioner's motion for summary relief is denied as to the guilt phase and granted as to the penalty phase. The petitioner's death sentence is vacated.

Online Docket Entry, p.38, 3/18/14. As the PCRA court explained:

With regard to the penalty phase, I will say frankly and candidly that based on existing law, I see absolutely no way in which, that counsel's woefully deficient performance at the penalty phase hearing can possibly stand.

(N.T. 3/18/14 at 70-71). Thereafter, the PCRA court granted Defendant's petition for a new trial. On Line Docket Entry, p.52, 3/13/17.

c. Outcome – *Commonwealth Agreement to a Different Sentence*

Case resolved through negotiated disposition, March 13, 2017. Online Docket Entry, p.52, 5/19/17.

d. Duration of Litigation Prior to Resolution

Arrest: November 11, 2003 – Death Penalty Relief: March 13, 2017 =
13 yrs, 4 mos, 2 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by penalty phase counsel C. (N.T. 3/18/14 at 70-71); C was court-appointed. CPCMS, Secure Dockets.

6. Commonwealth v. Jesse Bond, CP-51-CR-2217781-1992

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing to prepare for the penalty phase. Bond v. Beard, 539 F.3d 256, 291 (3d Cir. 2008), *as amended* (Oct. 17, 2008).

b. Relief Received by the Defendant

The Third Circuit held that trial counsel provided ineffective assistance by failing to prepare for Defendant's penalty phase. Bond, 539 F.3d at 291 ("Counsel performed an inadequate and tardy investigation into Bond's childhood").

c. Outcome – *Commonwealth Agreement to a Different Sentence*

On remand, the Commonwealth agreed to Life:

Order - Sentence/Penalty Imposed Re-sentencing. The death penalty sentence was set aside by the 3rd Circuit. The Commonwealth will not seek the death penalty. Defense motion to remove 1st degree is denied. The defendant is re-sentenced to life without parole. All other charges remain the same.

Online Docket Entry, p.11, 11/15/12.

d. Duration of Litigation Prior to Resolution

Arrest: November 28, 1991 – Resentenced: November 15, 2012 =
20 yrs, 11 mos, 18 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel C. Bond, 539 F.3d at 281.

7. Commonwealth v. Billy Brooks, CP-51-CR-0128471-1991

a. Claim of Ineffectiveness

Defendant sought relief due to trial counsel's failure to consult. Commonwealth v. Brooks, 839 A.2d 245 (Pa. 2003).

b. Relief Received by the Defendant

The Pennsylvania Supreme Court awarded a new trial due to ineffectiveness of counsel. Court-appointed counsel never met with his capitally charged client. Brooks, 839 A.2d at 248 (“As we agree with Appellant that counsel was clearly ineffective in this regard, we reverse”).

c. Outcome – Defendant deceased while in custody

This case was closed on remand, due to the death of the Defendant. Online Docket Entry, p.27, 9/24/2008 (“Due to the Death of the Appellant on 6/29/2008, This Appeal Has Been Closed”).

d. Duration of Litigation Prior to Resolution

Arrest: December 27, 1990 – Abated: September 24, 2008 =
17 yrs, 8 mos, 28 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel MMM. Brooks, 839 A.2d at 247. (Noting that “[i]t appears that [MMM] was suspended from the practice of law on October 26, 1993, and has not applied for readmission”); Order, 7/25/91, Stiles, J. (attached); CPCMS, Secure Dockets.

AUGUST 1, 1991

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

VS.

C.P. 9101-2847-2850

BILLY BROOKS., Defendant
PP# 506207

Homicide Case

O R D E R

NOW, this 25th day of July 1991

the Court Orders the appointment of [REDACTED] Esq
as counsel, to represent the defendant in the above-captioned
homicide matter.

This appointment is not transferable and is effective
immediately.

BY THE COURT:



Michael R. Stiles, Judge

Date: July 25, 1991
Listed 7/29/91 Room 646 City Hall

8. Commonwealth v. Samuel Carson, CP-51-CR-0228371-1994

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing to prepare for the penalty phase.

b. Relief Received by the Defendant

The Supreme Court remanded this matter to the PCRA court for an evidentiary hearing concerning Defendant's claim that trial and appellate counsel were ineffective in failing to investigate and present mitigation evidence. Commonwealth v. Carson, 913 A.2d 220, 267-268 (Pa. 2006).

c. Outcome – *Commonwealth Agreement to a Different Sentence*

On remand from the appellate court, the Commonwealth stipulated to penalty-phase relief due to counsel's failure to investigate and present mitigating evidence. Commonwealth Response to Petition for Writ of habeas Corpus, No. 11-1845, at p.8 ("the Commonwealth agreed to relief on the claim of counsel ineffectiveness"). The Commonwealth subsequently agreed to a life sentence:

Order - No Penalty Phase Hearing Scheduled. Both sides agree to Life Imprisonment

Online Docket Entry, p.12, 4/04/11; Order, 4/4/11, Temin, J. (attached).

d. Duration of Litigation Prior to Resolution

Arrest: January 8, 1994 – Resentenced: April 4, 2011 = **17 yrs, 2 mos, 27 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel Q. Post-Sentence Motion, 7/16/95, at p.1 (attached); CPCMS, Secure Dockets.

Commonwealth of Pennsylvania
v.
Samuel Carson

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

DOCKET NO: CP-51-CR-0228371-1994

ORDER

AND NOW, this 4th day of April, 2011, after consideration of the Motion to Cancel Penalty Phase Hearing presented by the Attorney for the Defendant, it is ORDERED that the Motion to Cancel Penalty Phase Hearing is GRANTED

On 4/2/2008, defendant's death sentence was vacated by the Hon. William J. Mandredi. By agreement of counsel on 4/4/2011, defendant re-sentenced to Life Imprisonment without

parole
ATTY: H. Sever
STENO: K. Butler
CLERK: J. Williams

BY THE COURT:


Senior Judge Carolyn Engel Temin

[REDACTED] ESQUIRE
I.D. [REDACTED]
[REDACTED]

Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
: vs. :
: SAMUEL CARSON :

FEBRUARY TERM, 1994
NO. 2837
MAY TERM, 1994
NOS. 1841, 1844
1846 and 1848
TRIAL JUDGE:
HON. PAUL RIBNER

RECEIVED

JUL 18 1995

Criminal Motion Court
First Judicial District of PA

POST-SENTENCING MOTION

9500-2534

TO THE HONORABLE PAUL RIBNER:

Defendant, Samuel Carson, by his court-appointed attorney, [REDACTED], Esquire, submits the following pleading in support of his request that he be granted a new trial:¹

¹ It is respectfully asked that when a copy of the trial record has been furnished to defendant's counsel, that he be permitted to submit a supplementary pleading setting forth additional issues which he deems necessary and important, and that he be given the opportunity to submit a legal memorandum in support of his position in this case, this prior to the presentation of oral argument sur Post-Sentencing Motions.

9. Commonwealth v. Ronald Clark, CP-51-CR-1241151-1993

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing to prepare for the penalty phase.

b. Relief Received by the Defendant

The PCRA court granted Defendant's request for a new penalty hearing based on trial counsel's ineffectiveness in failing to present additional mitigation evidence. The Commonwealth did not appeal this order. Commonwealth v. Clark, 961 A.2d 80, 83 (Pa. 2008).

c. Outcome – *Commonwealth Agreement to a Different Sentence*

On remand from the appellate court, the Commonwealth agreed to a life sentence. Online Docket Entry, p.13, 8/16/11 (“Order - Sentence/Penalty Imposed – agreement”).

d. Duration of Litigation Prior to Resolution

Arrest: November 3, 1993 – Resentenced: August 16, 2011 =
17 yrs, 9 mos, 13 d

e. Trial Counsel – *Court-Appointed*

“[Defendant] was represented at trial by [CC].” Clark v. Beard, No. CV 10-3164, 2015 WL 7294971, at *3 (E.D. Pa. June 1, 2015).

Defendant was represented by court-appointed counsel CC. See Motion for Withdrawal of Counsel (attached); Correspondence, 11/30/93 (attached); CPCMS, Secure Dockets.

IN THE COMMONWEALTH OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

COMMONWEALTH OF PENNSYLVANIA

RECEIVED

VS

AUG 19 1994

CRIMINAL TRIAL DIVISION

RONALD CLARK

CLERK OF QUARTER SESSIONS

CP# 9312-4115

9313462

PP# 623-894

Helmus

MOTION FOR WITHDRAWAL OF COUNSEL
AND APPOINTMENT OF NEW COUNSEL

9-8-94
of m. 483

I, the undersigned, in this pro-se motion respectfully re-
presents the following:

On 11/3/93, petitioner was arrested, and charged with

MURDER, VUFA 6106, 6108, PIC; CRIM CONSPIRACY

having occurred in Philadelphia County.

1. The Court appointed [REDACTED] esq.

to represent petitioner.

2. Petitioner request this Honorable Court to remove the
above named attorney from any further proceeding because his/her
continued representation is denying petitioner due process of law
as guarantee which is mandated by the United States Constitution.

a) Counsel do-not communicate or answer to reasonable re-
quests i.e., return phone calls to designated persons who will
keep petitioner informed of his legal matter;

b) counsel do not contact witness/s who were made known

Attach

to

675 CH

Sheet

[REDACTED]

ATTORNEY AT LAW

[REDACTED]

[REDACTED]

November 30, 1993

Stephen Jaffe
Supervisor
Criminal Listings Unit
Room 481
34 S. 11th Street
Philadelphia, PA 19107

RE: Commonwealth vs. Ronald Clark
MC# 9311-212

Dear Mr Jaffe:

I received notification of my appointment to the above homicide preliminary hearing on the morning that is was last listed, November 23, 1993. At that time, being unprepared I requested a continuance and was given a date of December 14, 1993, which upon review of my calendar appeared to be a satisfactory date. Unfortunately, I am scheduled to take the CLE Ethics course held that day at the Philadelphia Convention Center. As you know, this course is a mandatory requirement. I must complete same before the end of this year. As such, I would appreciate your effort in rescheduling this matter to December 15 or later.

By copy of this letter I am informing the District Attorney's Office of my situation, with a request that office contact you should December 15th be an unsatisfactory date.

Thank you.

RECEIVED

Very truly yours,

DEC 03 1993

MUNICIPAL COURT
CRIMINAL LISTING

[REDACTED]

VML/mk

cc: David Webb, Esquire
District Attorney's Office - Homicide Unit

10. Commonwealth v. Rodney Collins, CP-51-CR-0815881-1992

a. Claim of Ineffectiveness

Defendant raised ineffectiveness claims regarding trial counsel's performance at both the guilt and penalty phases.

b. Relief Received by the Defendant

On February 15, 2005, the PCRA court issued an opinion denying relief on all of appellant's guilt-phase claims but vacating appellant's death sentence. Commonwealth v. Collins, 957 A.2d 237, 243 (Pa. 2008).

The Commonwealth did not appeal from the PCRA court's grant of a new penalty hearing. Collins, 957 A.2d at 243.

c. Outcome – *Commonwealth Agreement to a Different Sentence*

The Commonwealth did not seek a new penalty phase hearing. Defendant was resentenced to Life before the Homicide Calendar Judge. Online Docket Entry, p.17, 11/05/09 ("On count 1, life without parole. All of the other charges remain the same").

d. Duration of Litigation Prior to Resolution

Arrest: July 15, 1992 – Resentenced: November 5, 2009 =
17 yrs, 3 mos, 21 d

e. Trial Counsel – *Not court-appointed*

Defendant was represented by counsel YY. See Bill of Information (attached). Trial counsel was *not* court-appointed.

jmk

COMMONWEALTH VS.
RECORD CON. NO.

NAME, A/K/A, ADDRESS, ZIP CODE

RODNEY COLLINS
05500 WYALUSING AVE OTN#M5362512
PHILA. PA 19131

YEAR/TERM & NO. 1580

POLICE PHOTO NO.
704608

THIS CASE INVOLVES NOS.
1588 TO 1591

STATUS OF DEFENDANT

PLACE OF PRELIM. HEARING

RM 675 CITY HALL

ISSUING AUTH.

RETACGO

339

Bail Set \$

Bail Made \$

DT. OF INCIDENT

7/14/92

BIRTH DATE

7/23/68

SEX

RACE

D. C. NO.

9219050715

Surety Name

Address

0000

ATTY. CO.

55046C

M. C. CASE NO.

92/07-1139 1/1

COMPLAINT DT.

7/15/92

DT. PREL. HEARING

8/05/92

ISM.

BILL NO.

DATE

8/12/92

DATE OF ARRAIGN.

8/26/92 RM.625

POL. SURG.

A

CHARGE CODES & CHARGES

12000-MURDER 2502 - 1st Degree
15000-VOLUNTARY MANSLAUGHTER 2503 F2

PRE-TRIAL/
TRIAL

WAIVER/JURY

DATE

ROOM

COURT STENO

COURT CLERK

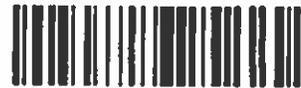
JUDGE

ADA

COUNSEL

FLEA

CP-51-CR-0815881-1992 Comm. v Collins, Rodney
Non-Public Archived File Scan



5139064

VERDICT

DATE

10/27/97. Judgment of sentence affirmed
By Supreme Court. Dept of Greenc CW-4923
10/28/98 - Record Ret. In CCP

Judge

SENTENCE

DATE

ROOM

COURT STENO

COURT CLERK

JUDGE

ADA

COUNSEL

11/1/95
707
Linda Settle
T.M. Johnson
Marita K. Stout
Tran, Schneider

The dependant was sentenced to the Death Penalty
in the above matter. Second Court merge for
the purposes of sentencing.

By the Court,

Stout, J.

11. Commonwealth v. Ronald Collins, CP-51-CR-0614771-1992

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing to prepare for the penalty phase.

b. Relief Received by the Defendant

The Supreme Court affirmed the PCRA court's decision granting penalty phase relief due to counsel's failure to present mitigating evidence. Commonwealth v. Collins, 888 A.2d 564 (Pa. 2005):

[W]e agree with the PCRA court's determination that counsel did not conduct a reasonable investigation to uncover the relevant mitigating evidence ...

Id. at 583.

c. Outcome – *Commonwealth agreement to a judge-only penalty phase*

The Commonwealth agreed that the trial court could conduct the penalty phase without a jury and the court imposed Life. Online Docket Entry, p.13, 5/11/2009 (“Order - Sentence/Penalty Imposed”).

d. Duration of Litigation Prior to Resolution

Arrest: April 11, 1992 – Resentenced: May 11, 2009 = **17 yrs, 1 mos**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel L. Docket Entry, 10/17/94 (attached). L was court-appointed. CPCMS, Secure Dockets.

6-5 jmk

COMMONWEALTH VS.
RECORD CON NO.

NAL. E. A/K/A ADDRESS ZIP CODE
RONALD COLLINS
05500 WYALUSING AVE OTN#M5249241
PHILA. PA 19100

YEAR 92 JUN 1477

POLICE PHOTO NO.
608892

THIS CASE INVOLVES NO. TO

STATUS OF DEFENDANT

PLACE OF PRELIM HEARING
RM 675 CITY HALL

ISSUING AUTH
DELEON 338

Bail Set \$

Bail Made \$

DT OF INCIDENT 4/11/92 BIRTH DATE 7/17/64

SEX M RACE N 1 C # 9219023703

Surety Name & Address

0000

ATTY CD 189970 M C CASE NO 92/04-0770 1/1

COMPLAINT DT 4/11/92 DT PREL HEARING 4/26/92

DISM BILL NO DATE 6/8/92

DATE OF ARRAIGN 6/16/92 RM.625 A POL SURG

CHARGE CODES & CHARGES

12000-MURDER 2502
15000-VOLUNTARY MANSLAUGHTER 2503 F2

12 day - Jury trial

PRE-TRIAL TRIAL 10-13-94 Jury Selection Commenced. 10/17/94 - Jury Selection Completed
DATE 10-6-94 ROOM 243 COURT STENO Debra Balardi COURT CLERK Allison Williams
JUDGE Hon. Eugene H. Clewley ADA Edward Cameron
PLEA 9/16/92 Em 635

THE DEFENDANT Ronald Collins HAS BEEN ARRAIGNED
UNDER PENNA. CRIMINAL CODE SECTION 303-306

BY THE COURT:

NEP

Motion to suppress statements filed under advisement until 10/12/94.
Motion to suppress is granted. 10-12-94 - motion to suppress is denied.

DEFENSE ATTORNEY

10/17/94 - 243 the defendant, upon being arraigned, pleads Not Guilty - jury trial.

DEFENDANT

10-20-94 pm. 243 at 12 p.m. the jury retired for deliberation.

VERDICT

10/21/94 at 10:55 Am the jury returned to the Court a verdict of Guilty of first degree murder. Containment until 10/24/94 as to penalty.

10-24-94 - 11:50 the jury retired to deliberate on the penalty.
10-25-94 - at 10:29 Am - the jury fixed the penalty at death.
Held for formal sentencing 1/3/95 pm 243.

By the Court [Signature] Judge

SENTENCE

Formal Sentencing

DATE April 20, 1995 ROOM 243 COURT STENO Debra Balardi COURT CLERK Allison Williams
JUDGE Hon. Eugene H. Clewley ADA Edward Cameron

The defendant is sentenced to death. This sentence is to run concurrently with sentence on bill 9200-1482. He is to pay mandatory fines and costs of \$185.00.
Held for post sentencing (motions 5/18/95 pm. 243)
By the Court [Signature]

012871

12. Commonwealth v. Robert Cook, CP-51-CR-0826512-1987

a. Claim of Ineffectiveness

Defendant filed a PCRA petition claiming the trial counsel provided ineffective assistance at the guilt and penalty phases. Commonwealth v. Cook, 952 A.2d 594, 600–601 (Pa. 2008).

b. Relief received by Defendant

The PCRA court granted Defendant a new penalty hearing. The Commonwealth initially appealed that decision but ultimately withdrew its appeal. Commonwealth v. Cook, 952 A.2d 594, 601 (2008).

c. Outcome – *Defendant’s new penalty phase still has not occurred.*

d. Duration of Litigation Prior to Resolution

Arrest: August 8, 1987 = **31 yrs and counting**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel CC. *See Cook*, 952 A.2d at 616-617 (affirming the trial court’s refusal to appoint new counsel and noting that, “While an indigent is entitled to free counsel, he is not entitled to free counsel of his own choosing”).

13. Commonwealth v. Bernard Cousar, CP-51-CR-0607431-1999

a. Claim of Ineffectiveness

Defendant raised ineffectiveness claims relating to the guilt phase and to counsel's failure to prepare and present mitigation evidence. Commonwealth v. Cousar, 154 A.3d 287, 293 (Pa. 2017).

b. Relief received by Defendant

The parties agreed that appellant was entitled to a new penalty hearing. Cousar, 154 A.3d at 293. The PCRA court entered the following Order:

AND NOW, this 20th day of November, 2014, with the agreement of the Commonwealth, it is ORDERED that relief be granted to Petitioner as to Claim XIX of his Post Conviction Relief Act (PCRA) Petition, which claimed ineffective assistance of counsel for failure to investigate, develop and present mitigating evidence at his penalty hearing.

Online Docket Entry, p.10, 11/20/14.

c. Outcome – *Undetermined*⁵

d. Duration of Litigation Prior to Resolution

Arrest: May 14, 1999 = 20 yrs **and counting**

e. Trial Counsel – *Court Appointed*

Defendant was represented by counsel NN and AAA Cousar, 154 A.3d at 293. Both attorneys were court-appointed. PCRA Court Opinion, Sarmina, J., p.1 n.1 (attached); CPCMS, Secure Dockets.

⁵ In 2017, the Pennsylvania Supreme Court determined that Defendant was entitled to an evidentiary hearing on certain of his guilt phase claims. Cousar, 154 A.3d at 300. No new penalty phase hearing has been scheduled.

PHILADELPHIA COURT OF COMMON PLEAS
CRIMINAL TRIAL DIVISION

COMMONWEALTH

v.

BERNARD COUSAR

Sarmina, J.
August 12, 2015

CP-51-CR-0508652-1999
CP-51-CR-0607431-1999 } cr 11/1
CP-51-CR-1008141-1999

Supreme Court No.
704 CAP

FILED

AUG 12 2015

Criminal Appeals Unit
First Judicial District of PA

OPINION

PROCEDURAL HISTORY

On May 9, 2001 following a capital jury trial¹ before the Honorable James A. Lineberger, Bernard Cousar (hereafter, petitioner) was convicted of two counts of murder of the first degree (H-1), criminal conspiracy (F-1), burglary (F-1), two counts of robbery (F-1), aggravated assault (F-1), and two counts of possessing instruments of crime (PIC)(M-1).² Notes of Testimony (N.T.) 5/9/01 at 4-7. Following the penalty phase, on May 11, 2001, the jury sentenced petitioner to death on each of the murder convictions, after which Judge Lineberger imposed sentence on all charges.³ N.T.

¹ Petitioner was represented in this capital trial by court-appointed counsel [REDACTED], Esquire and [REDACTED], Esquire. [REDACTED] handled the guilt and penalty phases, and [REDACTED] handled the penalty phase. However, there is no indication on the record that [REDACTED] was court-appointed or that he ever formally entered his appearance. David Mischak, Esquire represented petitioner at his formal imposition of sentence and on direct appeal, after [REDACTED] filed a motion for new court-appointed counsel. On CP-51-CR-0508652-1999, petitioner was charged with criminal conspiracy, burglary, robbery, and aggravated assault (victim [REDACTED]). On CP-51-CR-0607431, petitioner was charged with murder (victim [REDACTED]), robbery (victim [REDACTED]), and PIC. On CP-51-CR-1008141, petitioner was charged with murder (victim [REDACTED]) and PIC.

² 18 Pa.C.S. §§ 2502(a), 903(a), 3502(a), 3701(a)(1), 2702(a), and 907(a), respectively.

³ Petitioner was sentenced by Judge Lineberger to two consecutive death sentences. N.T. 5/11/01 at 38. With respect to the charge of robbery, victim [REDACTED], petitioner was sentenced to a concurrent term of not less than five nor more than ten years in prison. With respect to the charge of PIC, victim [REDACTED], petitioner was sentenced to a consecutive term of not less than one nor more than two years in prison. With respect to the charge of PIC, victim [REDACTED], petitioner was sentenced to a concurrent term of not less than one nor more than two years in prison. With respect to the charge of burglary, petitioner was sentenced to a consecutive term of not less than five nor more than ten years in prison. With respect to the charge of aggravated assault, victim [REDACTED], petitioner was sentenced to a consecutive term of not less than five nor more than ten years in prison. With respect to the charge of [FN cont'd. . .]

14. Commonwealth v. Dewitt Crawley, CP-51-CR-0201551-1984

a. Claim of Ineffectiveness

Defendant raised claims of trial counsel's ineffectiveness. *See* Crawley v. Horn, 7 F. Supp. 2d 587, 588 (E.D. Pa. 1998) ("Petitioner filed a PCRA petition in 1990, collaterally attacking his sentences for alleged ineffectiveness of counsel during the penalty phase of his trial").

b. Relief Received by the Defendant

Defendant was awarded a new penalty phase by the PCRA court.

c. Outcome - *Commonwealth Agreement to a Different Sentence*

The Commonwealth agreed to a life sentence:

Order - Sentence/Penalty Imposed Re-sentencing upon appeal. By agreement the above defendant is re-sentenced to life without parole on first degree murder. The Court recommends the defendant continue to be housed in a single cell. He is to be removed from death row.

Online Docket Entry, p.13, 5/1/15.

d. Duration of Litigation Prior to Resolution

Arrest: December 23, 1983 – Resentenced: May 1, 2015 =
31 yrs, 4 mos, 8 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by JJJ. Commonwealth v. Crawley, 526 A.2d 334, 346 (Pa. 1987). JJJ was court-appointed. *See* Docket Entry, 9/10/84 (attached).

| | | | | | | | | |
|--|----------------|--|------------------------|---|--|----------------|--|------------------------|
| DATE 7-17-84 | TYPE | COURTROOM 513 | COURT STENO. Harris | 6 | DATE 9-5-84 | TYPE | COURTROOM 513 | COURT STENO. Harris |
| COURT CLERK Krat | JUDGE Stout | ADA C. King | COUNSEL Harris | | COURT CLERK Krat | JUDGE Stout | ADA C. King | COUNSEL [REDACTED] |
| CONTIN. CODE | CONT. TO JUDGE | CONT. TO ROOM 513 | ON (Date) | | CONTIN. CODE | CONT. TO JUDGE | CONT. TO ROOM 513 | ON (Date) 9-10-84 |
| DEFENSE <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | PROSECUTION <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | | DEFENSE <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | PROSECUTION <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | |

Defense Counsel, Ronald
Legal, inc. Allowed to
withdraw.
New Counsel to be appointed
Status By the Court
Stout

New Counsel [REDACTED]
reappointed.
List for trial
By the Court
Stout

| | | | | | | | | |
|--|----------------|--|----------------------------|---|--|----------------|--|---------------------------|
| DATE 9-10-84 | TYPE | COURTROOM 513 | COURT STENO. L. Fingles | 8 | DATE 12-7-84 | TYPE Status | COURTROOM 513 | COURT STENO. Sokolstki |
| COURT CLERK P. Young | JUDGE Stout | ADA K. King | COUNSEL [REDACTED] | | COURT CLERK P. Young | JUDGE Stout | ADA J. Drast | COUNSEL [REDACTED] |
| CONTIN. CODE | CONT. TO JUDGE | CONT. TO ROOM 513 | ON (Date) 12-10-84 | | CONTIN. CODE | CONT. TO JUDGE | CONT. TO ROOM 513 | ON (Date) 12-11-84 |
| DEFENSE <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | PROSECUTION <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | | DEFENSE <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | PROSECUTION <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | |

- 12-10-84 - Pm 513 -
case request [REDACTED]
prepared - Commonwealth
ready to go to trial today
Rule 1100 waived until
12-10-84 -
By the Court
Stout

Rule 1100 Waived until
December 11, 1984 (See
Signed Waiver in file)
Commonwealth ready for
trial. Defense Counsel
unavailable on 12-10-84.
By the Court
Stout

15. Commonwealth v. Junious Diggs, CP-51-CR-0709781-2002

a. Claim of Ineffectiveness

Defendant raised claims of trial counsel's ineffectiveness in a *pro se* petition.

b. Relief Received by the Defendant

Without requiring defense counsel to file an amended PCRA petition, the Commonwealth agreed that Defendant was entitled to penalty phase relief.

c. Outcome - *Commonwealth Agreement to a Different Sentence*

At the PCRA stage, with the Commonwealth's agreement, the PCRA court vacated Defendant's sentence and the Commonwealth agreed to a life sentence. Secure Docket Entry, p.19, 8/14/12; Written Agreement Colloquy, at p.2 (attached).

d. Duration of Litigation Prior to Resolution

Arrest: May 18, 2002 – Resentenced: May 1, 2015 =
12 yrs, 11 mos, 13 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by G. G was court-appointed. CPCMS, Secure Dockets.



IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

Respondent,

v.

JUNIOUS DIGGS,

Petitioner.

Criminal Division

No. CP-51-CR-0709781-2002

Honorable Carolyn Engel Temin

CAPITAL PCRA

WRITTEN AGREEMENT COLLOQUY

1. I can read, write, and understand the English language.
2. I am not being treated by a psychiatrist or psychologist for mental problems.
3. I am not currently under the influence of drugs, alcohol, or medication.
4. I understand that a jury sitting before the Honorable James A. Lineberger has found me guilty of one count of Murder in the First Degree for the shooting of Johnetta Bryant, Burglary, Possession of an Instrument of Crime, and Criminal Trespass.
5. I understand that as to the count of first degree murder, the jury found that the aggravating circumstance outweighed the mitigating circumstance and, accordingly, imposed a death sentence.
6. I understand that Judge Lineberger formally imposed the death sentence, as well as an aggregate concurrent term of imprisonment of seven and one-half to fifteen years for burglary and possession of an instrument of crime.

7. I understand that, on direct appeal, the Pennsylvania Supreme Court affirmed the judgments of sentence.

8. I understand that the United States Supreme Court denied my petition for a writ of certiorari.

9. I understand that Billy H. Nolas, Esquire, is currently representing me during these PCRA proceedings, and that I have a legal team, including Investigator Rachel Aaron, working on my case from Mr. Nolas' office at the Federal Community Defender's Office (FCDO).

10. I understand that, during these PCRA proceedings, the District Attorney's Office has agreed that this Court may vacate my death sentence and impose a life sentence, with no possibility of parole, provided that:

- (a) I agree to withdraw my current PCRA petition;
- (b) I agree to never seek or file, or have filed on my behalf, any state or federal collateral appeal of this agreement;
- (c) I agree to never seek or file, or have filed on my behalf, a PCRA petition, a federal habeas petition, or any other motion challenging either my conviction or sentence;
- (d) I agree to never seek or file, or have filed on my behalf, any claims of ineffective assistance of past or present counsel;
- (e) I know that I am giving up these rights forever.

11. I agree that a copy of this written agreement and colloquy shall become part of my

prison record.

12. I have fully discussed all of my rights with my PCRA lawyer, Mr. Nolas, and with Rachel Aaron, an investigator at the FCDO, and I am satisfied that I fully understand all of my rights that I am giving up, and what I am receiving in return.

13. Other than the terms and conditions set forth in this Agreement, nobody has promised me anything, or forced me, or threatened me to accept the terms and conditions of the Agreement. I, myself, have decided to accept all terms and conditions of the Agreement. I know what I do and say today is final.

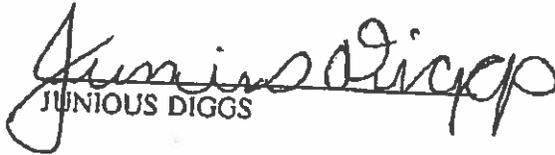
14. I have read this Agreement and have discussed it in its entirety with Mr. Nolas and Ms. Aaron. I have no questions regarding the terms and conditions of this Agreement and I understand exactly what is written here. I am satisfied with the advice and services I have received from Mr. Nolas and Ms. Aaron.

15. I am not contesting the Commonwealth's evidence or the jury's finding of guilt.

16. I accept all of the terms and conditions of this Agreement, knowingly, intelligently, and voluntarily.

I HAVE READ ALL OF THE ABOVE AND HAVE DISCUSSED IT WITH MY LEGAL TEAM. I FULLY UNDERSTAND WHAT IS SET FORTH IN THIS AGREEMENT AND I ACCEPT ALL TERMS AND CONDITIONS OF THIS AGREEMENT.

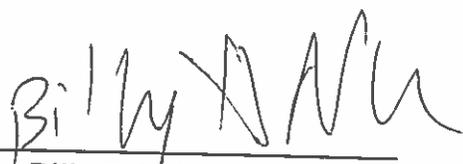
DATE: 8/14/2012


JUNIOUS DIGGS

CERTIFICATION OF DEFENSE COUNSEL

I, Billy H. Nolas, Esquire, certify that:

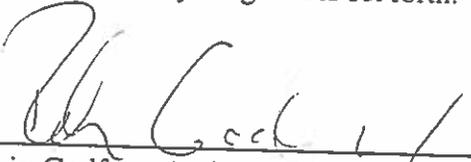
- (1) I am an attorney admitted to practice by the Supreme Court of Pennsylvania.
- (2) I represent the defendant herein.
- (3) I have no reason to believe that the defendant cannot fully understand everything that is being said and done here today.
- (4) The defendant has reviewed and discussed the terms of the written agreement colloquy in my presence and appeared to fully understand it. Ms. Aaron and I have reviewed the Agreement completely with the defendant, explained all of the items on the Agreement, and answered any question he had; the defendant appeared to understand the information and explanations provided.
- (5) The defendant is knowingly, voluntarily, and intelligently agreeing to all the terms and conditions of this Agreement.
- (6) We made no promises to the defendant other than any listed in this Agreement.
- (7) Although the decision was made exclusively by the defendant, we agree with his decision.

By: 
Billy H. Nolas, Esquire

Date: 8/14/12

DISTRICT ATTORNEY'S CERTIFICATIONS

I certify that I am the assigned prosecutor in this PCRA case and that the terms, conditions or agreements mentioned herein are true and correct, as they are set forth above. I have asked whether there is anything in the written agreement colloquy form or anything else about this case that the defendant does not understand, and the defendant has indicated that he understands everything that is set forth.

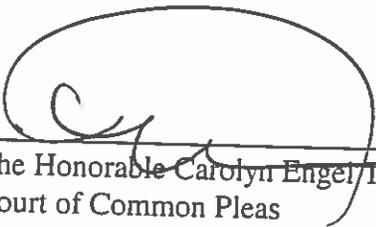


Robin Godfrey, Assistant District Attorney
Chief, PCRA Unit

Date: 5/14/12

JUDGE'S CERTIFICATIONS

I certify that I am the Judge having jurisdiction to hear this case and that I am satisfied the defendant understands fully the nature and quality of the Agreement that the defendant is entering before me. The defendant has exercised a knowing, intelligent, and voluntary acceptance of the Agreement mentioned above. The defendant has been colloquied to determine whether he understands everything that is being said and done in court, as well as to determine whether the defendant is entering this Agreement of his own free will.


The Honorable Carolyn Engel/Temmin
Court of Common Pleas

Date: 8/14/12

16. Commonwealth v. Daniel Dougherty, CP-51-CR-0705371-1999

a. Claim of Ineffectiveness

Defendant filed a PCRA petition claiming, *inter alia*, that the trial counsel provided ineffective assistance at the guilt and penalty phases.

b. Relief Received by the Defendant

The Commonwealth conceded that trial counsel was ineffective at the penalty phase “for failure to investigate and present certain mitigation evidence”. Online Docket Entry, p.23, 2/7/12.

c. Outcome – *Commonwealth Agreement to a Different Sentence*

The Commonwealth agreed that it would not pursue the death penalty at a new sentencing hearing and agreed to a life sentence. Commonwealth v. Dougherty, 2017 WL 4949000, at *2 (Pa. Super. 2017) (“[U]pon the agreement of the parties, Dougherty’s death sentences were vacated, and sentences of life in prison were imposed for each of Dougherty’s murder convictions”). The PCRA court’s order reads:

[B]ased upon the Commonwealth’s certification that, in the exercise of its discretion, it will not pursue a new penalty hearing in this matter, defendant’s sentence of death is hereby vacated and a new sentence of life imprisonment is hereby imposed.

Online Docket Entry, p.23, 2/7/12.

d. Duration of Litigation Prior to Resolution

Arrest: April 14, 1999 – Resentenced: February 7, 2012 =
12 yrs, 9 mos, 24 d

e. Trial Counsel - *Not court-appointed*

Defendant was represented by E. See Bill of Information (attached). Counsel apparently represented Defendant *pro bono*. (N.T. 6/10/00 at 101).

COMMONWEALTH VS.
RECORD CON NO

NAME, AKA, ADDRESS, ZIP CODE
JAMES H. CONNERTY
PHILA. PA 19114

YEAR, TERM & NO
1997 237 1/1

POLICE PHOTO NO
074170

STATUS OF DEFENDANT

PLACE OF PRELIM. HEARING
JAIL

ISSUING AUTH
MILFILL

Bail Set \$
Bail Made \$

DT OF INCIDENT
6/24/97

BIRTH DATE
2/1/50

SEX
M

RACE
C

U.C. NO
3502034118

Surety Name
& Address

ATTY. CD
19336

M.C. CASE NO
9909 4 236 1/1

COMPLAINT DT
6/14/97

DT PREL. HEARING
7/15/97

DISM

BILL NO

DATE
7/21/98

DATE OF ARRAIGN
7/24/97

FOR BURG
104

CHARGE CODES & CHARGES

11.250.20 - MURDER
2502

PRE-TRIAL/ARRAIGNMENT
TRIAL

DATE
7-26-2000

ROOM
807

COURT STENO
Milita, H. D.

COURT CLERK
Milita, H. D.

DEFENDANT
Hon Renee C. Hughes
ADA John Doyle

DEFENDANT
HON. BEEN ARRAIGNED UNDER
PENNS. CRIMINAL CODE
SECTION 263-306
BY THE COURT

DEFENSE ATTORNEY

DEFENDANT

Jury Selection began
Judge order issued 9-27-99
Jury Selection ended
continued until 9-27-2000
for Pre-trial Motions
10-2-2000 Defendant plead
Not Guilty after being
formally arraigned
Commonwealth opening
statements and testimony

1-3-2000 in 807
Hon Renee C. Hughes
ADA John Doyle
Att. Norman Scott Esq
Att. Judith Hall
Cl. Clerk: Sylvia Bullard
Motion to Quash -
denied by the court.

10-4-2000 testimony continued
Closing Arguments - After due deliberation
the jury rendered a Verdict of Murder 1st
Degree - 1st for Penalty Phase 10-6-2000
Rm 807

10-2-2000 in 807
Hon Renee C. Hughes
Rule 1100 Motion
denied. By the court.

SENTENCE

DATE
10/6/00

ROOM
807

COURT STENO
Milita, H. D.

COURT CLERK
Milita, H. D.

JUDGE
Hon Renee C. Hughes
ADA John Doyle

After due deliberation the jury rendered a decision
of 1st degree by lethal injection. Court gave \$125,000
to the jail for the defendant
By the court

17. Commonwealth v. Joseph Elliott, CP-51-CR-0410911-1994

a. Claim of Ineffectiveness

Defendant claimed that trial counsel provided ineffective assistance at the penalty phase because of “the failure to produce mental health testimony.” Commonwealth v. Elliott, 80 A.3d 415, 424 (Pa. 2013).

b. Relief Received by the Defendant

On February 26, 2010, “the Commonwealth agreed not to oppose Elliott’s request for a new penalty hearing.” Elliott, 80 A.3d at 424 n.5.

c. Outcome – *Commonwealth Agreement to Lesser Sentence*

On May 1, 2015, Defendant was resentenced to Life by the Homicide Calendar Judge:

Order - Sentence/Penalty Imposed Re-sentencing upon appeal. This matter came back from Supreme Court. He is resentenced to life without parole on first degree murder. He is to be taken off of death row.

Online Docket Entry, p.23, 5/1/15

d Duration of Litigation Prior to Resolution

Arrest: December 16, 1993 – Resentenced: May 1, 2015 =
21 yrs, 4 mos, 15 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel SS. Elliott, 80 A.3d at 422. (noting that the trial court “denied [Defendant’s] request for the appointment of new counsel”); CPCMS, Secure Dockets.

18. Commonwealth v. Henry Fahy, CP-51-CR-0222831-1981

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing to prepare for the penalty phase.

b. Relief Received by the Defendant

The Federal Court granted penalty phase relief because of counsel's failure to develop and present mitigation evidence and for suggesting to the jury that Defendant might someday be released:

The petition will be granted for: (1) ineffective assistance of trial counsel for failing to develop and present available and compelling mitigating evidence and for suggesting Fahy would likely be released on parole; and (2) the erroneous jury charge that prevented the jury from considering non-statutory mitigating evidence.

Fahy v. Horn, 2014 WL 4209551, at *1 (E.D. Pa. Aug. 26, 2014).

c. Outcome – *Defendant's case is in abeyance in the Third Circuit.*

d. Duration of Litigation Prior to Resolution

Arrest: Jan. 30, 1981 – New Penalty Phase granted August 26, 2014=
33 yrs, 6 mos, 27 d

d. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel Q. Commonwealth v. Fahy, 516 A.2d 689, 696 (Pa. 1986); Cover Page, N.T. 1/20/83 (attached). This was Q's first capital case. Commonwealth v. Ramos, CP-51-CR-0100891-1999, N.T. 9/25/08 at 17.

1/20/83

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH

: FEBRUARY TERM, 1981

VS.

: 2284 - POSS. INSTRUMENT
CRIME, GENERALLY

HENRY FAHY

: 2286 - RAPE

: 2288 - MURDER, GENERALLY

: 2289 - BURGLARY

JANUARY 20, 1983

COURTROOM 253, CITY HALL

JURY TRIAL

BEFORE:

HONORABLE ALBERT F. SABO, J.

PRESENT:

JUDITH FRANKEL RUBINO, ESQUIRE
ASSISTANT DISTRICT ATTORNEY
FOR THE COMMONWEALTH

[REDACTED] ESQUIRE
COUNSEL FOR THE DEFENSE
(COURT-APPOINTED)

HENRY FAHY,
DEFENDANT

19. Commonwealth v. Lester Fletcher, CP-51-CR-0709931-2001

a. Claim of Ineffectiveness

Defendant claimed ineffectiveness for counsel's failure to investigate and present mitigation evidence.

b. Relief Received by the Defendant

The Commonwealth agreed to penalty phase relief:

[W]ith the agreement of the Commonwealth, it is ORDERED that relief be granted to Petitioner as to Claim IX ... which claimed ineffective assistance of counsel for failure to investigate, develop and present mitigating evidence at his penalty hearing.

Online Docket Entry, p. 11, 2/7/11. Thereafter, the Supreme Court granted the parties' joint motion for remand for re-sentencing. Commonwealth v. Fletcher, 43 A.3d 1289 (Pa. 2012).

c. Outcome – *Commonwealth Agreement to a Different Sentence*

On July 18, 2012, the trial court resentenced Defendant to Life:

Order Modifying Sentence - Death penalty is vacated and the defendant is now sentenced to life in prison without the possibility of parole. The defendant has agreed to withdraw all current appeals and waives all future appeals.

Online Docket Entry, p.13, 7/18/12.

d. Duration of Litigation Prior to Resolution

Arrest: March 27, 2001 – Resentenced: July 18, 2012 = **11 yrs, 3 mos, 21 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed mitigation counsel AAA. Online Docket Entry, p.6, 10/24/01; Commonwealth v. Fletcher, 861 A.2d 898, 914 (Pa. 2004).

20. Commonwealth v. Kenneth Ford, CP-51-CR-1032221-1989

a. Claim of Ineffectiveness

Defendant claimed that trial counsel failed to prepare for the penalty phase.

b. Relief Received by the Defendant

The Supreme Court granted penalty phase relief based upon counsel's failure to investigate and present evidence of mitigation. Commonwealth v. Ford, 809 A.2d 325, 331 (Pa. 2002) ("During Appellant's penalty phase in the instant case, trial counsel presented virtually no evidence of mitigating circumstances").

c. Outcome - *Commonwealth Agreement to a Different Sentence*

On November 29, 2004, with the agreement of the Commonwealth, the PCRA court resentenced Defendant to Life. (N.T. 11/29/04 at 1-5) (attached); Online Docket Entry, p.9, 11/29/2004.

d. Duration of Litigation Prior to Resolution

Arrest: September 9, 1989 – Resentenced: November 29, 2004 =
15 yrs, 2mos, 20 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel A. See Order of Appointment (attached).

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA

- Trial Division
- Family Court Division
- Criminal Section
- Domestic Rel.
- Juvenile
- Women's Criminal
- Misdemeanant's

IN THE PHILADELPHIA MUNICIPAL COURT

- Criminal Section

Commonwealth

vs.

KENNETH FORD

Date: SEPTEMBER 13, 1989

MURDER

MC 8909 0586 - 0587 - 0588

PP# 498890

THIS APPOINTMENT IS NOT TRANSFERABLE

I hereby certify, That on 12TH day of SEPTEMBER A.D. 19 89

ON. JUDGE CURTIS C. CARSON APPOINTED [REDACTED] ESQUIRE

[REDACTED]

[REDACTED]

TO DEFEND KENNETH FORD IN ACCORDANCE WITH LAW.

*10/19
675*

Peter W. Trueman/sug Court Clerk

First Judicial District of Pennsylvania

89103222
Kenneth Ford

Sentencing Volume 1
November 29, 2004

CRS
Court Reporting System

RECEIVED

JAN 04 2005

CLERK OF QUARTER SESSIONS

First Judicial District of Pennsylvania
100 South Broad Street, Second Floor
Philadelphia, PA 19110
(215) 683-8000 FAX:(215) 683-8005

Original File 11-29-04^FORD.txt, 5 Pages
CRS Catalog ID: 04120716

[2] IN THE COURT OF COMMON PLEAS
[3] FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
[4] ---
[5] COMMONWEALTH : OCTOBER TERM, 1989

[6] vs
[7] KENNETH FORD : NO.: 3222
[8] ---

[9] Monday, November 29, 2004
[10] ---
[11] Courtroom 602 - Criminal Justice Center
Philadelphia, Pennsylvania

[12] ---
[13] RESENTENCING
[14] ---

[15] ---
[16] BEFORE: THE HONORABLE JANE C. GREENSPAN, J.
[17] ---

[17] APPEARANCES:
[18] ---
[19] VERNON CHESTNUT, ESQ.
Assistant District Attorney
For the Commonwealth
[20] ---
[21] MARC BOOKMAN, ESQ. and
KARL SCHWARTZ, ESQ.
For the Defendant
[22] ---
[23] ---
[24] ---
[25] KEVIN FLANAGAN, RPR

[1]
[2]
[3] THE COURT: We can have the
[4] Defendant sworn, please.
[5] COURT OFFICER: State your
[6] full name, spell your last name.
[7] THE DEFENDANT: Kenneth Ford;
[8] F-O-R-D.

[9] ---
[10] KENNETH FORD, having been
[11] first duly sworn, was examined and
[12] testified, as follows:
[13] ---

[14] THE COURT: It is my
[15] understanding, Mr. Ford, that the -- it
[16] is a little unclear as to how this
[17] opinion from Justice Nigro is worded.
[18] He remands for a new sentencing hearing
[19] but the Commonwealth has agreed that the
[20] death sentences will be vacated and I
[21] will impose two consecutive life
[22] sentences on those death sentences. It
[23] is my intention that all the remaining
[24] sentences remain the same as they were
[25] imposed originally; do you understand

[1] all of that?
[2] THE DEFENDANT: Yes, ma'am.
[3] THE COURT: Is there anything
[4] you wish to say to me before I sentence
[5] you? You have that right but you don't
[6] have to if you don't want to.
[7] THE DEFENDANT: No, not
[8] really.

[9] MR. CHESTNUT: Before
[10] sentencing, Mr. McCann reviewed the
[11] Supreme Court's opinion. He also
[12] considered the information that
[13] Mr. Bookman and Mr. Schwartz had
[14] provided to him. Based on all the
[15] information that he has, he is agreeing
[16] and also talking to the families in
[17] these cases, it is his position that
[18] just for the purposes of this hearing,
[19] that we will not seek the death penalty.
[20] We will would ask for the imposition of
[21] two consecutive life sentences.

[22] MR. BOOKMAN: We are greatly
[23] appreciative of the District Attorney's
[24] review of this matter.
[25]

[1] THE COURT: Thank you. Then
[2] on I guess it is 8910, 3222, I sentence
[3] you to life imprisonment without parole;
[4] on the bill, 8910, 3227, I sentence you
[5] to a consecutive term of life
[6] imprisonment without parole. All the
[7] remaining sentences or all the remaining
[8] bills that have sentences on them are to
[9] remain as they were when originally
[10] sentenced.

[11] It is my understanding that there
[12] may be some agreement -- I don't know if there
[13] is. If there is no agreement with regard to
[14] filing any notices of appeal, you do have that
[15] right within thirty days in writing. If you
[16] wish to do that and cannot afford Counsel,
[17] Counsel will be appointed for you for that
[18] purpose free of charge. Your Lawyers
[19] understand all of this.

[20] MR. SCHWARTZ: For the record
[21] and for Mr. Ford's edification, there is
[22] no agreement regarding waiver but I
[23] would ask because we run into these
[24] problems whenever this happens, that
[25]

[1]
[2] when the clerk prepares the short, it
[3] indicate that the death sentences have
[4] been permanently vacated and the
[5] Defendant is to be taken off of death
[6] row.

[7] **THE COURT:** That will be done.
[8] **MR. SCHWARTZ:** Thank you.

[9] ---
[10] (Whereupon, the proceedings
[11] were adjourned, at this time.)
[12] ---

[13]
[14]
[15]
[16]
[17]
[18]
[19]
[20]
[21]
[22]
[23]
[24]
[25]

Court Reporting System (Generated 2004/12/13 15:03:43)



21. Commonwealth v. William Gribble, CP-51-CR-1220811-1992

a. Claim of Ineffectiveness

At the PCRA stage, Defendant claimed that “counsel was ineffective in failing to perform a reasonable investigation and thereby failing to locate and call available family members who had additional evidence material to mitigating circumstances.” Commonwealth v. Gribble, 863 A.2d 455, 475 (Pa. 2004).

b. Relief received by Defendant

The PCRA court granted Defendant a new sentencing hearing. Gribble, 863 A.2d at 458.

The Supreme Court remanded for an evidentiary hearing on Defendant’s ineffective assistance claims. Gribble, 863 A.2d at 476 (noting that “[t]he family member witnesses whom counsel is faulted for failing to have interviewed and presented at the penalty phase are the sort of witnesses whose existence should have been readily apparent or discoverable to any counsel who conducted a reasonable investigation”).

c. Outcome – Life Sentence after New Penalty Hearing

After a second penalty phase hearing, the Defendant received Life. Online Docket Entry, p.20, 3/10/09 (“Original Sentence of 8/11/94 is vacated. Jury Hung on Penalty Phase”).

d. Duration of Litigation Prior to Resolution

Arrest: November 15, 1992 – Resentenced: March 10, 2009 =
16 yrs, 3 mos, 23 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel JJ. Commonwealth’s Motion to Dismiss PCRA Petition (“Defendant was represented at trial by [JJ]”); CPCMS, Secure Dockets.

22. Commonwealth v. Donald Hall, CP-51-CR-0210711-1982

a. Claim of Ineffectiveness

Defendant claimed that new penalty phase counsel was ineffective for failing to raise the issue of the Commonwealth's prior concession that it would not seek the death penalty before the commencement of Defendant's second penalty phase hearing. Commonwealth v. Hall, 1993 WL 1156097 (Pa. Com. Pl. July 23, 1993).

b. Relief Received by the Defendant

The PCRA court determined that new penalty phase counsel was ineffective:

This Court concludes that defense counsel ... was ineffective for failure to raise the concession issue before Judge Sabo during presentence motions. ... [T]his Court finds that the sentences of death should be vacated and sentences of life imprisonment imposed.

Hall, 1993 WL 1156097, at *633 *affirmed* Commonwealth v. Hall, 645 A.2d 888 (Pa. Super. 1994) (Table).

c. Outcome – Life Sentence

After the PCRA court's determination, Defendant received Life pursuant to the version of 42 Pa.C.S. § 9711(h)(2) in effect at the time of his trial (stating that a court "shall either affirm the sentence of death or vacate the sentence of death and remand for the imposition of a life imprisonment sentence.") (repealed effective December 21, 1988). Online Docket Entry, p.3, 2/29/96.

d. Duration of Litigation Prior to Resolution

Arrest: February 2, 1982 – Resentenced: February 29, 1996 = **14 yrs, 27 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel H. Hall, 1993 WL 1156097, at *623; CPCMS, Secure Dockets.

23. Commonwealth v. Ronald Hanible, CP-51-CR-0409021-1999

a. Claim of Ineffectiveness

Defendant claimed that defense counsel failed to present mitigating evidence. Commonwealth v. Hanible, 30 A.3d 426, 438 (Pa. 2011).

b. Relief Received by the Defendant

The Commonwealth agreed that Defendant was entitled to a new penalty hearing:

The Commonwealth filed a motion to dismiss the PCRA petition, but subsequently agreed that a new penalty hearing was warranted due to trial counsel's failure to present available mitigating evidence.

Hanible, 30 A.3d at 438.

c. Outcome – *Commonwealth Agreement to a Different Sentence*

The Commonwealth did not seek a new penalty hearing and Defendant was resentenced to life in prison by the Homicide Calendar Judge. Online Docket Entry, p.20, 9/24/13.

d. Duration of Litigation Prior to Resolution

Arrest: January 21, 1999 – Resentenced: September 24, 2013 =
14 yrs, 8 mos, 3 d

e. Trial Counsel - *Court-Appointed*

Defendant was represented by QQ. QQ was court-appointed. Secure Docket Entry, p. 9; CPCMS, Secure Dockets.

24. Commonwealth v. John Harris, CP-51-CR-0903421-1992

a. Claim of Ineffectiveness

Defendant claimed that counsel provided ineffective assistance during the penalty phase. Commonwealth v. Harris, 852 A.2d 1168, 1170 (Pa. 2004).

b. Relief Received by the Defendant

The PCRA court entered an order granting an evidentiary hearing on Appellant's claims that counsel had been ineffective during the penalty phase, but denying relief on the guilt-phase claims. Harris, 852 A.2d at 1171. The Commonwealth did not appeal the PCRA court's penalty phase decision. *Id.* n.6.

c. Outcome – *Commonwealth Agreement to a Different Sentence*

By agreement, Defendant was resentenced to Life by the Homicide Calendar Judge (Lerner, J.). Online Docket Entry, p.8, 2/28/05.

d. Duration of Litigation Prior to Resolution

Arrest: August 22, 1992 – Resentenced: February 28, 2005 =
12 yrs, 6 mos, 6 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel K. Commonwealth v. Harris, 703 A.2d 441, 447 n.11 (Pa. 1997). K was court-appointed. CPCMS, Secure Dockets.

25. Commonwealth v. Donetta Hill, CP-51-CR-0518391-1991

a. Claim of Ineffectiveness

At the PCRA stage, Defendant claimed that her court-appointed counsel provided ineffective assistance at both the trial and penalty phases of her trial.

b. Relief Received by the Defendant

The federal court agreed with Defendant's ineffectiveness claim:

In clear contravention of prevailing professional norms at the time of trial, Petitioner's trial attorney did not conduct a social history investigation.

Hill v. Wetzel, 279 F. Supp. 3d 550, 566 (E.D. Pa. 2016).

c. Outcome – *Commonwealth Agreement to a Different Sentence*

The Commonwealth agreed that Defendant should receive a Life sentence:

[D]uring state post-conviction proceedings, the Commonwealth and Ms. Hill's attorneys stipulated that she should be resentenced to life without the possibility of parole.

Hill, 279 F. Supp. 3d at 557 n.1. The new sentence was imposed on March 21, 2012. Online Docket Entry, p.21, 3/21/12. After the federal court granted her a new guilt phase trial, the Commonwealth negotiated a term of years sentence for third degree murder. Online Docket Entry, p.22, 7/12/17.

c. Duration of Litigation Prior to Resolution

Arrest: April 20, 1991 – Resentenced: August 14, 2006 =
15 yrs, 3 mos, 25 d

d. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel CC. Commonwealth v. Hill, 16 A.3d 484, 486 (Pa. 2011); Hill, 279 F. Supp. 3d at 556; CPCMS, Secure Dockets.

26. Commonwealth v. William Holland, CP-51-CR-1014291-1984

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for “(1) for failing to obtain potentially helpful records; (2) for failing to investigate, develop, and present expert testimony; (3) for failing to properly interview and present testimony from Petitioner’s family and other acquaintances.” Holland v. Horn, 150 F. Supp. 2d 706, 729 (E.D. Pa. 2001), *aff’d*, 519 F.3d 107 (3d Cir. 2008).

b. Relief Received by the Defendant

The federal court determined that Defendant was denied his 5th Amendment right to a court-appointed defense expert for help in developing defenses in support of mitigation at the penalty phase. Holland, 150 F. Supp. 2d at 749.

c. Outcome – *Defendant died in custody prior to resolution*

Defendant died prior to resentencing. Online Docket Entry, p.6, 10/21/10 (“Case Abated - Defendant Deceased”).

d. Duration of Litigation Prior to Resolution

Arrest: August 8, 1984 – Died in Custody: October 21, 2010 =
26 yrs, 2 mos, 13 d

d. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel DD. Holland, 150 F. Supp. 2d at 713; (N.T. 6/5/85 at 1.2) (attached); CPCMS, Secure Dockets.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

TRIAL DIVISION

COMMONWEALTH

OCTOBER TERM, 1984

WILLIAM C. HOLLAND

NOS. 1429 INVOLUNTARY MANSLAUGHTER
1430 MURDER
VOLUNTARY MANSLAUGHTER
1437 ATT INVOL DEV SET INTER
1438 ATTEMPTED RAPE
1439 ROBBERY
1440 CRIM TRESP BLDGS OCC ST
DEFIANT TRESPASSER
1441 BURGLARY
THEFT UNL TAK/DISP
THEFT R.S.P.
1442 REAP
TERRORISTIC THREATS
1443 SIMPLE ASSAULT
AGGRAVATED ASSAULT

Room 232, City Hall
Philadelphia, Pennsylvania
June 5, 1985

BEFORE: HONORABLE STANLEY L. KUBACKI, J. and a Jury

APPEARANCES

WILLIAM CHADWICK, ESQUIRE
Assistant District Attorney
For the Commonwealth

RECORD FILED IN
SUPREME COURT

[REDACTED], ESQUIRE
For the Defendant

AUG 4 1986

ALSO PRESENT:

EASTERN
DISTRICT

GWEN DOGGETT,
Official Spanish Interpreter

TRIAL - FIRST DAY

A-056

(In the courtroom, out of the presence of the jury.)

THE COURT: [REDACTED], I believe you wanted to make a statement for the record.

[REDACTED]. Yes, I did want to make a statement for the record. With the Court's indulgence, I was in the process of discussing this matter with my client, Mr. William Holland. Would the Court be good enough to give me a few extra minutes with him so I can clarify this matter before I make the statement?

THE COURT: Sure.

(Pause.)

THE COURT: Yes, [REDACTED].

[REDACTED]: Good morning, Your Honor. The matter before the Bar of the Court is Commonwealth versus William Holland, a homicide matter. My name is [REDACTED]. I am court appointed to represent the defendant William Holland. The matter is here today for a jury trial. Before the matter goes to trial, I requested to put a statement for the record. Before I do that, with the Court's kind permission, I would like to call

27. Commonwealth v. Arnold Holloway, CP-51-CR-0613051-1985

a. Claim of Ineffectiveness

Defendant claimed that counsel was ineffective for failing to investigate his background for mental health issues and because he failed to request that a mental health expert be appointed to assist the defense. Holloway v. Horn, 161 F. Supp. 2d 452, 573-74 (E.D. Pa. 2001).

b. Relief Received by the Defendant

The District Court concluded that Holloway's counsel provided ineffective assistance in failing to investigate mental-health issues and request the assistance of a mental-health expert. Holloway v. Horn, 355 F.3d 707, 713 (3rd Cir. 2004).

On appeal, the Third Circuit, gave additional relief on defendant's Batson claim. Holloway v. Horn, 355 F.3d at 730 (remanding the case for retrial).

c. Outcome – *Commonwealth Agreement to a Different Sentence*

On remand, Defendant entered an open plea and received a term of years sentence. Online Docket Entry, p.5, 4/14/05.

d. Duration of Litigation Prior to Resolution

Arrest: May 31, 1985 – Resentenced: April 14, 2005 =
19 yrs, 10 mos, 14 d

e. Trial Counsel - *Not court-appointed*

Defendant was represented by counsel J. Holloway, 355 F.3d at 722. J was *not* court-appointed.

28. Commonwealth v. Steven Hutchinson, CP-51-CR-0408581-1998

a. Claim of Ineffectiveness

Defendant filed a PCRA petition, raising numerous guilt and penalty phase claims. Commonwealth v. Hutchinson, 25 A.3d 277, 284 (Pa. 2011).

b. Relief Received by the Defendant

“[W]ith with the agreement of the Commonwealth, the PCRA court entered an order ... granting Appellant a new penalty phase hearing.” Hutchinson, 25 A.3d at 284.

c. Outcome – *Commonwealth Agreement to Different Sentence*

On January 23, 2013, Defendant was resentenced to Life by the Homicide Calendar Judge. Online Docket Entry, p.16, 1/23/2013.

d. Duration of Litigation Prior to Resolution

Arrest March 2, 1998 – Resentenced: January 23, 2013 =
14 yrs, 10 mos, 21 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel RR. Hutchinson, 25 A.3d at 286. RR was court-appointed. CPCMS, Secure Dockets.

29. Commonwealth v. Kareem Johnson, CP-51-CR-1300424-2006

a. Claim of Ineffectiveness

Defendant filed a PCRA petition, raising numerous guilt and penalty phase claims.

b. Relief received by Defendant

“At the PCRA stage, the Commonwealth conceded that Defendant was denied effective assistance of counsel ... and therefore the parties stipulated that Appellant was entitled to a new trial.” Commonwealth v. Johnson, 2018 WL 3133226. The PCRA Docket entries state:

AGREEMENT AND ORDER - There is an agreement by and between Petitioner and the Commonwealth. All parties agree that Petitioner is entitled to the grant of a new trial based on ineffective assistance of counsel at the guilty-innocence phase of trial ...

Online Docket Entry, p.24, 4/22/15.

c. Outcome – *Commonwealth Agreement to a Different Sentence*

On February 17, 2016, the Commonwealth filed a notice with the trial court indicating that it would no longer be seeking the death penalty. Brief for Appellee, Commonwealth v. Johnson, 927 EDA 2016, at p.2 n.1; Online Docket Entry, p.30, 2/17/16 (“Notice of Removal of Capital Designation”).

d. Duration of Litigation Prior to Resolution

Arrest: May 22, 2006 – Death Penalty Removed: February 17, 2016 =
9 yrs, 8 mos, 26 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel F and FFF. On Line Docket Entry, p.11, 6/18/07. Both attorneys were court-appointed. PCRA Petition, 8/15/14 at 5 (attached); CPCMS, Secure Dockets.

IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
: CRIMINAL DIVISION
Respondent, : CP-51-CR-1300424-2006
v. :
KAREEM JOHNSON, :
Petitioner. :

AMENDED PETITION FOR WRIT OF HABEAS CORPUS
AND FOR COLLATERAL RELIEF FROM CRIMINAL CONVICTION
PURSUANT TO THE POST CONVICTION RELIEF ACT, 42 PA. CS. § 9541 *ET SEQ.*

Eric J. Montroy
Pa. Bar No. 90949
Amy Gershenfeld Donnella
Pa. Bar No. 85194
Michael Gonzales
Pa. Bar No. 89351
Capital Habeas Corpus Unit
Federal Community Defender Office
for the Eastern District of Pennsylvania
The Curtis Center, Suite 545-W
Philadelphia, PA 19106
215-928-0520

Counsel for Petitioner
Kareem Johnson

Dated: Philadelphia, Pennsylvania
August 15, 2014

CP-51-CR-1300424-2006 Comm. v. Johnson, Kareem
PCRA - Amended PCRA Petition Filed



7186383661

7. Trial counsel filed a postverdict motion, which was later denied when counsel failed to brief it.

8. Trial counsel continued to represent Petitioner on direct appeal to the Pennsylvania Supreme Court. That Court refused to consider two of the claims appellate counsel raised on the basis that they were inadequately briefed. The Pennsylvania Supreme Court affirmed the conviction and sentence of death. Commonwealth v. Johnson, 985 A.2d 915 (Pa. 2009).

9. Petitioner filed a petition for certiorari with the United States Supreme Court, which was denied on October 4, 2010. Johnson v. Pennsylvania, 131 S.Ct. 250 (2010).

10. Petitioner filed a timely pro se PCRA petition on December 16, 2010. On December 21, 2010, undersigned counsel entered their appearance on Petitioner's behalf. This First Amended PCRA Petition is being timely filed.

11. On January 14, 2011, the Governor signed a warrant for the execution of Petitioner. On January 18, 2011, the Honorable Carolyn Engel Temin ordered that Petitioner's impending execution be stayed until the resolution of PCRA proceedings.

PRIOR COUNSEL

12. Petitioner was represented at trial by [REDACTED] Esquire, and [REDACTED] Esquire. [REDACTED] was appointed several months after [REDACTED], and designated to serve as penalty phase counsel. [REDACTED] continued to represent Petitioner through direct appeal to the Pennsylvania Supreme Court.

ELIGIBILITY FOR RELIEF

A. Federal Constitutional Standards.

30. Commonwealth v. William Johnson, CP-51-CR-0936052-1991

a. Claim of Ineffectiveness

At the PCRA stage, Defendant claimed that his trial attorney provided ineffective assistance. In the amended petition, counsel raised numerous claims, “most of which alleged that trial counsel was ineffective for various reasons.” Commonwealth v. Johnson, 139 A.3d 1257, 1270 (Pa. 2016)

b. Relief Received by the Defendant

At the PCRA stage, the Commonwealth agreed that Defendant should have a new penalty phase hearing. (N.T. 5/22/14 at 4).

c. Outcome - *Commonwealth Agreement to a Different Sentence*

The Commonwealth subsequently agreed that it would not pursue the death penalty. (N.T. 10/7/16 at 5) (“The Commonwealth has determined we will not be going forward with the new penalty hearing”).

Defendant was subsequently sentenced to Life. Online Docket Entry, p.20 9/21/16.

d. Duration of Litigation Prior to Resolution

Arrest: June 14, 1991 – Resentenced: September 21, 2016 =
25 yrs, 3 mos, 7 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel EE. Commonwealth v. Johnson, 668 A.2d 97, 104 n.17 (Pa. 1995). EE was court-appointed. CPCMS, Secure Dockets.

31. Commonwealth v. Damon Jones, CP-51-CR-0907121-1982

a. Claim of Ineffectiveness

Defendant claimed that trial counsel failed to investigate and present evidence in support of mitigating circumstances. Commonwealth v. Jones, 912 A.2d 268, 290 (Pa. 2006).

b. Relief Received by the Defendant

[T]he PCRA court found that there was substantial information available at the time of trial that trial counsel should have investigated and that would have supported the statutory mitigating circumstances of Jones' inability to appreciate the criminality of his conduct ...

Jones, 912 A.2d at 292.

c. Outcome – *Commonwealth Agreement to Different Sentence*

Defendant was resentenced to Life. Online Docket Entry, p.45, 12/14/12; Memorandum Opinion, Commonwealth v. Jones, 520 EDA 2013, at 1 (Pa. Super. 11/24/14) (“[T]he Commonwealth elected not to re-pursue the death penalty following the grant of penalty phase relief during PCRA proceedings”).

d. Duration of Litigation Prior to Resolution

Arrest: August 8, 1982 – Resentenced: December 14, 2012 =
30 yrs, 4 mos, 6 d

e. Trial Counsel - *Not court-appointed*

Defendant was represented by Y. Jones, 912 A.2d at 291. (“Jones’ trial counsel, [Y], called no witnesses and presented no evidence at Jones’ penalty hearing”). Y was *not* court-appointed.

32. Commonwealth v. James Jones, CP-51-CR-1024861-1980

a. Claim of Ineffectiveness

Defendant claimed trial counsel provided ineffective assistance when he failed to object to the inclusion of an uncharged aggravating circumstance and failed to investigate and prepare a mitigation presentation. Commonwealth v. Jones, 876 A.2d 380, 383 (Pa. 2005)

b. Relief Received by the Defendant

The PCRA court awarded penalty phase relief and denied all guilt phase relief. Jones, 876 A.2d at 380 (Pa. 2005). The Commonwealth initially filed a cross-appeal contesting the award of a new penalty hearing, but then withdrew its cross-appeal. Jones, 876 A.2d at 383 n.6.

c. Outcome – *Commonwealth Agreement to Lesser Sentence*

Defendant was subsequently sentenced to Life, by agreement:

Order Granting Motion to Vacate Sentence
Commonwealth withdraws penalty phase for death sentence.
Court orders death sentence vacated and imposes sentence of
Life Imprisonment.

Online Docket Entry, p.11, 8/16/11.

d. Duration of Litigation Prior to Resolution

Arrest: October 3, 1980 – Resentenced August 16, 2011 =
30 yrs, 10 mos, 13 d

e. Trial Counsel - *Not court-appointed*

Defendant was represented by counsel HHH. Docket Entry, 5/28/81 (attached). HHH was *not* court-appointed.



COURT OF COMMON PLEAS
 OFFICE OF COURT ADMINISTRATION
 APPEALS DIVISION
 ROOM 601 CITY HALL
 PHILADELPHIA, PA. 19107

EDWARD J. BRADLEY
 PRESIDENT JUDGE

UPDATED DOCKET ENTRIES AS OF 5-6-88

CP-51-CR-1024861-1980 Comm. v. Jones, James
 Certificate and Transmittal of Record to Appellate Court



Commonwealth

1980 October

Vs

2486 - Arson Endangering Persons
 Arson Endangering Property

James Jones

2487 - Murder, First Degree
 2491 - Murder, First Degree

| | | | |
|----------------|---|-----|---|
| Feb. 18, 1980 | - | D-1 | Motion for the Appointment of an investigator, granted by Judge Ribner, cost not to exceed \$150.00. |
| Nov. 12, 1980 | - | | The defendant has been arraigned under Penn. Criminal Code Section 303-306 Ribner, J. |
| Nov. 20, 1980 | - | D-2 | Motion to Quash, filed. |
| Jan. 27, 1981 | - | D-3 | Motion to Quash denied. Ribner, J. |
| Jan. 27, 1981 | - | D-4 | Order of Judge Ribner entered wherein James Jones is to be detained at the Phila. County Prison, Detention Center |
| Feb. 18, 1981 | - | D-5 | Motion to Suppress, filed. To be heard at time of trial. Ribner, J. |
| -- | - | D-6 | Amended Motion to Suppress, #27-43, filed |
| March 27, 1981 | - | | Court Room 453 Defendant arraigned and plead Not Guilty Jury trial requested. |
| April 3, 1981 | - | D-7 | Amended Motion to Suppress further Amended to include points 44-45-and 46. |
| April 13, 1981 | | | Motion to Suppress held under advisement. |

Trial before the Hon. Robert Latrone
Defense attorney, [REDACTED]
ADA: Roger King

- May 28, 1981 - Court Room 453
Commonwealth Rests.
- May 29, 1981 - Motion to Demur is denied.
Defense rests.
- Motion for a Directed Verdict is denied.
- June 1, 1981 - Closing remarks and summation by Counsel
- June 3, 1981 - Charge by the Court to the Jury
- 4:30pm the Jury retired to deliberate
- June 4, 1981 - 11:40am Question from Jury, Answer by Co
- 12:15pm
After due deliberation, the Jury returns
VERDICT:
2486 - Guilty of Arson Endangering Person
Two counts and Arson Endangering Property
- 2487 - Guilty of Murder - First Degree
- 2491 - Guilty of Murder - First Degree
- Jurors polled individually.
- June 5, 1981 - Penalty Hearing:
5:50 pm - Jury Deliberation
7:45 pm - Question from the Jury answered
by the Court.
8:30pm - After due deliberation, the
Jury finds aggravating circumstances
outweigh mitigating circumstances and
sets the Penalty at Death on Bills
2487 and 2491.
- Sentence deferred pending disposition
of written Post Trial Motions.
- Presentence investigation and psychiatric
examination ordered. Defendant to be
held at the Detention Center.
Latrone, J.

JUNE 12, 1981

0-10A

MOTION FOR A NEW TRIAL AND/OR
ARREST OF JUDGMENT FILED.

33. Commonwealth v. Thomas Jones, CP-51-CR-0403101-1982

a. Claim of Ineffectiveness

Defendant claimed that counsel was ineffective at the trial and penalty phases of his trial.

b. Relief Received by the Defendant

On remand from the Pennsylvania Supreme Court, the Post-Verdict Motions Judge “found that trial counsel had provided ineffective assistance during the penalty phase of the proceeding”. Commonwealth’s Brief for Appellee, Jones v. Frank, 1999 WL 33620698 (C.A.3), at p.4.

Thereafter, the Pennsylvania Supreme Court entered a Per Curiam Order granting Defendant’s Motion for Extraordinary Relief and remanding “to the trial court to vacate the sentence of death and to impose a sentence of life imprisonment based on that court’s finding of ineffective assistance of trial counsel during the penalty stage.” Commonwealth v. Jones, 550 A.2d 536, 536 (Pa. 1988)

c. Outcome – *Commonwealth Agreement to a Different Sentence*

On January 18, 1989, the Common Pleas Court vacated the death sentence and imposed a life sentence. Commonwealth’s Brief for Appellee, Jones v. Frank, 1999 WL 33620698 (3d Cir.), at p.4.

d. Duration of Litigation Prior to Resolution

Arrest: January 27, 1982 – Resentenced: January 18, 1989 =
6 yrs, 11 mos, 22 d

e. Trial Counsel - *Not court-appointed*

Defendant was represented by counsel DDD. DDD was *not* court-appointed. Jones v. Frank, 28 F. Supp. 2d 956, 958-959 (E.D. Pa. 1998).

34. Commonwealth v. Alexander Keaton, CP-51-CR-0319251-1993

a. Claim of Ineffectiveness

Defendant claimed that trial counsel's preparation and presentation of mitigation evidence constituted ineffective assistance. Commonwealth v. Keaton, 45 A.3d 1050 (Pa. 2012).

b. Relief Received by the Defendant

The PCRA court granted penalty phase relief and the Pennsylvania Supreme Court affirmed. Keaton, 45 A.3d at 1091 (“[W]e agree with the PCRA court that trial counsel’s investigation regarding penalty phase mitigating evidence fell below the standard expressed in Williams and Wiggins”).

c. Outcome – *Commonwealth Agreement to a Different Sentence*

On June 12, 2014, by agreement, Defendant was sentenced to Life by the Homicide Calendar Judge:

Sentence/Penalty Imposed Resentencing upon appeal. The death penalty has been vacated. The defendant has been resentenced to life without parole. The defendant is to be taken off of death row.

Online Docket Entry, p. 26, 6/12/14; *see also* Commonwealth’s Response to Petition for Writ of Habeas Corpus, Keaton v. Folino, No. 11-cv-7225 (E.D. Pa.) (“[B]y agreement, a life sentence was imposed in 2014”).

d. Duration of Litigation Prior to Resolution

Arrest: January 14, 1993 – Resentenced June 12, 2014 = **21 yrs, 4 mos, 29 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel LL. Keaton, 45 A.3d at 1070, 1087.

35. Commonwealth v. Joseph Kindler, CP-51-CR-0827471-1982

a. Claim of Ineffectiveness

Defendant raised claims of trial counsel's ineffectiveness at the penalty phase.

b. Relief Received by the Defendant

The Third Circuit granted penalty phase relief based upon counsel's ineffectiveness. Kindler v. Horn, 642 F.3d 398, 405 (3d Cir. 2011) (concluding that "(1) that the jury instructions and verdict sheet used during the penalty phase of his trial denied [Defendant] due process of law pursuant to the Supreme Court's holding in Mills and (2) that Kindler was denied effective assistance of counsel during the penalty phase").

c. Outcome – *Commonwealth Agreement to a Different Sentence*

The Commonwealth subsequently agreed to a Life sentence:

Order - Sentence/Penalty Imposed
Defendant sentenced to life without parole, Commonwealth is not seeking the death penalty. Sentence has been agreed to by counsel.

Online Docket Entry, p.26, 3/01/18

d. Duration of Litigation Prior to Resolution

Arrest: August 19, 1982 – Resentenced: March 1, 2018 = **35 yrs, 6 mos, 10 d**

e. Trial Counsel - *Not court-appointed*

Defendant was represented by counsel A. See Petition to Withdraw Appearance (attached). A was *not* court-appointed.

BY: [REDACTED], ESQUIRE
IDENTIFICATION NO. [REDACTED]

COMMONWEALTH OF PENNSYLVANIA

vs.

JOSEPH KINDLER

COURT OF COMMON PLEAS
TRIAL DIVISION
CRIMINAL SECTION

AUGUST TERM. 1982

No. 2747

SUR CHARGE: MURDER

PETITION TO WITHDRAW APPEARANCE AND TO
APPOINT COUNSEL

TO THE HONORABLE JOHN A. GEISZ, THE JUDGE OF THE SAID COURT:

The Petition of [REDACTED], ESQUIRE, respectfully represents:

1. That, your Petitioner has represented the Defendant above named since the date of his arrest and throughout trial.
2. That, the Defendant has been continually incarcerated since the date of his arrest.
3. That, Defendant and his family are without funds to hire counsel to proceed with post-trial motions or any appeal if necessary.

4. That, on February 21, 1984, this Honorable Court entered an order denying Defendant the right to have the notes of testimony herein transcribed at the cost of the county.
5. That, whereas Defendant is not in a position to pay for said notes, and Petitioner will not lay out said funds, the Defendant will not be able to properly proceed with his appeals.
6. That, is is neither the fault of Defendant not Petitioner that the Defendant is indigent.

WHEREFORE, Petitioner prays this Honorable Court enter an Order authorizing Court Administration to administer a "pauper's oath" to Defendant, and if he so qualifies for court-appointed counsel, to withdraw the appearance of Petitioner herein.

And he will ever pray.

Respectfully submitted,

A large, dark, irregularly shaped redaction mark covering the signature of the attorney.

Attorney For Defendant
Joseph Kindler

36. Commonwealth v. Michael LaCava, CP-51-CR-0711041-1990

a. Claim of Ineffectiveness

Defendant claimed that counsel provided ineffective assistance at the penalty phase when he failed to object to the prosecutor's improper closing statement. Commonwealth v. LaCava, 666 A.2d 221 (Pa. 1995).

b. Relief Received by the Defendant

The Pennsylvania Supreme Court determined that counsel was ineffective. LaCava, 666 A.2d at 237 ("we find that trial counsel had no reasonable basis for failing to object to [the prosecutor's] comments").

c. Outcome – *Life Sentence after New Penalty Hearing*

Defendant resentenced to Life after a new penalty phase hearing. Online Docket Entry, p.3, 3/22/96; Commonwealth's Response to Petition for Writ of Habeas Corpus, p.2 ("Petitioner received a new sentencing hearing on March 22, 1996. The jury imposed a sentence of life imprisonment").

d. Duration of Litigation Prior to Resolution

Arrest: June 15, 1990 – Resentenced: March 22, 1996 = **5 yrs, 9 mos, 7 d**

e. Trial Counsel - *Not court-appointed*

Defendant was represented by counsel YY, throughout the trial and the first penalty phase. Commonwealth's Motion to Dismiss PCRA Petition. YY was *not* court-appointed.

37. Commonwealth v. Robert Lark, CP-51-CR-0120121-1980

a. Claim of Ineffectiveness

Defendant claimed ineffectiveness of appellate counsel (who was also his trial counsel) for failing to raise a preserved Batson claim on direct appeal. Lark v. Sec'y Pennsylvania Dep't of Corr., 645 F.3d 596, 600 (3d Cir. 2011).

b. Relief Received by the Defendant

The Third Circuit affirmed the federal district court's grant of a writ of habeas corpus. Lark v. Sec'y Pennsylvania Dep't of Corr., 566 F. App'x 161, 162 (3d Cir. 2014).

c. Outcome – *Life Sentence After New Trial*

After a retrial, a jury convicted Defendant. After a new penalty phase, the jury was unable to render a unanimous verdict and the trial court sentenced Defendant to Life. (N.T. 11/9/17 at 103).

d. Duration of Litigation Prior to Resolution

Arrest: January 9, 1980 – Resentenced: November 9, 2017 = **37 yrs, 10 mos**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel VV. Lark v. Sec'y Pennsylvania Dep't of Corr., 645 F.3d at 599. VV was court-appointed. Affidavit of V.V., Esq. (attached).

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS.)

AFFIDAVIT OF [REDACTED] ESQUIRE

I, [REDACTED] ESQUIRE, swear and affirm as follows; I was court appointed trial counsel for Robert Lark in Commonwealth v. Lark, CP 80-01-2012 through 2022. I believed that the court would not pay for expert consultants to assist me in my defense of Mr. Lark, and I therefore did not request that experts, such as medical and mitigation experts be appointed or retained.

While I do not have a specific recollection of jury selection, I had no strategic, tactical or legal reason for not asking the prospective jurors, who initially indicated that they had some moral or religious belief that would prevent them from voting for the death penalty in the proper case, any questions in an effort to rehabilitate them.

I had no tactical reason for failing to litigate a motion to suppress the physical evidence which was introduced against Mr. Lark at trial. I knew that Mr. Lark had pled guilty to the charge of Possessing an Instrument of Crime as laid in Bill of Information 80-01-2017. I had no tactical reason for failing to raise and argue nor did I even consider raising or arguing a Motion to Dismiss the other charges arising out of the same criminal episode pursuant to 18 Pa. C.S.A. 109 and 110.

I did not call any mitigation witnesses at the sentencing phase of the trial because the first consideration that I gave to mitigation and/or sentencing issues was after the jury had returned a guilty verdict on the first degree murder charge at 2:27 p.m. on June

28, 1985. The only opportunity that I had to investigate the mitigation issues was between the time the jury returned the guilty verdict and the time that the sentencing hearing began almost immediately thereafter. I did not develop psychological, mental health or background mitigation evidence in that time period.



Sworn to and Subscribed

before me this 8th day

of February, 1995.

Patricia M. McCormick

NOTARIAL SEAL
PATRICIA M. MCCORMICK, Notary Public
City of Philadelphia, Phila. County
My Commission Expires June 24, 1996

38. Commonwealth v. Reginald Lewis, CP-51-CR-0205851-1983

a. Claim of Ineffectiveness

Defendant claimed penalty phase ineffectiveness. Lewis v. Horn, 2006 WL 2338409, at *2 (E.D. Pa. Aug. 9, 2006).

b. Relief received by Defendant

The federal district court agreed that counsel provided ineffective assistance at the penalty phase. Lewis, 2006 WL 2338409, at *11 (finding no reason ... for trial counsel's failure to investigate and present mitigating evidence").

On appeal, the Third Circuit remanded the case for an evidentiary hearing on Defendant's ineffectiveness claim. Lewis v. Horn, 581 F.3d 92, 117 (3d Cir. 2009).

On July 25, 2011, the Commonwealth notified the district court that it would not contest the grant of conditional relief as to Lewis's death sentence. Order, Lewis v. Horn, 00-cv-802 (E.D. Pa. July 26, 2011), ECF No. 80.

c. Outcome – *Commonwealth Agreement to a Different Sentence*

On July 9, 2012, by agreement, Lewis was re-sentenced to life without parole:

Sentencing. This case is being re-sentenced upon appeal. The defendant will receive life without parole. The death penalty has been removed.

Online Docket Entry, p.3, 7/9/12.

d. Duration of Litigation Prior to Resolution

Arrest: January 26, 1983 – Resentenced: July 9, 2012 = **29 yrs, 5 mos, 13 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed trial and appeal counsel QQ. Commonwealth v. Lewis, 567 A.2d 1376, 1378 (Pa. 1989); Commonwealth v. Lewis, 743 A.2d 907, 909 (Pa. 2000).

39. Commonwealth v. Steven McCrae, CP-51-CR-0204521-1999

a. Claim of Ineffectiveness

Defendant filed a PCRA petition claiming that trial counsel was ineffective for failing to investigate and present mitigation evidence. Written Agreement Colloquy, at p.2 (attached).

b. Relief Received by the Defendant

The Commonwealth agreed to penalty phase relief.

c. Outcome – *Commonwealth Agreement to a Different Sentence*

The Commonwealth “agreed that [the PCRA] Court may vacate [Defendant’s] two death sentences and impose two consecutive life sentences.” Written Agreement Colloquy, 4/13/06 at p.2 (attached).

d. Duration of Litigation Prior to Resolution

Arrest: January 12, 1999 – Resentenced: April 13, 2006 = **7 yrs, 3 mos, 1 d**

e. Trial Counsel - *Not court-appointed*

Defendant was represented by counsel NNN. NNN was *not* court-appointed. Bill of Information (attached).

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION – CRIMINAL SECTION**

| | | |
|------------------------|---|----------------------------|
| COMMONWEALTH OF | : | FEBRUARY TERM, 1999 |
| PENNSYLVANIA | : | NO. 0452 |
| | : | |
| v. | : | |
| | : | (PCRA) |
| STEVEN MCCRAE | : | |

WRITTEN AGREEMENT COLLOQUY

1. I can read, write and understand the English language.
2. I am not being treated by a psychiatrist or psychologist for any mental problems.
3. I am not currently under the influence of drugs, alcohol, or medication.
4. I understand that a jury sitting before the Honorable Gary S. Glazer has convicted me of two counts of first degree murder, criminal conspiracy, and possession of an instrument of crime in connection with the shooting deaths of Kendrick Haskell and John Ford.
5. I understand that, as to both counts of first degree murder, the jury found that the aggravating circumstances outweighed the mitigating circumstances and, accordingly, imposed sentences of death for each murder conviction.
6. I understand that Judge Glazer then formally imposed consecutive death sentences for the two counts of first degree murder, along with consecutive sentences of five to ten years imprisonment for conspiracy, and two and one-half to five years imprisonment for possession of an instrument of crime.
7. I understand that, on direct appeal, the Pennsylvania Supreme Court affirmed the judgments of sentence.
8. I understand that the United States Supreme Court denied writ of certiorari.

9. I understand that current counsel, Barnaby Wittels, Esquire, is representing me during these PCRA proceedings, and that he has filed PCRA petitions on my behalf claiming: (1) that counsel was ineffective at the penalty hearing for failing to investigate and present additional mitigation evidence; (2) that the prosecutor committed misconduct at the guilt and penalty phases of trial; and (3) that this Court erred when it instructed the jury at the penalty phase.

10. I understand that, during these PCRA proceedings, the District Attorney's Office has agreed that this Court may vacate my two death sentences and impose two consecutive life sentences (i.e., one after the other), with no possibility of parole, provided that:

- (a) I agree to withdraw my current PCRA petition;
- (b) I agree to never seek or file, or have filed on my behalf, any direct appeal, or any state or federal collateral appeal of this Agreement;
- (c) I agree to never seek or file, or have filed on my behalf, a PCRA petition, a federal habeas petition, or any other motion challenging either my conviction or sentence;
- (d) I agree to never seek or file, or have filed on my behalf, any claims of ineffective assistance of past or present counsel;
- (e) I agree to never seek or file, or have filed on my behalf, any claims of trial court error or prosecutorial misconduct;
- (f) I agree to never seek or file, or have filed on my behalf, any petitions for pardon before the Pennsylvania Board of Pardons on this case; and
- (g) I know that I am now giving up these rights forever.

11. I understand that by accepting this Agreement, I am forgoing the Commonwealth's alternative offer of a new penalty phase hearing.
12. I agree that a copy of this written Agreement and Colloquy shall become part of my prison record.
13. I have fully discussed all of my rights as they apply to a PCRA proceeding with my PCRA lawyer, Barnaby Wittels, Esquire, and I am satisfied that I fully understand all of the rights that I am giving up, and what I am receiving in return.
14. Other than the terms and conditions set forth in this Agreement, nobody has promised me anything, or forced me, or threatened me to accept the terms and conditions of this Agreement. I, myself, have decided to accept all terms and conditions of this Agreement. I know what I do and say today is final.
15. I have read this Agreement and have discussed it in its entirety with PCRA counsel, Barnaby Wittels, Esquire. I have no questions regarding the terms and conditions of the Agreement and I understand exactly what is written here. I am satisfied by the advice and services I have received from Mr. Wittels.
16. I admit that I am, in fact, guilty of the murders of both Kendrick Haskell and John Ford, and of conspiracy and possession of an instrument of crime in accordance with the evidence presented at my trial.
17. I accept all of the terms and conditions of this Agreement, knowingly, intelligently, and voluntarily.

I HAVE READ ALL OF THE ABOVE AND HAVE DISCUSSED IT WITH MY
LAWYER. I FULLY UNDERSTAND WHAT IS SET FORTH IN THIS AGREEMENT
AND I ACCEPT ALL TERMS AND CONDITIONS OF THIS AGREEMENT.

Steven McCrae
Steven McCrae

Date: 4/13/06

CERTIFICATION OF DEFENSE COUNSEL

I certify that:

- (1) I am an attorney admitted to the Supreme Court of Pennsylvania.
- (2) I represent the defendant herein.
- (3) I have no reason to believe that the defendant cannot fully understand everything that is being said and done here today.
- (4) The defendant read the above written agreement colloquy in my presence and appeared to fully understand it. I have reviewed the Agreement completely with the defendant, explained all of the items on the Agreement, and answered any questions that he had. The defendant understands the information and my explanations.
- (5) The defendant is knowingly, intelligently and voluntarily agreeing to all terms and conditions in this Agreement.
- (6) I made no promises to the defendant other than any listed on this Agreement.
- (7) Although this decision was made exclusively by the defendant, I agree with his decision.

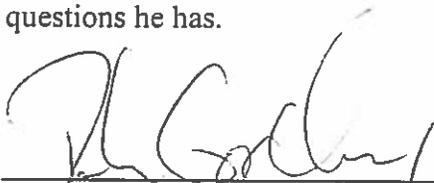

Barnaby Wittels, Esquire

6429 Walnut St
Address Philadelphia PA 19102

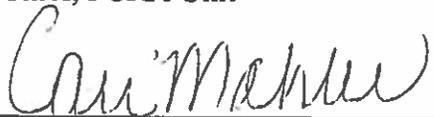
Date: 4/13/06

DISTRICT ATTORNEY'S CERTIFICATION

I certify that we are the assigned assistant district attorneys in this case and that the terms, conditions or agreements mentioned herein are true and correct, as they are set forth above. I have asked the defendant if there is anything on the written agreement colloquy form or anything else about this case that the defendant does not understand, and the defendant has indicated the he understands everything that is set forth. The defendant states that PCRA counsel, Barnaby Wittels, Esquire, has answered any questions he has.



Robin Godfrey, Assistant District Attorney
Chief, PCRA Unit



Cari Mahler, Assistant District Attorney
PCRA Unit

Date: Apr. 13, 2006

JUDGE'S CERTIFICATION

I certify that I am the Judge having the jurisdiction to hear this case and that I am satisfied the defendant understands fully the nature and quality of the Agreement that the defendant is entering before me. The defendant has exercised a knowing, intelligent, and voluntary acceptance of the Agreement mentioned above. I have colloquied the defendant on the record to determine whether he understands everything that is being said and done here today, as well as to determine whether the defendant is entering this Agreement of his own free will.



The Honorable Gary S. Glazer
Court of Common Pleas

Date: 4-13-06

COMMONWEALTH VS
RECORD CON NO

NAME A/K/A ADDRESS ZIP CODE
STEVEN MCCRAE
942 E SCHILLER ST
PHILA. PA 19134
CTNR 00095113

YEAR TERM & NO
9902 0452 1/1
THIS CASE INVOLVES NOS
CHARGE 170 6

STATUS OF DEFENDANT

Bail Set \$
Bail Made \$
Surety Name & Address
DISM.

PLACE OF PRELIM HEARING
RM 703 CJC
DT OF INCIDENT 8/13/98
BIRTH DATE 1/29/80
ATTY CD 98471
M C CASE NO 9901 5203 1/1

ISSUING AUTH
NEIFIELD 421
SEX M RACE A-A
D C NO 9825081362
COMPLAINT DT 1/12/99
DT PREL HEARING 2/09/99

CHARGE CODES & CHARGES
CC25020 - MURDER 2502 H
DATE 2/16/99 DATE OF ARRAIGN 3/03/99 POL SURG RM. 504

| | | | | | |
|------------------|---------------|----------|------|--------------------------|-------------|
| PRE-TRIAL/ TRIAL | WAIVER/JURY | DATE | ROOM | COURT STENO | COURT CLERK |
| | | 11-14-00 | 902 | Matthew M. P. [redacted] | M. H. Smith |
| JUDGE | ADA | PLEA | | | |
| Camp S. Glazer | M. [redacted] | | | | |

DEFENDANT
INVESTIGATED UNDER
B. [redacted] CODE
[redacted]
IN [redacted]

Plea: 11-16-00
Not guilty

11-13-00 Rm 902
Camp S. Glazer
Plea 1100 Motion
to Dismiss is
Denied
11-14-00 Jury Selection
Commences
11-18-00 pris [redacted]
11/16/00 Commonwealth's
Availability
Petition Granted

| | |
|---|---|
| VERDICT | DATE |
| Death by Deliberation the Jury 11-27-00 Returns with a Verdict of Guilty C-11-29-00 for Penalty Hearing Murder 1st Degree 11/30/00 After Deliberation the Jury Sets the Penalty at DEATH | 11-20-00 Motion for Mistrial is Denied 11/21/00 Jury Retires to Deliberate at 4:14 PM 11/29/00 Jury Retires to Deliberate The Penalty is set at DEATH |

| | | | | |
|----------------|---------------|------|------------------|-------------|
| SENTENCE | DATE | ROOM | COURT STENO | COURT CLERK |
| | 11/30/00 | 902 | Lloyd [redacted] | M. H. Smith |
| JUDGE | ADA | | | |
| Camp S. Glazer | M. [redacted] | | | |

DEATH AT THE STATE CORRECTIONS
Institute Rockview \$195.00 Cost.

By the Court
[Signature]

00001100

40. Commonwealth v. Bernard McGill, CP-51-CR-0339201-1990

a. Claim of Ineffectiveness

Defendant claimed “that trial counsel was ineffective for failing to investigate fully, possible mitigating circumstances for his penalty phase.” Commonwealth v. McGill, 832 A.2d 1014, 1025 (Pa. 2003).

b. Relief Received by the Defendant

The Supreme Court remanded the matter to the PCRA court to conduct an evidentiary hearing regarding Defendant’s penalty phase claims. McGill, 832 A.2d at 1026.

c. Outcome – *Commonwealth Agreement to a Different Sentence*

On remand, with the Commonwealth’s agreement, the Homicide Calendar Judge resented Defendant to Life:

Order - Sentence/Penalty Imposed Sentencing. Revised upon appeal, the death penalty is vacated. The defendant is re-sentenced to life without parole

Online Docket Entry, p.15, 1/7/13.

d. Duration of Litigation Prior to Resolution

Arrest: February 17, 1990 – Resentenced: January 7, 2013 =
22 yrs, 10 mos, 21 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel W. McGill, 832 A.2d at 1017. W was court-appointed. CPCMS, Secure Dockets.

41. Commonwealth v. Nathaniel McNair, CP-51-CR-1224591-1987

a. Claim of Ineffectiveness

After his conviction and death sentence were affirmed on direct appeal, Defendant filed a PCRA petition.

b. Relief Received by the Defendant

Defendant received penalty phase relief at the PCRA stage after a hearing.

c. Outcome – *Commonwealth Agreement to a Different Sentence*

Defendant’s sentence changed to Life. Online Docket Entry, p.4, 4/4/02
By agreement, the Commonwealth did not appeal the grant of penalty phase relief and Defendant did not appeal the denial of guilt phase PCRA claims.

d. Duration of Litigation Prior to Resolution

Arrest: December 25, 1987 – Resentenced: April 4, 2002 =
14 yrs, 3 mos, 10 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel QQ. Commonwealth v. McNair, 603 A.2d 1014, 1015 (Pa. 1992). QQ was court-appointed. (Cover Page, N.T. 11/22/88) (“[QQ] for Defendant”) (attached).

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH : DECEMBER TERM 1987
: BILL NOS. 2459 - 2463
: CRIM CONSPIRACY; PIC
V. : GENLY, PIC WEAPON;
: INVOL MANSL; MURDER,
NATHANIEL MCRAIR : VOL MANSL; SIMPL
: ASSLT, AGG ASSAULT

JURY TRIAL

Wednesday, November 16, 1988
Courtroom 246, City Hall
Philadelphia, Pennsylvania

BEFORE:

HONORABLE GEORGE J. IVINS, J., PRESIDING

APPEARANCES:

JUDITH RUBINO, ESQUIRE
Assistant District Attorney
For the Commonwealth of Pennsylvania

~~REDACTED~~, ESQUIRE
Court-Appointed Counsel
Attorney for the Defendant McNair

42. Commonwealth v. Christopher McNeil, CP-51-CR-0500461-1991

a. Claim of Ineffectiveness

Defendant claimed that counsel was ineffective for failing to object to victim impact testimony, which was inadmissible at the time of his trial. Commonwealth v. McNeil, 679 A.2d 1253, 1259 (Pa. 1996)

b. Relief Received by the Defendant

The Pennsylvania Supreme Court agreed that counsel was ineffective for failing to object and remanded for a new sentencing hearing. McNeil, 679 A.2d at 1259-1260. (“We find no reasonable basis for counsel’s failure to object”).

c. Outcome – Life

On June 23, 1997, Defendant was resentenced to Life:

Final Disposition 1 / MURDER-1ST DEGREE Guilty
Confinement LIFE

Online Docket Entry, p.4, 6/23/97

d. Duration of Litigation Prior to Resolution

Arrest: March 26, 1991 – Resentenced: June 23, 1997 = **6 yrs, 2 mos, 28 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel Q. Q was court-appointed. See Court-Appointed Counsel’s Petition to Withdraw (attached); CPCMS, Secure Dockets.

Law Offices

[REDACTED], Esquire

ID No. [REDACTED]

COMMONWEALTH OF PENNSYLVANIA : COMMON PLEAS COURT OF PHILADELPHIA
v. : CRIMINAL TRIAL DIVISION
CHRISTOPHER J. McNEIL : MAY TERM, 1991
: NOS. 46, 48, 50, 52 and 54
: TRIAL JUDGE: BIUNNO, J.

PETITION TO WITHDRAW
AS DEFENDANT'S COURT-APPOINTED COUNSEL

TO THE HONORABLE FRANCIS A. BIUNNO:

[REDACTED], Esquire, Court-Appointed Counsel for the subject Defendant requests that he be permitted to withdraw as Defendant's Court-Appointed Counsel based upon the following:

1. Petitioner was appointed by the Court (Halbert, J.) on March 28, 1991, to represent Christopher J. McNeil who had been charged with murder and other serious criminal offenses. Defendant's arrest was derived from a shooting which occurred shortly after midnight, December 5, 1990, at or near the intersection of 53rd Street and Parkside Avenue, this City, the decedent being one John Arasian.

2. Petitioner diligently represented the Defendant at all stages of the proceedings, having investigated the case carefully, having reviewed trial strategy with him often and at length and having involved himself in assiduous preparation for trial.

3. The case was called to trial before the Hon. Francis A. Biunno and a death-qualified jury, commencing on March 23, 1992, in Courtroom 602,

43. Commonwealth v. William Mikell, CP-51-CR-0716051-1987

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing to request an alibi instruction. Commonwealth v. Mikell, 729 A.2d 566, 570 (Pa. 1999).

b. Relief Received by the Defendant

The Supreme Court ordered a new trial, finding counsel ineffective for failing to request an alibi instruction. Mikell, 729 A.2d at 571 (“[C]ounsel’s inexplicable failure to request an alibi instruction constituted constitutionally ineffective assistance of counsel”).

c. Outcome – *Defendant Received Life after New Trial*

The Commonwealth did not seek a death sentence at Defendant’s second trial. After the retrial, Defendant was convicted of first degree murder by a jury and resentenced by the trial court to Life:

RESULT COMMON PLEAS TRIAL
MURDER JURY VERDICT GUILTY - SENTENCE IMPOSED
SENTENCE: LIFE

Online Docket Entry, p.13, 12/9/04. *See also* Brief for Appellee, Commonwealth v. Mikell, 1127 EDA 2005 (Pa.Super. 2005) (“... a jury again found him guilty of first-degree murder, robbery and possessing an instrument of crime. The following day, Judge Sarmina sentenced him to life imprisonment”).

d. Duration of Litigation Prior to Resolution

Arrest: May 5, 1987 – Resentenced: December 9, 2004 = **17 yrs, 7 mos, 4 d**

e Trial Counsel – *Court-Appointed*

Defendant was represented by counsel B at the first trial. Bill of Information (attached); B was court-appointed. CPCMS, Secure Dockets.

87 JULY 1607
87071607

COMMONWEALTH VS [] NAME & RES. ADDRESS OF LOCAL DEFENDANT
 WILLIAM E. MICKEL
 15000-VIA IMPACT TRANSLATIONS 2514 1-2

STATUS OF DEFENDANT
 Bail Set \$ [] Bail Made \$ []

Surety Name & Address
 []

DATE 7/16/87

CHANGE COBEN R CHANGED
 12000-41100-N 2502
 15000-VIA IMPACT TRANSLATIONS 2514 1-2

PRE-TRIAL/ TRIAL DATE 6-23-88
 WAIVER/JURY []
 HOUR 602
 COURT ROOM 11800-118
 JUDGE DAVID N. SCOTT
 CLERK CARLOS MEZA
 DEFENSE ATTORNEY []
 DEFENDANT []

MIRACLE CONCERNING LUCIANA COOKS
 6-23-88 - JURY NOT GUILTY
 JURY TRIAL REQUESTED BY MURDER
 THE JURY HOPEFULLY CONSIDER
 THIS TO BE A DECISION
 BY THE COURT
 SCOTT

1-19-89 - Jury selection completed
 1-21-89 Jury trial began - defendant arriving with
 counsel and quietly - testimony of [] and Commonwealth
 motions in limine presented during trial are incorporated into
 the record. 1-27-89 After voir dire testimony closing remarks
 of counsel and the charge to the jury the jury deliberated at
 3:14 p.m. to deliberate - 1-28-89 at the last deliberation
 the jurors returned at 11:00 a.m. with a verdict of
 guilty of murder - first degree - []
 Verdict recorded by jury at 11:00 a.m. for []
 on penalty of [] at 3:35 p.m. finding the aggravating
 circumstances and finding no mitigating circumstances taking
 offing the penalty at death. By the jury.
 January 30 1989 - August 9, 1989
 And on this 30th day of January, 1989 the Court hereby
 sentence the defendant William E. Mickel to a sentence of
 death during the week of [] by the Governor of the
 Commonwealth. For-trial motion scheduled for 5/29/89 - R 426
 4-23-89 Judgment of sentence of [] the 13th day of []
 []
 []

88802548

44. Commonwealth v. Mikal Moore, CP-51-CR-0701141-1998

a. Claim of Ineffectiveness

On direct appeal, Defendant claimed that trial counsel was “ineffective for eliciting from a detective that Appellant exercised his right to remain silent and declined to make a post-arrest statement.” Commonwealth v. Moore, 937 A.2d 1062, 1067 n.1 (Pa. 2007). Pursuant to Commonwealth v. Grant, the Court declined to address these ineffectiveness claims. Moore, 937 A.2d at 1067.

b. Relief Received by the Defendant

After the Pennsylvania Supreme Court affirmed his conviction, Defendant filed a PCRA petition. Online Docket Entry, p.12, 2/4/09.

c. Outcome – *Commonwealth Agreement to a Different Sentence*

At the PCRA stage, the Commonwealth agreed to Life. Online Docket Entry, p.22, 3/27/17 (“Order - Sentence/Penalty Imposed By Agreement this court Vacates previous sentence of DEATH and reimposes a sentence of LIFE as to Murder 1st Degree”).

d. Duration of Litigation Prior to Resolution

Arrest: April 28, 1998 – Resentenced: March 27, 2017 =
18 yrs, 10 mos, 27 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel ZZ. Brief for Appellee, No. 396 Capital Appeal Docket, at p.4 (attached). ZZ was court-appointed. CPCMS, Secure Dockets.

**SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

NO. 396

CAPITAL APPEAL DOCKET

**COMMONWEALTH OF PENNSYLVANIA,
Appellee**

V.

**MIKAL MOORE,
Appellant**

BRIEF FOR APPELLEE

**Appeal from the September 28, 1999 Judgments of Sentence
of the Court of Common Pleas of Philadelphia County,
Criminal Division at July Term, 1998, No. 0114.**

**REGINA M. OBERHOLZER
Assistant District Attorney
HUGH J. BURNS, JR.
Chief, Appeals Unit
RONALD EISENBERG
Deputy District Attorney
ARNOLD GORDON
First Assistant District Attorney
LYNNE ABRAHAM
District Attorney**

**1421 Arch Street
Philadelphia, PA 19102**

that, if Kinney had snitched on defendant, he would get someone to stab Kinney and would have Pryer stabbed as well (N.T. 6/22/99, 28; 6/23/99, 5-10, 35-37).

At trial, Donald Burroughs's father, sister and long-time friend testified that defendant had repeatedly bullied the victim, who was twenty-one at the time of his murder, throughout his teenage years. This bullying included including taking his money, beating him up for a beverage bottle, and generally trying to pick fights whenever he saw the victim. He also encouraged his friends to assault Mr. Burroughs. On at least one occasion, the victim was taken to the hospital for treatment of injuries inflicted by defendant. ~~The victim had most recently complained to his sister only a week before he was killed, and his father as he was leaving for work the day he was killed, that he was still having problems with defendant (6/16/99, 10-22, 51-65, 79-89).~~

On June 28, 1999, a jury convicted defendant of murder in the first degree and possessing an instrument of crime. Following a penalty hearing, the jury found one aggravating circumstance – that defendant had a significant history of felony convictions involving the use or threat of violence¹ – and no mitigating circumstances. The jury therefore returned a sentence of death. The trial court formally imposed the death sentence, as well as an additional two-and-a-half to five year sentence for the conviction for possessing an instrument of crime, on September 28, 1999.

Defendant filed post-sentence motions. While the post-sentence motions were pending, both trial counsel, ~~██████████~~, Esquire, and ~~██████████~~ passed away. Present counsel was subsequently appointed and filed amended post-sentence

¹ 42 Pa.C.S. § 9711(d)(9).

45. Commonwealth v. Salvador Morales, CP-51-CR-1012921-1982

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing to object to the prosecutor's statements during closing arguments at trial and at the penalty hearing. Commonwealth v. Morales, 701 A.2d 516, 527 (Pa. 1997)

b. Relief received by Defendant

The Pennsylvania Supreme Court agreed that “[t]he prosecutor invited the jury to sentence this defendant to death in order to compensate for the alleged evils perpetrated by stereotypical liberal judges who routinely allow criminals to go free.” Morales, 701 A.2d at 529 (remanding the case for a new sentencing hearing).

c. Outcome – *Defendant sentenced to Life after new penalty hearing*

On January 4, 2000, after a second penalty phase hearing, Defendant was resentenced to Life. Online Docket Entry, p.4, 1/4/2000; Pirela v. Vaughn, 2013 WL 11323274, at *5 (E.D. Pa. Apr. 29, 2013).

d. Duration of Litigation Prior to Resolution

Arrest: September 30, 1982 – Resentenced: January 4, 2000 =
17 yrs, 3 mos, 5 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel U. Bill of Information (attached). U was court-appointed. Commonwealth v. Morales, Brief for Appellant, 1995 WL 17019887 (Pa.), at p.2 (attached).

IN THE SUPREME COURT OF PENNSYLVANIA

No. 84 Capital Appeal Docket 1995

COMMONWEALTH OF PENNSYLVANIA

v.

**SALVADOR MORALES
a/k/a SIMON PIRELA**

BRIEF FOR APPELLANT

**APPEAL FROM THE ORDER OF THE PHILADELPHIA COUNTY
COURT OF COMMON PLEAS AT NO. 8210-1292-1295**

**James D. Crawford (#03848)
Joseph T. Lukens (#67405)
Attorneys for Appellant**

**Schnader, Harrison, Segal & Lewis
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103
(215) 751-2162**

Of Counsel.

FACTS

Pirela is confined in Graterford Prison, after being convicted of and sentenced for possessing an instrument of crime, criminal conspiracy, and first degree murder.

Pirela, an uneducated, learning disabled and brain damaged Hispanic man who speaks and understands no English and is illiterate in Spanish, was charged with the murder of Jorge Figueroa.¹ Pirela was accused, along with his brother and co-defendant Heriberto Pirela, a/k/a Carlos Tirado ("Tirado"), of summoning Figueroa to the home of Tirado's lover, Elizabeth "Lisa" Colon, with the intention of killing him, allegedly over drug debts. When Figueroa arrived at the Colon residence, he allegedly was stabbed to death by Pirela and Tirado.

A jury convicted Pirela after a fourteen-day trial presided over by Judge Sabo.² Commonwealth v. Morales, Oct. Term 1982, Dkt. Nos. 1292-95 (C.P. Phila., Crim. Div.). ~~Salvador Morales~~ was appointed to represent Pirela at trial. The prosecution's chief witnesses were Soilo "Solo" Greo, a fourteen-year-old heroin dealer; Lisa Colon (Tirado's lover); and Heriberto "Eddie" Colon, Lisa's brother, who testified against Pirela in exchange for leniency in connection with his guilty plea for his participation in an unrelated murder and robbery. (241a-243a).

1. The witnesses to the events at the crime scene referred to appellant as Pirela. However, the bill of particulars, the sentencing verdict slip, Judge Sabo during voir dire and jury charges, the jury when polled at the guilt stage, and the prosecutor during the penalty phase repeatedly referred to Pirela through the alias "Salvador Morales." Prejudicial references were also made to his brother's alias.
2. Pretrial motions were heard on May 1-2, 1983; voir dire took until the ninth day of trial, May 12. The guilt phase began on the ninth day and closing arguments were presented on the twelfth day of trial May 17. Judge Sabo charged the jury and it returned a verdict on May 18; the penalty phase was completed the next day, May 19.

46. Commonwealth v. Willard Moran, CP-51-CR-1130901-1981

a. Claim of Ineffectiveness

Defendant filed a PCRA petition claiming the trial counsel was ineffective for failing to convey a plea offer. Order, 1/27/99, Lineberger, J. (attached).

b. Relief Received by the Defendant

The PCRA court granted relief, vacating the sentence of death and imposing a sentence of Life. Order, *supra* (attached) (“The Court finds that Defendant has proven that his trial counsel failed to convey a pretrial offer to plead guilty and receive a life imprisonment sentence”).

The Commonwealth did not appeal the PCRA court’s decision.

c. Outcome – *Commonwealth Agreement to a Different Sentence*

Defendant was resentenced to Life. Online Docket Entry, p.3, 1/27/99.

d. Duration of Litigation Prior to Resolution

Arrest: November 8, 1981 – Resentenced: January 27, 1999 =
17 yrs, 2 mos, 19 d

e. Trial Counsel - *Not court-appointed*

Defendant was represented by counsel KKL. Bill of Information (attached). KKL was *not* court-appointed.

5
IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
CRIMINAL DIVISION

RECEIVED

JAN 27 1999

Criminal Justice Court
Philadelphia District of PA

COMMONWEALTH OF PENNSYLVANIA :
v. : C.P. No. 8111-3090 et seq.
WILLARD MORAN, JR. :

ORDER

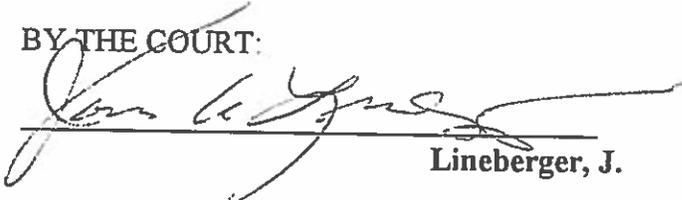
AND NOW, this 25th day of January, 1999, after consideration of defendant's claims for relief under the Post-Conviction Relief Act, and after reviewing the response of the Commonwealth and the Notes of Testimony of the evidentiary hearing of June 25, 1998, it is hereby ORDERED and DECREED that the relief requested is GRANTED in part and DENIED in part, as follows:

1. Defendant's motion to have the sentence of death vacated and a sentence of life imprisonment imposed is GRANTED. The Court finds that Defendant has proven that his trial counsel failed to convey a pretrial offer to plead guilty and receive a life imprisonment sentence, in exchange for cooperation with the federal and state governments. Accordingly, Defendant's sentence of death is hereby VACATED, and Defendant is hereby sentenced to a term of life imprisonment. Defendant is granted credit for all time served since September 30, 1981.

2. All other requests for relief contained in documents filed by Defendant under the Post Conviction Relief Act are DENIED.

The Court further ORDERS that Defendant is to serve his sentence in federal custody under the Federal Witness Protection Program (Witness Unit only).

BY THE COURT:


Lineberger, J.

47. Commonwealth v. Kelvin Morris, CP-51-CR-0704091-1982

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing to prepare and present mitigation evidence. Defendant also claimed that counsel had a conflict of interest, because he once represented Defendant's brother, who was also a suspect in the charged homicide. Morris v. Beard, 2012 WL 4757868, at *1 (E.D. Pa. Oct. 5, 2012).

b. Relief Received by the Defendant

The federal court ruled that "defense counsel's failure to conduct a reasonable investigation of mitigating evidence in anticipation of Morris's capital sentencing hearing, failure to present available mitigating evidence at that hearing, and failure to make a sufficient argument at that hearing violated Morris's Sixth Amendment right to effective assistance of counsel." Morris, 2012 WL 4757868, at *1. The federal court also ordered a new trial due to the conflict of interest. *Id.*

The Commonwealth did not challenge the federal court's Order vacating Defendant's death sentence. Morris, 2012 WL 4757868, at *2. Although the Commonwealth challenged Defendant's right to guilt phase relief, the federal court ultimately granted a new trial. *Id.*

c. Outcome - Commonwealth Agreement to a Different Sentence

On remand, the Commonwealth negotiated a term of years sentence in exchange for Defendant's guilty plea. Online Docket Entry, p.12, 6/7/13; Negotiated Guilty Plea Order (attached).

d. Duration of Litigation Prior to Resolution

Arrest: May 21, 1982 – Resentenced: June 7, 2013 = **31 yrs, 17 d**

e. Trial Counsel – Court-Appointed

Defendant was represented by counsel LLL. LLL was court-appointed. Morris v. Beard, 633 F.3d 185, 189 (3d Cir. 2011).

Commonwealth of Pennsylvania

v.

Kelvin J Morris

4
IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

DOCKET NO: CP-51-CR-0704091-1982
OTN: M 109949-0
PID: 0509571

NEGOTIATED GUILTY PLEA UPON APPEAL ORDER

AND NOW, this 7th day of June, 2013, the defendant having been convicted in the above-captioned case is hereby sentenced by this Court as follows:

Count 1 - 18 § 2702 §§ A - Aggravated Assault (F1)

To be confined for a minimum period of 5 Year(s) and a maximum period of 10 Year(s) at State.

To be placed on Probation for a maximum period of 10 Year(s) to be supervised by First Judicial District County Probation Department.

Count 3 - 18 § 907 §§ A - Poss Instrument Of Crime W/Int (M1)

To be placed on Probation for a maximum period of 5 Year(s) to be supervised by First Judicial District County Probation Department.

Count 5 - 18 § 2502 §§ C - Murder Of The Third Degree (F1)

To be confined for 10 to 20 years at State.

The following conditions are imposed:

Other: Life sentence vacated and death penalty was set aside in federal court.

Credit for time served: Credit for time served effective May 22, 1982.

Other: Mental health evaluation from the street ordered.

Immediate Parole: Defendant paroled immediately.

Other: Mandatory court costs and fines waived.

Count 7 - 18 § 3701 §§ A1I - Robbery-Inflict Serious Bodily Injury (F1)

To be placed on Probation for a maximum period of 20 Year(s) to be supervised by First Judicial District County Probation Department.

LINKED SENTENCES:

Link 1

CP-51-CR-0704091-1982 - Seq. No. 1 (18§ 2702 §§ A) - Probation is Consecutive to
CP-51-CR-0704091-1982 - Seq. No. 1 (18§ 2702 §§ A) - Confinement

Link 2

CP-51-CR-0704091-1982 - Seq. No. 1 (18§ 2702 §§ A) - Confinement is Consecutive to
CP-51-CR-0704091-1982 - Seq. No. 5 (18§ 2502 §§ C) - Confinement

Link 3

CP-51-CR-0704091-1982 - Seq. No. 7 (18§ 3701 §§ A1I) - Probation is Consecutive to
CP-51-CR-0704091-1982 - Seq. No. 1 (18§ 2702 §§ A) - Probation

Link 4

CP-51-CR-0704091-1982 - Seq. No. 3 (18§ 907 §§ A) - Probation is Consecutive to
CP-51-CR-0704091-1982 - Seq. No. 7 (18§ 3701 §§ A1I) - Probation

CP-51-CR-0704091-1982 Comm. v. Morris, Kelvin
Order - Sentence/Penalty Imposed



7029342971

48. Commonwealth v. Craig Murphy, CP-51-CR-0925231-1985

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing to cross-examine the sole identification witness to establish bias. Commonwealth v. Murphy, 591 A.2d 278, 280–281 (Pa. 1991).

b. Relief Received by the Defendant

The Supreme Court agreed and ordered a new trial. Murphy, 591 A.2d at 280-281 (“Appellant was clearly prejudiced by counsel’s performance. Wilson was the only eyewitness to the crime and her testimony was crucial to the Commonwealth’s case”).

c. Outcome - *Commonwealth Agreement to a Different Sentence*

On remand, Defendant entered a guilty plea for a Life sentence. Online Docket Entry, p.3, 11/22/91 (“Guilty Plea ... Confinement LIFE”).

d. Duration of Litigation Prior to Resolution

Arrest: 1985 (Murphy, at 278) – Resentenced: November 22, 1991: = **6 yrs**

e. Trial Counsel - *Not court-appointed*

Defendant was represented by counsel N. Commonwealth’s Motion to Dismiss PCRA Petition, at p.5. N was *not* court-appointed.

49. Commonwealth v. William Nieves, CP-51-CR-1009681-1993

a. Claim of Ineffectiveness

Defendant claimed that trial counsel provided ineffective assistance when he incorrectly advised him that, if he testified, the prosecutor could cross-examine him regarding prior non-*crimen falsi* convictions. Commonwealth v. Nieves, 746 A.2d 1102, 1104 (Pa. 2000)

b. Relief Received by the Defendant

The Pennsylvania Supreme Court agreed that Defendant was entitled to a new trial due to defense counsel's ineffectiveness. Nieves, 746 A.2d at 1104-1105 ("We agree with Appellant that such advice was clearly unreasonable as it is well-established that evidence of prior convictions can only be introduced for the purpose of impeaching the credibility of a witness if the conviction was for an offense involving dishonesty or false statement").

c. Outcome – *Defendant acquitted after retrial*

Defendant was acquitted after retrial. Online Docket Entry, p.3, 12/20/00.

d. Duration of Litigation Prior to Resolution

Arrest: September 21, 1993 – Acquittal: December 20, 2000 =
7 yrs, 2 mos, 29 d

e. Trial Counsel - *Not court-appointed*

Defendant was represented by counsel E. CPCMS, Secure Dockets. E was *not* court-appointed.

50. Commonwealth v. Kelley O'Donnell, CP-51-CR-1220812-1992

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing to prepare and present mitigation evidence.

b. Relief Received by the Defendant

The Supreme Court granted penalty phase relief due to the inadequacy of the colloquy that preceded Defendant's agreement to a sentencing hearing before the trial court, rather than a jury.

In so ruling, the Court was also "compelled to note that the record raises serious doubts regarding counsel's effectiveness during the penalty phase." Commonwealth v. O'Donnell, 740 A.2d 198, 214 n.13 (Pa. 1999) (criticizing trial counsel's failure to "present or argue any further evidence of mitigation even though the record itself indicates that other evidence of mitigation was available and known to counsel").

c. Outcome – *Defendant sentenced to Life after new penalty hearing*

After a new sentencing hearing, the jury unanimously agreed upon a Life sentence. Commonwealth v O'Donnell, 2006 WL 5429138 (Pa.Com.Pl. Nov. 21, 2006); Commonwealth Response to PCRA Petition, 9/18/17 ("On February 6, 2002, the jury found that the Commonwealth had failed to establish the aggravating circumstance of robbery, requiring a verdict of life imprisonment").

d. Duration of Litigation Prior to Resolution

Arrest: November 14, 1992 – Resentenced: February 6, 2002 =
9 yrs, 2 mos, 23 d

e. Trial Counsel - *Not court-appointed*

Defendant was represented by GGG. GGG was *not* court-appointed. O'Donnell v. Lamas, No. CIV.A. 09-3435, 2012 WL 7018079, at *1 (E.D. Pa. Feb. 1, 2012).

51. Commonwealth v. Lamont Overby, CP-51-CR-1006081-1996

a. Claim of Ineffectiveness

After Defendant's direct appeal was denied, he filed a PCRA petition. Online Docket Entry, p.9, 07/08/2004.

b. Relief Received by the Defendant

The PCRA court granted penalty phase relief. Online Docket Entry, p.20, 10/18/13 ("PCRA Petition GRANTED in part. Sentence of DEATH is VACATED").

c. Outcome - *Commonwealth Agreement to a Different Sentence*

After the PCRA court granted penalty phase relief, the Commonwealth agreed to Life. Online Docket Entry, p.20, 10/18/13 ("After hearing, sentence of LIFE imprisonment without the possibility of parole is imposed for Murder in the First Degree").

d. Duration of Litigation Prior to Resolution

Arrest: August 29, 1996 – Resentenced: October, 18, 2013 =
17 yrs, 1 mos, 19 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel EE. (N.T. 7/17/98, 8-9). EE was court-appointed. CPCMS, Secure Dockets.

52. Commonwealth v. Kevin Pelzer, CP-51-CR-1031752-1988

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing to prepare and present mitigation evidence.

b. Relief Received by the Defendant

The Pennsylvania Supreme Court determined that trial counsel's mitigation representation at the penalty phase was deficient:

Having reviewed the testimony presented at the penalty phase, the additional evidence that allegedly could have been discovered and presented, and the parties' arguments, we conclude that the PCRA court did not err in holding that Pelzer established the performance prong of Strickland, *i.e.*, that trial counsel's penalty phase performance in ascertaining and presenting mitigation evidence was deficient.

Commonwealth v. Daniels, 104 A.3d 267, 302 (Pa. 2014).

c. Outcome – *Defendant's case remains open*

Defendant's case remains open. He has received a new appeal from the denial of his PCRA petition, pursuant to Williams v. Pennsylvania, 136 S. Ct. 1899 (2016). Online Docket Entry, p.31, 6/1/17.

d. Duration of Litigation Prior to Resolution

Arrest: September, 1988 – Penalty remains unresolved: = **31 yrs**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel QQ. Commonwealth v. Daniels, 104 A.3d 267, 276 (Pa. 2014). QQ was court-appointed. CPCMS, Secure Dockets.

53. Commonwealth v. Curry Perry, CP-51-CR-0418121-1989

a. Claim of Ineffectiveness

Defendant claimed that trial counsel provided ineffective assistance at both the trial and penalty phase. Commonwealth v. Perry, 644 A.2d 705, 709 (Pa. 1994).

b. Relief Received by the Defendant

The Supreme Court agreed that Defendant received ineffective assistance that entitled him to a new trial:

Applying this standard to counsel's representation in this case leads inexorably to the conclusion that trial counsel was constitutionally ineffective and that appellant must be granted a new trial. There is no question that appellant's underlying allegations of ineffectiveness—failure to interview appellant prior to trial, failure to prepare for trial, failure to use his investigator, unawareness that he was defending a capital case, and failure to prepare for the death penalty hearing—have merit. Counsel's failure to interview witnesses was ineffective, arguably *per se*.

Perry, 644 A.2d at 709.

c. Outcome – *Defendant acquitted after retrial*

On remand, Defendant was retried and acquitted. Online Docket Entry, p.2, 6/26/96.

d. Duration of Litigation Prior to Resolution

Arrest: March 17, 1989 (Perry, 644 A.2d at 707) – Acquitted: June 26, 1996
= **7 yrs, 3 mos, 9 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by court-appointed counsel X. Perry, 644 A.2d at 707; CPCMS, Secure Dockets.

54. Commonwealth v. Otis Peterkin, CP-51-CR-0207841-1982

a. Claim of Ineffectiveness

Defendant raised numerous claims of ineffective assistance of counsel at the pre-trial, trial, sentencing and post-trial stages of his case. Peterkin v. Horn, 176 F. Supp. 2d 342, 374 (E.D. Pa. 2001), *amended on reconsideration in part*, 179 F. Supp. 2d 518 (E.D. Pa. 2002).

b. Relief received by the Defendant

The federal district court granted a new trial:

We therefore find that trial counsel’s representation of the Petitioner was blatantly deficient at least with respect to his failure to provide notice of an alibi defense and to interview alibi and fact witnesses for the defense, that appellate counsel was likewise ineffective in failing to raise these claims earlier and that these deficient performances prejudiced the defense to the extent that Petitioner was deprived of a fair, reliable trial.

Peterkin v. Horn, 176 F. Supp. 2d 342, 376–377 (E.D. Pa. 2001), amended on reconsideration in part, 179 F. Supp. 2d 518 (E.D. Pa. 2002).

c. Outcome - *Commonwealth Agreement to a Different Sentence*

On remand, Defendant entered a guilty plea and received Life. Online Docket Entry, p.3, 12/6/02 (“Guilty Plea ... Confinement LIFE”).

d. Duration of Litigation Prior to Resolution

Arrest: December 2, 1981 – Resentenced: December 6, 2002 = **21 yrs, 4 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel CC. Brief for Appellee, at 1. CC was court-appointed. Peterkin, 176 F. Supp.2d at 349.

55. Commonwealth v. Michael Rainey, CP-51-CR-0419613-1990

a. Claim of Ineffectiveness

Defendant claimed that appellate counsel failed to raise trial counsel's failure to investigate and present mitigating evidence. Commonwealth v. Rainey, 928 A.2d 215, 237-238 (Pa. 2007).

b. Relief Received by the Defendant

The Supreme Court determined that counsel failed to present mitigation:

The proffered evidence indicates Appellant's dysfunctional background, his low level of functioning, and, most significantly, evidence of schizophrenia, paranoia, and bipolar affective disorder. This proof, if believed by the jury, would have been sufficient to implicate the mental health mitigator and potentially affect the weight the jury ascribed to the catch-all mitigator.

Rainey, 928 A.2d at 240. The Court determined that an evidentiary hearing was required to "allow Appellant the opportunity to develop this claim and challenge the reasonableness of counsel's actions." Rainey, 928 A.2d at 241.

c. Outcome - *Commonwealth Agreement to a Different Sentence*

On remand, with the Commonwealth's agreement, the Homicide Calendar Judge sentenced Defendant to Life. Online Docket Entry, p.12, 3/10/09 ("Order - Sentence/Penalty Imposed: Court orders the death penalty sentence vacated and a new sentence of life without parole on 1st degree murder imposed"); Rainey v. Beard, 2014 WL 12696531, at *1 (E.D. Pa. Jan. 31, 2014).

d. Duration of Litigation Prior to Resolution

Arrest: January 9, 1990 – Resentenced: March 10, 2009 = **19 yrs, 2 mos, 1 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel OO. Commonwealth v. Rainey, Brief for Appellant, 2006 WL 2643352 (Pa.), 5. OO was court-appointed. CPCMS, Secure Dockets.

56. Commonwealth v. Wilfredo Ramos, CP-51-CR-0100891-1999

a. Claim of Ineffectiveness

Defendant claimed that he received ineffective assistance at the penalty phase due to counsel's failure to investigate and present mitigation evidence. Commonwealth v. Ramos, 2017 WL 4286386, at *7 (Pa. Super. Ct. Sept. 27, 2017).

b. Relief Received by the Defendant

The PCRA court vacated Defendant's death sentence "based upon the Commonwealth's agreement not to contest [Appellant]'s request for a new penalty hearing based upon ineffective assistance of trial counsel at the penalty hearing for failure to investigate and present certain mitigation evidence." Ramos, 2017 WL 4286386, at *7.

c. Outcome - *Commonwealth Agreement to a Different Sentence*

The Commonwealth agreed to Life:

[B]ased upon the Commonwealth's agreement not to contest defendant's request for a new penalty hearing based upon ineffective assistance of trial counsel at the penalty hearing ... and based upon the Commonwealth's certification that, in the exercise of its discretion, it will not pursue a new penalty hearing in this matter, defendant's sentence of death is hereby vacated and a new sentence of life imprisonment is hereby imposed.

Online Docket Entry, p.18, 4/18/08.

d. Duration of Litigation Prior to Resolution

Arrest: November 17, 1998 – Resentenced: April 18, 2008 = **9 yrs, 5 mos, 1 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by Q. Q was court-appointed. Commonwealth v. Ramos (PCRA) (N.T. 9/25/08 at 18); CPCMS, Secure Dockets.

57. Commonwealth v. Lloyd Reid, CP-51-CR-0405461-1991

a. Claim of Ineffectiveness

Defendant filed a post-sentence motion claiming that trial counsel was ineffective at the guilt and penalty phases of his trial. Post-Sentence Motion Court Opinion, at 2.

b. Relief Received by the Defendant

The post-sentence motion court vacated the death sentence. Reid v. Price, 2000 WL 992609, at *1 (E.D. Pa. July 17, 2000).

c. Outcome - *Commonwealth Agreement to a Different Sentence*

Before the new penalty phase hearing, the Commonwealth withdrew the death certification and defendant was sentenced to life imprisonment. Brief for Appellee Commonwealth of Pennsylvania, 1563 EDA 2018, at p.2.

Defendant was resentenced to Life. Online Docket Entry, p.3, 10/20/94.

d. Duration of Litigation Prior to Resolution

Arrest: March 23, 1991 – Resentenced: October 20, 1994 =
3 yrs, 6 mos, 27 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel OO. OO was court-appointed. Defendant's Post-Sentence Motion (attached); CPCMS, Secure Dockets.

IDENTIFICATION NO. [REDACTED]

[REDACTED] ATTORNEY FOR Defendant

COMMONWEALTH OF PENNSYLVANIA

v.

LLOYD REID

COURT OF COMMON PLEAS
DIVISION

TERM,

C.P. No. 91-04-0546, et seq
[Homicide, inter alia]

Defendant's Post-Sentence Motion for
Arrest of Judgment and/or New Trial, and for
New Effective Counsel

JUDGE TEMIN:

[REDACTED] Lloyd Reid, by his Court-Appointed Attorney, [REDACTED]
[REDACTED] Esq., respectfully avers:

- 1) Jury Trial commenced on 11/12/91;
- 2) on 11/14/91 the Jury returned a verdict of Murder in the First Degree, Robbery, and Possessing Criminal Instrument;
- 3) on 11/15/91 the Jury returned a sentence of "Death";

ARREST OF JUDGMENT

4) Your Honor should have sustained the timely Demurrer to the charge of Murder in the First Degree as the evidence of premeditation was purely speculative and conjectural, and insufficient as a matter of law;

NEW TRIAL

5) Your Honor committed reversible error in admitting the "surprise" expert ballistics opinion that scientific tests had narrowed down the murder weapon to one of only two model revolvers, one of which was the Commonwealth exhibit allegedly recovered near Defendant;

6) Defense Counsel was ineffective in failing to present the evidence tending to disprove that Defendant was the actual shooter; to wit: during the Robbery which caused the Police investigation that discovered the alleged murder weapon, Defendant was NOT holding the gun, but was turning out the pockets of the victim, while his co-conspirator held the gun. Said evidence would have tended to disprove the Premeditation argued by the Prosecutor.

WHEREFORE, Defendant humbly prays for arrest of Judgment; and/or New Trial; and New Counsel.


ESQUIRE
Attorney for Defendant

58. Commonwealth v. Timothy Rice, CP-51-CR-0906231-1996

a. Claim of Ineffectiveness

Defendant claimed that direct appeal counsel was ineffective for not challenging his death sentence under Atkins v. Virginia, 536 U.S. 304 (2002). Commonwealth Motion to Dismiss PCRA Petition, at p.6.

b. Relief Received by the Defendant

At the PCRA stage, the Commonwealth agreed that the PCRA court should grant Defendant's motion to vacate his death sentence. Commonwealth v. Rice, 2013 WL 11256379, at *2 (Pa. Super. Aug. 5, 2013).

c. Outcome - *Commonwealth Agreement to a Different Sentence*

The Commonwealth also agreed to the imposition of a Life sentence:

[T]he PCRA court, with the agreement of the Commonwealth, granted Rice's motion to vacate both death sentences, and instead, imposed two consecutive life sentences.

Commonwealth v. Rice, 2013 WL 11256379, at *2 (Pa. Super. Aug. 5, 2013).

d. Duration of Litigation Prior to Resolution

Arrest: March 23, 1991 – Resentenced: January 27, 2012 =
20 yrs, 10 mos, 4 d

e. Trial Counsel - *Court-Appointed*

On appeal, Defendant was represented by new counsel UU. UU was court-appointed. Commonwealth Motion to Dismiss PCRA Petition, at p.5; CPCMS, Secure Dockets.

59. Commonwealth v. Delores Rivers, CP-51-CR-0335191-1988

a. Claim of Ineffectiveness

On collateral review, Defendant claimed that trial counsel was ineffective for failing to present mitigating evidence at the penalty phase of trial. Specifically, she contended that trial counsel failed to investigate and present evidence of her mental health problems, childhood physical/sexual abuse, and drug abuse, and that trial counsel should have presented the testimony of a mental health expert at the penalty hearing. Commonwealth's Response to Petitioner's Reply Brief, Rivers v. Horn, 02-cv-1600 (E.D. Pa.).

b. Relief Received by the Defendant

The federal district court vacated Defendant's sentence and granted penalty phase relief on Claim IX of Defendant's petition, which alleged that "trial counsel was ineffective at the penalty phase in failing to investigate and present mitigating evidence." Federal Docket Entry, 5/10/05; Commonwealth's Memorandum of Law, Rivers v. Horn, 02-cv-1600; Docket Entry, CP-51-CR-0335191-1988, 6/30/05 (noting that Defendant's death sentence was "vacated by Federal Court on 3/10/05") (attached).

c. Outcome - *Commonwealth Agreement to a Different Sentence*

The Commonwealth agreed to Life if Defendant would waive all future appeals. Court Commitment, 6/30/05 (attached); Docket Entry, supra (noting that the sentencing court imposed Life "as per attached agreement") (attached); Written Agreement Colloquy, 6/30/05 (attached).

d. Duration of Litigation Prior to Resolution

Arrest: February 27, 1988 – Resentenced: June 30, 2005 =
17 yrs, 4 mos, 3 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel MM. MM was court-appointed. Docket Entry, 10/17/91 (attached); CPCMS, Secure Dockets.

COMMONWEALTH VS. *Abelous RIVERA*

SUPPLEMENT TO:
INDICTMENT NO.

NAME, A/K/A, ADDRESS, ZIP CODE

YEAR, TERM & NO.

PP # 508674

of 2803-3579!

City Murder

THIS CASE INVOLVES NOS.

TO

STATUS OF DEFENDANT

DOCKET IN CHRONOLOGICAL ORDER

(List Charge No. and follow with sentence - signed & dated by Judge)

PROCEEDING

| | | |
|------------------------------------|--|--------------------------|
| DATE <i>6/30/05</i> | TYPE | COURTROOM <i>1002</i> |
| COURT CLERK <i>D. Lopez</i> | COURT STENO. <i>Bonnie REIKOVLS</i> | |
| ADA <i>Law for... [unclear]</i> | DEF. COUNSEL <i>Victor Abreu</i> | |
| CONT. CODE | CONT. TO RM. | ON (Date) |

B.W. ISSUED BAIL SUED OUT

B.W. WITHDRAWN NEW BAIL

SAME BAIL \$ _____

PROCEEDING

| | | |
|-------------|--------------|-----------|
| DATE | TYPE | COURTROOM |
| COURT CLERK | COURT STENO. | |
| ADA | DEF. COUNSEL | |
| CONT. CODE | CONT. TO RM. | ON (Date) |

B.W. ISSUED BAIL SUED OUT

B.W. WITHDRAWN NEW BAIL

SAME BAIL \$ _____

PROCEEDING

| | | |
|-------------|--------------|-----------|
| DATE | TYPE | COURTROOM |
| COURT CLERK | COURT STENO. | |
| ADA | DEF. COUNSEL | |
| CONT. CODE | CONT. TO RM. | ON (Date) |

B.W. ISSUED BAIL SUED OUT

B.W. WITHDRAWN NEW BAIL

SAME BAIL \$ _____

Dr. John Foscina
70.2.5. file on County
Death sentence imposed
on March 16, 1989 vacated
by Federal Court on
March 10, 2005.

As per attached
agreement Court
impose sentence of
life imprisonment

By the Court
Foscina J

| | | | |
|--|----------------------------------|--|---|
| DC-300B (PART I) Rev. 7/99 COURT COMMITMENT STATE OR COUNTY CORRECTIONAL INSTITUTION Commonwealth of Pennsylvania vs. <u>RIVERL DELORE</u> | | Type or Print Legibly COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS BOX 598 CAMP HILL, PA. 17001-0598 Attn: Central Office Records NOTE: Additional supply of this form available at above address | |
| COMMITMENT NAME (LAST, FIRST, INITIAL, SUFFIX) | | <input type="checkbox"/> DC-300B (PART II) attached | |
| <input checked="" type="checkbox"/> F <input type="checkbox"/> M | Date of Birth <u>11/25/53</u> | SID | OTN <u>NIP</u> |
| COMMITTING COUNTY <u>Philadelphia</u> | | COURT NUMBER <u>35191 MARCIT</u> | COURT OF INITIAL JURISDICTION <input type="checkbox"/> COMMON PLEAS <input checked="" type="checkbox"/> |
| MANDATORY SENTENCE <input type="checkbox"/> Yes <input type="checkbox"/> No | | COUNTY REFERENCE #: <u>PP # 502674</u> | |
| BOOT CAMP RECOMMENDED <input type="checkbox"/> Yes <input type="checkbox"/> No | | DATE - TERM <u>982</u> | |
| The above defendant after <input type="checkbox"/> Pleading guilty | | <input type="checkbox"/> Nolo contendre <input type="checkbox"/> Being found guilty <input type="checkbox"/> GBMI | |
| was on <u>JUNE 30</u> <u>2001</u> , sentenced by Judge <u>John P. Zinner</u> | | | |
| to a term of not less than _____ years, _____ months, _____ days nor more than _____ years, _____ months, _____ days, or <u>Life Imprisonment</u> for the offense of <u>Murder 1st Degree</u> (Section _____ of the Crimes Code) or (other statute) _____. It is further ordered that the said defendant be delivered by the proper authority to and treated as the law directs at the <u>517</u> facility located at <u>Muncy</u> . | | | |
| Fine: Amount \$ _____ Balance \$ _____ | | Cost: Amount \$ _____ Balance \$ _____ | |
| Restitution: Amount \$ _____ Balance \$ _____ | | EFFECTIVE DATE OF SENTENCE <u>6/30/01</u> | |
| CREDIT FOR TIME SERVED (EXPLANATION OF CREDIT COMPUTATION ON REVERSE SIDE) | | | |
| THIS SENTENCE IS CONCURRENT WITH: <u>any sentence now being served</u> | | | |
| THIS SENTENCE IS CONSECUTIVE TO: | | | |
| PROSECUTING ATTORNEY <u>ANN PONTIERO</u> | | DISPOSITION ON NON-INCARCERATION OFFENSE(S) <u>Death sentence imposed on 3/16/89 vacated by Federal Court on 3/16/95.</u> | |
| DEFENSE ATTORNEY <u>VICTOR ACER</u> | | | |
| COURT REPORTER <u>BONNIE KITKOVIS</u> | | | |
| (SEAL) | | In witness, whereof I have hereunto set my hand and seal of said court, this <u>30</u> day of <u>JUNE</u> , <u>2001</u> <u>[Signature]</u> AUTHORIZED SIGNATURE A-121 | |

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA : MARCH TERM, 1988

V. :

DELORES RIVERS : NO. 3519

WRITTEN AGREEMENT COLLOQUY

1. I can read, write and understand the English language.
2. I am not being treated by a psychiatrist or psychologist for any mental problems. I fully understand what is going on today.
3. I am not currently under the influence of drugs, alcohol, or medication.
4. I understand that I was convicted by a jury before the Honorable John Poserina of Murder in the First Degree, Robbery and Possession of an Instrument of Crime for the murder of Violet Burt.
5. I understand that I was sentenced to death by that jury, that my death sentence was affirmed by the Pennsylvania Supreme Court, that my Post-Conviction Relief Act Petition was denied in the Philadelphia Court of Common Pleas, and that the denial of my P.C.R.A. petition was affirmed by the Pennsylvania Supreme Court.
6. I understand that I filed a petition for writ of habeas corpus in federal court that was pending when my attorney entered into a stipulation on my behalf on April 25, 2005. I understand that pursuant to that stipulation, and an Order by the Honorable Mary A. McLaughlin dated May 10, 2005, the following has happened:

a. The federal court has conditionally granted Claim IX in my habeas petition and denied the remainder of the claims in the petition;

b. It is my understanding that the Court's granting of my petition as to Claim IX will result in the vacation of my death sentence for first degree murder, while leaving intact my convictions and sentences for the other offenses of which I was convicted;

c. It is my understanding that my case has been returned to Common Pleas Court so that I will be sentenced to life imprisonment for my first degree murder conviction;

d. In consideration of the Commonwealth's agreement not to seek capital re-sentencing, I agree to waive any further appeals in any court (state or federal) challenging my convictions and/or sentences.

7. I understand that a life sentence in Pennsylvania means life without the possibility of parole at any future time.

8. I have fully discussed all my rights as they apply to my federal habeas petition and this agreement with my lawyers, Victor Abreu, Esquire, and David Wycoff, Esquire, and I am satisfied that I fully understand those rights.

9. In return for the District Attorney's decision to not seek the death penalty in this case, I agree to the following terms and conditions of this written agreement:

a. I agree to accept a sentence of life imprisonment for murder in the first degree;

b. I agree to have my current federal habeas petition dismissed;

c. I agree to never seek or file, or have filed on my behalf, any direct or collateral appeals of either my conviction or sentence or this Agreement to either the

Pennsylvania Superior or Supreme Courts, or to any federal courts. I know that I am now giving up these rights forever.

- d. I agree to never seek or file, or have filed on my behalf, any claims of ineffective assistance of counsel, including but not limited to: a claim of lack of preparation for trial, lack of defense strategy, failure to file pre-trial motions and a claim of any defense attorney errors pre-trial, trial and post-trial. I know that I am now giving up these rights forever.
- e. I agree to never seek or file, or have filed on my behalf, any claims of trial court error regarding any pre-trial, trial or post-trial rulings, or any claim of prosecutorial misconduct pre-trial, trial or post-trial. I know that I am now giving up these rights forever.
- f. I agree to never seek or file, or have filed on my behalf, any Petitions for Allocatur in either the State or Federal Court systems relating to this case. I know that I am now giving up these rights forever.
- g. I agree to never seek or file, or have filed on my behalf, any state or federal collateral appeals of my conviction or sentence on this agreement, including but not limited to, any relief under the Post Conviction Relief Act or any Federal Habeas Corpus Petitions.
- h. I know I could continue to litigate my federal habeas petition and have all my claims decided by the Honorable Mary McLaughlin. I know that I am now giving

up that right forever and agree to have my federal habeas petition dismissed. I also know that my federal habeas petition will be denied with prejudice with respect to every claim except claim IX, and I know that means I am forever giving up the right to pursue those claims in state or federal court.

- i. I agree that no other court will review my case after today.
 - j. I agree to never seek or file, or have filed on my behalf, any Petitions for Pardon before the Pennsylvania Board of Pardons on this case or my convictions or sentences or this agreement;
 - k. ~~I agree to never seek or file, or have filed on my behalf, any Appeal for Commutation of my sentences to the Governor of the Commonwealth of Pennsylvania;~~ EMC
USA
 - l. I agree to never seek or file, or have filed on my behalf, any Petitions for Extraordinary Relief or Post-Sentence Motion before any state or federal court relating to my convictions or sentences or this agreement. I know that I am now giving up that right forever.
 - m. I agree that a copy of this written agreement and colloquy shall become part of my prison record or file.
10. In return for my decision to comply with all of the terms and conditions of this agreement and to give up each and every one of the rights described above, the District Attorney agrees not to seek the death penalty against me of murder in the first degree for which I have been found guilty, and previously sentenced to death.

11. Other than the terms and conditions set forth in this agreement, nobody has promised me anything or forced me or threatened me to accept the terms and conditions of this agreement. I, myself, have decided to accept all terms and conditions of this agreement. I know what I do and say today is final.
12. I have read this agreement and discussed this agreement, in its entirety, with my counsel. I have no questions regarding the terms and conditions of the agreement and I understand exactly what is written here.
13. I am satisfied with the advice and service I have received from my counsel, Victor Abreu, Esquire, and David Wycoff, Esquire. I have discussed my case fully with my counsel. My lawyers have spent enough time on my case and I have had enough time to discuss my case fully with my lawyers.
14. My lawyers have left the final decision as to what to do on my case with me, and I have decided, myself, to accept the terms and conditions of this Agreement.
15. My lawyers have fully explained to me what it means to accept the terms and conditions of this Agreement and they have each reviewed and explained this written agreement colloquy with me and it is my decision to accept all terms and condition of this written agreement.
16. I admit that I am in fact guilty of first degree murder, robbery, and possession of an instrument of crime in accordance with the evidence presented at trial.
17. I accept all terms and conditions of this agreement, knowingly, intelligently and voluntarily.

I HAVE READ ALL OF THE ABOVE AND HAVE DISCUSSED IT WITH MY
LAWYERS. I FULLY UNDERSTAND WHAT IS SET FORTH IN THIS
AGREEMENT AND I ACCEPT ALL TERMS AND CONDITIONS OF THIS
AGREEMENT.

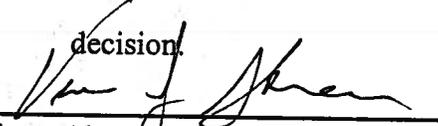
Delores Rivers
DELORES RIVERS

Date: 8/30/05

CERTIFICATION OF DEFENSE COUNSEL

I certify that:

- (1) I am an attorney admitted to the Supreme Court of Pennsylvania:
- (2) I represent the defendant herein.
- (3) I know no reason why the defendant cannot fully understand everything that is being said and done here today.
- (4) The defendant read the above written agreement colloquy in my presence and appeared to fully understand it. I have gone over the agreement completely with the defendant, explained all of the items on the agreement, and answered any questions she had. The defendant understands the information and my explanations.
- (5) The defendant is knowingly, intelligently and voluntarily agreeing to all terms and conditions in this agreement.
- (6) I made no promises to the defendant other than any listed on this agreement.
- (7) Although this decision was made exclusively by the defendant, I agree with her decision.



Victor Abreu, Esquire

David Wycoff, Esquire

6/30/05

(Date)

DISTRICT ATTORNEY'S CERTIFICATION

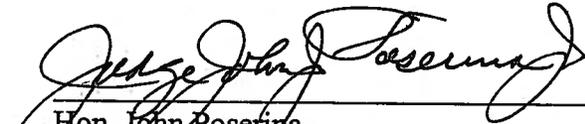
I certify that I am the assigned assistant district attorney in this case and that the terms, conditions or agreements mentioned herein are true and correct, as they are set forth above. I have asked the defendant if there is anything on the written agreement colloquy form or anything else about this case that the defendant does not understand, and the defendant has indicated the she understands everything that is set forth. The defendant states that any questions she has have been answered fully by defense counsel, Victor Abreu, Esquire and David Wycoff, Esquire.


Edward McCann, Assistant District Attorney
Chief, Homicide Unit

Date: 6/30/05

JUDGE CERTIFICATION

I certify that I am the Judge having the jurisdiction to hear this case and that I am satisfied the defendant understands fully the nature and quality of the agreement that the defendant is entering before me. The defendant has exercised a knowing, intelligent, voluntary acceptance of the agreement mentioned above. I have colloquied the defendant on the record to determine whether the defendant understands everything that is being said and done here today, as well as to determine whether the defendant is entering this agreement of her own free will.



Hon. John Posertina
Judge, Court of Common Pleas

Date: 6-30-05

COURT OF COMMON PLEAS
APPEALS DIVISION
ROOM 601 CITY HALL
PHILADELPHIA, PA. 19107

COMMONWEALTH

CCP Lower Court Numbers

VS.

DELORES RIVERS

CP# 8803-3519 to 3524

DEATH PENALTY

Phila. Police Photo #: 508674

Computer Lead #: 8803-3519

Offense Tracking #: M3412721

Appellate Ct. #: 152 CO APPELLATE DKT. 1191 C

Judge: John Poserina

| DATE: | DOC.# | DESCRIPTION OF ACTION: |
|----------|-------|---|
| 10-17-91 | D-7 | -- Notice of Appeal to Supreme Court from the final order/judgment entered on 10-3-91 |
| | | Appeal filed by: XXXXXXXXXX |
| | | Status: IFP/ XXXXXXXXXX |
| | | Appointment of Counsel Request forwarded. |
| | | Counsel appointed: _____ |
| 11/26/91 | - | -- Bills of Information located. Docket entries prepared, XXXXXXXXXX . |
| 10/23/91 | D-8 | -- Order pursuant to Pa. R.A.P. 1925(b), filed. |
| 10/28/91 | D-9 | -- Statement of Matters pursuant to PRAP 1925(b), filed. |
| 10/31/91 | D-10 | -- Record returned from Judge Poserina, J. Opinion filed. |
| 8-27-92 | - | -- Record transmitted to Appellate Court. |
| | D-11 | -- NOTES OF TESTIMONY: (One envelope exhibits) 3/24/88, 3/1/89, 3/2/89, 3/3/89, 3/6/89, 3/8/89, 3/9/89, 3/10/89, 3/13/89, 3/14/89, 3/15/89, 3/16/89 |

60. Commonwealth v. Florencio Rolan, CP-51-CR-0228931-1984

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective at the penalty phase.

b. Relief Received by the Defendant

The PCRA court vacated the death sentence “upon finding that Defendant’s right to effective assistance of counsel was violated during the penalty phase of his trial.” Rolan v. Vaughn, 2004 WL 2297407, at *1 (E.D. Pa. Oct. 12, 2004) *affirmed* 445 F.3d 671 (3d Cir. 2006).

The Superior Court affirmed the grant of a new sentencing hearing. Commonwealth v. Rolan, 4581 Philadelphia 1997 (Pa. Super. June 9, 1999).

c. Outcome – *Defendant sentenced to Life after new penalty hearing*

After a re-sentencing hearing, a jury unanimously sentenced Defendant to Life. Rolan, 2004 WL 2297407, at *1.

d. Duration of Litigation Prior to Resolution

Arrest: November 30, 1983 – Resentenced: May 2, 2003 (Rolan v. Vaughn, 445 F.3d 671, 674 (3d Cir. 2006)) = **19 yrs, 5 mos, 2 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel O Rolan v. Coleman, 680 F.3d 311, 315 (3d Cir. 2012). O was court-appointed. Rolan v. Vaughn, Brief for Appellant (Commonwealth), 2004 WL 5026812 (3d Cir.).

61. Commonwealth v. Saharris Rollins, CP-51-CR-0405851-1986

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing “to investigate or present to the jury significant mitigating evidence regarding Petitioner’s physically and psychologically traumatic upbringing.” Rollins v. Horn, 2005 WL 1806504, at *6 (E.D. Pa. July 26, 2005).

b. Relief Received by the Defendant

The Third Circuit granted penalty phase relief. Rollins v. Horn, 386 F. App’x 267, 270 (3d Cir. 2010) (“Rollins’ attorney performed deficiently by failing to adequately investigate and present evidence of mitigating circumstances”).

c. Outcome - *Commonwealth Agreement to a Different Sentence*

On remand, the Commonwealth agreed to Life. Online Docket Entry, p.6, 12/21/11 (“This case was sent back from Federal court. The original sentence was vacated. Listed for re-sentencing. The Commonwealth will not seek the death penalty on remand”).

The Common Pleas court sentenced Defendant to Life. Online Docket Entry, p.6, 1/13/12 (“The defendant has been re-sentenced to life without parole”).

d. Duration of Litigation Prior to Resolution

Arrest: February 26, 1986 – Resentenced: January 13, 2012 =
26 yrs, 11 mos, 18 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by HH. Commonwealth v. Rollins, Commonwealth’s Brief for Appellee, 1999 WL 33657491 (Pa.), p.17. HH was court-appointed. Statement of Matters Complained of on Appeal (attached).

6-9-87
P. 570

IDENTIFICATION NO. [REDACTED]
[REDACTED]

Attorney for Defendant
Court Appointed by:
Honorable Murray C. Goldman

IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : April Term, 1986
: :
: :
VS. : Nos. 0585;0586;0587;0588
: :
: :
SAHARRIS ROLLINS a/k/a :
HAROLD ALVEREZ :

STATEMENT OF MATTERS COMPLAINED OF ON APPEAL

Defendant, Saharris Rollins, by and through his court-appointed attorney, [REDACTED], states the below as the matters complained of on appeal:

1. Trial Court erred in failing to exclude the "Ballistic Match-Up" evidence of a subsequent crime.
2. Trial Court erred in allowing the entire subsequent crime to be tried during the course of the trial.
3. Trial Court erred in failing to find the show-up identifications of Richard Campbell, Dennis Danzler and Sharon Williams constitutionally infirm.

FILED

OCT 20 1987

APPEALS DIVISION, ROOM 601
COURT OF COMMON PLEAS PHILA.

n-21

62. Commonwealth v. James Melvin Smith, CP-51-CR-0717891-1983

a. Claim of Ineffectiveness

In his PCRA petition, Defendant raised three claims: “whether Atkins barred Appellant’s execution; whether Appellant had been forcibly medicated at the time of trial; and whether trial counsel was ineffective during the penalty phase with regard to the presentation of mitigating evidence.” Commonwealth v. Smith, 17 A.3d 873, 882 (Pa. 2011).

b. Relief Received by the Defendant

On June 19, 2009, defense counsel and the Commonwealth stipulated that Appellant would be granted a new penalty phase hearing based on the ineffectiveness of trial counsel. Smith, 17 A.3d at 882.

c. Outcome - *Commonwealth Agreement to a Different Sentence*

Defendant was resentenced to Life. Smith v. Wetzel, 2015 WL 4886421, at *1 (E.D. Pa. Aug. 14, 2015); Online Docket Entry, p.18, 10/25/2012 (“The defendant is re-sentenced to life without parole. The defendant is to be taken off of death row forthwith”); Commonwealth’s Response to Petition for Writ of Habeas Corpus (“The prosecution later agreed not to seek a new capital sentencing proceeding”).

d. Duration of Litigation Prior to Resolution

Arrest: May 4, 1983 – Resentenced: October 25, 2012 =
29 yrs, 5 mos, 21 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel BB. Smith, 17 A.3d at 881; Commonwealth v. Smith, 540 A.2d 246, 247 (Pa. 1988). BB was court-appointed. Cover Page, N.T. 9/22/83 (attached).

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH

VS

JAMES M. SMITH

JULY SESSIONS, 1983

#1789: MURDER
VOLUNTARY MANSLAUGHTER

#1790: INVOLUNTARY MANSLAUGHTER

#1791: CRIMINAL CONSPIRACY

#1792: P.I.C. - GENERALLY

CITY HALL
ROOM 646

WEDNESDAY
FEBRUARY 6TH, 1985
11:45 A.M.

BEFORE: HON. EUGENE GELFAND, JUDGE
AND A JURY

APPEARANCES: ROBERT MYERS, ESQUIRE
ASSISTANT DISTRICT ATTORNEY

~~REDACTED~~ ESQUIRE
ATTORNEY FOR DEFENDANT (COURT-APPOINTED)

REPORTED BY: WILLIAM J. SCHAEFER, R.P.R./C.M.
OFFICIAL COURT REPORTER

TYPED BY: MARGOT BERGER SERVICES



COURT OF COMMON PLEAS
 OFFICE OF COURT ADMINISTRATION
 APPEALS DIVISION
 ROOM 601 CITY HALL
 PHILADELPHIA, PA. 19107

EDWARD J. BRADLEY
 PRESIDENT JUDGE

DOCKET ENTRIES

APPEALS

Commonwealth ATTORNEYS OFFICE

1983 July

vs

JAMES MELVIN SMITH

- 1789 - Murder, First Degree
- 1791 - Criminal Conspiracy
- 1792 - Possession Instrument of Crime Generally

Estimated Run Date under Rule 1100 is 10-31-83.

- May 31, 1983 - D-1 - Pro Se Motion for a PreTrial Order Restraining and Enjoining the DA from Cross-Examining or Interrogating the defendant concerning his prior criminal record.
- June 13, 1983 - D-2 - Omnibus PreTrial Motion for Relief, filed.
- Sept. 1, 1983 - D-3 - Notice of Joint Trial, filed.
- Sept. 1, 1983 - - Court Room 643
 Defendant has been arraigned under Pa. Criminal Code Section 303-306.
 - Bail set at \$25,000.00.
 Richette, J.
- Sept. 22, 1983 - CR 643
 - Defense Motion to Sever denied.
 - Richard Moore, Esq. withdraws, Court appoints [redacted] Esq.
 - Defendant waived Rule 1100, new rundate is 12-31-83.
 Richette, J.
- Oct. 31, 1983 - D-4 - Petition for the Hiring of an Investigator filed.
- Oct. 31, 1983 - D-5 - Motion to Suppress Statements, Physical Evidence and Identification, filed.

63. Commonwealth v. Willie Sneed, CP-51-CR-0606741-1984

a. Claim of Ineffectiveness

Defendant claimed that trial counsel provided ineffective assistance at the penalty phase. Commonwealth v. Sneed, 899 A.2d 1067, 1077 (Pa. 2006) (“appellee contended that counsel failed to present any character witnesses and, essentially, failed to present any mitigation defense whatsoever”).

b. Relief Received by the Defendant

The PCRA court agreed that trial counsel was ineffective at the sentencing hearing. Sneed, 899 A.2d at 1071.

The Supreme Court affirmed the granting of penalty phased relief. Sneed, 899 A.2d at 1084 (“We are satisfied that if the jury had heard testimony and argument regarding the mitigation evidence presented by appellee at the PCRA hearing, there is a reasonable probability that at least one juror would have struck a different balance and voted not to impose the death penalty”).

c. Outcome - *Commonwealth Agreement to a Different Sentence*

On remand, the Commonwealth agreed to Life. Online Docket Entry, p.8, 12/18/12 (“Order Granting Motion to Vacate Sentence By agreement of counsel, Court orders DEATH SENTENCE imposed on 4/2/1986 VACATED and imposes a new sentence of LIFE Imprisonment”).

d. Duration of Litigation Prior to Resolution

Arrest: April 10, 1984 – Resentenced: December 18, 2012 =
28 yrs, 8 mos, 8 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel JJ. Commonwealth v. Sneed, 526 A.2d 749, 751 (Pa. 1987); Commonwealth Brief for Appellee, 601 Capital Appeal Docket, at p.6. JJ was court-appointed. Cover Page, Trial Transcript, (“APPEARANCES [JJ] for Defendant Sneed”) (attached).

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH : JUNE TERM, 1984
: CP NOS. 0669 - 0673
V. : MURDER, VOL MANSL;
: INVOL MANSL; ROBBERY;
WILLIE S. SNEED : POSS INSTR CRIM GENLY,
: CRIMINAL CONSPIRACY

JURY TRIAL

Monday, February 25, 1985
Courtroom 246, City Hall
Philadelphia, Pennsylvania

BEFORE:

HONORABLE GEORGE J. IVINS, J., PRESIDING

APPEARANCES:

JAMES LONG, JR., ESQUIRE
Assistant District Attorney
For the Commonwealth of Pennsylvania

~~REDACTED~~, ESQUIRE
Court-Appointed Counsel
Attorney for the Defendant Sneed

64. Commonwealth v. Brian Thomas, CP-51-CR-0827161-1985

a. Claim of Ineffectiveness

Defendant claimed that trial counsel was ineffective for failing to investigate and present evidence regarding his mental health history at the penalty phase.

b. Relief received by Defendant

The Third Circuit remanded the matter for an evidentiary hearing “concerning the extent, if any, of Thomas’ counsel’s pre-sentencing investigative efforts to obtain mitigating evidence.” Thomas v. Horn, 570 F.3d 105, 130 (3d Cir. 2009) (noting that “there exists a reasonable probability that effective counsel would have chosen to present evidence of Thomas’ mental health history, and that its presentation would have convinced at least one juror to sentence Thomas to life imprisonment”).

c. Outcome - *Commonwealth Agreement to a Different Sentence*

On remand, the Commonwealth notified the court that it would no longer contest the grant of conditional relief as to Thomas’s death sentence. Thomas v. Horn, 00-cv-803-CMR (E.D. Pa. Dec. 20, 2011), ECF No. 98.

The Commonwealth did not seek a new penalty hearing. Defendant was resentenced to Life by the Homicide Calendar Judge. Online Docket Entry, p.14, 9/24/13 (“The death penalty has been vacated. Life without parole on count #9”).

d. Duration of Litigation Prior to Resolution

Arrest: August 12, 1985 – Resentenced: September 24, 2013 =
28 yrs, 1 mos, 12 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel PPP. PPP was court-appointed. Thomas v. Beard, 388 F. Supp. 2d 489, 493 (E.D. Pa. 2005) (“[Defendant] was represented by court-appointed counsel”).

65. Commonwealth v. LeRoy Thomas, CP-51-CR-1207001-1994

a. Claim of Ineffectiveness

Defendant claimed penalty phase ineffectiveness for failure to present mitigating evidence. Commonwealth v. Thomas, 44 A.3d 12, 16 (Pa. 2012)

b. Relief Received by the Defendant

At the PCRA stage, the Commonwealth agreed to a new penalty hearing. Thomas, 44 A.3d 12, 16 n.3. (“[A]ppellant’s claim that trial counsel was ineffective for failing to present mitigating evidence was rendered moot after the parties stipulated to a new penalty hearing”).

At the PCRA hearing, the Commonwealth agreed that Defendant received ineffective assistance at the penalty phase. (N.T. 9/18/07 at 4-5).

c. Outcome - *Commonwealth Agreement to a Different Sentence*

With the Commonwealth’s agreement, the Homicide Calendar Judge resentenced Defendant to Life:

Order - Sentence/Penalty Imposed Re-sentencing upon appeal. The death penalty has been vacated upon appeal. New sentence of life without parole. The defendant is to be taken off of death row.

Online Docket Entry, p.16, 3/15/13.

d. Duration of Litigation Prior to Resolution

Arrest: December 7, 1994 – Resentenced: March 15, 2013 =
18 yrs, 3 mos, 8 d

e. Trial Counsel - *Not court-appointed*

Defendant was represented by E. (N.T. 5/9/95 at 1). E was *not* court-appointed.

66. Commonwealth v. Michael Thomaston, CP-51-CR-0400541-1995

a. Claim of Ineffectiveness

After his capital sentence, Defendant's new counsel filed post-sentence motions challenging the effectiveness of trial counsel. Commonwealth v. Thomaston, 118 EDA 2003 (Pa. Super. 11/16/04) (Memorandum) ("Appellant filed post-sentence motions ... alleging ineffective assistance of counsel and requesting either a new trial or a new penalty hearing"). Defendant challenged trial counsel's stewardship at the penalty phase for "not objecting to the elicitation of defendant's criminal history, and the court's explanation of age as a mitigating factor." Commonwealth Letter Brief for Appellee, 118 EDA 2003, at p.4.

b. Relief Received by the Defendant

At the post-sentence motion stage, the Common Pleas Court vacated the death sentence and granted a new penalty phase hearing. Opinion, Mazzola, J., 12/4/03 at p.1; Thomaston, 118 EDA 2003, at p.4.

c. Outcome - *Commonwealth Agreement to a Different Sentence*

The Commonwealth did not seek a new penalty hearing and the PCRA court imposed Life. Online Docket Entry, p.4, 12/11/02; Brief for Appellee, 314 EDA 2008 ("Judge Mazzola reviewed the record, denied defendant's request for a new trial, but vacated his death sentence and imposed a sentence of life imprisonment").

d. Duration of Litigation Prior to Resolution

Arrest: February 2, 1995 – Resentenced: December 11, 2002 =
7 yrs, 10 mos, 9 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel T. T was court-appointed. Docket Entry (attached); CPCMS, Secure Dockets.



COURT OF COMMON PLEAS
 TRIAL DIVISION
 APPEALS UNIT
 ROOM 206 CRIMINAL JUSTICE CENTER
 1301 FILBERT STREET
 PHILADELPHIA, PA 19107

683-7522, 7523

FREDERICA MASSIAH-JACKSON
 President Judge
 Trial Division

JAMES J. FITZGERALD, III
 Administrative Judge
 Trial Division

D. WEBSTER KEOGH
 Supervising Judge
 Criminal Division

SUSAN CARMODY
 Supervisor

COMMONWEALTH

CP#9504-0054 1/3

VS

PP#743257

Michael E. Thomaston

CHARGES: #1 Murder H
 #7 PIC M1

#2 Robbery F
 #8 Criminal Conspiracy F1

| <u>DATE</u> | <u>DOCUMENT#</u> | <u>COURT ACTION</u> |
|-------------|------------------|---|
| 3-7-95 | D-1 | [REDACTED] Esq. appointed as counsel for the defendant. Means, J. |
| 4-12-95 | -- | Arraignment. C- 5-12-95, rm 625. Temin, J. |
| 5-12-95 | -- | Additional Discovery received. Inv. ongoing. Motion to be filed.. T.E. C- 6-12-95, rm 625. Temin, J. |
| 6-12-95 | -- | Defense counsel to file Motion to quash. List 6-26-95, rm 625. Temin, J. |
| 6-26-95 | -- | List w/co-defendants. C - 7-11-195, rm 625. Temin, J. |

67. Commonwealth v. Andre Thompson, CP-51-CR-0221931-1993

a. Claim of Ineffectiveness

After his death sentence was affirmed, Defendant filed a PCRA petition. On Line Docket Entry, p.6, 10/27/00.

b. Relief Received by the Defendant

The Commonwealth agreed to penalty phase relief.

c. Outcome - *Commonwealth Agreement to a Different Sentence*

At the PCRA stage, the Commonwealth agreed to a term of years sentence. Online Docket Entry, p.12, 9/20/05 (“Murder Guilty Pleas Negotiated/Sentence Imposed: Minimum Sentence: 10 Years 0 Months 0 Days, Maximum Sentence: 20 Years 0 Months 0 Days Concurrent With Other Charge(s) Within The Same Case”).

d. Duration of Litigation Prior to Resolution

Arrest: December 23, 1992 – Resentenced: Sept. 20, 2005 =
12 yrs, 7 mos, 28 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel Q. Bill of Information (attached); Q was court-appointed. (N.T. 10/14/93 at 1) (attached).

ANDRE J. THOMPSON

| | | | | | | | | | | | | | | | |
|--|------------------------------|------------------------|-----------------------|--|-----------------------------------|----------------------------|------------------------|--|---------------------------------------|--|--|--|--|--|--|
| 5 | 10-7-93 | | 453 | COURT STENO. CLARENCE DIPRETORO | 6 | 10-25-93 | | 453 | COURT STENO. CLARENCE DIPRETORO | | | | | | |
| COURT CLERK LIVY ENRI COOKS | JUDGE ROBERT A LATRONE | ADA GAIL FAIRMAN | COUNSEL [REDACTED] | | COURT CLERK LIVY ENRI COOKS | JUDGE ROBERT LATRONE | ADA GAIL FAIRMAN | COUNSEL [REDACTED] | | | | | | | |
| CONTIN. CODE | CONT. TO JUDGE | CONT. TO ROOM 453 | ON (Date) 10-12-93 | | CONTIN. CODE | CONT. TO JUDGE | CONT. TO ROOM | ON (Date) | | | | | | | |
| DEFENSE <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | | | PROSECUTION <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | | | DEFENSE <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | | | PROSECUTION <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | | |

Defence Attorney LLC

By the Court
Lawrence J.

TRIAL DAYS 10-25-93 - JUROR #5 EXCLUDED
10-26-93 - KNOW WITNESSES
10-27-93
10-28-93
10-29-93
10-30-93
10-31-93
11-1-93
11-2-93
11-3-93
11-4-93
11-5-93
11-8-93 VERDICT
11-9-93 PENALTY PHASE

11-10-93
21 DAYS

| | | | | | | | | | | | | | | | |
|--|------------------------------|------------------------|-----------------------|--|-----------------------------------|------------------------------|------------------------|--|---------------------------------------|--|--|--|--|--|--|
| 7 | 11-1-93 | | 453 | COURT STENO. CLARENCE DIPRETORO | 8 | 11-5-93 | | 453 | COURT STENO. CLARENCE DIPRETORO | | | | | | |
| COURT CLERK LIVY ENRI COOKS | JUDGE ROBERT A LATRONE | ADA GAIL FAIRMAN | COUNSEL [REDACTED] | | COURT CLERK LIVY ENRI COOKS | JUDGE ROBERT A LATRONE | ADA GAIL FAIRMAN | COUNSEL [REDACTED] | | | | | | | |
| CONTIN. CODE | CONT. TO JUDGE | CONT. TO ROOM 453 | ON (Date) 11-3-93 | | CONTIN. CODE | CONT. TO JUDGE | CONT. TO ROOM 453 | ON (Date) 11-8-93 | | | | | | | |
| DEFENSE <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | | | PROSECUTION <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | | | DEFENSE <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | | | PROSECUTION <input type="checkbox"/> Ready <input type="checkbox"/> Not Ready | | | |

ELECTION DAY 11-2-93

COURT NOT IN SESSION 11-2

By the Court
Lawrence J.

JUDGE 11-5-93

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FOR THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

* * *

COMMONWEALTH : FEBRUARY TERM, 1993

VS. :

ANDRE THOMPSON A/K/A :
ANTHONY RODGERS : C.P. NO. 2193

* * *

THURSDAY, OCTOBER 14, 1993
COURTROOM 453, CITY HALL
PHILADELPHIA, PENNSYLVANIA

* * *

BEFORE: THE HONORABLE ROBERT A. LATRONE, J.
(AND A JURY)

* * *

A P P E A R A N C E S:

GAIL FAIRMAN, ESQUIRE,
ASSISTANT DISTRICT ATTORNEY
FOR THE COMMONWEALTH

~~XXXXXXXXXXXXXXXXXXXX~~, ESQUIRE,
COURT-APPOINTED COUNSEL
FOR THE DEFENDANT

68. Commonwealth v. Louis Thompson, CP-51-CR-0436071-1990

a. Claim of Ineffectiveness

Defendant raised ineffectiveness claims after his capital conviction.

b. Relief Received by the Defendant

At the PCRA stage, the Commonwealth agreed that Defendant received ineffective assistance at his penalty phase:

Commonwealth is in agreement with petitioner's PCRA claims AS TO PENALTY PHASE ONLY

Docket Entry, 5/21/04 (emphasis in original) (attached).

c. Outcome - *Commonwealth Agreement to a Different Sentence*

With the Commonwealth's agreement, Defendant was resentenced to Life. Online Docket Entry, p.6, 5/21/04.; Correspondence with PCRA Counsel, 5/5/04 (attached).

d. Duration of Litigation Prior to Resolution

Arrest: April 14, 1990 – Resentenced: May 21, 2004 = **14 yrs, 1 mos, 7 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel TT. TT was court-appointed. Order Vacating Homicide Appointment (attached).

COMMONWEALTH VS.

SUPPLEMENT TO:
INDICTMENT NO.



NAME, A/K/A, ADDRESS, ZIP CODE
Louis Thompson
PP # 364882

YEAR, TERM & NO
CP 9004-3607
THIS CASE INVOLVES NOS.
3607 TO 3612

STATUS OF DEFENDANT

DOCKET IN CHRONOLOGICAL ORDER

(List Charge No. and follow with sentence - signed & dated by Judge)

PROCEEDING

| | | |
|---|--|--|
| DATE <i>5-21-04</i> | TYPE | COURTROOM <i>1002</i> |
| COURT CLERK <i>Flameny</i> | | COURT STENO. <i>Adalys Cummins</i> |
| ADA <i>Sheryl LaBar and</i> | | DEF. COUNSEL <i>Ronald Greenblatt</i> |
| CONT. CODE <i>Robin Godfrey</i> | CONT. TO RM. | ON (Date) |
| <input type="checkbox"/> B.W. ISSUED | <input type="checkbox"/> BAIL SUED OUT | |
| <input type="checkbox"/> B.W. WITHDRAWN | <input type="checkbox"/> NEW BAIL | |
| <input type="checkbox"/> SAME BAIL | \$ _____ | |

Hon. John J. Poserina, Jr 5-21-04

Commonwealth is in agreement with petitioner's PCRA claims AS TO PENALTY PHASE ONLY.

Petitioner and defense counsel withdraw all claims as to guilt phase. (see colloquy on record and signed memorandum of agreement in file) By agreement of all parties, court vacates sentence of death imposed formally on 7-31-92, and imposes a sentence of life imprisonment without the possibility of parole. Defendant by agreement signed this date, waives all rights to further appeal.

By the Court.

Poserina, Jr J

PROCEEDING

| | | |
|---|--|--------------|
| DATE | TYPE | COURTROOM |
| COURT CLERK | | COURT STENO. |
| ADA | | DEF. COUNSEL |
| CONT. CODE | CONT. TO RM. | ON (Date) |
| <input type="checkbox"/> B.W. ISSUED | <input type="checkbox"/> BAIL SUED OUT | |
| <input type="checkbox"/> B.W. WITHDRAWN | <input type="checkbox"/> NEW BAIL | |
| <input type="checkbox"/> SAME BAIL | \$ _____ | |

PROCEEDING

| | | |
|---|--|--------------|
| DATE | TYPE | COURTROOM |
| COURT CLERK | | COURT STENO. |
| ADA | | DEF. COUNSEL |
| CONT. CODE | CONT. TO RM. | ON (Date) |
| <input type="checkbox"/> B.W. ISSUED | <input type="checkbox"/> BAIL SUED OUT | |
| <input type="checkbox"/> B.W. WITHDRAWN | <input type="checkbox"/> NEW BAIL | |
| <input type="checkbox"/> SAME BAIL | \$ _____ | |

April 29, 2004

Ronald L. Greenblatt, Esq.
1429 Walnut Street, Suite 1001
Philadelphia, PA 19102

Re: Commonwealth v. Louis Thompson CP 9004-3607-3612
Written Agreement N.L. May 5, 2004

Dear Ron,

As we discussed earlier this week, our office has a few, small proposed changes to the Written Agreement that you have drafted regarding your client Louis Thompson.

Referring to the example agreement for the Faruqi case, which was your template for the present agreement, we would like you to add the following changes:

- 1) Your document, page 5, begins with subset numbers 2-7. Your #7 corresponds to the Faruqi #7. However, Faruqi then has a number 8, stating simply that: "I agree that no other court will review my case after today." We propose adding the #8 clause.
- 2) Immediately after your #7 (pg. 5), the next clause is given outline #13. This clause corresponds exactly to Faruqi #13. However, on the Faruqi document, before #13 and after #8, are subset letters (h), (i),(j), and (k). We propose that you include Faruqi clauses (h), (i), and (k)----clause (j) is admittedly not relevant to this type of agreement.

Thank you for your attention to this matter. This letter is being faxed to your office today, as well as being mailed, in order to expedite these changes before our May 5 hearing date. Please call me with regarding any questions or disagreements with these proposed changes.

Sincerely,

Sheryl LaBar, Assistant District Attorney
PCRA Unit 215-686-5716

98

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA

Trial Division
 Criminal Section

PLEAS OF PHILADELPHIA

Family Court Division

Domestic Rel.

Juvenile

Women's
Criminal

Misdemeanant's

IN THE PHILADELPHIA MUNICIPAL COURT

Criminal Section

Commonwealth

vs.

1102

Date: NOVEMBER 26TH, 1991

MURDER

CP 9004-3607-3612

PP# 364882

LOUIS THOMPSON

TO VACATE HOMICIDE APPOINTMENT

I hereby certify, That on 28TH day of OCTOBER A.D. 1991

HON. JUDGE CLARK PERMITTED

ESQUIRE

TO WITHDRAW AS DEFENSE COUNSEL IN THE ABOVE CAPTIONED CASE.

Court Clerk

69. Commonwealth v. William Tilley, CP-51-CR-1210781-1985

a. Claim of Ineffectiveness

Defendant raised ineffectiveness claims after his capital conviction. Commonwealth v. Tilley, 780 A.2d 649, 652 (Pa. 2001).

b. Relief Received by the Defendant

At the PCRA stage, the Commonwealth agreed that Defendant was entitled to a new penalty phase. As the Commonwealth's attorney explained:

[T]he Commonwealth determined that it was appropriate to agree to a new penalty phase based on [trial counsel's] admissions in that affidavit that he essentially did nothing in preparation for the penalty phase hearing; he didn't really think about it; he didn't think his client could get the death sentence and basically started prepping at the end of the guilty phase or, worse, didn't prep at all. That is the basis for our agreement.

(N.T. 5/1/07 at 7-8). As the PCRA court observed, this was trial counsel's "first capital case and he was unfamiliar with the law and didn't think he would reach a penalty phase." (N.T. 5/1/07 at 8).

c. Outcome – *Unresolved due to Defendant's death in custody*⁶

d. Duration of Litigation Prior to Resolution

Arrest: August 2, 1985 – New Penalty Hearing Ordered: May 1, 2007 =
21 yrs, 8 mos, 29 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by counsel II. (N.T. 5/7/07 at 7); II was court-appointed. Conversation with Trial Counsel.

⁶ After receiving a new penalty phase, Defendant appealed the denial of his remaining guilt phase issues. The case was closed upon his death. On Line Docket Entry, p.10, 1/21/2009.

70. Commonwealth v. Philip Trivigno, CP-51-CR-0100861-1996

a. Claim of Ineffectiveness

Defendant claimed that the prosecutor argued future dangerousness and that trial counsel did not request a Simmons instruction. Commonwealth v. Trivigno, 750 A.2d 243, 257 (Pa. 2000) (noting that “no Simmons instruction was requested”).

b. Relief Received by the Defendant

The Pennsylvania Supreme Court granted penalty phase relief. Trivigno, 750 A.2d at 254 (“Given that the prosecution had placed Trivigno’s future dangerousness at issue, the trial court should have at this point explained what a life sentence means in accordance with Simmons”).

c. Outcome – *Defendant received Life after new penalty hearing*

After a new penalty phase hearing, the jury imposed Life. Online Docket Entry, p.4, 1/29/03; PCRA Opinion, Tucker, J. 11/2/16, at p.2.

d. Duration of Litigation Prior to Resolution

Arrest: December 19, 1995 – Resentenced: January 29, 2003 =
7 yrs, 1 mos, 10 d

e. Trial Counsel - *Not court-appointed*

Defendant was represented by counsel BBB. (N.T. 9/7/96 at 1). BBB was *not* court-appointed.

71. Commonwealth v. Vinson Washington, CP-51-CR-0310321-1994

a. Claim of Ineffectiveness

Defendant's PCRA petition claimed that trial counsel violated his duty of loyalty to him "by laboring under a conflict of interest that caused him to sabotage his defense, thus denying him effective assistance of counsel." Defendant cited a letter that his lawyer wrote to a defense expert in which the lawyer stated that Defendant may "epitomize the banality of evil." Commonwealth v. Washington, 880 A.2d 536, 541 (Pa. 2005).

b. Relief Received by the Defendant

On appeal from the denial of post-conviction relief, the Pennsylvania Supreme Court remanded the matter for an evidentiary hearing. Washington, 880 A.2d at 546 ("this case is remanded to the PCRA court for an evidentiary hearing on the claim that trial counsel breached his duty of loyalty to Appellant because of personal feelings of hostility that counsel harbored and that the breach caused trial counsel to render ineffective assistance").

On remand, the Commonwealth agreed that Defendant was entitled to a new penalty phase hearing. Online Docket Entry, p.9, 7/15/08 ("Commonwealth agrees to stipulation to grant the defendant a new penalty phase").

c. Outcome - *Commonwealth Agreement to a Different Sentence*

The parties entered into a negotiated guilty plea and Defendant was sentenced to Life. On Line Docket Entry, p.13, 5/16/11 ("[B]ased on stipulation of parties, the defendant is sentenced to LIFE Imprisonment").

d. Duration of Litigation Prior to Resolution

Arrest: February 12, 1994 – Resentenced: May 16, 2011 =
17 yrs, 3 mos, 4 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented by QQQ. QQQ was court-appointed. Court Order, 3/30/94 (attached); CPCMS, Secure Dockets.

COURT OF COMMON PLEAS
TRIAL DIVISION
APPEALS UNIT
ROOM 601 CITY HALL
PHILADELPHIA, PA. 19107

Alex Bonavitacola
Administrative Judge
Trial Division

Joanne Morelli Besden
Supervisor

COMMONWEALTH

CP# 94-03-1032-1037

VS

PP# 721806

VINSON WASHINGTON

DEATH PENALTY

CHARGES: **BILLS #1032 - MURDER**
VOLUNTARY MANSLAUGHTER
#1034 - ROBBERY
#1035 - PIC - GENERALLY
PIC - CONCEALED WEAPON
#1037 - CRIMINAL CONSPIRACY

| <u>DATE</u> | <u>DOCUMENT#</u> | <u>COURT ACTION</u> |
|-------------|------------------|---|
| 3-23-94 | D-1 | Notice Of Mandatory Minimum Sentence Case, Filed. |
| 3-23-94 | D-2 | Notice Of Joint Trial, Filed. |
| 3-23-94 | D-3 | Notice Of Aggravating Circumstances, Filed. |
| 3-23-94 | | Formal Arraignment Waived Under Criminal Code 303-306. <u>NOT GUILTY</u> plea entered. Commonwealth Notices Given; 352 Mandatory Minimum. Estimated 1100 Run Date 1-12-95. Informal Discovery not Complete to be mailed within 30 days. Listed For Trial E.P.D. 4-25-94 for status and filing of motions. Foy, T/C. |
| 3-30-94 | D-4 | Petition For Leave To Employ Special Investigator, Filed. |

| <u>DATE</u> | <u>DOCUMENT#</u> | <u>COURT ACTION</u> |
|-------------|------------------|--|
| 3-30-94 | D-5 | ORDER. AND NOW, this 23rd day of March, 1994, upon consideration of the foregoing Petition, and after hearing thereon, it is ORDERED that [REDACTED] Esquire, attorney for the above named destitute defendant, who is charged with murder, be and is hereby authorized to employ a special investigator to assist him in the defense of said defendant, said expense to be an allowance charged against the County of Philadelphia. Not to exceed \$500.00. Davis, J. |
| 3-30-94 | D-6 | Petition For Leave To Employ A Psychiatrist, Filed. |
| 3-30-94 | D-7 | ORDER. AND NOW, this 23rd day of March, 1994, upon consideration of the foregoing Petition, and after hearing thereon, it is ORDERED that [REDACTED] Esquire, attorney for the above named destitute defendant, who is charged with murder, be and is hereby authorized to employ a psychiatrist to assist him in the defense of said defendant, said expense to be an allowance charged against the County of Philadelphia. Not to exceed \$1,000.00. Davis, J. |
| 4-5-94 | D-8 | Motion For Appointment Of Associate Counsel, Filed. |
| 4-5-94 | D-9 | AND NOW, this 29th day of March, 1994, upon consideration of the within application and upon motion of [REDACTED] Esquire, attorney for defendant herein, it is hereby ORDERED AND DECREED: That, the motion is GRANTED, and [REDACTED] Esquire is appointed as Associate Counsel in this matter. Davis, J. |
| 4-25-94 | | Status Listing. Time Ruled Excludable. Davis, J. |
| 5-6-94 | D-10 | Omnibus Motion, Filed. |

72. Commonwealth v. Derrick White, CP-51-CR-0012991-2010

a. Claim of Ineffectiveness

After his capital conviction, Defendant filed a PCRA petition claiming that mitigation counsel provided ineffective assistance at the penalty phase. Defendant's petition "raise[d] a single, limited ineffectiveness issue, related to penalty phase counsel's failure to present to the jury evidence in support of the age mitigator. Per Curiam Remand Order, 7/2/13, Commonwealth v. White, No. 663 CAP.

b. Relief Received by the Defendant

On remand, the trial court granted Defendant a new penalty phase hearing. Commonwealth v. White, (Memorandum Opinion), 1152 EDA 2015, at p.5.

c. Outcome – *Aggravator quashed by resentencing court*

Thereafter, the court quashed the sole aggravating circumstance and sentenced Defendant to Life. White, supra, at p. 5.

d. Duration of Litigation Prior to Resolution

Arrest: July 22, 2010 – Resentenced: March 23, 2015 = **4 yrs, 8 mos, 1 d**

e. Trial Counsel – *Court-Appointed*

Defendant was represented by trial counsel P and by mitigation counsel C. Both were court-appointed. Entry of Appearance, 8/24/10 (attached); Entry of Appearance, 2/17/11 (attached); CPCMS, Secure Dockets.

8
Commonwealth of Pennsylvania
Court of Common Pleas
County of: Philadelphia
16 Judicial District



ENTRY OF APPEARANCE

Docket No: CP12CR-0012991-2010

COMMONWEALTH OF PENNSYLVANIA
v.

DERATCH LIETE

To the Clerk of Courts:

Please enter my appearance for the defendant in the above-captioned case.

[Redacted Signature]

Signature of Attorney for Defendant

17 Feb 2011

Date

Name and address of Attorney for Defendant:

Name: [Redacted]

Supreme Court ID No: [Redacted]

Firm: _____

Address: _____

Phone No: [Redacted]

Fax No: (optional) _____

Email Address: (optional) [Redacted]

Check Applicable:

Court Appointed

Privately Retained

Public Defender

Pro Bono Counsel

[Philadelphia Use Only]

Common Pleas Court Trial Division, Criminal Section

Common Pleas Court, Family Court Division

Philadelphia Municipal Court, Criminal Division

Commonwealth of Pennsylvania
Court of Common Pleas
County of: PHILA
Judicial District



ENTRY OF APPEARANCE

Docket No:

MC SICR 0031468-2010

COMMONWEALTH OF PENNSYLVANIA

DERRICK WHITE

To the Clerk of Courts:

Please enter my appearance for the defendant in the above-captioned case.

Signature of Attorney for Defendant

Date

8/24/10

Name and address of Attorney for Defendant:

Name:

Supreme Court ID No:

Firm:

Address:

Phone No:

Fax No: (optional)

Email Address: (optional)

Check Applicable:

Court Appointed

Privately Retained

Public Defender

Pro Bono Counsel

[Philadelphia Use Only]

Common Pleas Court Trial Division, Criminal Section

Common Pleas Court, Family Court Division

Philadelphia Municipal Court, Criminal Division

73. Commonwealth v. Christopher Williams, CP-51-CR-0417523-1992

a. Claim of Ineffectiveness

Defendant raised ineffectiveness claims after his capital conviction, based upon trial counsel's failure to investigate medical and forensic evidence. On Line Docket Entry, p.21, 1/3/13.

b. Relief Received by the Defendant

After an evidentiary hearing, the PCRA court determined that "trial counsel was ineffective for failing to investigate the medical and forensic evidence" and that "appellate counsel was ineffective for failing to raise this claim on appeal." Online Docket Entry, p.25, 12/30/13 *affirmed* Commonwealth v. Williams, 141 A.3d 440 (Pa. 2016).

c. Outcome - *Commonwealth Agreement to a Different Sentence*

The Commonwealth subsequently "withdrew the capital designation on this case". Online Docket Entry, p.32, 8/9/18.

d. Duration of Litigation Prior to Resolution

Arrest: March 11, 1992 – Capital Designation Withdrawn: August 9, 2018 =
26 yrs, 4 mos, 29 d

e. Trial Counsel – *Court-Appointed*

Defendant was represented at trial by counsel EE. EE was court-appointed. Order of Appointment (attached). Defendant was represented by XX on direct appeal. XX was court-appointed. Commonwealth v. Williams, 720 A.2d 679, 682 (Pa. 1998); Williams, 141 A.3d at 448; CPCMS, Secure Dockets.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA

Trial Division
 Criminal Section

Family Court Division

Domestic Rel.

Juvenile

Women
 Criminal

Misdemeanor

IN THE PHILADELPHIA MUNICIPAL COURT

Criminal Section

Commonwealth

vs.

Date: APRIL 6, 1992

MURDER

MC 9203-1193-1196

PP# 692468

THIS APPOINTMENT IS NOT TRANSFERABLE

CHRISTOPHER WILLIAMS

I hereby certify, That on 17TH day of MARCH A.D. 1992
HON. JUDGE MASSIAH-JACKSON APPOINTED [REDACTED], ESQUIRE

TO DEFEND IN ACCORDANCE WITH LAW.

[Signature] Court Clerk

64

74. Commonwealth v. Craig Williams, CP-51-CR-0525631-1987

a. Claim of Ineffectiveness

Defendant claimed that trial counsel provided ineffective assistance at the guilt and penalty phases of his trial. Commonwealth v. Williams, 980 A.2d 510, 533 (Pa. 2009) (Saylor, J. dissenting).

b. Relief received by Defendant

At the PCRA stage, the Commonwealth consented to the grant of a new capital penalty hearing. Williams, 980 A.2d at 513.

c. Outcome - *Commonwealth Agreement to a Different Sentence*

The Commonwealth did not seek a new penalty hearing and the Homicide Calendar Judge resentenced Defendant to Life. Online Docket Entry, p.17, 5/1/12.

d. Duration of Litigation Prior to Resolution

Arrest: April 25, 1987 – Resentenced: May 1, 2012 = **25 yrs, 6 d**

e. Trial Counsel - *Not court-appointed*

Defendant was represented by M. Commonwealth’s Motion to Dismiss PCRA Petition, at p.1. M was privately retained. Williams, 980 A.2d at 533 (Saylor, J. dissenting) (“Pervading several of Appellant’s claims is the allegation that his trial counsel conducted no investigation of guilt or penalty, but rather, focused his efforts on the extraction of fees from those concerned about Appellant”).

PART I, SECTION A, SUBSECTION TWO

PHILADELPHIA DEATH SENTENCES OVERTURNED DUE TO INEFFECTIVE ASSISTANCE WHERE THE DEFENDANT HAD COURT-APPOINTED COUNSEL

Part I, Section A, Subsection Two lists the IAC cases where court-appointed trial counsel—i.e. an attorney selected by the Philadelphia Court of Common Pleas for an indigent defendant—represented the accused at trial. Court-appointed counsel represented the defendants in **58 (78%)** of the 74 cases where the defendant received post-conviction relief due to ineffective assistance.

The same information regarding whether counsel was court-appointed appears in the preceding list of 74 IAC cases (Part I, Section A, Subsection One). That information is separately detailed here, for ease of reference.

Each case is listed by the defendant's name, Common Pleas Court docket number, and by the number assigned to it in Part I, Section A, Subsection One.

1. (1) Comm. v. Lawrence Baker, CP-51-CR-0629891-1981

Trial counsel was court-appointed. Commonwealth v. Baker, 511 A.2d 777, 787, 780-781 (Pa. 1986).

2. (2) Comm. v. Lee Baker, CP-51-CR-0405062-1984

Trial counsel was court-appointed. Docket Entries, at p.3; Conversation with counsel.

3. (3) Comm. v. Billa, CP-51-CR-0136311-1987

Trial counsel was court-appointed. Defendant's Motion for Post-Conviction Relief, 6/13/12, at p.5; Docket Entry, 4/13/87; Petition for Leave to Withdraw as Counsel, at p.1.

4. (4) Comm. v. John M. Blount, CP-51-CR-0124901-1990

Trial counsel was court-appointed. Order, 2/9/90, Clarke, J.

5. (5) Comm. v. Aquil Bond, CP-51-CR-0502971-2004

Trial counsel was court-appointed. (N.T. 3/18/14 at 70-71); CPCMS, Secure Dockets.

6. (6) Commonwealth v. Jesse Bond, CP-51-CR-2217781-1992

Trial counsel was court-appointed. Bond v. Beard, 539 F.3d 256, 281 (3d Cir. 2008).

7. (7) Comm. v. Billy Brooks, CP-51-CR-0128471-1991

Trial counsel was court-appointed. Commonwealth v. Brooks, 839 A.2d 245, 247 (Pa. 2003).

8. (8) Comm. v. Samuel Carson, CP-51-CR-0228371-1994

Trial counsel was court-appointed. Post-Sentence Motion, 7/16/95, at p.1

9. (9) Comm. v. Ronald Clark, CP-51-CR-1241151-1993

Trial counsel was court-appointed. See Motion for Withdrawal of Counsel; Correspondence, 11/30/93.

10. (11) Comm. v. Ronald Collins, CP-51-CR-0614771-1992

Trial counsel was court-appointed. Docket Entry, 10/17/94; CPCMS, Secure Dockets.

11. (12) Comm. v. Robert Cook, CP-51-CR-0826512-1987

Trial counsel was court-appointed. Commonwealth v. Cook, 952 A.2d 594, 616 (2008).

12. (13) Comm. v. Bernard Cousar, CP-51-CR-0607431-1999

Trial counsel was court-appointed. Commonwealth v. Cousar, 154 A.3d 287, 293 (Pa. 2017); PCRA Court Opinion, p.1 n.1.

13. (14) Comm. v. Dewitt Crawley, CP-51-CR-0201551-1984

Trial counsel was court-appointed. Commonwealth v. Crawley, 526 A.2d 334, 346 (Pa. 1987); Docket Entry, 9/10/84.

14. (15) Comm. v. Junious Diggs, CP-51-CR-0709781-2002

Trial counsel was court-appointed. CPCMS, Secure Dockets.

15. (17) Comm. v. Joseph Elliott, CP-51-CR-0410911-1994

Trial counsel was court-appointed. Commonwealth v. Elliott, 80 A.3d 415, 422 (Pa. 2013); CPCMS, Secure Dockets.

16. (18) Comm. v. Henry Fahy, CP-51-CR-0222831-1981

Trial counsel was court-appointed. Commonwealth v. Fahy, 516 A.2d 689, 696 (Pa. 1986); (N.T. 1/20/83 at 187).

17. (19) Comm. v. Lester Fletcher, CP-51-CR-0709931-2001

Trial counsel was court-appointed. Online Docket Entry, p.6, 10/24/01; Commonwealth v. Fletcher, 861 A.2d 898, 914 (Pa. 2004).

18. (20) Comm. v. Kenneth Ford, CP-51-CR-1032221-1989

Trial counsel was court-appointed. Order of Appointment.

19. (21) Comm. v. William Gribble, CP-51-CR-1220811-1992

Trial counsel was court-appointed. Commonwealth's Motion to Dismiss PCRA Petition ("Defendant was represented at trial by [court-appointed counsel]); CPCMS, Secure Dockets.

20. (22) Comm. v. Donald Hall, CP-51-CR-0210711-1982

Trial counsel was court-appointed. Commonwealth v. Hall, 1993 WL 1156097 at *623.

21. (23) Comm. v. Ronald Hanible, CP-51-CR-0409021-1999

Trial counsel was court-appointed. Secure Docket Entry, p.9.

22. (24) Comm. v. John Harris, CP-51-CR-0903421-1992

Trial counsel was court-appointed. Commonwealth v. Harris, 703 A.2d 441, 447 n.11 (Pa. 1997); Docket Entry.

23. (25) Comm. v. Donetta Hill, CP-51-CR-0518391-1991

Trial counsel was court-appointed. Commonwealth v. Hill, 16 A.3d 484, 486 (Pa. 2011); Hill v. Wetzel, 279 F. Supp. 3d 550, 566 (E.D. Pa. 2016).

24. (26) Comm. v. William Holland, CP-51-CR-1014291-1984

Trial counsel was court-appointed. Holland v. Horn, 150 F. Supp. 2d 706, 713 (E.D. Pa. 2001); (N.T. 6/5/85 at 1.2).

25. (28) Comm. v. Steven Hutchinson, CP-51-CR-0408581-1998

Trial counsel was court-appointed. Commonwealth v. Hutchinson, 25 A.3d 277, 286 (Pa. 2011).

26. (29) Comm. v. Kareem Johnson, CP-51-CR-1300424-2006

Trial counsel was court-appointed. PCRA Petition, 8/15/14 at 5.

27. (30) Comm. v. William Johnson, CP-51-CR-0936052-1991

Trial counsel was court-appointed. Commonwealth v. Johnson, 668 A.2d 97, 104 n.17 (Pa. 1995).

28. (34) Comm. v. Alexander Keaton, CP-51-CR-0319251-1993

Trial counsel was court-appointed. Commonwealth v. Keaton, 45 A.3d 1050, 1087 (Pa. 2012).

29. (37) Comm. v. Robert Lark, CP-51-CR-0120121-1980

Trial counsel was court-appointed. Lark v. Sec’y Pennsylvania Dep’t of Corr., 645 F.3d 596, 599 (3d Cir. 2011); Affidavit of Trial Counsel.

30. (38) Comm. v. Reginald Lewis, CP-51-CR-0205851-1983

Trial counsel was court-appointed. Commonwealth v. Lewis, 567 A.2d 1376, 1378 (Pa. 1989); Commonwealth v. Lewis, 743 A.2d 907, 909 (Pa. 2000).

31. (40) Comm. v. Bernard McGill, CP-51-CR-0339201-1990

Trial counsel was court-appointed. Commonwealth v. McGill, 832 A.2d 1014, 1017 (Pa. 2003).

32. (41) Comm. v. Nathaniel McNair, CP-51-CR-1224591-1987

Trial counsel was court-appointed. Commonwealth v. McNair, 603 A.2d 1014, 1015 (Pa. 1992); (“Cover Page, N.T. 11/22/88).

33. (42) Comm. v. Christopher McNeil, CP-51-CR-0500461-1991

Trial counsel was court-appointed. Court-Appointed Counsel’s Petition to Withdraw.

34. (43) Comm. v. William Mikell, CP-51-CR-0716051-1987

Trial counsel was court-appointed. Bill of Information.

35. (44) Comm. v. Mikal Moore, CP-51-CR-0701141-1998

Trial counsel was court-appointed. Brief for Appellee, No. 396 Capital Appeal Docket, at p.4; CPCMS, Secure Dockets.

36. (45) Comm. v. Salvador Morales, CP-51-CR-1012921-1982

Trial counsel was court-appointed. Bill of Information; Commonwealth v. Morales, Brief for Appellant, 1995 WL 17019887 (Pa.), at p.2.

37. (47) Comm. v. Kelvin Morris, CP-51-CR-0704091-1982

Trial counsel was court-appointed. Morris v. Beard, 633 F.3d 185, 189 (3d Cir. 2011).

38. (51) Comm. v. Lamont Overby, CP-51-CR-1006081-1996

Trial counsel was court-appointed. (N.T. 7/17/98, 8-9).

39. (52) Comm. v. Kevin Pelzer, CP-51-CR-1031752-1988

Trial counsel was court-appointed. Commonwealth v. Daniels, 104 A.3d 267, 276 (Pa. 2014).

40. (53) Comm. v. Curry Perry, CP-51-CR-0418121-1989

Trial counsel was court-appointed. Commonwealth v. Perry, 644 A.2d 705, 707 (Pa. 1994).

41. (54) Comm. v. Otis Peterkin, CP-51-CR-0207841-1982

Trial counsel was court-appointed. Peterkin v. Horn, 176 F. Supp. 2d 342, 349 (E.D. Pa. 2001).

42. (55) Comm. v. Michael Rainey, CP-51-CR-0419613-1990

Trial counsel was court-appointed. Commonwealth v. Rainey, Brief for Appellant, 2006 WL 2643352 (Pa.), 5.

43. (56) Comm. v. Wilfredo Ramos, CP-51-CR-0100891-1999

Trial counsel was court-appointed. Commonwealth v. Ramos (PCRA) (N.T. 9/25/08 at 18).

44. (57) Comm. v. Lloyd Reid, CP-51-CR-0405461-1991

Trial counsel was court-appointed. Defendant's Post-Sentence Motion.

45. (58) Comm. v. Timothy Rice, CP-51-CR-0906231-1996

Counsel was court-appointed. Commonwealth Motion to Dismiss PCRA Petition, at p.5.

46. (59) Comm. v. Delores Rivers, CP-51-CR-0335191-1988

Trial counsel was court-appointed. Online Docket Entry, 10/17/91.

47. (60) Comm. v. Florencio Rolan, CP-51-CR-0228931-1984

Trial counsel was court-appointed. Rolan v. Coleman, 680 F.3d 311, 315 (3d Cir. 2012); Rolan v. Vaughn, Brief for Appellant (Commonwealth), 2004 WL 5026812 (3d Cir.).

48. (61) Comm. v. Saharris Rollins, CP-51-CR-0405851-1986

Trial counsel was court-appointed. Commonwealth's Brief for Appellee, 1999 WL 33657491 (Pa.), p.17; Statement of Matters Complained of on Appeal.

49. (62) Comm. v. James Melvin Smith, CP-51-CR-0717891-1983

Trial counsel was court-appointed. Commonwealth v. Smith, 17 A.3d 873, 881 (Pa. 2011); Commonwealth v. Smith, 540 A.2d 246, 247 (Pa. 1988); Cover Page, N.T. 9/22/83.

50. (63) Comm. v. Willie Sneed, CP-51-CR-0606741-1984

Trial counsel was court-appointed. Commonwealth v. Sneed, 526 A.2d 749, 751 (Pa. 1987); Commonwealth Brief for Appellee, 601 Capital Appeal Docket, at

p.6; Cover Page, Trial Transcript, (“APPEARANCES [Court-Appointed Counsel] for Defendant Sneed”).

51. (64) Comm. v. Brian Thomas, CP-51-CR-0827161-1985

Trial counsel was court-appointed. Thomas v. Beard, 388 F. Supp. 2d 489, 493 (E.D. Pa. 2005).

52. (66) Comm. v. Michael Thomaston, CP-51-CR-0400541-1995

Trial counsel was court-appointed. Docket Entry.

53. (67) Comm. v. Andre Thompson, CP-51-CR-0221931-1993

Trial counsel was court-appointed. Bill of Information; (N.T. 10/14/93 at 1).

54. (68) Comm. v. Louis Thompson, CP-51-CR-0436071-1990

Trial counsel was court-appointed. Bill of Information; Order Vacating Homicide Appointment.

55. (69) Comm. v. William Tilley, CP-51-CR-1210781-1985

Trial counsel was court-appointed. (N.T. 5/7/07 at 7); Conversation with Trial Counsel.

56. (71) Comm. v. Vinson Washington, CP-51-CR-0310321-1994

Trial counsel was court-appointed. Court Order, 3/30/94.

57. (72) Comm. v. Derrick White, CP-51-CR-0012991-2010

Trial counsel was court-appointed. Entry of Appearance, 8/24/10; Entry of Appearance, 2/17/11.

58. (73) Comm. v. Christopher Williams, CP-51-CR-0417523-1992

Trial counsel was court-appointed. Order of Appointment; Commonwealth v. Williams, 720 A.2d 679, 682 (Pa. 1998); Commonwealth v. Williams, 141 A.3d 440, 448 (Pa. 2016).

PART I, SECTION A, SUBSECTION THREE

IAC CASES REQUIRING PENALTY PHASE RELIEF BECAUSE COUNSEL FAILED TO PREPARE AND PRESENT CONSTITUTIONALLY ACCEPTABLE MITIGATION

Part I, Section A, Subsection Three lists the IAC cases where a reviewing court ordered a new penalty phase, specifically because counsel failed to prepare and present mitigation evidence. **38 (51%)** of the 74 IAC determinations were based upon counsel's failure to prepare a constitutionally adequate mitigation presentation.

The defendant had court-appointed counsel in **31 (82%)** of the 38 IAC cases where counsel failed to prepare and present available mitigation.

This list designates each case by the Defendant's name, the Common Pleas Court Docket Number, and the number assigned to the case in Part I, Section A (listing Philadelphia death sentences overturned due to ineffective assistance of counsel). The same information regarding whether counsel failed to prepare adequate mitigation appears in the preceding list of 74 IAC cases (Part I, Section A, Subsection One). That information is separately detailed here, for ease of reference.

1. (5) Commonwealth v. Aquil Bond, CP-51-CR-0502971-2004

The PCRA court granted summary relief based on court-appointed penalty phase counsel's failure to prepare and present available mitigation evidence. (N.T. 3/18/14 at 70-71) ("I see absolutely no way in which, that counsel's woefully deficient performance at the penalty phase hearing can possibly stand").

Defendant's penalty phase counsel was court-appointed. (N.T. 3/18/14 at 70-71); CPCMS, Secure Dockets.

2. (6) Commonwealth v. Jesse Bond, CP-51-CR-2217781-1992

The Third Circuit concluded that trial counsel provided ineffective assistance by failing to prepare for Defendant's penalty phase. Bond v. Beard, 539 F.3d 256, 291 (3d Cir. 2008) ("Counsel performed an inadequate and tardy investigation into [Defendant's] childhood").

Defendant was represented by court-appointed counsel. Bond, 539 F.3d at 281.

3. (8) Commonwealth v. Samuel Carson, CP-51-CR-0228371-1994

After the Supreme Court remanded this matter to the PCRA court for an evidentiary hearing concerning Defendant's claim that trial and appellate counsel were ineffective in failing to investigate and present mitigation evidence, the Commonwealth stipulated that penalty phase relief. Commonwealth v. Carson, 913 A.2d 220, 267-268 (Pa. 2006); Commonwealth Response to Petition for Writ of habeas Corpus, No. 11-1845, at p.8 ("the Commonwealth agreed to relief on the claim of counsel ineffectiveness").

Defendant was represented by court-appointed counsel. Post-Sentence Motion, 7/16/95, at p.1; CPCMS, Secure Dockets.

4. (9) Commonwealth v. Ronald Clark, CP-51-CR-1241151-1993

The PCRA court granted Defendant's request for a new penalty hearing based on trial counsel's ineffectiveness in failing to present additional mitigation evidence. The Commonwealth did not appeal this order. Commonwealth v. Clark, 961 A.2d 80, 83 (Pa. 2008).

Defendant was represented by court-appointed counsel. Clark v. Beard, 2015 WL 7294971, at *3; Motion for Withdrawal of Counsel.

5. (11) Commonwealth v. Ronald Collins, CP-51-CR-0614771-1992

The Supreme Court affirmed the PCRA court's decision granting penalty phase relief due to counsel's failure to present mitigating evidence. Commonwealth v. Collins, 888 A.2d 564, 583 (Pa. 2005) ("[W]e agree with the PCRA court's determination that counsel did not conduct a reasonable investigation to uncover the relevant mitigating evidence").

Defendant was represented by court-appointed counsel. Docket Entry, 10/17/94; CPCMS, Secure Dockets.

6. (13) Commonwealth v. Bernard Cousar, CP-51-CR-0607431-1999

The parties agreed appellant was entitled to a new penalty hearing due to counsel's failure to prepare and present mitigation evidence Commonwealth v. Cousar, 154 A.3d 287, 293 (Pa. 2017); On Line Docket Entry, p.10, 11/20/14.

Defendant was represented by court-appointed counsel. Cousar, 154 A.3d at 293; PCRA Court Opinion, Sarmina, J., p.1 n.1.

7. (16) Comm. v. Daniel Dougherty, CP-51-CR-0705371-1999

The Commonwealth agreed not to contest Defendant's claim that trial counsel was ineffective at the penalty phase "for failure to investigate and present certain mitigation evidence". Online Docket Entry, p.23, 2/7/12.

Trial counsel was *not* court-appointed and was apparently *pro bono*. See Bill of Information.

8. (17) Commonwealth v. Joseph Elliott, CP-51-CR-0410911-1994

The Commonwealth agreed not to oppose Defendant claim that trial counsel provided ineffective assistance at the penalty phase because of "the failure to produce mental health testimony." Commonwealth v. Elliott, 80 A.3d 415, 424 n.5 (Pa. 2013).

Defendant was represented by court-appointed counsel. Elliott, 80 A.3d at 422; CPCMS, Secure Dockets.

9. (18) Commonwealth v. Henry Fahy, CP-51-CR-0222831-1981

The Federal Court granted penalty phase relief because of counsel's failure to develop and present mitigation evidence and for suggesting to the jury that Defendant might someday be released. Fahy v. Horn, 2014 WL 4209551, at *1.

Defendant was represented by court-appointed counsel. Commonwealth v. Fahy, 516 A.2d 689, 696 (Pa. 1986). This was counsel's first capital case.

Commonwealth v. Ramos, CP-51-CR-0100891-1999, N.T. 9/25/08 at 17.
Defendant also represented by [court-appointed counsel] (N.T. 1/20/83 at 187).

10. (19) Commonwealth v. Lester Fletcher, CP-51-CR-0709931-2001

With the Commonwealth's agreement, the PCRA court granted penalty phase relief on Defendant's claim of "ineffective assistance of counsel for failure to investigate, develop and present mitigating evidence at his penalty hearing." Online Docket Entry, p. 11, 2/7/11.

Defendant was represented by court-appointed mitigation counsel. Online Docket Entry, p.6, 10/24/01; Commonwealth v. Fletcher, 861 A.2d 898, 914 (Pa. 2004).

11. (20) Commonwealth v. Kenneth Ford, CP-51-CR-1032221-1989

The Supreme Court granted penalty phase relief based upon counsel's failure to investigate and present evidence of mitigation. Commonwealth v. Ford, 809 A.2d 325, 331 (Pa. 2002) ("During Appellant's penalty phase in the instant case, trial counsel presented virtually no evidence of mitigating circumstances").

Defendant was represented by court-appointed counsel. Order of Appointment.

12. (21) Commonwealth v. William Gribble, CP-51-CR-1220811-1992

The Supreme Court remanded for an evidentiary hearing on Defendant's ineffective assistance claims. Gribble, 863 A.2d at 476 (noting that "[t]he family member witnesses whom counsel is faulted for failing to have interviewed and presented at the penalty phase are the sort of witnesses whose existence should have been readily apparent or discoverable to any counsel who conducted a reasonable investigation"). On remand, the PCRA court granted Defendant a new sentencing hearing.

Defendant was represented by court-appointed counsel. Commonwealth's Motion to Dismiss PCRA Petition ("Defendant was represented at trial by [court-appointed counsel]"). CPCMS, Secure Dockets.

13. (23) Commonwealth v. Ronald Hanible, CP-51-CR-0409021-1999

The Commonwealth agreed that “a new penalty hearing was warranted due to trial counsel’s failure to present available mitigating evidence.” Commonwealth v. Hanible, 30 A.3d 426, 438 (Pa. 2011).

Defendant was represented by court-appointed counsel. Secure Docket Entry, p.9.

14. (24) Commonwealth v. John Harris, CP-51-CR-0903421-1992

Defendant claimed that counsel provided ineffective assistance during the penalty phase and the PCRA court granted relief. The Commonwealth did not appeal the PCRA court’s decision. Commonwealth v. Harris, 852 A.2d 1168, 1170, 1171 n.6 (Pa. 2004).

Defendant was represented by court-appointed counsel. Commonwealth v. Harris, 703 A.2d 441, 447 (Pa. 1997); Docket Entry.

15. (25) Commonwealth v. Donetta Hill, CP-51-CR-0518391-1991

The federal district court granted penalty phase relief because “[i]n clear contravention of prevailing professional norms at the time of trial, Petitioner’s trial attorney did not conduct a social history investigation.” Hill v. Wetzel, 279 F. Supp. 3d 550, 566 (E.D. Pa. 2016).

Defendant was represented by court-appointed counsel. Commonwealth v. Hill, 16 A.3d 484, 486 (Pa. 2011); Hill, 279 F. Supp. 3d at 556.

16. (26) Commonwealth v. William Holland, CP-51-CR-1014291-1984

The federal court determined that Defendant was denied his 5th Amendment right to a court-appointed defense expert for help in developing defenses in support of mitigation at the penalty phase. Holland v. Horn, 150 F. Supp. 2d 706, 749 (E.D. Pa. 2001), *aff’d*, 519 F.3d 107 (3d Cir. 2008).

Defendant was represented by court-appointed counsel. Holland, 150 F. Supp. 2d at 713; (N.T. 6/5/85 at 1.2).

17. (27) Comm. v. Arnold Holloway, CP-51-CR-0613051-1985

The federal district court determined that Defendant's counsel "provided ineffective assistance in failing to investigate mental-health issues and request the assistance of a mental-health expert." Holloway v. Horn, 161 F. Supp. 2d 452, 573-574 (E.D. Pa. 2001); Holloway v. Horn, 355 F.3d 707, 713 (3rd Cir. 2004).

Trial counsel was not court-appointed. Holloway, 355 F.3d at 722.

18. (31) Commonwealth v. Damon Jones, CP-51-CR-0907121-1982

The PCRA court concluded that "there was substantial information available at the time of trial that trial counsel should have investigated and that would have supported the statutory mitigating circumstances." . Commonwealth v. Jones, 912 A.2d 268, 292 (Pa. 2006).

Trial counsel was *not* court appointed. Jones, 912 A.2d at 291. ("Jones' trial counsel, [Court-Appointed Counsel], called no witnesses and presented no evidence at Jones' penalty hearing").

19. (32) Commonwealth v. James Jones, CP-51-CR-1024861-1980

Defendant claimed trial counsel provided ineffective assistance when he failed to object to the inclusion of an uncharged aggravating circumstance and failed to investigate and prepare a mitigation presentation. The PCRA court awarded penalty phase relief and denied all guilt phase relief. Commonwealth v. Jones, 876 A.2d 380, 383 (Pa. 2005).

Trial counsel was *not* court-appointed. Docket Entry, 5/28/81.

20. (34) Comm. v. Alexander Keaton, CP-51-CR-0319251-1993

The PCRA court granted penalty phase relief and the Pennsylvania Supreme Court affirmed. Commonwealth v. Keaton, 45 A.3d 1050, 1091 (Pa. 2012) ("[W]e agree with the PCRA court that trial counsel's investigation regarding penalty phase mitigating evidence fell below the standard expressed in Williams and Wiggins").

Defendant was represented by court-appointed counsel. Keaton, 45 A.3d at 1070, 1087.

21. (38) Commonwealth v. Reginald Lewis, CP-51-CR-0205851-1983

The federal district court concluded that counsel provided ineffective assistance at the penalty phase. Lewis v. Horn, 2006 WL 2338409, at *11 (E.D. Pa. Aug. 9, 2006) (“The fact that trial counsel failed to present any evidence whatsoever in mitigation leads inexorably to the conclusion that he failed to make any reasonable effort to uncover such evidence”). After the Third Circuit remanded the case for an evidentiary hearing, the Commonwealth notified the district court that it would not contest the grant of conditional relief as to Lewis’s death sentence. Order, Lewis v. Horn, 00-cv-802 (E.D. Pa. July 26, 2011), ECF No. 80.

Defendant was represented by court-appointed counsel. Commonwealth v. Lewis, 567 A.2d 1376, 1378 (Pa. 1989); Commonwealth v. Lewis, 743 A.2d 907, 909 (Pa. 2000).

22. (39) Commonwealth v. Steven McCrae, CP-51-CR-0204521-1999

After Defendant filed a PCRA petition claiming that trial counsel was ineffective for failing to investigate and present mitigation evidence, The Commonwealth “agreed that [the PCRA] Court may vacate [Defendant’s] two death sentences and impose two consecutive life sentences.” Written Agreement Colloquy, at p.2.

Trial counsel was *not* court-appointed. Bill of Information.

23. (40) Commonwealth v. Bernard McGill, CP-51-CR-0339201-1990

Defendant claimed “that trial counsel was ineffective for failing to investigate fully, possible mitigating circumstances for his penalty phase.” Commonwealth v. McGill, 832 A.2d 1014, 1025-1026 (Pa. 2003). After the Supreme remanded the matter for an evidentiary hearing regarding Defendant’s penalty phase claims, the Commonwealth agreed to a life sentence. Online Docket Entry, p.15, 1/7/13.

Defendant was represented by court-appointed counsel. McGill, 832 A.2d at 1017; CPCMS, Secure Dockets.

24. (47) Commonwealth v. Kelvin Morris, CP-51-CR-0704091-1982

The federal court concluded that “defense counsel’s failure to conduct a reasonable investigation of mitigating evidence in anticipation of [Defendant’s]

capital sentencing hearing, failure to present available mitigating evidence at that hearing, and failure to make a sufficient argument at that hearing violated [Defendant's] Sixth Amendment right to effective assistance of counsel." Morris v. Beard, 2012 WL 4757868, at *1.

Defendant was represented by court-appointed counsel. Morris v. Beard, 633 F.3d 185, 189 (3d Cir. 2011).

25. (50) Comm. v. Kelley O'Donnell, CP-51-CR-1220812-1992

The Supreme Court granted penalty phase relief due to the inadequacy of the colloquy that preceded Defendant's sentencing hearing. The Court also noted that "the record raises serious doubts regarding counsel's effectiveness during the penalty phase." Commonwealth v. O'Donnell, 740 A.2d 198, 214 n.13 (Pa. 1999) (criticizing trial counsel's failure to "present or argue any further evidence of mitigation even though the record itself indicates that other evidence of mitigation was available and known to counsel").

Trial Counsel was *not* court-appointed. Defendant was represented by Steven Sigal, Esquire. O'Donnell v. Lamas, 2012 WL 7018079, at *1 (E.D. Pa. Feb. 1, 2012).

26. (52) Commonwealth v. Kevin Pelzer, CP-51-CR-1031752-1988

The Supreme Court determined that trial counsel's mitigation representation at the penalty phase was deficient. Commonwealth v. Daniels, 104 A.3d 267, 302 (Pa. 2014) ("[W]e conclude that the PCRA court did not err in holding that ... trial counsel's penalty phase performance ... in ascertaining and presenting mitigation evidence was deficient").

Defendant was represented by court-appointed counsel. Commonwealth v. Daniels, 104 A.3d 267, 276 (Pa. 2014).

27. (53) Commonwealth v. Curry Perry, CP-51-CR-0418121-1989

The Supreme Court concluded that Defendant received ineffective assistance that entitled him to a new trial, in part because counsel's "unawareness that he was defending a capital case, and failure to prepare for the death penalty hearing"). Commonwealth v. Perry, 644 A.2d 705, 709 (Pa. 1994).

Defendant was represented by court-appointed counsel. Perry, 644 A.2d at 707.

28. (55) Commonwealth v. Michael Rainey, CP-51-CR-0419613-1990

Defendant claimed that appellate counsel was ineffective for failing to raise trial counsel's failure to investigate and present mitigating evidence. Commonwealth v. Rainey, 928 A.2d 215, 237-238 (Pa. 2007). The Supreme Court determined that there was mitigation evidence that trial counsel failed to present and remanded for an evidentiary hearing. Rainey, 928 A.2d at 240-241.

Defendant was represented by court-appointed counsel. Commonwealth v. Rainey, Brief for Appellant, 2006 WL 2643352 (Pa.), 5.; CPCMS, Secure Docket.

29. (56) Commonwealth v. Wilfredo Ramos, CP-51-CR-0100891-1999

The PCRA court vacated Defendant's death sentence "based upon the Commonwealth's agreement not to contest [Defendant]'s request for a new penalty hearing based upon ineffective assistance of trial counsel at the penalty hearing for failure to investigate and present certain mitigation evidence." Commonwealth v. Ramos, 2017 WL 4286386, at *7.

Defendant was represented by court-appointed counsel. Commonwealth v. Ramos (PCRA) (N.T. 9/25/08 at 18).

30. (59) Commonwealth v. Delores Rivers, CP-51-CR-0335191-1988

The federal district court vacated Defendant's sentence and granted penalty phase relief on Claim IX of Defendant's petition, which alleged that "trial counsel was ineffective at the penalty phase in failing to investigate and present mitigating evidence." Federal Docket Entry, 5/10/05; Commonwealth's Memorandum of Law, Rivers v. Horn, 02-cv-1600.

Defendant was represented by court-appointed counsel. Docket Entry, 10/17/91.

31. (61) Commonwealth v. Saharris Rollins, CP-51-CR-0405851-1986

The Third Circuit granted penalty phase relief. Rollins v. Horn, 386 F. App'x 267, 270 (3d Cir. 2010) (“Rollins’ attorney performed deficiently by failing to adequately investigate and present evidence of mitigating circumstances”).

Defendant was represented by court-appointed counsel. Commonwealth v. Rollins, Commonwealth’s Brief for Appellee, 1999 WL 33657491 (Pa.), p.17.; Statement of Matters Complained of on Appeal.

32. (63) Commonwealth v. Willie Sneed, CP-51-CR-0606741-1984

The Supreme Court affirmed the granting of penalty phased relief. Commonwealth v. Sneed, 899 A.2d 1067, 1084 (Pa. 2006) (“We are satisfied that if the jury had heard testimony and argument regarding the mitigation evidence presented by appellee at the PCRA hearing, there is a reasonable probability that at least one juror would have struck a different balance and voted not to impose the death penalty”).

Defendant was represented by court-appointed counsel. Commonwealth v. Sneed, 526 A.2d 749, 751 (Pa. 1987); Commonwealth Brief for Appellee, 601 Capital Appeal Docket, at p.6.; Statement of Matters Complained of on Appeal.

33. (64) Commonwealth v. Brian Thomas, CP-51-CR-0827161-1985

The Third Circuit remanded the matter for an evidentiary hearing. Thomas v. Horn, 570 F.3d 105, 130 (3d Cir. 2009) (noting that “there exists a reasonable probability that effective counsel would have chosen to present evidence of Thomas’ mental health history, and that its presentation would have convinced at least one juror to sentence Thomas to life imprisonment”). On remand, the Commonwealth notified the court that it would no longer contest the grant of conditional relief as to Thomas’s death sentence. Thomas v. Horn, 00-cv-803-CMR (E.D. Pa. Dec. 20, 2011), ECF No. 98.

Defendant was represented by court-appointed counsel. Thomas v. Beard, 388 F. Supp. 2d 489, 493 (E.D. Pa. 2005) (“[Defendant] was represented by court-appointed counsel”).

34. (65) Commonwealth v. LeRoy Thomas, CP-51-CR-1207001-1994

At the PCRA hearing, the Commonwealth conceded that Defendant received ineffective assistance at the penalty phase. (N.T. 9/18/07 at 4-5).

Trial counsel was *not* court-appointed. (N.T. 5/9/95 at 1).

35. (68) Commonwealth v. Louis Thompson, CP-51-CR-0436071-1990

At the PCRA stage, the Commonwealth agreed that Defendant received ineffective assistance at his penalty phase. Online Docket Entry, 5/21/04 (“Commonwealth is in agreement with petitioner’s PCRA claims AS TO PENALTY PHASE ONLY”) (emphasis in original).

Defendant was represented by court-appointed counsel. Bill of Information; Order Vacating Homicide Appointment.

36. (69) Commonwealth v. William Tilley, CP-51-CR-1210781-1985

At the PCRA stage, the Commonwealth agreed that Defendant was entitled to a new penalty phase. (N.T. 5/1/07 at 7-8) (“[T]he Commonwealth determined that it was appropriate to agree to a new penalty phase based on [trial counsel’s] admissions ... that he essentially did nothing in preparation for the penalty phase hearing”).

Defendant was represented by court-appointed counsel. (Conversation with Trial Counsel).

37. (72) Commonwealth v. Derrick White, CP-51-CR-0012991-2010

After his capital conviction, Defendant filed a PCRA petition claiming that mitigation counsel provided ineffective assistance at the penalty phase for failing to “present to the jury evidence in support of the age mitigator”. Per Curiam Remand Order, 7/2/13, Commonwealth v. White, No. 663 CAP. On remand, the trial court granted Defendant a new penalty phase hearing.

Defendant was represented by court-appointed mitigation counsel. Entry of Appearance, 2/17/11.

38. (73) Comm. v. Christopher Williams, CP-51-CR-0417523-1992

After an evidentiary hearing, the PCRA court determined that “trial counsel was ineffective for failing to investigate the medical and forensic evidence” and that “appellate counsel was ineffective for failing to raise this claim on appeal.” On Line Docket Entry, p.25, 12/30/13; Commonwealth v. Williams, 141 A.3d 440 (Pa. 2016) (*affirmed*).

Defendant was represented at trial by court-appointed counsel. Order of Appointment. Defendant was represented on direct appeal by court-appointed counsel. Commonwealth v. Williams, 720 A.2d 679, 682 (Pa. 1998). Williams, 141 A.3d at 448.

PART I, SECTION B

38 CASES OVERTURNED ON OTHER GROUNDS

This Section lists 38 Philadelphia capital cases that were overturned for reasons other than ineffective assistance of counsel. We group the cases in five categories, based upon the reason for the reversal of the original death sentence:

- a. Sentences Overturned due to Trial Court Error - *Total 16*
- b. Sentences Overturned due to Prosecutorial Misconduct - *Total 10*
- c. Sentences Overturned due to Changes in the Law - *Total 8*
- d. Sentences Overturned due to Actual Innocence - *Total 1*
- e. Sentences Overturned for Unspecified Reasons - *Total 3*

For each case, this list also specifies the final, post-reversal resolution of the defendant's sentence, where available. As will be seen, **34** out of 38 cases (**89%**), resulted in a non-capital disposition—either a life sentence, a terms of years sentence, an acquittal, or a withdrawal of prosecution.⁷ None of these non-capital dispositions occurred during the administration of the current Philadelphia District Attorney. Many were imposed with the agreement of the Commonwealth.

For each case, this list also calculates the length of time between arrest and the resolution of the capital aspect of the case. The average length of time for the

⁷ Four overturned death cases did *not* result in non-capital dispositions. One defendant was resentenced to death, but died from natural causes while in custody. Commonwealth v. Alfred Jasper, CP-51-CR-0613941-1984. One defendant died before his resentencing hearing. Commonwealth v. Willie Clayton, CP-51-CR-1127941-1984. In two cases the defendant's sentence is still in litigation. Commonwealth v. Washington, CP-51-CR-1210371-1993; Commonwealth v. Ernest Porter, CP-51-CR-0622491-1985.

non-capital resolution is **17** years. Thus, on average, **seventeen (17)** years of litigation elapsed before the case resulted in a non-capital resolution.

(1). Death Sentences Overturned due to Trial Court Error (Total 16)

1. Mumia Abu-Jamal, CP-51-CR-0113571-1982

Defendant phrased his issue regarding an incorrect jury instruction as a claim of ineffective assistance of counsel. Abu-Jamal v. Horn, 520 F.3d 272, 298 (3d Cir. 2008). However, the Third Circuit decided the claim in his favor, without specifically finding that trial counsel was ineffective. Abu-Jamal v. Sec’y, Pa. Dep’t of Corrections, 643 F.3d 370, 381-382 (3d Cir. 2011).

Result: On remand the Commonwealth did not seek a new penalty phase hearing. Online Docket Entry, p.10, 8/13/12 (“And Now this 13th day of August 2012, the Commonwealth having not requested a new sentencing hearing ... it is Hereby Decreed that Mumia Abu-Jamal is sentenced to life imprisonment”).

Arrest: December 9, 1981 – Resentenced: August 13, 2012 = **30 yrs, 8 mos, 4 d**

2. Commonwealth v. Sam Bannerman, CP-51-CR-1033281-1984

The Supreme Court granted a new trial Per Curiam because the trial court failed to give an appropriate good character instruction. Commonwealth v. Bannerman, 579 A.2d 1295 (Pa. 1990).

Result: Defendant entered guilty plea and was resentenced to Life. Online Docket Entry, p.2, 10/9/91.

Arrest: October 16, 1984 – Resentenced: October 9, 1991 = **6 yrs, 11 mos, 23 d**

3. Commonwealth v. James Bryant, CP-51-CR-1023791-1983

The Supreme Court twice granted Defendant a new trial due to the improper admission of other crimes evidence. Commonwealth v. Bryant, 530 A.2d 83, 85 (Pa. 1987); Commonwealth v. Bryant, 611 A.2d 703, 704 (Pa. 1992).

Result: Case nolle prossed. On Line Docket Entry, p.3, 1/25/93.

Arrest: October 27, 1983 – Nolle Prosequi: January 25, 1993 = **9 yrs, 2 mos, 29 d**

4. Commonwealth v. Kevin Chandler, CP-51-CR-0832561-1993

The Supreme Court vacated Defendant’s death sentence after the trial court refused to give a Simmons instruction. Commonwealth v. Chandler, 721 A.2d 1040, 1046–1047 (Pa. 1998) (“Once the issue of future dangerousness is raised, and the defendant requests a Simmons instruction ... the trial court is required ... to give the jury an instruction on what the term ‘life imprisonment’ means in Pennsylvania”).

Result: Defendant was resentenced to Life. Online Docket Entry, p.5, 8/11/99.

Arrest: October 27, 1983 – Resentenced: August 11, 1999 = **15 yrs, 9 mos, 15 d**

5. Commonwealth v. Willie Clayton, CP-51-CR-1127941-1984

The Supreme Court granted a trial due to the improper admission of other crimes evidence. Commonwealth v. Clayton, 483 A.2d 1345, 1349 (Pa. 1984).

Result: Defendant died before the resolution of his PCRA petition. Online Docket Entry, p.9, 6/25/14 (“Order Dismissing PCRA Petition as Moot-Defendant Deceased”).

Arrest: November 9, 1984 – Abated: June 25, 2014 = **29 yrs, 7 mos, 16 d**

6. Commonwealth v. George Goins, CP-51-CR-0829421-1981

The Supreme Court vacated Defendant’s death sentence because the trial court erroneously allowed the jury to consider the significant criminal history aggravator, where Defendant only had one prior violent felony conviction. Commonwealth v. Goins, 495 A.2d 527, 532 (Pa. 1985).

Result: Defendant’s sentence automatically modified to Life, based on the law as it existed at that time. Goins, 495 A.2d at 534.

Arrest: June 30, 1981 – Resentenced: September 4, 1985 = **4 yrs, 2 mos, 5 d**

7. Commonwealth v. William Green, CP-51-CR-0427361-1982

The Supreme Court overturned Defendant's death sentence due to the improper admission of hearsay at the penalty phase. Commonwealth v. Green, 581 A.2d 544, 564 (Pa. 1990) ("We find that this hearsay evidence was improperly admitted at the sentencing hearing and that it improperly prejudiced Appellant by providing a basis for the jury to reject Appellant's sole mitigation evidence and a basis to decline to find a mitigating circumstance in Appellant's favor under our sentencing statute").

Result: Remanded for a new penalty hearing. Defendant resentenced to Life. Online Docket Entry, p.3, 9/10/91.

Arrest: April 16, 1982 – Resentenced: September 10, 1991 = **9 yrs, 4 mos, 25 d**

8. Commonwealth v. Eric Grier, CP-51-CR-0334871-1989

The Supreme Court granted a new trial due to the trial court's erroneous instruction on accomplice liability. Commonwealth v. Grier, 638 A.2d 965, 965 (Pa. 1994).

Result: On remand, the Defendant entered a guilty plea and received Life. Online Docket Entry, p.3, 1/5/98.

Arrest: March 16, 1989 – Resentenced: January 5, 1998 = **8 yrs, 9 mos, 20 d**

9. Commonwealth v. Derrick Harvey, CP-51-CR-0307631-1998

The Supreme Court vacated Defendant's death sentence because the Commonwealth failed to "present sufficient evidence to establish all of the elements" of the drug aggravator. Commonwealth v. Harvey, 812 A.2d 1190, 1199–2000 (Pa. 2002).

Result: On March 28, 2003, Defendant was resentenced to life imprisonment without parole following his new penalty hearing. Harvey v. Folino, 2011 WL 9155257, at *3 (E.D. Pa. Dec. 20, 2011).

Arrest: January 12, 1998 – Resentenced: March 28, 2003 = **5 yrs, 2 mos, 16 d**

10. Commonwealth v. Andrew Huffman, CP-51-CR-0511051-1989

The Supreme Court granted a new trial due to the trial court's erroneous instruction on accomplice liability. Commonwealth v. Huffman, 638 A.2d 961, 962 (Pa. 1994).

Result: Defendant sentenced to Life. Unclear from Docket Entries whether he entered a guilty plea or went to trial and was convicted. Also unclear whether the Commonwealth agreed or a new penalty phase resulted in Life. Online Docket Entry, p.4, 1/14/98.

Arrest: April 5, 1989 – Resentenced: January 14, 1998 = **8 yrs, 9 mos, 9 d**

11. Commonwealth v. Alfred Jasper, CP-51-CR-0613941-1984

The Supreme Court determined that the trial court's jury instruction violated Mills v. Maryland, 486 U.S. 367 (1988). The case was remanded for a new sentencing hearing. Commonwealth v. Jasper, 587 A.2d 705, 712 (Pa. 1991).

Result: Defendant was sentenced to death a second time but died during pendency of the subsequent appeals. Online Docket Entry, p.3, 9/13/00.

Arrest: May 4, 1984 – Abated: September 13, 2000 = **16 yrs, 4 mos, 9 d**

12. Commonwealth v. Marcus Lloyd, CP-51-CR-0501982-1998

On direct appeal, the Commonwealth agreed that the trial court improperly submitted the history of violent felony aggravator to the jury. Commonwealth's Petition to Remand for Resentencing, at p.1 (“[T]he Commonwealth is obliged to note that ... the aggravating circumstance of ‘significant history of felony convictions involving use or threat of violence to person’ was incorrectly submitted”).

Based upon the Commonwealth's petition, the Supreme Court remanded for a new sentencing hearing. Commonwealth v. Lloyd, 800 A.2d 927 (Pa. 2002).

Result: On August 20, 2003, the Common Pleas Court conducted a new penalty phase hearing. The Commonwealth agreed to a new sentencing hearing before the trial court, without a jury. Online Docket Entry, p.6, 8/20/03. The

sentencing court imposed consecutive life sentences. Commonwealth v. Lloyd, 2004 WL 3481055 (Pa.Super. 2004), at 5.

Arrest: March 31, 1998 – Resentenced: August 20, 2003 = **5 yrs, 4 mos, 20 d**

13. Commonwealth v. Michael Overby, CP-51-CR-0105802-1995

The Supreme Court granted a new trial due to the admission of an improperly redacted out-of-court statement from a codefendant. Commonwealth v. Overby, 809 A.2d 295, 306 (Pa. 2002) (“It is clear that the admission of [codefendant’s] hearsay statement, as redacted, prejudiced Appellant”).

Result: On remand, Defendant was sentenced to Life. Not clear if he had a new trial or the Commonwealth agreed to a life sentence. Online Docket Entry, p.24, 6/21/07.

Arrest: July 26, 1994 – Resentenced: June 21, 2007 = **12 yrs, 10 mos, 26 d**

14. Commonwealth v. Ernest Porter, CP-51-CR-0622491-1985

The federal district court determined that the trial court’s jury instruction violated Mills v. Maryland, 486 U.S. 367 (1988). Porter v. Horn, 276 F. Supp. 2d 278, 311 (E.D. Pa. 2003).

Case remains unresolved.

Arrest: May 3, 1985 – Defendant’s case remains unresolved.

15. Commonwealth v. Paul Rizzuto, CP-51-CR-0132391-1994

The Supreme Court vacated Defendant’s death sentence because the jury failed to find a mitigator established by stipulation. Commonwealth v. Rizzuto, 777 A.2d 1069 (Pa. 2001).

Result: After a new hearing, Defendant was sentenced to Life. Online Docket Entry, p.5, 10/7/03.

Arrest: January 21, 1994 – Resentenced: October 7, 2003 = **9 yrs, 8 mos, 16 d**

16. Commonwealth v. Bobby Sims, CP-51-CR-0500751-1982

The Supreme Court reversed Defendant's conviction because the trial court refused to permit Defendant to compel a witness to claim his attorney-client privilege in front of the jury. Commonwealth v. Sims, 521 A.2d 391, 395 (Pa. 1987).

Result: Defendant pleaded guilty to a term of years sentence. Online Docket Entry, p.3, 9/25/87.

Arrest: May 3, 1982 – Resentenced: September 25, 1987 = **5 yrs, 4 mos, 22 d**

(2). Death Sentences Overturned due to Prosecutorial Misconduct (Total 10)

1. Commonwealth v. Jose DeJesus, CP-51-CR-0704671-1998

The Supreme Court vacated Defendant's death sentence because the prosecutor requested the jury to "send a message" with its verdict. Commonwealth v. DeJesus, 860 A.2d 102, 118–119 (Pa. 2004).

Result: The Commonwealth agreed to Life in exchange for Defendant's guilty plea. On Line Docket Entry, p.5, 1/4/18 ("Commonwealth agrees that PCRA petition is granted as to the death penalty sentences ... Re-sentenced to Life without the possibility of parole").

Arrest: June 1, 1998 – Resentenced: January 4, 2018 = **19 yrs, 7 mos, 3 d**

2. Commonwealth v. James Dennis, CP-51-CR-0104841-1992

The Third Circuit granted Defendant a new trial due to a Brady violation. Dennis v. Sec'y Dept. Corrs., 834 F.3d 263 (3d Cir. 2016) (*en banc*).

Result: On remand, the Commonwealth agreed to a negotiated guilty plea to third degree murder. On Line Docket Entry, p.25, 12/22/16.

Arrest: November 21, 1991 – Resentenced: December 22, 2016 = **25 yrs, 1 mos, 1 d**

3. Commonwealth v. Calvin Floyd, CP-51-CR-0813171-1980

The Supreme Court vacated Defendant's death sentence due to the prosecutor's improper closing argument. Commonwealth v. Floyd, 484 A.2d 365, 370 (Pa. 1984) ("It is extremely prejudicial for a prosecutor to importune a jury to base a death sentence upon the chance that a defendant might receive parole").

Result: Defendant's sentence automatically modified to Life, based on the law as it existed at that time.

Arrest: July 2, 1980 – Resentenced: November 24, 1984 = **4 yrs, 6 mos, 22 d**

4. Commonwealth v. Donald Hardcastle, CP-51-CR-0632881-1982

The federal court awarded a new trial due to a Batson violation. Hardcastle v. Horn, 332 F. App'x 764, 766 (3d Cir. 2009).

Result: On remand, Defendant entered a negotiated guilty plea for a term of years sentence. Online Docket Entry, p.5, 3/16/11.

Arrest: September 1, 1983 – Resentenced: March 16, 2011 = **27 yrs, 6 mos, 15 d**

5. Commonwealth v. James Lambert, CP-51-CR-0803432-1983

The Third Circuit granted a new trial on the basis of Brady violations. Lambert v. Beard, 537 F. App'x 78, 80 (3d Cir. 2013).

Result: Defendant entered a negotiated guilty plea to third degree murder for a term of years sentence. Online Docket Entry, p.10, 12/18/17.

Arrest: May 4, 1983 – Resentenced: December 18, 2017 = **34 yrs, 7 mos, 14 d**

6. Commonwealth v. Cam Ly, CP-51-CR-1125561-1986

The Supreme Court agreed that the prosecutor withheld Brady material, but the Court denied relief on materiality grounds. Commonwealth v. Cam Ly, 980 A.2d 61, 83 (Pa. 2009).

Result: When Defendant filed a new PCRA petition, the Commonwealth agreed to Life. Online Docket Entry, p.10, 12/12/13 (“re-sentenced to life without parole. ... By agreement there are no appellate and post-conviction rights”).

Arrest: October 7, 1986 – Resentenced: December 12, 2013 = **27 yrs, 2 mos, 5 d**

7. Commonwealth v. Lawrence Smith, CP-51-CR-1001002-2000

The Supreme Court reversed Defendant’s death sentence, determining that “the prosecutor improperly referred to a fact not of record and ... the Commonwealth has failed to establish that this error was harmless.”

Commonwealth v. Smith, 861 A.2d 892, 898 (Pa. 2004).

Result: The Commonwealth did not request a new penalty hearing and the Defendant was resentenced to Life. Online Docket Entry, p.17, 11/1/05.

Arrest: July 17, 2000 – Resentenced: November 1, 2005 = **5 yrs, 3 mos, 15 d**

8. Commonwealth v. Anthony Washington, CP-51-CR-1210371-1993

The federal district court granted a new trial due to Brady violations and the prosecutor’s improper closing argument. Washington v. Beard, 2015 WL 234719, at *1 (E.D. Pa. Jan. 16, 2015).

Result: The Commonwealth removed the capital designation. Online Docket Entry, 3/14/19. Retrial scheduled for July 22, 2019.

Arrest: April 20, 1993 – De-Capitalized: March 14, 2019 = **25 yrs, 11 mos, 22 d**

9. Commonwealth v. Terrence Williams, CP-51-CR-0823621-1984

An equally divided Supreme Court affirmed the PCRA court’s decision granting a new penalty phase hearing because “the Commonwealth willfully suppressed material exculpatory evidence.” Commonwealth v. Williams, 168 A.3d 97, 112 (Pa. 2017) (remanding for a new penalty phase trial).

Result: The Commonwealth did not seek a new penalty phase and Defendant was resentenced to Life. Online Docket Entry, p.17, 12/29/17 (“Order - Sentence/Penalty Imposed Remand From Supreme Court. Defendant Resentenced. Murder-Life Without Parole”).

Arrest: July 24, 1984 – De-Capitalized: December 29, 2017 = **33 yrs, 5 mos, 5 d**

10. Commonwealth v. Zachary Wilson, CP-51-CR-0929501-1986

The Third Circuit granted a new trial because the Commonwealth withheld Brady material. Wilson v. Beard, 589 F.3d 651, 667 (3d Cir. 2009).

Result: On retrial, Defendant was convicted but the Commonwealth did not seek the death penalty. Commonwealth v. Wilson, 147 A.3d 7, 12 (Pa. Super. 2016).

Arrest: September 8, 1986 – Life sentence: April 1, 2014 = **27 yrs, 6 mos, 24 d**

(3). Death Sentences Overturned due to Changes in the Law (Total 8)

• ***Reversals Pursuant To Atkins v. Virginia (Total 6)***

1. Commonwealth v. Edward Bracey, CP-51-CR-0632821-1991

The Supreme Court affirmed the PCRA court’s determination that Defendant is intellectually disabled. Commonwealth v. Bracey, 117 A.3d 270, 284 (Pa. 2015).

Arrest: February 4, 1991 – Resentenced: January 10, 2014 = **22 yrs, 11 mos, 6 d**

2. Commonwealth v. Joseph D’Amato, CP-51-CR-1219941-1981

Defendant resentenced to Life pursuant to Atkins. On Line Docket Entry, p.18, 6/13/13.

Arrest: December 10, 1981 – Resentenced: June 13, 2013 = **31 yrs, 6 mos, 3 d**

3. Commonwealth v. Harrison Graham, CP-51-CR-0839481-1987

Defendant resentenced to Life pursuant to Atkins. On Line Docket Entry, p.9, 12/18/03.

Arrest: August 17, 1987 – Resentenced: December 18, 2003 = **16 yrs, 4 mos, 1 d**

4. Commonwealth v. Melvin Howard, CP-51-CR-0304271-1988

The Commonwealth agreed to vacate Defendant's death sentence, pursuant to Atkins. On Line Docket Entry, p.11, 6/10/11. Howard v. Horn, 56 F. Supp. 3d 709, 715 (E.D. Pa. 2014) ("Petitioner's death sentence was vacated and he was resentenced to life in prison without parole").

Arrest: February 13, 1988 — Resentenced: June 10, 2011 = **23 yrs, 3 mos, 28 d**

5. Commonwealth v. Raymond Whitney, CP-51-CR-1114161-1981

The Court of Common Pleas found "the evidence of [Defendant's] mental retardation 'overwhelming'." The Court vacated Defendant's death sentence and resentenced him to life without possibility of parole. The Commonwealth did not appeal. Whitney v. Horn, 2008 WL 4761733, at *3 (E.D. Pa. Oct. 30, 2008).

Arrest: October 10, 1981 – Resentenced: January 16, 2008 = **26 yrs, 3 mos, 6 d**

6. Commonwealth v. Simon Pirela, CP-51-CR-0121431-1983

The Pennsylvania Supreme Court affirmed the PCRA court's determination that Defendant is intellectually disabled Per Curiam. Commonwealth v. Pirela, 929 A.2d 629 (Pa. 2007).

Arrest: December 20, 1982 – Resentenced: April 30, 2004 = **21 yrs, 4 mos, 10 d**

- *Reversals Pursuant to Roper v. Simmons (Total 2)*

7. Commonwealth v. Kevin Hughes, CP-51-CR-0116881-1980

The PCRA court granted relief pursuant to Roper "because Petitioner was less than eighteen years old at the time of the offense". Online Docket Entry, p.8, 3/21/05.

Arrest: January 12, 1980 — Resentenced: March 21, 2005 = **25 yrs, 2 mos, 9 d**

8. Commonwealth v. Percy Lee, CP-51-CR-0511562-1986

Because Lee was 17 at the time of the murders, his death sentence was later vacated under Roper and replaced with two consecutive life sentences. Lee v. Smeal, 447 F. App'x 357, 359 n.2 (3d Cir. 2011).

Arrest: February 28, 1986 — Resentenced: September 20, 2005 =
19 yrs, 6 mos, 23 d

(4). Death Sentences Overturned due to Actual Innocence (Total 1)

1. Commonwealth v. Neil Ferber, CP-51-CR-0710481-1981

After conviction and death sentence, Defendant “ultimately was released from custody after law enforcement authorities conceded that he, in fact, had nothing whatsoever to do with these murders.” Neil Ferber & Annette Ferber, h/w v. City of Philadelphia, Sergeant Daniel Rosenstein & Officer Dominic Frontino, 1994 WL 1251179 (Pa. Com. Pl. Oct. 3, 1994), aff'd in part, rev'd in part sub nom. Ferber v. City of Philadelphia, 661 A.2d 470 (Pa. Commw. Ct. 1995).

Result: Case nolle prossed. Online Docket Entry, p.3, 3/7/86.

Arrest: June 8, 1981 – March 7, 1986 = **4 yrs, 8 mos, 27 d**

(5). Sentences Overturned at PCRA Stage for Reasons Unspecified in the Docket Entries (Total 3)

1. Commonwealth v. Kenneth Miller, CP-51-CR-0902382-1998

At the PCRA stage, the PCRA court vacated Defendant's sentence and imposed Life. Secure Docket Entry, p.52, 5/13/14.

Arrest: July 31, 1998 – Resentenced: May 13, 2014 = **15 yrs, 9 mos, 13 d**

2. Commonwealth v. Jose DeJesus, CP-51-CR-1103501-1997

At the post-conviction stage, the PCRA court vacated Defendant's sentence and imposed Life. Secure Docket Entry, p.24, 1/4/18 ("Order Granting Motion to Vacate Sentence Listed Today for Re-Sentencing. Commonwealth agrees that PCRA petition is granted as to the death penalty sentences ... Re-sentenced to Life without the possibility of parole").

Arrest: October 30, 1997 – Resentenced January 4, 2018 = **20 yrs, 2 mos, 5 d**

3. Commonwealth v. DeJesus, CP-51-CR-1103511-1997

The Commonwealth agreed to PCRA relief and a sentence of Life and the Defendant agreed to forgo all future appeals. (N.T. 1/4/18 at 16).

Arrest: September 23, 1997 – Resentenced: January 4, 2018 = **20 yrs, 3 mos, 12 d**

PART I, SECTION C

NON-CAPTIAL OUTCOMES OF CASES ON REMAND

Part I, Section C lists the cases where, on remand, the previously death-sentenced defendant received something other than a capital sentence. **102 (91%)** of the 112 overturned Philadelphia death sentences resulted in a non-capital disposition.

Section C, Subsection One lists the **67** ineffective assistance cases (“IAC cases”) that resulted in a non-capital disposition. This list designates each case by the Defendant’s name, the Common Pleas Court Docket Number, and the number assigned to the case in Part I, Section A (listing Philadelphia death sentences overturned due to ineffective assistance of counsel).

Section C, Subsection Two lists the **35** cases overturned on other grounds that resulted in a non-capital disposition. This list also designates each case by the Defendant’s name, the Common Pleas Court Docket Number, and the number assigned to the case in Part I, Section B (listing Philadelphia death sentences overturned on grounds other than ineffectiveness).

(1). SUBSECTION ONE – Non-Capital Outcomes of IAC Cases

After remand, **none** of the 74 IAC cases resulted in a new death sentence. **67 (90%)** of the 74 defendants ultimately received either a non-capital sentence or a

guilt phase acquittal. Three died of natural causes while in custody.⁸ Four still await new penalty hearings, while reviewing courts consider their guilt phase claims.⁹

1. (1) **Comm. v. Lawrence Baker, CP-51-CR-0629891-1981**

On remand, the Defendant received a life sentence pursuant to the version of the statute governing sentencing procedure for murder of the first degree then in effect. Commonwealth v. Baker, 511 A.2d 777, 791 (Pa. 1986); Online Docket Entry, p.3, 7/30/86.

2. (2) **Commonwealth v. Lee Baker, CP-51-CR-0405062-1984**

Negotiated guilty plea. Online Docket Entry, p.6, 5/23/2008

3. (3) **Commonwealth v. Billa, CP-51-CR-0136311-1987**

On remand, Defendant entered a guilty plea and received a life sentence. Online Docket Entry, p.3, 1/11/90

4. (4) **Commonwealth v. John M. Blount, CP-51-CR-0124901-1990**

After a new sentencing hearing, Defendant was sentenced to life imprisonment. Blount v. Wetzel, 2015 WL 851855, at *2; Online Docket Entry, p.12, 7/24/96.

5. (5) **Commonwealth v. Aquil Bond, CP-51-CR-0502971-2004**

Case resolved through negotiated disposition. Online Docket Entry, p.52, 5/19/17.

⁸ Commonwealth v. Billy Brooks, CP-51-CR-0128471-1991, Commonwealth v. William Holland, CP-51-CR-1014291-1984, and Commonwealth v. William Tilley, CP-51-CR-1210781-1985.

⁹ Commonwealth v. Robert Cook, CP-51-CR-0826512-1987, Commonwealth v. Bernard Cousar, CP-51-CR-0508652-1999, Commonwealth v. Henry Fahy, CP-51-CR-0222831-1981, and Commonwealth v. Kevin Pelzer, CP-51-CR-1031752-1988.

6. (6) **Commonwealth v. Jesse Bond**, CP-51-CR-2217781-1992

On remand from the appellate courts, Defendant received a life sentence. Online Docket Entry, p.11, 11/15/12.

7. (8) **Commonwealth v. Samuel Carson**, CP-51-CR-0228371-1994

Online Docket Entry, p.12, 4/04/11 (“Both sides agree to Life Imprisonment”).

8. (9) **Commonwealth v. Ronald Clark**, CP-51-CR-1241151-1993

Online Docket Entry, p.13, 8/16/11 (“Order - Sentence/Penalty Imposed – agreement”).

9. (10) **Commonwealth v. Rodney Collins**, CP-51-CR-0815881-1992

Defendant resentenced to Life. Docket Entry, p.17, 11/05/09 (“On count 1, life without parole. All of the other charges remain the same”).

10. (11) **Commonwealth v. Ronald Collins**, CP-51-CR-0614771-1992

“Order - Sentence/Penalty Imposed” Online Docket Entry, p.13, 5/11/2009.

11. (14) **Commonwealth v. Dewitt Crawley**, CP-51-CR-0201551-1984

Online Docket Entry, p.13, 5/1/15 (“By agreement the above defendant is re-sentenced to life without parole on first degree murder”).

12. (15) **Commonwealth v. Junious Diggs**, CP-51-CR-0709781-2002

With the Commonwealth’s agreement, the PCRA court vacated Defendant’s death sentence and sentenced Defendant to Life. Secure Docket Entry, p.19, 8/14/12; Written Agreement Colloquy, at p.2.

13. (16) **Comm. v. Daniel Dougherty**, CP-51-CR-0705371-1999

Online Docket Entry, p.23, 2/7/12 (death sentence vacated and life sentence imposed).

14. (17) Commonwealth v. Joseph Elliott, CP-51-CR-0410911-1994

Online Docket Entry, p.23, 5/1/15 (“He is resentenced to life without parole on first degree murder”).

15. (19) Commonwealth v. Lester Fletcher, CP-51-CR-0709931-2001

Online Docket Entry, p.13, 7/18/12 (“Death penalty is vacated and the defendant is now sentenced to life in prison without the possibility of parole”).

16. (20) Commonwealth v. Kenneth Ford, CP-51-CR-1032221-1989

With the agreement of the Commonwealth, the PCRA court resentenced Defendant to Life. (N.T. 11/29/04 at 1-5); On Line Docket Entry, p.9, 11/29/2004.

17. (21) Commonwealth v. William Gribble, CP-51-CR-1220811-1992

After a second penalty phase hearing, the Defendant received Life. Online Docket Entry, p.20, 3/10/09 (“Original Sentence of 8/11/94 is vacated. Jury Hung on Penalty Phase”).

18. (22) Commonwealth v. Donald Hall, CP-51-CR-0210711-1982

Defendant received Life pursuant to the version of 42 Pa.C.S. § 9711(h)(2) in effect at the time of his trial. Online Docket Entry, p.3, 2/29/96.

19. (23) Commonwealth v. Ronald Hanible, CP-51-CR-0409021-1999

Defendant resentenced to life in prison. Online Docket Entry, p.20, 9/24/13.

20. (24) Commonwealth v. John Harris, CP-51-CR-0903421-1992

Defendant was resentenced to Life. Online Docket Entry, p.8, 2/28/05.

21. (25) Commonwealth v. Donetta Hill, CP-51-CR-0518391-1991

After the federal court granted her a new guilt phase trial, the Commonwealth negotiated a term of years sentence for third degree murder. Online Docket Entry, p.22, 7/12/17.

22. (27) Comm. v. Arnold Holloway, CP-51-CR-0613051-1985

On remand, Defendant entered an open plea and received a term of years sentence. Online Docket Entry, p.5, 4/14/05.

23. (28) Comm. v. Steven Hutchinson, CP-51-CR-0408581-1998

Defendant was resentenced to Life. Online Docket Entry, p.16, 1/23/2013.

24. (29) Commonwealth v. Kareem Johnson, CP-51-CR-1300424-2006

The Commonwealth filed a notice with the trial court indicating that it would no longer be seeking the death penalty. Online Docket Entry, p.30, 2/17/16 (“Notice of Removal of Capital Designation”).

25. (30) Comm. v. William Johnson, CP-51-CR-0936052-1991

Defendant sentenced to Life. Online Docket Entry, p.20 9/21/16.

26. (31) Commonwealth v. Damon Jones, CP-51-CR-0907121-1982

Defendant was resentenced to Life. Online Docket Entry, p.45, 12/14/12.

27. (32) Commonwealth v. James Jones, CP-51-CR-1024861-1980

Online Docket Entry, p.11, 8/16/11 (“Court orders death sentence vacated and imposes sentence of Life Imprisonment”).

28. (33) Commonwealth v. Thomas Jones, CP-51-CR-0403101-1982

On January 18, 1989, the Common Pleas Court vacated the death sentence and imposed a life sentence. Commonwealth’s Brief for Appellee, Jones v. Frank, 1999 WL 33620698 (3d Cir.), at p.4.

29. (34) Comm. v. Alexander Keaton, CP-51-CR-0319251-1993

Defendant resentenced to life without parole. Online Docket Entry, p. 26, 6/12/14.

30. (35) Commonwealth v. Joseph Kindler, CP-51-CR-0827471-1982

Online Docket Entry, p.26, 3/01/18 (“Defendant sentenced to life without parole, Commonwealth is not seeking the death penalty. Sentence has been agreed to by counsel”).

31. (36) Comm. v. Michael LaCava, CP-51-CR-0711041-1990

Defendant resentenced to Life after a new penalty phase hearing. Online Docket Entry, p.3, 3/22/96.

32. (37) Commonwealth v. Robert Lark, CP-51-CR-0120121-1980

After a new penalty phase, the jury was unable to render a unanimous verdict and the trial court sentenced Defendant to Life. (N.T. 11/9/17 at 103).

33. (38) Commonwealth v. Reginald Lewis, CP-51-CR-0205851-1983

Online Docket Entry, p.3, 7/9/12 (“The defendant will receive life without parole. The death penalty has been removed”).

34. (39) Commonwealth v. Steven McCrae, CP-51-CR-0204521-1999

The Commonwealth “agreed that [the PCRA] Court may vacate [Defendant’s] two death sentences and impose two consecutive life sentences.” Written Agreement Colloquy, 4/13/06 at p.2.

35. (40) Commonwealth v. Bernard McGill, CP-51-CR-0339201-1990

Online Docket Entry, p.15, 1/7/13 (“Revised upon appeal, the death penalty is vacated. The defendant is re-sentenced to life without parole”).

36. (41) Comm. v. Nathaniel McNair, CP-51-CR-1224591-1987

Defendant’s sentence changed to Life. Online Docket Entry, p.4, 4/4/02.

37. (42) Comm. v. Christopher McNeil, CP-51-CR-0500461-1991

Online Docket Entry, p.4, 6/23/97 (“Guilty ... Confinement Life”).

38. (43) Commonwealth v. William Mikell, CP-51-CR-0716051-1987

Online Docket Entry, p.13, 12/9/04 (“Sentence: Life”).

39. (44) Comm. v. Mikal Moore, CP-51-CR-0701141-1998

Online Docket Entry, p.22, 3/27/17 (“Order - Sentence/Penalty Imposed By Agreement this court Vacates previous sentence of DEATH and reimposes a sentence of LIFE as to Murder 1st Degree”).

40. (45) Comm. v. Salvador Morales, CP-51-CR-1012921-1982

After a second penalty phase hearing, Defendant was resentenced to Life. Online Docket Entry, p.4, 1/4/2000; Pirela v. Vaughn, 2013 WL 11323274, at *5.

41. (46) Commonwealth v. Willard Moran, CP-51-CR-1130901-1981

Defendant was resentenced to Life. Online Docket Entry, p.3, 1/27/99.

42. (47) Commonwealth v. Kelvin Morris, CP-51-CR-0704091-1982

The Commonwealth negotiated a term of years sentence in exchange for Defendant’s guilty plea. On Line Docket Entry, p.12, 6/7/13; Negotiated Guilty Plea Order.

43. (48) Commonwealth v. Craig Murphy, CP-51-CR-0925231-1985

On remand, Defendant entered a guilty plea for a Life sentence. Online Docket Entry, p.3, 11/22/91 (“Guilty Plea ... Confinement LIFE”).

44. (49) Commonwealth v. William Nieves, CP-51-CR-1009681-1993

Defendant was acquitted after retrial. Online Docket Entry, p.3, 12/20/00.

45. (50) Comm. v. Kelley O’Donnell, CP-51-CR-1220812-1992

After a new sentencing hearing, the jury unanimously agreed upon a life sentence. Commonwealth v O’Donnell, 2006 WL 5429138 (Pa.Com.Pl. Nov. 21, 2006).

46. (51) Commonwealth v. Lamont Overby, CP-51-CR-1006081-1996

Online Docket Entry, p.20, 10/18/13 (“After hearing, sentence of LIFE imprisonment without the possibility of parole is imposed for Murder in the First Degree”).

47. (53) Commonwealth v. Curry Perry, CP-51-CR-0418121-1989

Defendant was retried and acquitted. Online Docket Entry, p.2, 6/26/96.

48. (54) Commonwealth v. Otis Peterkin, CP-51-CR-0207841-1982

On remand, Defendant entered a guilty plea and received Life. Online Docket Entry, p.3, 12/6/02 (“Guilty Plea ... Confinement LIFE”).

49. (55) Commonwealth v. Michael Rainey, CP-51-CR-0419613-1990

Online Docket Entry, p.12, 3/10/09 (“Order - Sentence/Penalty Imposed: Court orders the death penalty sentence vacated and a new sentence of life without parole on 1st degree murder imposed”).

50. (56) Comm. v. Wilfredo Ramos, CP-51-CR-0100891-1999

Online Docket Entry, p.18, 4/18/08 (“[B]ased upon the Commonwealth’s certification that, in the exercise of its discretion, it will not pursue a new penalty hearing in this matter, defendant’s sentence of death is hereby vacated and a new sentence of life imprisonment is hereby imposed”).

51. (57) Commonwealth v. Lloyd Reid, CP-51-CR-0405461-1991

Defendant was resentenced to Life. Online Docket Entry, p.3, 10/20/94.

52. (58) Commonwealth v. Timothy Rice, CP-51-CR-0906231-1996

Commonwealth v. Rice, 2013 WL 11256379, at *2 (Pa. Super. Aug. 5, 2013). (“[T]he PCRA court, with the agreement of the Commonwealth, granted [Defendant’s] motion to vacate both death sentences, and instead, imposed two consecutive life sentences”).

53. (59) Commonwealth v. Delores Rivers, CP-51-CR-0335191-1988

The Commonwealth agreed to Life if Defendant would waive all future appeals. Court Commitment, 6/30/05.

54. (60) Commonwealth v. Florencio Rolan, CP-51-CR-0228931-1984

After a re-sentencing hearing, a jury unanimously sentenced Defendant to Life. Rolan v. Vaughn, 2004 WL 2297407, at *1.

55. (61) Commonwealth v. Saharris Rollins, CP-51-CR-0405851-1986

On remand, the Commonwealth agreed to Life. Online Docket Entry, p.6, 12/21/11 (“This case was sent back from Federal court. The original sentence was vacated. Listed for re-sentencing. The Commonwealth will not seek the death penalty on remand”).

56. (62) Comm. v. James Melvin Smith, CP-51-CR-0717891-1983

Online Docket Entry, p.18, 10/25/2012 (“The defendant is re-sentenced to life without parole. The defendant is to be taken off of death row forthwith”).

57. (63) Commonwealth v. Willie Sneed, CP-51-CR-0606741-1984

Online Docket Entry, p.8, 12/18/12 (“Order Granting Motion to Vacate Sentence By agreement of counsel, Court orders DEATH SENTENCE imposed on 4/2/1986 VACATED and imposes a new sentence of LIFE Imprisonment”).

58. (64) Commonwealth v. Brian Thomas, CP-51-CR-0827161-1985

Online Docket Entry, p.14, 9/24/13 (“The death penalty has been vacated. Life without parole on count #9”).

59. (65) Commonwealth v. LeRoy Thomas, CP-51-CR-1207001-1994

Online Docket Entry, p.16, 3/15/13 (“New sentence of life without parole. The defendant is to be taken off of death row”).

60. (66) Comm. v. Michael Thomaston, CP-51-CR-0400541-1995

The PCRA court imposed Life. Online Docket Entry, p.4, 12/11/02.

61. (67) Comm. v. Andre Thompson, CP-51-CR-0221931-1993

At the PCRA stage, the Commonwealth agreed to a term of years sentence. Online Docket Entry, p.12, 9/20/05.

62. (68) Commonwealth v. Louis Thompson, CP-51-CR-0436071-1990

Defendant was resentenced to Life. Online Docket Entry, p.6, 5/21/04.

63. (70) Commonwealth v. Philip Trivigno, CP-51-CR-0100861-1996

After a new penalty phase hearing, the jury imposed Life. Online Docket Entry, p.4, 1/29/03; PCRA Opinion, Tucker, J. 11/2/16, at p.2.

64. (71) Comm. v. Vinson Washington, CP-51-CR-0310321-1994

Online Docket Entry, p.13, 5/16/11 (“[B]ased on stipulation of parties, the defendant is sentenced to LIFE Imprisonment”).

65. (72) Commonwealth v. Derrick White, CP-51-CR-0012991-2010

The PCRA court quashed the sole aggravating circumstance and sentenced Defendant to Life. Commonwealth v. White, (Memorandum Opinion), 1152 EDA 2015, at p.5.

66. (73) Comm. v. Christopher Williams, CP-51-CR-0417523-1992

The Commonwealth subsequently “withdrew the capital designation on this case”. Online Docket Entry, p.32, 8/9/18.

67. (74) Commonwealth v. Craig Williams, CP-51-CR-0525631-1987

The Commonwealth agreed to the imposition of a life sentence. Online Docket Entry, p.17, 5/1/12.

(2). SUBSECTION TWO - Non-Capital Outcomes of Cases Overturned on Other Grounds

35 (92%) of the 38 Philadelphia death cases overturned on other grounds resulted in a non-capital disposition—either a life sentence, a terms of years sentence, an acquittal, or withdrawal of prosecution. Four overturned death cases did *not* result in non-capital dispositions. One defendant was resentenced to death but died of natural causes while in custody.¹⁰ One defendant died before his resentencing hearing.¹¹ In one case, the defendant’s sentence remains the subject of ongoing litigation.¹²

1. Mumia Abu-Jamal, CP-51-CR-0113571-1982

On remand the Commonwealth did not seek a new penalty phase hearing. On Line Docket Entry, p.10, 8/13/12 (“And Now this 13th day of August 2012, the Commonwealth having not requested a new sentencing hearing ... it is Hereby Decreed that Mumia Abu-Jamal is sentenced to life imprisonment”).

2. Commonwealth v. Sam Bannerman, CP-51-CR-1033281-1984

Defendant entered guilty plea and was resentenced to Life. Online Docket Entry, p.2, 10/9/91.

3. Commonwealth v. Edward Bracey, CP-51-CR-0632821-1991

The Supreme Court affirmed the PCRA court’s determination that Defendant is intellectually disabled. Commonwealth v. Bracey, 117 A.3d 270 (Pa. 2015). Resentenced: January 10, 2014

¹⁰ Commonwealth v. Alfred Jasper, CP-51-CR-0613941-1984.

¹¹ Commonwealth v. Willie Clayton, CP-51-CR-1127941-1984.

¹² Commonwealth v. Ernest Porter, CP-51-CR-0622491-1985.

4. Commonwealth v. James Bryant, CP-51-CR-1023791-1983

Case nolle prossed. Online Docket Entry, p.3, 1/25/93.

5. Commonwealth v. Kevin Chandler, CP-51-CR-0832561-1993

Defendant was resentenced to Life. Online Docket Entry, p.5, 8/11/99.

6. Commonwealth v. Joseph D'Amato, CP-51-CR-1219941-1981

Defendant resentenced to Life pursuant to Atkins. Online Docket Entry, p.18, 6/13/13.

7. Commonwealth v. Jose DeJesus, CP-51-CR-0704671-1998

The Commonwealth agreed to Life in exchange for Defendant's guilty plea. On Line Docket Entry, p.5, 1/4/18 ("Commonwealth agrees that PCRA petition is granted as to the death penalty sentences ... Re-sentenced to Life without the possibility of parole").

8. Commonwealth v. Jose DeJesus, CP-51-CR-1103501-1997

At the post-conviction stage, the PCRA court vacated Defendant's sentence and imposed Life. Secure Docket Entry, p.24, 1/4/18 ("Order Granting Motion to Vacate Sentence Listed Today for Re-Sentencing. Commonwealth agrees that PCRA petition is granted as to the death penalty sentences ... Re-sentenced to Life without the possibility of parole").

9. Commonwealth v. DeJesus, CP-51-CR-1103511-1997

The Commonwealth agreed to PCRA relief and a sentence of Life and the Defendant agreed to forgo all future appeals. (N.T. 1/4/18 at 16).

10. Commonwealth v. James Dennis, CP-51-CR-0104841-1992

On remand, the Commonwealth agreed to a negotiated guilty plea to third degree murder. Online Docket Entry, p.25, 12/22/16.

11. Commonwealth v. Neil Ferber, CP-51-CR-0710481-1981

After conviction and death sentence, Defendant “ultimately was released from custody after law enforcement authorities conceded that he, in fact, had nothing whatsoever to do with these murders.” Neil Ferber & Annette Ferber, h/w v. City of Philadelphia, Sergeant Daniel Rosenstein & Officer Dominic Frontino, 1994 WL 1251179 (Pa. Com. Pl. Oct. 3, 1994), aff’d in part, rev’d in part sub nom. Ferber v. City of Philadelphia, 661 A.2d 470 (Pa. Commw. Ct. 1995). Case nolle prossed. On Line Docket Entry, p.3, 3/7/86.

12. Commonwealth v. Calvin Floyd, CP-51-CR-0813171-1980

Defendant’s sentence automatically modified to Life, based on the law as it existed at that time.

13. Commonwealth v. George Goins, CP-51-CR-0829421-1981

Defendant’s sentence automatically modified to Life, based on the law as it existed at that time.

14. Commonwealth v. Harrison Graham, CP-51-CR-0839481-1987

Defendant resentenced to Life pursuant to Atkins. Online Docket Entry, p.9, 12/18/03.

15. Commonwealth v. William Green, CP-51-CR-0427361-1982

Remanded for a new penalty hearing. Defendant resentenced to Life. Online Docket Entry, p.3, 9/10/91.

16. Commonwealth v. Eric Grier, CP-51-CR-0334871-1989

On remand, the Defendant entered a guilty plea and received Life. Online Docket Entry, p.3, 1/5/98.

17. Commonwealth v. Donald Hardcastle, CP-51-CR-0632881-1982

On remand, Defendant entered a negotiated guilty plea for a term of years sentence. Online Docket Entry, p.5, 3/16/11.

18. Commonwealth v. Derrick Harvey, CP-51-CR-0307631-1998

On March 28, 2003, Defendant was resentenced to life imprisonment without parole following his new penalty hearing. Harvey v. Folino, 2011 WL 9155257, at *3 (E.D. Pa. Dec. 20, 2011).

19. Commonwealth v. Melvin Howard, CP-51-CR-0304271-1988

The Commonwealth agreed to vacate Defendant's death sentence, pursuant to Atkins. On Line Docket Entry, p.11, 6/10/11. Howard v. Horn, 56 F. Supp. 3d 709, 715 (E.D. Pa. 2014) ("Petitioner's death sentence was vacated and he was resentenced to life in prison without parole").

20. Commonwealth v. Andrew Huffman, CP-51-CR-0511051-1989

Defendant sentenced to Life. Unclear from Docket Entries whether he entered a guilty plea or went to trial and was convicted. Also unclear whether the Commonwealth agreed or a new penalty phase resulted in Life. Online Docket Entry, p.4, 1/14/98.

21. Commonwealth v. Kevin Hughes, CP-51-CR-0116881-1980

The PCRA court granted relief pursuant to Roper "because Petitioner was less than eighteen years old at the time of the offense". Online Docket Entry, p.8, 3/21/05.

22. Commonwealth v. James Lambert, CP-51-CR-0803432-1983

Defendant entered a negotiated guilty plea to third degree murder for a term of years sentence. Online Docket Entry, p.10, 12/18/17.

23. Commonwealth v. Percy Lee, CP-51-CR-0511562-1986

Because Lee was 17 at the time of the murders, his death sentence was later vacated under Roper and replaced with two consecutive life sentences. Lee v. Smeal, 447 F. App'x 357, 359 n.2 (3d Cir. 2011).

24. Commonwealth v. Marcus Lloyd, CP-51-CR-0501982-1998

On August 20, 2003, the Common Pleas Court conducted a new penalty phase hearing. The Commonwealth agreed to a new sentencing hearing before the trial court, without a jury. Online Docket Entry, p.6, 8/20/03. The sentencing court imposed consecutive life sentences. Commonwealth v. Lloyd, 2004 WL 3481055 (Pa.Super.), at 5.

25. Commonwealth v. Cam Ly, CP-51-CR-1125561-1986

When Defendant filed a new PCRA petition, the Commonwealth agreed to Life. Online Docket Entry, p.10, 12/12/13.

26. Commonwealth v. Kenneth Miller, CP-51-CR-0902382-1998

At the PCRA stage, the PCRA court vacated Defendant's sentence and imposed Life. Secure Docket Entry, p.52, 5/13/14.

27. Commonwealth v. Michael Overby, CP-51-CR-0105802-1995

On remand, Defendant was sentenced to Life. Not clear if he had a new trial or the Commonwealth agreed to a life sentence. Online Docket Entry, p.24, 6/21/07.

28. Commonwealth v. Simon Pirela, CP-51-CR-0121431-1983

The Pennsylvania Supreme Court affirmed the PCRA court's determination that Defendant is intellectually disabled. Commonwealth v. Pirela, 929 A.2d 629 (Pa. 2007).

29. Commonwealth v. Paul Rizzuto, CP-51-CR-0132391-1994

After a new hearing, Defendant was sentenced to Life. Online Docket Entry, p.5, 10/7/03.

30. Commonwealth v. Bobby Sims, CP-51-CR-0500751-1982

Defendant pleaded guilty to a term of years sentence. Online Docket Entry, p.3, 9/25/87.

31. Commonwealth v. Lawrence Smith, CP-51-CR-1001002-2000

The Commonwealth did not request a new penalty hearing and the Defendant was resentenced to Life. Online Docket Entry, p.17, 11/1/05.

32. Commonwealth v. Anthony Washington, CP-51-CR-1210371-1993

The Commonwealth removed the capital designation. Online Docket Entry, 3/14/19. Retrial scheduled for July 22, 2019.

33. Commonwealth v. Raymond Whitney, CP-51-CR-1114161-1981

The Court of Common Pleas found “the evidence of [Defendant’s] mental retardation ‘overwhelming’.” The Court vacated Defendant’s death sentence and resentenced him to life without possibility of parole. The Commonwealth did not appeal. Whitney v. Horn, 2008 WL 4761733, at *3 (E.D. Pa. Oct. 30, 2008).

34. Commonwealth v. Terrence Williams, CP-51-CR-0823621-1984

The Commonwealth did not seek a new penalty phase and Defendant was resentenced to Life. On Line Docket Entry, p.17, 12/29/17 (“Order - Sentence/Penalty Imposed Remand From Supreme Court. Defendant Resentenced. Murder-Life Without Parole”).

35. Commonwealth v. Zachary Wilson, CP-51-CR-0929501-1986

On retrial, Defendant was convicted but the Commonwealth did not seek the death penalty. Commonwealth v. Wilson, 147 A.3d 7, 12 (Pa. Super. 2016).

PART I, SECTION D

COMMONWEALTH AGREEMENT TO NON-CAPTIAL OUTCOMES IN CASES WHERE THE DEATH SENTENCE WAS OVERTURNED

As noted in Part I, Section C, 102 of the 112 overturned Philadelphia death sentences ultimately resulted in a non-capital disposition. The Philadelphia District Attorney's Office (DAO) agreed to non-capital dispositions in **65 (63.7%)** of the 102 Philadelphia cases where the original death sentence was overturned. In all of these cases, the Commonwealth could have retried either the guilt or the penalty phase. Instead, it elected to pursue a non-capital resolution. In each of these **65** cases, the Commonwealth's agreement to a non-capital resolution occurred **before** the current Philadelphia District Attorney assumed office.

Part I, Section D is divided into two Subsections. Section D, Subsection One lists the pre-2018 cases where the DAO agreed to a non-capital sentence after a finding of prior counsel's ineffectiveness. (Total **50**). Each case is listed by the defendant's name, Common Pleas Court docket number, and by the number assigned to it in Part I, Section A, Subsection One. The same information regarding whether the DAO agreed to a non-capital resolution appears in the preceding list of 74 IAC cases (Part I, Section A, Subsection One). That information is separately detailed here, for ease of reference.

Section D, Subsection Two lists pre-2018 cases where the Commonwealth agreed to a non-capital sentence after a reviewing court vacated the original sentence on other grounds. (Total 15).

(1). SUBSECTION ONE – DAO Agreement in IAC Cases (Total – 50)

1. (2) Comm. v. Lee Baker, CP-51-CR-0405062-1984

After the District Court ruled that counsel was ineffective, Defendant entered a negotiated guilty plea and received a term of years sentence. Baker v. Horn, 383 F. Supp. 2d 720, 765, 777-779 (E.D. Pa. 2005); Online Docket Entry, p.6, 5/23/2008 (“Negotiated guilty plea. Defendant waived formal arraignment, plead and was adjudged guilty”).

2. (3) Comm. v. Billa, CP-51-CR-0136311-1987

After the Supreme Court ruled that counsel was ineffective, Defendant pleaded guilty and received a life sentence. Commonwealth v. Billa, 555 A.2d 835, 842 (Pa. 1989); Online Docket Entry, p.3, 1/11/90.

3. (5) Comm. v. Aquil Bond, CP-51-CR-0502971-2004

After the PCRA court vacated Defendant’s death sentence, the case was resolved through a negotiated disposition. Online Docket Entry, p.52, 3/13/17; Online Docket Entry, p.52, 5/19/17.

4. (6) Comm. v. Jesse Bond, CP-51-CR-2217781-1992

After the Third Circuit ruled that counsel was ineffective, the Commonwealth agreed to a life sentence. Bond v. Beard, 539 F.3d 256, 291 (3d Cir. 2008); Online Docket Entry, p.11, 11/15/12 (“The Commonwealth will not seek the death penalty”).

5. (8) Comm. v. Samuel Carson, CP-51-CR-0228371-1994

After the Supreme Court remanded for an evidentiary hearing on Defendant’s ineffectiveness claim, the Commonwealth agreed to a life sentence.

Commonwealth v. Carson, 913 A.2d 220, 267-268 (Pa. 2006); Online Docket Entry, p.12, 4/04/11 (“Both sides agree to Life Imprisonment”).

6. (9) Comm. v. Ronald Clark, CP-51-CR-1241151-1993

After the PCRA court granted Appellant’s request for a new penalty hearing based on trial counsel’s ineffectiveness, the defendant pleaded guilty in exchange for a life sentence. Commonwealth v. Clark, 961 A.2d 80, 83 (Pa. 2008); Online Docket Entry, p.13, 8/16/11 (“Order - Sentence/Penalty Imposed – agreement”).

7. (10) Comm. v. Rodney Collins, CP-51-CR-0815881-1992

After the PCRA court granted Appellant a new penalty hearing based on trial counsel’s ineffectiveness, the Commonwealth did not appeal. Collins, 957 A.2d at 243. Thereafter, the Commonwealth did not seek a new penalty hearing. Defendant was resentenced to Life by the Homicide Calendar Judge. Online Docket Entry, p.17, 11/05/09 (“On count 1, life without parole. All of the other charges remain the same”).

8. (14) Comm v. Dewitt Crawley, CP-51-CR-0201551-1984

After Defendant raised claims of trial counsel’s ineffectiveness at the PCRA stage, the Commonwealth agreed to a life sentence. Crawley v. Horn, 7 F. Supp. 2d 587, 588 (E.D. Pa. 1998); Online Docket Entry, p.13, 5/1/15 (“By agreement the above defendant is re-sentenced to life without parole”).

9. (16) Comm. v. Daniel Dougherty, CP-51-CR-0705371-1999

At the PCRA stage, the Commonwealth conceded that trial counsel was ineffective at the penalty phase “for failure to investigate and present certain mitigation evidence.” Online Docket Entry, p.23, 2/7/12. The Commonwealth agreed that it would not pursue the death penalty at a new sentencing hearing and agreed to a life sentence. Commonwealth v. Dougherty, 2017 WL 4949000, at *2 (Pa. Super. 2017) (death sentences vacated and life imposed “upon the agreement of the parties”).

10. (17) Comm. v. Joseph Elliott, CP-51-CR-0410911-1994

At the PCRA stage, “the Commonwealth agreed not to oppose Elliott’s request for a new penalty hearing.” Commonwealth v. Elliott, 80 A.3d 415, 424 n.5 (Pa. 2013). Thereafter, the Commonwealth agreed to a life sentence and the defendant was resentenced, by video, before the Homicide Calendar Judge. Online Docket Entry, p.23, 5/1/15.

11. (19) Comm. v. Lester Fletcher, CP-51-CR-0709931-2001

After the Supreme Court granted the parties’ joint motion for remand, the Commonwealth agreed to a life sentence. Commonwealth v. Fletcher, 43 A.3d 1289 (Pa. 2012); Online Docket Entry, p.13, 7/18/12 (“The defendant has agreed to withdraw all current appeals and waives all future appeals”).

12. (20) Comm. v. Kenneth Ford, CP-51-CR-1032221-1989

After the Supreme Court ruled that counsel was ineffective, the Commonwealth agreed to a life sentence. Commonwealth v. Ford, 809 A.2d 325, 331 (Pa. 2002); Online Docket Entry, p.9, 11/29/2004.

13. (23) Comm. v. Ronald Hanible, CP-51-CR-0409021-1999

At the PCRA stage, the Commonwealth “agreed that a new penalty hearing was warranted due to trial counsel’s failure to present available mitigating evidence.” Commonwealth v. Hanible, 30 A.3d 426, 438 (Pa. 2011); The Commonwealth did not seek a new penalty hearing and Defendant was resentenced to life in prison by the Homicide Calendar Judge. Online Docket Entry, p.20, 9/24/13.

14. (24) Comm. v. John Harris, CP-51-CR-0903421-1992

After the PCRA court granted an evidentiary hearing on Appellant’s claim that counsel had been ineffective during the penalty phase, Defendant was resentenced to Life before the Homicide Calendar Judge. Commonwealth v. Harris, 852 A.2d 1168, 1171 (Pa. 2004); Online Docket Entry, p.8, 2/28/05.

15. (25) Comm. v. Donetta Hill, CP-51-CR-0518391-1991

After the District Court ruled that counsel was ineffective, Defendant entered a negotiated guilty plea and received a term of years sentence. Hill v. Wetzel, 279 F. Supp. 3d 550, 566 (E.D. Pa. 2016); Online Docket Entry, p.22, 7/12/17.

16. (27) Comm. v. Arnold Holloway, CP-51-CR-0613051-1985

After the Third Circuit ruled that counsel was ineffective, the Commonwealth agreed to term of years sentence. Holloway v. Horn, 355 F.3d 707, 730 (3rd Cir. 2004) (remanding the case for retrial); Online Docket Entry, p.5, 4/14/05.

17. (28) Comm. v. Steven Hutchinson, CP-51-CR-0408581-1998

“[W]ith with the agreement of the Commonwealth, the PCRA court entered an order ... granting Appellant a new penalty phase hearing.” Commonwealth v. Hutchinson, 25 A.3d 277, 284 (Pa. 2011). By agreement, Defendant was resentenced to Life. Online Docket Entry, p.16, 1/23/2013.

18. (29) Comm. v. Kareem Johnson, CP-51-CR-1300424-2006

“At the PCRA stage, the Commonwealth conceded that Defendant was denied effective assistance of counsel ... and therefore the parties stipulated that Appellant was entitled to a new trial.” Commonwealth v. Johnson, 2018 WL 3133226. Thereafter, the Commonwealth notified the trial court that that it would not seek the death penalty. Brief for Appellee, Commonwealth v. Johnson, 927 EDA 2016, at p.2 n.1; Online Docket Entry, p.30, 2/17/16 (“Notice of Removal of Capital Designation”).

19. (30) Comm. v. William Johnson, CP-51-CR-0936052-1991

At the PCRA stage, the Commonwealth agreed that Defendant should have a new penalty phase hearing. (N.T. 5/22/14 at 4). The Commonwealth subsequently agreed that it would not pursue the death penalty. (N.T. 10/7/16 at 5) (“The Commonwealth has determined we will not be going forward with the new penalty hearing”). Defendant was subsequently sentenced to Life. Online Docket Entry, p.20 9/21/16.

20. (31) Comm. v. Damon Jones, CP-51-CR-907121-1982

After the Supreme Court ruled that counsel was ineffective, Defendant pleaded guilty and received a life sentence. Commonwealth v. Jones, 912 A.2d 268, 290 (Pa. 2006); Commonwealth v. Jones, 520 EDA 2013, at 1 (Pa. Super. 11/24/14) (“[T]he Commonwealth elected not to re-pursue the death penalty following the grant of penalty phase relief during PCRA proceedings”).

21. (32) Comm. v. James Jones, CP-51-CR-1024861-1980

The PCRA court awarded penalty phase relief and denied all guilt phase relief. Commonwealth v. Jones, 876 A.2d 380, 383 (Pa. 2005). Defendant subsequently sentenced to Life, by agreement. Online Docket Entry, p.11, 8/16/11 (“Commonwealth withdraws penalty phase for death sentence”).

22. (34) Comm. v. Alexander Keaton, CP-51-CR-0319251-1993

After the Supreme Court affirmed the PCRA court’s grant of penalty phase relief, the Commonwealth agreed to a life sentence. Commonwealth v. Keaton, 45 A.3d 1050 (Pa. 2012); Commonwealth’s Response to Petition for Writ of Habeas Corpus, Keaton v. Folino, No. 11-cv-7225 (E.D. Pa.) (“[B]y agreement, a life sentence was imposed”).

23. (35) Comm. v. Joseph Kindler, CP-51-CR-0827471-1982

After the Third Circuit ruled that counsel was ineffective, the Commonwealth agreed to a life sentence. Kindler v. Horn, 642 F.3d 398, 405 (3d Cir. 2011); On Line Docket Entry, p.26, 3/01/18 (“Commonwealth is not seeking the death penalty”).

24. (38) Comm. v. Reginald Lewis, CP-51-CR-0205851-1983

After the Third Circuit remanded for an evidentiary hearing on Defendant’s ineffectiveness claim, the Commonwealth agreed to a life sentence. Lewis v. Horn, 581 F.3d 92, 117 (3d Cir. 2009); Online Docket Entry, p.3, 7/9/12 (“The death penalty has been removed”).

25. (39) Comm. v. Steven McCrae, CP-51-CR-0204521-1999

After Defendant filed a PCRA petition claiming that trial counsel was ineffective for failing to investigate and present mitigation evidence, the Commonwealth “agreed that [the PCRA] Court may vacate [Defendant’s] two death sentences and impose two consecutive life sentences.” Written Agreement Colloquy, 4/13/06 at p.2.

26. (40) Comm. v. Bernard McGill, CP-51-CR-0339201-1990

After the Supreme Court remanded for a hearing regarding Defendant’s penalty phase ineffectiveness claims, the Commonwealth agreed to a life sentence. Commonwealth v. McGill, 832 A.2d 1014, 1026 (Pa. 2003); Online Docket Entry, p.15, 1/7/13 (“Revised upon appeal, the death penalty is vacated. The defendant is re-sentenced to life without parole”).

27. (43) Comm. v. William Mikell, CP-51-CR-0716051-1987

After the Supreme Court agreed with Defendant’s ineffectiveness claim and ordered a new trial, Defendant was re-convicted by a jury. However, the Commonwealth did not seek a death sentence and the trial court resentenced Defendant to life imprisonment. Online Docket Entry, p.13, 12/9/04.

28. (44) Comm. v. Mikal Moore, CP-51-CR-0701141-1998

At the PCRA stage, the Commonwealth agreed to a life sentence. Online Docket Entry, p.22, 3/27/17 (“Order - Sentence/Penalty Imposed By Agreement this court Vacates previous sentence of DEATH and reimposes a sentence of LIFE as to Murder 1st Degree”).

29. (46) Comm. v. Willard Moran, CP-51-CR-1130901-1981

The PCRA court granted relief, vacating the sentence of death and imposing a sentence of Life. Order, 1/27/99, Lineberger, J. (“The Court finds that Defendant has proven that his trial counsel failed to convey a pretrial offer to plead guilty and receive a life imprisonment sentence”). After the Commonwealth did not appeal the PCRA court’s decision, Defendant was resentenced to Life. Docket Entry, p.3, 1/27/99.

30. (47) Comm. v. Kelvin Morris, CP-51-CR-0704091-1982

After the District Court ruled that counsel was ineffective, Defendant entered a negotiated guilty plea and received a term of years sentence. Morris v. Beard, 2012 WL 4757868, at *1 (E.D. Pa. Oct. 5, 2012); Online Docket Entry, p.12, 6/7/13.

31. (48) Comm. v. Craig Murphy, CP-51-CR-0925231-1985

After the Supreme Court agreed with Defendant's ineffectiveness claim and ordered a new trial, Defendant entered a guilty plea for a life sentence. Commonwealth v. Murphy, 591 A.2d 278, 280–281 (Pa. 1991); Online Docket Entry, p.3, 11/22/91 (“Guilty Plea ... Confinement LIFE”).

32. (51) Comm. v. Lamont Overby, CP-51-CR-1006081-1996

After the PCRA court granted penalty phase relief, the Commonwealth agreed to Life. On Line Docket Entry, p.20, 10/18/13 (“After hearing, sentence of LIFE imprisonment without the possibility of parole is imposed for Murder in the First Degree”).

33. (56) Comm. v. Otis Peterkin, CP-51-CR-0207841-1982

After the District Court ruled that counsel was ineffective, Defendant entered a guilty plea and received a life sentence. Peterkin v. Horn, 176 F. Supp. 2d 342, 376–377 (E.D. Pa. 2001); Online Docket Entry, p.3, 12/6/02 (“Guilty Plea ... Confinement LIFE”).

34. (55) Comm. v. Michael Rainey, CP-51-CR-0419613-1990

After the Supreme Court remanded for a hearing regarding the mitigation evidence that trial counsel failed to present, the Commonwealth agreed to a life sentence. Commonwealth v. Rainey, 928 A.2d 215, 237-238, 240 (Pa. 2007); Online Docket Entry, p.12, 3/10/09.

35. (56) Comm. v. Wilfredo Ramos, CP-51-CR-0100891-1999

The PCRA court vacated Defendant's death sentence “based upon the Commonwealth's agreement not to contest [Appellant]'s request for a new penalty hearing based upon ineffective assistance of trial counsel at the

penalty hearing for failure to investigate and present certain mitigation evidence.” Commonwealth v. Ramos, 2017 WL 4286386, at *7 (Pa. Super. Ct. Sept. 27, 2017). Thereafter, the Commonwealth agreed to a life sentence. Online Docket Entry, p.18, 4/18/08 (noting “the Commonwealth’s certification that, in the exercise of its discretion, it will not pursue a new penalty hearing”).

36. (57) Comm. v. Lloyd Reid, CP-51-CR-0405461-1991

After the post-sentence motion court vacated Defendant’s death sentence, the Commonwealth withdrew the death certification and defendant was sentenced to life imprisonment. Reid v. Price, 2000 WL 992609, at *1 (E.D. Pa. July 17, 2000); Brief for Appellee Commonwealth of Pennsylvania, 1563 EDA 2018, at p.2.

37. (58) Comm. v. Timothy Rice, CP-51-CR-0906231-1996

The PCRA court, with the agreement of the Commonwealth, vacated both death sentences and imposed two consecutive life sentences. Commonwealth v. Rice, 2013 WL 11256379, at *2 (Pa. Super. Aug. 5, 2013).

38. (59) Comm. v. Delores Rivers, CP-51-CR-0335191-1988

After the District Court ruled that counsel was ineffective, Defendant entered a guilty plea and received a life sentence. Federal Docket Entry, 5/10/05; Docket Entry, CP-51-CR-0335191-1988, 6/30/05 (imposing a life sentence “as per attached agreement”).

39. (61) Comm. v. Saharris Rollins, CP-51-CR-0405851-1986

After the Third Circuit ruled that counsel was ineffective, the Common Pleas Court imposed a life sentence. Rollins v. Horn, 386 F. App’x 267, 270 (3d Cir. 2010); Online Docket Entry, p.6, 12/21/11 (“The Commonwealth will not seek the death penalty on remand”).

40. (62) Comm. v. James Smith, CP-51-CR-0717891-1983

At the PCRA stage, defense counsel and the Commonwealth stipulated that Defendant would be granted a new penalty phase hearing based on the ineffectiveness of trial counsel. Commonwealth v. Smith, 17 A.3d 873, 882

(Pa. 2011). Thereafter, the Commonwealth agreed to a life sentence. Commonwealth's Response to Petition for Writ of Habeas Corpus ("The prosecution later agreed not to seek a new capital sentencing proceeding").

41. (63) Comm. v. Willie Sneed, CP-51-CR-0606741-1984

After the Supreme Court affirmed the PCRA court's grant of penalty phase relief, the Commonwealth agreed to a life sentence. Commonwealth v. Sneed, 899 A.2d 1067, 1084 (Pa. 2006); Online Docket Entry, p.8, 12/18/12 ("Order Granting Motion to Vacate Sentence By agreement of counsel, Court orders DEATH SENTENCE imposed on 4/2/1986 VACATED and imposes a new sentence of LIFE Imprisonment").

42. (64) Comm. v. Brian Thomas, CP-51-CR-0827161-1985

After the Third Circuit remanded for an evidentiary hearing on Defendant's ineffectiveness claim, the Commonwealth agreed to a life sentence. Thomas v. Horn, 570 F.3d 105, 130 (3d Cir. 2009); Online Docket Entry, p.14, 9/24/13.

43. (65) Comm. v. LeRoy Thomas, CP-51-CR-1207001-1994

At the PCRA stage, the Commonwealth agreed to a new penalty hearing. Commonwealth v. Thomas, 44 A.3d 12, 16 n.3 (Pa. 2012) ("the parties stipulated to a new penalty hearing"); The Commonwealth subsequently agreed to a life sentence before the Homicide Calendar Judge. Online Docket Entry, p.16, 3/15/13.

44. (66) Comm. v. Michael Thomaston, CP-51-CR-0400541-1995

At the post-sentence motion stage, the Common Pleas Court vacated the death sentence and granted a new penalty phase hearing. Commonwealth v. Thomaston, 118 EDA 2003, at 4 (Pa. Super. 11/16/04) (Memorandum). The Commonwealth did not seek a new penalty hearing and the PCRA court imposed Life. Online Docket Entry, p.4, 12/11/02; Brief for Appellee, 314 EDA 2008 ("Judge Mazzola reviewed the record, denied defendant's request for a new trial, but vacated his death sentence and imposed a sentence of life imprisonment").

45. (67) Comm. v. Andre Thompson, CP-51-CR-0221931-1993

At the PCRA stage, the Commonwealth agreed to a term of years sentence. Online Docket Entry, p.12, 9/20/05

46. (68) Comm. v. Louis Thompson, CP-51-CR-0436071-1990

At the PCRA stage, the Commonwealth agreed that Defendant received ineffective assistance at his penalty phase. Docket Entry, 5/21/04. With the Commonwealth's agreement, Defendant was resentenced to Life. Online Docket Entry, p.6, 5/21/04; Correspondence, 4/29/04.

47. (69) Comm. v. William Tilley, CP-51-CR-1210781-1985

At the PCRA stage, the Commonwealth agreed that Defendant was entitled to a new penalty phase. (N.T. 5/1/07 at 7-8). The case was closed upon Defendant's death. Online Docket Entry, p.10, 1/21/2009.

48. (71) Comm. v. Vinson Washington, CP-51-CR-0310321-1994

After the Supreme Court remanded for a hearing regarding trial counsel's ineffectiveness, the Commonwealth agreed to a life sentence. Commonwealth v. Washington, 880 A.2d 536, 546 (Pa. 2005); Online Docket Entry, p.13, 5/16/11 (“[B]ased on stipulation of parties, the defendant is sentenced to LIFE Imprisonment”).

49. (73) Comm. v. Christopher Williams, CP-51-CR-0417523-1992

After the PCRA court determined that prior counsel were ineffective, the Commonwealth “withdrew the capital designation on this case”. Online Docket Entry, p.25, 12/30/13; On Line Docket Entry, p.32, 8/9/18.

50. (74) Comm. v. Craig Williams, CP-51-CR-0525631-1987

At the PCRA stage, the Commonwealth consented to the grant of a new capital penalty hearing. Commonwealth v. Williams, 980 A.2d 510, 513 (Pa. 2009). The Commonwealth did not seek a new penalty hearing and the Homicide Calendar Judge resentenced Defendant to Life. Online Docket Entry, p.17, 5/1/12.

(2). *SUBSECTION TWO – DAO Agreement in Cases Overturned for Other Reasons (Total – 15)*

1. Comm. v. Mumia Abu-Jamal, CP-51-CR-0113571-1982

After Defendant received a penalty phase relief, the Commonwealth did not seek a new penalty phase hearing. Abu-Jamal v. Sec’y, Pa. Dep’t of Corrections, 643 F.3d 370, 381-382 (3d Cir. 2011); Online Docket Entry, p.10, 8/13/12 (“the Commonwealth having not requested a new sentencing hearing ... it is HEREBY DECREED that Mumia Abu-Jamal is sentenced to life imprisonment”).

2. Comm. v. Jose DeJesus, CP-51-CR-1103501-1997

The Commonwealth agreed to PCRA relief and a sentence of life and the Defendant agreed to forgo all future appeals. (N.T. 1/4/18 at 15).

3. Comm. v. Jose DeJesus, CP-51-CR-1103511-1997

The Commonwealth agreed to PCRA relief and a sentence of Life and the Defendant agreed to forgo all future appeals. (N.T. 1/4/18 at 16).

4. Comm. v. DeJesus, CP-51-CR-0704671-1998

The Commonwealth agreed to PCRA relief and a sentence of Life and the Defendant agreed to forgo all future appeals. (N.T. 1/4/18 at 16).

5. Comm. v. James Dennis, CP-51-CR-0104841-1992

After the Third Circuit granted Defendant a new trial due to a Brady violation, the Commonwealth agreed to a negotiated guilty plea to third degree murder. Dennis v. Sec’y Dept. Corrs., 834 F.3d 263 (3d Cir. 2016) (*en banc*); Online Docket Entry, p.25, 12/22/16.

6. Comm. v. Eric Grier, CP-51-CR-0334871-1989

The Pennsylvania Supreme Court granted a new trial due to the trial court’s erroneous instruction on accomplice liability. On remand, Defendant entered a guilty plea and received a life sentence. Commonwealth v. Grier, 638 A.2d 965, 965 (Pa. 1994); Online Docket Entry, p.3, 1/5/98.

7. Comm. v. Donald Hardcastle, CP-51-CR-0632881-1982

The federal court awarded a new trial due to a Batson violation. On remand, Defendant entered a negotiated guilty plea for a term of years sentence. Hardcastle v. Horn, 332 F. App'x 764, 766 (3d Cir. 2009); Online Docket Entry, p.5, 3/16/11.

8. Comm. v. James Lambert, CP-51-CR-0803432-1983

After the Third Circuit granted a new trial based on Brady violations, Defendant entered a negotiated guilty plea to third degree murder for a term of years sentence. Lambert v. Beard, 537 F. App'x 78, 80 (3d Cir. 2013); Online Docket Entry, p.10, 12/18/17.

9. Comm. v. Cam Ly, CP-51-CR-1125561-1986

After the Supreme Court agreed that the prosecutor withheld Brady material, but denied relief on materiality grounds, the Commonwealth agreed to a life sentence. Commonwealth v. Cam Ly, 980 A.2d 61, 83 (Pa. 2009); Online Docket Entry, p.10, 12/12/13 (“re-sentenced to life without parole. In all other respects the sentence remains the same. By agreement there are no appellate and post-conviction rights”).

10. Comm. v. Al Peoples, CP-51-CR-1044981-1989

The Commonwealth agreed to Life at the PCRA stage. Online Docket Entry, p.16, 6/24/11 (“The original guilty verdict is reinstated. Life without Parole”).

11. Comm. v. Bobby Sims, CP-51-CR-0500751-1982

The Supreme Court reversed Defendant’s conviction because the trial court refused to permit Defendant to compel a witness to “claim his “attorney-client privilege” in front of the jury. Commonwealth v. Sims, 521 A.2d 391, 395 (Pa. 1987). Thereafter, Defendant pleaded guilty to a term of years sentence. Online Docket Entry, p.3, 9/25/87.

12. Comm. v. James Melvin Speight, CP-51-CR-1036271-1992

During federal habeas corpus proceedings, the Commonwealth agreed that it would not contest penalty phase relief. Speight v. Beard, 2017 WL 914907, at *1 (E.D. Pa. Mar. 7, 2017) (noting that “Respondents advised this Court that they no longer opposed a grant of relief as to the death penalty”).

13. Comm. v. Morris Spence, CP-51-CR-CP-51-CR-0933911-1986

The Pennsylvania Supreme Court affirmed Defendant’s conviction and sentence on direct appeal. Commonwealth v. Spence, 627 A.2d 1176, 1185 (Pa.1993). When Defendant filed a PCRA petition, the Commonwealth agreed to a term of years sentence. Online Docket Entry, p.12, 8/30/06.

14. Comm. v. Terrence Williams, CP-51-CR-0823621-1984

An equally divided Supreme Court affirmed the PCRA court’s decision granting a new penalty phase hearing because “the Commonwealth willfully suppressed material exculpatory evidence.” Commonwealth v. Williams, 168 A.3d 97, 112 (Pa. 2017) (remanding “for a new penalty phase trial”). The Commonwealth did not seek a new penalty phase and Defendant received a Life sentence. Online Docket Entry, p.17, 12/29/17 (“DEFENDANT RESENTENCED...LIFE WITHOUT PAROLE”).

15. Comm. v. Zachary Wilson, CP-51-CR-0929501-1986

The Third Circuit granted a new trial because the Commonwealth withheld Brady material. Wilson v. Beard, 589 F.3d 651, 667 (3d Cir. 2009). On retrial, Defendant was convicted but the Commonwealth did not seek the death penalty. Commonwealth v. Wilson, 147 A.3d 7, 12 (Pa. Super. 2016).

PART I, SECTION E

OVERTURNED PHILADELPHIA DEATH SENTENCES LISTED ACCORDING TO THE DURATION OF THE LITIGATION BETWEEN ARREST AND A NON-CAPITAL RESOLUTION

For each of the 102 overturned Philadelphia death sentences that resulted in a non-capital resolution, Part I, Section E describes the length of time that elapsed between arrest and an alternative disposition.

Subsection One lists the duration of each of the 67 IAC cases, prior to a non-capital resolution. Subsection Two calculates the duration of the 35 cases overturned on other grounds. The average amount of time between arrest and non-capital disposition for these 102 cases is **17** years. The same information regarding the duration of litigation appears in the preceding list of 74 IAC cases (Part I, Section A, Subsection One) and in the list of cases overturned for other reasons (Part I, Section B). That information is separately detailed here, for ease of reference.

(1). *SUBSECTION ONE* – Duration of IAC Cases Prior to Non-Capital Disposition (Average – 15.5 years)

On remand, **67 (90%)** of the 74 IAC cases were resolved without re-imposition of the death penalty. *See Appendix, Part I, Section C* (above). The

average amount of time between arrest and the non-capital resolution of these 67 IAC cases is **17 years**.¹³

- **IAC Cases Resolved within 5 Years**

Three (3) out of 74 IAC cases (**4%**) were resolved with a non-capital disposition within five years of arrest.

1. (3) **Commonwealth v. Billa, CP-51-CR-0136311-1987**

(Arrest Date: January 17, 1987 – Resentenced: January 11, 1990 = **2 yrs, 11 mos, 25 d**)

2. (57) **Commonwealth v. Lloyd Reid, CP-51-CR-0405461-1991**

(Arrest: March 23, 1991 – Resentenced: October 20, 1994 = **3 yrs, 6 mos, 27 d**)

3. (72) **Commonwealth v. Derrick White, CP-51-CR-0012991-2010**

(Arrest: July 22, 2010 – Resentenced: March 23, 2015 = **4 yrs, 8 mos, 1 d**)

- **IAC Cases Resolved between 5 and 10 Years**

Fourteen (14) out of 74 IAC cases (**19%**) were resolved with a non-capital disposition between 5 and 10 years after arrest.

1. (1) **Comm. v. Lawrence Baker, CP-51-CR-0629891-1981**

(Arrest date: April 8, 1981 – Resentenced: July 30, 1986 = **5 yrs, 3 mos, 22 d**)

2. (4) **Commonwealth v. John M. Blount, CP-51-CR-0124901-1990**

(Arrest: October 25, 1989 – Resentenced July 24, 1996 = **6 yrs, 8 mos, 29 d**)

¹³ Each IAC case is identified by name and by the number assigned to it in the alphabetical list appearing in Part I, Section A.

3. (29) Commonwealth v. Kareem Johnson, CP-51-CR-1300424-2006

(Arrest: May 22, 2006 – Death Penalty Removed: February 17, 2016 =
9 yrs, 8 mos, 26 d)

4. (33) Commonwealth v. Thomas Jones, CP-51-CR-0403101-1982

(Arrest: January 27, 1982 – Resentenced: = January 18, 1989 =
6 yrs, 11 mos, 22 d)

5. (36) Commonwealth v. Michael LaCava, CP-51-CR-0711041-1990

(Arrest: June 15, 1990 – Resentenced: March 22, 1996 = **5yrs, 9 mos, 7 d**)

6. (39) Commonwealth v. Steven McCrae, CP-51-CR-0204521-1999

(Arrest: January 12, 1999 – Resentenced: April 13, 2006 = **7 yrs, 3 mos, 1 d**)

7. (42) Comm. v. Christopher McNeil, CP-51-CR-0500461-1991

(Arrest: March 26, 1991 – Resentenced: June 23, 1997 = **6 yrs, 2 mos, 28 d**)

8. (48) Commonwealth v. Craig Murphy, CP-51-CR-0925231-1985

(Arrest: 1985 – Resentenced: November 22, 1991 = **6 yrs**)

9. (49) Commonwealth v. William Nieves, CP-51-CR-1009681-1993

(Arrest: September 21, 1993 – Acquittal: December 20, 2000 =
7 yrs, 2 mos, 29 d)

10. (50) Comm. v. Kelley O'Donnell, CP-51-CR-1220812-1992

(Arrest: November 14, 1992 – Resentenced: February 6, 2002 =
9 yrs, 2 mos, 23 d)

11. (53) Commonwealth v. Curry Perry, CP-51-CR-0418121-1989

(Arrest: March 17, 1989 – Acquitted: June 26, 1996 = **7 yrs, 3 mos, 9 d**)

12. (56) Commonwealth v. Wilfredo Ramos, CP-51-CR-0100891-1999

(Arrest: November 17, 1998 – Resentenced: April 18, 2008 =
9 yrs, 5 mos, 1 d)

13. (66) Comm. v. Michael Thomaston, CP-51-CR-0400541-1995

(Arrest: February 2, 1995 – Resentenced: Dec. 11, 2002 = **7 yrs, 10 mos, 9 d**)

14. (70) Commonwealth v. Philip Trivigno, CP-51-CR-0100861-1996

(Arrest: December 19, 1995 – Resentenced: Jan. 29, 2003 =
7 yrs, 1 mos, 10 d)

- **IAC Cases Resolved between 10 and 15 Years**

Ten (10) out of 74 IAC cases (**13.5%**) were resolved with a life sentence between 10 and 15 years after arrest.

1. (5) Commonwealth v. Aquil Bond, CP-51-CR-0502971-2004

(Arrest: November 11, 2003 – Death Penalty Relief: March 13, 2017 =
13 yrs, 4 mos, 2 d)

2. (15) Commonwealth v. Junious Diggs, CP-51-CR-0709781-2002

(Arrest: May 18, 2002 – Resentenced: May 1, 2015 =
12 yrs, 11 mos, 13 d)

3. (16) Comm. v. Daniel Dougherty, CP-51-CR-0705371-1999

(Arrest: April 14, 1999 – Resentenced: February 7, 2012 =
12 yrs, 9 mos, 24 d)

4. (18) Commonwealth v. Lester Fletcher, CP-51-CR-0709931-2001

(Arrest: March 27, 2001 – Resentenced: July 18, 2012 = **11yrs, 3 mos, 21 d**)

5. (21) **Commonwealth v. Donald Hall**, CP-51-CR-0210711-1982

(Arrest: February 2, 1982 – Resentenced: February 29, 1996 = **14 yrs, 27 d**)

6. (22) **Commonwealth v. Ronald Hanible**, CP-51-CR-0409021-1999

(Arrest: January 21, 1999 – Resentenced: September 24, 2013 =
14 yrs, 8 mos, 3 d)

7. (23) **Commonwealth v. John Harris**, CP-51-CR-0903421-1992

(Arrest: August 22, 1992 – Resentenced: February 28, 2005 = **12 yrs, 6 mos, 6 d**)

8. (27) **Comm. v. Steven Hutchinson**, CP-51-CR-0408581-1998

(Arrest March 2, 1998 – Resentenced: January 23, 2013 = **14 yrs, 10 mos, 21 d**)

9. (66) **Comm. v. Andre Thompson**, CP-51-CR-0221931-1993

(Arrest: December 23, 1992 – Resentenced: Sept. 20, 2005 =
12 yrs, 7 mos, 28 d)

10. (67) **Commonwealth v. Louis Thompson**, CP-51-CR-0436071-1990

(Arrest: April 14, 1990 – Resentenced: May 21, 2004 = **14 yrs, 1 mos, 7 d**)

- **IAC Cases Resolved between 15 and 20 Years**

Nineteen (19) out of 74 IAC cases (**26%**) were resolved with a life sentence between 15 and 20 years of arrest.

1. (8) **Commonwealth v. Samuel Carson**, CP-51-CR-0228371-1994

(Arrest: January 8, 1994 – Resentenced: April 4, 2011 = **17 yrs, 9 mos, 27 d**)

2. (9) **Commonwealth v. Ronald Clark**, CP-51-CR-1241151-1993

(Arrest: November 3, 1993 – Resentenced: August 16, 2011 =
17 yrs, 9 mos, 13 d)

3. (10) Commonwealth v. Rodney Collins, CP-51-CR-0815881-1992

(Arrest: July 15, 1992 – Resentenced: November 5, 2009 =
17 yrs, 3 mos, 21 d)

4. (11) Commonwealth v. Ronald Collins, CP-51-CR-0614771-1992

(Arrest: April 11, 1992 – Resentenced: May 11, 2009 = **17 yrs, 1 mos**)

5. (20) Commonwealth v. Kenneth Ford, CP-51-CR-1032221-1989

(Arrest: September 9, 1989 – Resentenced: November 29, 2004 =
15 yrs, 2 mos, 20 d)

6. (21) Commonwealth v. William Gribble, CP-51-CR-1220811-1992

(Arrest: November 15, 1992 – Resentenced: March 10, 2009 =
16 yrs, 3 mos, 23 d)

7. (25) Commonwealth v. Donetta Hill, CP-51-CR-0518391-1991

(Arrest: April 20, 1991 – Resentenced: August 14, 2006 = **15 yrs, 3 mos, 25 d**)

8. (27) Comm. v. Arnold Holloway, CP-51-CR-0613051-1985

(Arrest: May 31, 1985 – Resentenced: April 14, 2005 = **19 yrs, 10 mos, 14 d**)

9. (41) Comm. v. Nathaniel McNair, CP-51-CR-1224591-1987

(Arrest: December 25, 1987 – Resentenced: April 4, 2002 =
14 yrs, 3 mos, 10 d)

10. (43) Commonwealth v. William Mikell, CP-51-CR-0716051-1987

(Arrest: May 5, 1987 – Resentenced: December 9, 2004 =
17 yrs, 7 mos, 4 d)

11. (44) Commonwealth v. Mikal Moore, CP-51-CR-0701141-1998

(Arrest: April 28, 1998 – Resentenced: March 27, 2017 =

18 yrs, 10 mos, 27 d)

12. (45) Comm. v. Salvador Morales, CP-51-CR-1012921-1982

(Arrest: September 30, 1982 – Resentenced: January 4, 2000 =
17 yrs, 3 mos, 5 d)

13. (46) Commonwealth v. Willard Moran, CP-51-CR-1130901-1981

(Arrest: November 8, 1981 – Resentenced: January 27, 1999 =
17 yrs, 2 mos, 19 d)

14. (51) Commonwealth v. Lamont Overby, CP-51-CR-1006081-1996

(Arrest: August 29, 1996 – Resentenced: October, 18, 2013 =
17 yrs, 1 mos, 19 d)

15. (55) Commonwealth v. Michael Rainey, CP-51-CR-0419613-1990

(Arrest: January 9, 1990 – Resentenced: March 10, 2009 =
19 yrs, 2 mos, 1 d)

16. (59) Commonwealth v. Delores Rivers, CP-51-CR-0335191-1988

(Arrest: February 27, 1988 – Resentenced: June 30, 2005 =
17 yrs, 4 mos, 3 d)

17. (60) Commonwealth v. Florencio Rolan, CP-51-CR-0228931-1984

(Arrest: November 30, 1983 — Resentenced: May 2, 2003 =
19 yrs, 5 mos, 2 d)

18. (65) Commonwealth v. LeRoy Thomas, CP-51-CR-1207001-1994

(Arrest: December 7, 1994 – Resentenced: March 15, 2013 =
18 yrs, 3 mos, 8d)

19. (71) Comm. v. Vinson Washington, CP-51-CR-0310321-1994

(Arrest: February 12, 1994 – Resentenced: May 16, 2011 =

17 yrs, 3 mos, 4 d)

- **IAC Cases Resolved between 20 and 25 Years**

Seven (7) out of 74 IAC cases (10%) were resolved with a non-capital disposition between 20 and 25 years after arrest.

1. (2) **Commonwealth v. Lee Baker, CP-51-CR-0405062-1984**

(Arrest: March 8, 1984 – Resentenced: May 23, 2008 = **24 yrs, 2 mos, 15 d**)

2. (6) **Commonwealth v. Jesse Bond, CP-51-CR-2217781-1992**

(Arrest: November 28, 1991 – Resentenced: November 15, 2012 = **20 yrs, 11 mos, 18 d**)

3. (17) **Commonwealth v. Joseph Elliott, CP-51-CR-0410911-1994**

(Arrest: December 16, 1993 – Resentenced: May 1, 2015 = **21 yrs, 4 mos, 15 d**)

4. (34) **Comm. v. Alexander Keaton, CP-51-CR-0319251-1993**

(Arrest: January 14, 1993 – Resentenced June 12, 2014 = **21 yrs, 4 mos, 29 d**)

5. (40) **Commonwealth v. Bernard McGill, CP-51-CR-0339201-1990**

(Arrest: February 17, 1990 – Resentenced: January 7, 2013 = **22 yrs, 10 mos, 21 d**)

6. (54) **Commonwealth v. Otis Peterkin, CP-51-CR-0207841-1982**

(Arrest: December 2, 1981 – Resentenced: December 6, 2002 = **21 yrs, 4 d**)

7. (58) **Commonwealth v. Timothy Rice, CP-51-CR-0906231-1996**

(Arrest: March 23, 1991 – Resentenced: January 27, 2012 = **20 yrs, 10 mos, 4 d**)

- **IAC Cases Resolved between 25 and 30 Years**

Eight (8) out of 74 IAC cases (**11%**) were resolved with a non-capital disposition between 25 and 30 years after arrest.

1. (30) **Commonwealth v. William Johnson**, CP-51-CR-0936052-1991

(Arrest: June 14, 1991 – Resentenced: September 21, 2016 =
25 yrs, 3 mos, 7 d)

2. (38) **Commonwealth v. Reginald Lewis**, CP-51-CR-0205851-1983

(Arrest: January 26, 1983 – Resentenced: July 9, 2012 = **29 yrs, 5 mos, 13 d**)

3. (61) **Commonwealth v. Saharris Rollins**, CP-51-CR-0405851-1986

(Arrest: February 26, 1986 – Resentenced: January 13, 2012 =
26 yrs, 11 mos, 18 d)

4. (62) **Comm. v. James Melvin Smith**, CP-51-CR-0717891-1983

(Arrest: May 4, 1983 – Resentenced: October 25, 2012 =
29 yrs, 5 mos, 21 d)

5. (63) **Commonwealth v. Willie Sneed**, CP-51-CR-0606741-1984

(Arrest: April 10, 1984 – Resentenced: December 18, 2012 =
28 yrs, 8 mos, 8 d)

6. (64) **Commonwealth v. Brian Thomas**, CP-51-CR-0827161-1985

(Arrest: August 12, 1985 – Resentenced: Sept. 24, 2013 =
28 yrs, 1 mos, 12 d)

7. (73) **Comm. v. Christopher Williams**, CP-51-CR-0417523-1992

(Arrest: March 11, 1992 – Capital Designation Withdrawn: August 9, 2018
= **26 yrs, 4 mos, 29 d**)

8. (74) **Commonwealth v. Craig Williams**, CP-51-CR-0525631-1987

(Arrest: April 25, 1987 — Resentenced: May 1, 2012 = **25 yrs, 6 d**)

- **IAC Cases Resolved after 30 Years**

Six (6) out of 74 IAC cases (**8%**) were resolved with a non-capital disposition after 30 years from the date of arrest.

1. (14) **Commonwealth v. Dewitt Crawley**, CP-51-CR-0201551-1984

(Arrest: December 23, 1983 – Resentenced May 1, 2015 =
31 yrs, 4 mos, 8 d)

2. (31) **Commonwealth v. Damon Jones**, CP-51-CR-0907121-1982

(Arrest: August 8, 1982 – Resentenced: December 14, 2012 =
30 yrs, 4 mos, 6 d)

3. (32) **Commonwealth v. James Jones**, CP-51-CR-1024861-1980

(Arrest: October 3, 1980 – Resentenced August 16, 2011 =
30 yrs, 10 mos, 13 d)

4. (35) **Commonwealth v. Joseph Kindler**, CP-51-CR-0827471-1982

(Arrest: August 19, 1982 – Resentenced: March 1, 2018 = **35 yrs, 6 mos, 10 d**)

5. (37) **Commonwealth v. Robert Lark**, CP-51-CR-0120121-1980

(Arrest: January 9, 1980 – Resentenced: November 9, 2017 =**37 yrs, 10 mos**)

6. (47) **Commonwealth v. Kelvin Morris**, CP-51-CR-0704091-1982

(Arrest: May 21, 1982 – Resentenced: June 7, 2013 = **31 yrs, 17 d**)

(2). *SUBSECTION TWO – Duration of Cases Overturned for Other Reasons Prior to Non-Capital Disposition (Average – 17 years)*

For each case overturned for reasons other than ineffectiveness, this list calculates the length of time between arrest and the resolution of the capital aspect of the case. The average length of time for the non-capital resolution is **17** years.

1. Mumia Abu-Jamal, CP-51-CR-0113571-1982

(Arrest: December 9, 1981 – Resentenced: August 13, 2012 = **30 yrs, 8 mos, 4 d**)

2. Commonwealth v. Sam Bannerman, CP-51-CR-1033281-1984

(Arrest: October 16, 1984 – Resentenced: October 9, 1991 = **6 yrs, 11 mos, 23 d**)

3. Commonwealth v. Edward Bracey, CP-51-CR-0632821-1991

(Arrest: February 4, 1991 – Resentenced: January 10, 2014 = **22 yrs, 11 mos, 6 d**)

4. Commonwealth v. James Bryant, CP-51-CR-1023791-1983

(Arrest: October 27, 1983 – Nolle Prosequi: January 25, 1993 = **9 yrs, 2 mos, 29 d**)

5. Commonwealth v. Kevin Chandler, CP-51-CR-0832561-1993

(Arrest: October 27, 1983 – Resentenced: August 11, 1999 = **15 yrs, 9 mos, 15 d**)

6. Commonwealth v. Joseph D’Amato, CP-51-CR-1219941-1981

(Arrest: December 10, 1981 – Resentenced: June 13, 2013 = **31 yrs, 6 mos, 3 d**)

7. Commonwealth v. Jose DeJesus, CP-51-CR-0704671-1998

(Arrest: June 1, 1998 – Resentenced: January 4, 2018 = **19 yrs, 7 mos, 3 d**)

8. Commonwealth v. Jose DeJesus, CP-51-CR-1103501-1997

(Arrest: October 30, 1997 – Resentenced January 4, 2018 = **20 yrs, 2 mos, 5 d**)

9. Commonwealth v. DeJesus, CP-51-CR-1103511-1997

(Arrest: September 23, 1997 – Resentenced: January 4, 2018 =
20 yrs, 3 mos, 12 d)

10. Commonwealth v. James Dennis, CP-51-CR-0104841-1992

(Arrest: November 21, 1991 – Resentenced: December 22, 2016 =
25 yrs, 1 mos, 1 d)

11. Commonwealth v. Neil Ferber, CP-51-CR-0710481-1981

(Arrest: June 8, 1981 – Nolle Pros: March 7, 1986 = **4 yrs, 8mos, 27 d**)

12. Commonwealth v. Calvin Floyd, CP-51-CR-0813171-1980

(Arrest: July 2, 1980 – November 24, 1984 = **4 yrs, 4 mos, 22 d**)

13. Commonwealth v. George Goins, CP-51-CR-0829421-1981

(Arrest: June 30, 1981 – September 4, 1985 = **4 yrs, 2 mos, 5 d**)

14. Commonwealth v. Harrison Graham, CP-51-CR-0839481-1987

(Arrest: August 17, 1987 – Resentenced: December 18, 2003 =
16 yrs, 4 mos, 1 d)

15. Commonwealth v. William Green, CP-51-CR-0427361-1982

(Arrest: April 16, 1982 – Resentenced: September 10, 1991 = **9 yrs, 4 mos,
25 d**)

16. Commonwealth v. Eric Grier, CP-51-CR-0334871-1989

(Arrest: March 16, 1989 – Resentenced: January 5, 1998 =
8 yrs, 9 mos, 20 d)

17. Commonwealth v. Donald Hardcastle, CP-51-CR-0632881-1982

(Arrest: September 1, 1983 – Resentenced: March 16, 2011 =
27 yrs, 6 mos, 15 d)

18. Commonwealth v. Derrick Harvey, CP-51-CR-0307631-1998

(Arrest: January 12, 1998 — Resentenced: March 28, 2003 =
5 yrs, 2 mos, 16 d)

19. Commonwealth v. Melvin Howard, CP-51-CR-0304271-1988

(Arrest: February 13, 1988 — Resentenced: June 10, 2011 =
23 yrs, 3 mos, 28 d)

20. Commonwealth v. Andrew Huffman, CP-51-CR-0511051-1989

(Arrest: April 5, 1989 – Resentenced: January 14, 1998 = **8 yrs, 9 mos, 9 d**)

21. Commonwealth v. Kevin Hughes, CP-51-CR-0116881-1980

(Arrest: January 12, 1980 — Resentenced: March 21, 2005 =
25 yrs, 2 mos, 9 d)

22. Commonwealth v. James Lambert, CP-51-CR-0803432-1983

(Arrest: May 4, 1983 – Resentenced: December 18, 2017 =
34 yrs, 7 mos, 14 d)

23. Commonwealth v. Percy Lee, CP-51-CR-0511562-1986

(Arrest: February 28, 1986 – Resentenced: September 20, 2005 =
19 yrs, 6 mos, 23 d)

24. Commonwealth v. Marcus Lloyd, CP-51-CR-0501982-1998

(Arrest: March 31, 1998 – Resentenced: August 20, 2003 =
5 yrs, 4 mos, 20 d)

25. Commonwealth v. Cam Ly, CP-51-CR-1125561-1986

(Arrest: October 7, 1986 – Resentenced: December 12, 2013 =
27 yrs, 2 mos, 5 d)

26. Commonwealth v. Kenneth Miller, CP-51-CR-0902382-1998

(Arrest: July 31, 1998 – Resentenced: May 13, 2014 = **15 yrs, 9 mos, 13 d**)

27. Commonwealth v. Michael Overby, CP-51-CR-0105802-1995

(Arrest: July 26, 1994 – Resentenced: June 21, 2007 = **12 yrs, 10 mos, 26 d**)

28. Commonwealth v. Simon Pirela, CP-51-CR-0121431-1983

Arrest: December 20, 1982 – Resentenced: April 30, 2004 =
21 yrs, 4 mos, 10 d

29. Commonwealth v. Paul Rizzuto, CP-51-CR-0132391-1994

(Arrest: January 21, 1994 – Resentenced: October 7, 2003 =
9 yrs, 8 mos, 16 d)

30. Commonwealth v. Bobby Sims, CP-51-CR-0500751-1982

(Arrest: May 3, 1982 – Resentenced: September 25, 1987 = **5 yrs, 4 mos**)

31. Commonwealth v. Lawrence Smith, CP-51-CR-1001002-2000

(Arrest: July 17, 2000 – Resentenced: November 1, 2005 =
5 yrs, 4 mos, 22 d)

32. Commonwealth v. Anthony Washington, CP-51-CR-1210371-1993

(Arrest: April 20, 1993 – De-Capitalized: March 14, 2019 =
25 yrs, 10 mos, 22 d)

33. Commonwealth v. Raymond Whitney, CP-51-CR-1114161-1981

(Arrest: October 10, 1981 – Resentenced: January 16, 2008 =

26 yrs, 3 mos, 6 d)

34. Commonwealth v. Terrence Williams, CP-51-CR-0823621-1984

Arrest: July 24, 1984 – De-Capitalized: December 29, 2017 =
(33 yrs, 5 mos, 5 d)

35. Commonwealth v. Zachary Wilson, CP-51-CR-0929501-1986

(Arrest: September 8, 1986 – Life sentence: April 1, 2014 =
27 yrs, 6 mos, 24 d)

APPENDIX - PART II

45 PHILADELPHIA DEFENDANTS WHO REMAIN SENTENCED TO DEATH

Appendix Part II lists Philadelphia defendants who are currently sentenced to death. The Philadelphia District Attorney's Office has identified **45** Philadelphia defendants who are currently on death row. Part II lists these defendants in three categories: (1) Race, (2) Whether court-appointed counsel represented the defendant, and (3) Whether a reviewing court has determined that the attorney who represented the defendant was also ineffective in at least one other Philadelphia capital case.

A. RACE OF PHILADELPHIA DEFENDANTS CURRENTLY SENTENCED TO DEATH

- ***Black Defendants (37)***

- 1. Ralph Birdsong - CP-51-CR-0140802-1989**

- 2. John W. Brown - CP-51-CR-0738881-1990**

- 3. Kenneth Brown - CP-51-CR-1124661-1993**

- 4. Lavar Brown - CP-51-CR-0208091-2004**

- 5. Omar Cash - CP-51-CR-0000573-2009**

- 6. Jerry Chambers - CP-51-CR-1101421-2003**

- 7. Jermont Cox - CP-51-CR-0231581-1993**

- 8. Russell Cox - CP-51-CR-0511561-1986**

9. **Henry Daniels** - CP-51-CR-1031751-1988
10. **Anthony Fletcher** - CP-51-CR-0360011-1992
11. **Gibson, Ronald**- CP-51-CR-0128091-1991
12. **Daniel Gwynn** - CP-51-CR-1207051-1994
13. **Sheldon Hannibal** - CP-51-CR-0428351-1993
14. **Darien Houser** - CP-51-CR-0605180-2004
15. **Aaron Jones** - CP-51-CR-1035061-1991
16. **Lewis Jordan (aka John Lewis)** - CP-51-CR-0000455-2008
17. **Emanuel Lester** - CP-51-CR-1103001-1990
18. **Antoine Ligons** - CP-51-CR-0500861-1998
19. **Jerome Marshall** - CP-51-CR-1117211-1983
20. **Craig Murphy** - CP-51-CR-0126101-1984
21. **Ricardo Natividad** - CP-51-CR-0400131-1997
22. **Donyell Paddy** - CP-51-CR-0709621-1993
23. **Borgela Philistin** - CP-51-CR-0709691-1993
24. **Ernest Porter** - CP-51-CR-0622491-1985
25. **Gregory Powell** - CP-51-CR-0100741-1998
26. **Derrick Ragan** - CP-51-CR-0926161-1990
27. **Anthony Reid** - CP-51-CR-0602521-1989
28. **Larry Rush** – CP-51-CR-0708711-1987

29. **Christopher Roney** - CP-51-CR-0208663-1996
 30. **Rasheen Simpson** - CP-51-CR-1103161-1996
 31. **Christopher Smith** - CP-51-CR-0502972-2004
 32. **Melvin Speight** - CP-51-CR-1036271-1992
 33. **Ralph Stokes, Ralph** - CP-51-CR-0345761-1982
 34. **Dante Thomas** - CP-51-CR-0606781-2006
 35. **Herbert Watson** - CP-51-CR-0932031-1982
 36. **Wharton, Robert** - CP-51-CR-0222581-1984
 37. **Roy Williams** - CP-51-CR-0124571-1991
- *Asian Defendants (2)*
 1. **Le, Tam** - CP-51-CR-0002231-2015
 2. **Sam, Thavirak** – CP-51-CR-0743591-1989
 - *Latino Defendants (2)*
 1. **Rivera, William** - CP-51-CR-0902431-1996
 2. **Uderra, Jose** - CP-51-CR-1051452-1991
 - *White Defendants (4)*
 1. **Fahy, Henry** - CP-51-CR-0222831-1981
 2. **Richard Hackett** – CP-51-CR-0933912-1986
 2. **Ogrod, Walter** - CP-51-CR-0532781-1992
 3. **Pierce, Michael** - CP-51-CR-0813121-1989

B. CURRENT DEATH ROW DEFENDANTS REPRESENTED AT TRIAL BY COURT-APPOINTED COUNSEL

Section B lists the Philadelphia death row defendants who were represented by court-appointed counsel at trial. **36** out of 45 (**80%**) of these Philadelphia defendants were represented by court-appointed counsel.

- ***Black defendants represented by court-appointed counsel***

Court-appointed counsel represented **78% (29 out of 37)** of the black defendants from Philadelphia currently sentenced to death.¹⁴

1. Ralph Birdsong - CP-51-CR-0140802-1989

- Court-Appointed Counsel PP

2. John W. Brown - CP-51-CR-0738881-1990

- Court-Appointed Counsel Q

3. Kenneth Brown - CP-51-CR-1124661-1993

- Court-Appointed counsel MM

4. Lavar Brown - CP-51-CR-0208091-2004

- Court-appointed counsel UU and WW

5. Omar Cash - CP-51-CR-0000573-2009

- Court-Appointed counsel AA and EE.

6. Jerry Chambers - CP-51-CR-1101421-2003

- Court-Appointed counsel JJ and AAA

7. Russell Cox - CP-51-CR-0511561-1986

- Court-Appointed counsel HH.

¹⁴ Undersigned counsel believe that 78% is an underestimate, but have not counted any cases where it could not be independently confirmed that counsel was court-appointed.

- 8. Henry Daniels** - CP-51-CR-1031751-1988
- Court-Appointed Counsel L
- 9. Anthony Fletcher** - CP-51-CR-0360011-1992
- Court-Appointed Counsel RR
- 10. Daniel Gwynn** - CP-51-CR-1207051-1994
- Court-Appointed Counsel EE
- 11. Sheldon Hannibal** - CP-51-CR-0428351-1993
- Court-Appointed counsel RR
- 12. Darien Houser** - CP-51-CR-0605180-2004
- 13. Lewis Jordan (aka John Lewis)** - CP-51-CR-0000455-2008
- Court-Appointed counsel F and FFF
- 14. Emanuel Lester** - CP-51-CR-1103001-1990
- Court-Appointed Counsel G
- 15. Antoine Ligons** - CP-51-CR-0500861-1998
- Court-Appointed counsel OOO
- 16. Jerome Marshall** - CP-51-CR-1117211-1983
- Court-Appointed counsel FF
- 17. Craig Murphy** - CP-51-CR-0126101-1984
- Court-appointed counsel N
- 18. Ricardo Natividad** - CP-51-CR-0400131-1997
- Court-Appointed counsel QQ
- 19. Donyell Paddy** - CP-51-CR-07096211993
- Court-Appointed counsel III
- 20. Borgela Philistin** - CP-51-CR-0709691-1993
- Court-Appointed counsel CCC
- 21. Gregory Powell** - CP-51-CR-0100741-1998
- Court-Appointed counsel AAA)

22. Anthony Reid - CP-51-CR-0602521-1989
- Court-Appointed Counsel C

23. Larry Rush – CP-51-CR-0708711-1987
- Court-Appointed Counsel H

24. Rasheen Simpson - CP-51-CR-1103161-1996
- Court-Appointed counsel in FFF

25. Christopher Smith - CP-51-CR-0502972-2004
- Court-Appointed counsel EEE

26. Melvin Speight - CP-51-CR-1036271-1992
- Court-Appointed Counsel G

27. Herbert Watson - CP-51-CR-0932031-1982
- Court-Appointed counsel KK

28. Wharton, Robert - CP-51-CR-0222581-1984
- Court-Appointed Counsel D

29. Roy Williams - CP-51-CR-0124571-1991
- Court-appointed counsel Y

- ***Asian Defendants represented by court-appointed counsel***

Both Asian defendants on death row (100%) had court-appointed counsel.

1. Sam, Thavirak – CP-51-CR-0743591-1989
- Court-Appointed counsel V)

2. Le, Tam - CP-51-CR-0002231-2015
- Court-Appointed Counsel G and I

- ***Latino Defendants represented by court-appointed counsel***

Both Latino defendants on death row (100%) had court-appointed counsel.

1. Rivera, William - CP-51-CR-0902431-1996
- Court-appointed counsel GG and AAA

2. Uderra, Jose - CP-51-CR-1051452-1991
- Court-Appointed counsel OOO

- ***White Defendants represented by court-appointed counsel***

Three out of four White defendants on death row (75%) were represented by court-appointed counsel.

1. Fahy, Henry - CP-51-CR-0222831-1981
- Court-Appointed counsel Q

2. Ogrod, Walter - CP-51-CR-0532781-1992
- Court-Appointed Counsel R

3. Pierce, Michael - CP-51-CR-0813121-1989
- Court-Appointed counsel III

C. DEATH SENTENCED DEFENDANTS REPRESENTED AT TRIAL BY ATTORNEYS WHO HAVE HAD AT LEAST ONE OTHER DEATH SENTENCE OVERTURNED ON GROUNDS OF INEFFECTIVE ASSISTANCE

Part II, Section C lists the Philadelphia defendants currently on death row who were represented, at trial, by attorneys who have had at least one other death penalty case overturned due to a finding of ineffective assistance of counsel. **28 (62%)** of the 45 Philadelphia defendants on death row were represented by such counsel.¹⁵

¹⁵ The cases where these attorneys represented other defendants whose death sentences were overturned due to a finding of ineffectiveness, appear in Appendix

1. John W. Brown - CP-51-CR-0738881-1990

Defendant was represented by court-appointed counsel Q.
Court-appointed counsel Q provided ineffective assistance in:

- (8) Comm. v. Samuel Carson, CP-51-CR-0228371-1994
- (18) Comm. v. Henry Fahy, CP-51-CR-0222831-1981
- (42) Comm. v. Christopher McNeil, CP-51-CR 0500461-1991
- (56) Comm. v. Wilfredo Ramos, CP-51-CR-0100891-1999
- (67) Comm. v. Andre Thompson, CP-51-CR-0221931-1993

2. Kenneth Brown - CP-51-CR-1124661-1993

Defendant was represented by court-appointed counsel MM.
Court-appointed counsel MM provided ineffective assistance in:

- (59) Comm v. Delores Rivers, CP-51-CR-0335191-1988

3. Lavar Brown - CP-51-CR-0208091-2004

Defendant was represented by court-appointed counsel UU.
Court-appointed counsel UU provided ineffective assistance in:

- (58) Comm. v. Timothy Rice, CP-51-CR-0906231-1996

4. Omar Cash - CP-51-CR-0000573-2009

Defendant was represented by court-appointed counsel EE.
Court-appointed counsel EE provided ineffective assistance in:

- (30) Comm. v. William Johnson, CP-51-CR-0936052-1991
- (51) Comm v. Lamont Overby, CP-51-CR-1006081-1996

A (listing the 73 Philadelphia IAC cases where a defendant received penalty phase relief).

5. Jerry Chambers - CP-51-CR-1101421-2003

Defendant was represented by Court-Appointed counsel JJ and AAA.

Court-appointed counsel JJ provided ineffective assistance in:

- (21) Comm.v.William Gribble, CP-51-CR-1220811-1992
- (63) Comm. v. Willie Sneed, CP-51-CR-0606741-1984

Court-appointed counsel AAA provided ineffective assistance in:

- (13) Comm. v. Bernard Cousar, CP-51-CR-0607431-1999
- (19) Comm. v. Lester Fletcher, CP-51-CR-0709931-2001

6. Russell Cox - CP-51-CR-0231581-1993

Court-Appointed counsel HH provided ineffective assistance in:

- (61) Comm. v. Saharris Rollins, CP-51-CR-0405851-1986

7. Henry Daniels - CP-51-CR-1031751-1988

Court-Appointed counsel L provided ineffective assistance in:

- (11) Comm. v. Ronald Collins, CP-51 CR-0614771-1992

8. Henry Fahy - CP-51-CR-0222831-1981

Defendant was represented by court-appointed counsel Q.

Court-appointed counsel Q provided ineffective assistance in:

- (8) Comm. v. Samuel Carson, CP-51-CR-0228371-1994
- (42) Comm. v. Christopher McNeil, CP-51-CR 0500461-1991
- (56) Comm. v. Wilfredo Ramos, CP-51-CR-0100891-1999
- (67) Comm. v. Andre Thompson, CP-51-CR-0221931-1993

9. Anthony Fletcher - CP-51-CR-0360011-1992

Defendant was represented by court-appointed counsel RR.

Court-appointed counsel RR provided ineffective assistance in:

(28) Comm. v. Steven Hutchinson, CP-51-CR-0408581-1998

10. Ronald Gibson - CP-51-CR-0128091-1991

Defendant was represented by counsel N.

Counsel N provided ineffective assistance in:

(48) Comm. v. Craig Murphy, CP-51-CR-0925231-1985

11. Daniel Gwynn - CP-51-CR-1207051-1994

Defendant was represented by court-appointed counsel EE.

Court-appointed counsel EE provided ineffective assistance in:

(30) Comm. v. William Johnson, CP-51-CR-0936052-1991

(51) Comm v. Lamont Overby, CP-51-CR-1006081-1996

12. Sheldon Hannibal - CP-51-CR-0428351-1993

Defendant was represented by court-appointed counsel RR.

Court-appointed counsel RR provided ineffective assistance in:

(28) Comm. v. Steven Hutchinson, CP-51-CR-0408581-1998

13. Darien Houser - CP-51-CR-0605180-2004

Defendant was represented by Court-Appointed counsel G and AAA.

Court-appointed counsel G provided ineffective assistance in:

(15) Comm. v. Junious Diggs, CP-51-CR-0709781-2002

Court-appointed counsel AAA provided ineffective assistance in:

(13) Comm. v. Bernard Cousar, CP-51-CR-0607431-1999

(19) Comm. v. Lester Fletcher, CP-51-CR-0709931-2001

14. Lewis Jordan - CP-51-CR-0000455-2008

Defendant was represented by court-appointed counsel F and FFF.
Court-appointed counsel F and FFF provided ineffective assistance in:

(29) Comm. v. Kareem Johnson, CP-51-CR-1300424-2006

15. Le, Tam - CP-51-CR-0002231-2015

Defendant was represented by court-appointed counsel G and I.
Court-appointed counsel G provided ineffective assistance in:

(15) Comm. v. Junious Diggs, CP-51-CR-0709781-2002

16. Emanuel Lester - CP-51-CR-1103001-1990

Defendant was represented by court-appointed counsel G.
Court-appointed counsel G provided ineffective assistance in:

(15) Comm. v. Junious Diggs, CP-51-CR-0709781-2002

17. Craig Murphy - CP-51-CR-0126101-1984

Defendant was represented by court-appointed counsel N.
Counsel N provided ineffective assistance in:

(48) Comm. v. Craig Murphy, CP-51-CR-0925231-1985

18. Ricardo Natividad - CP-51-CR-0400131-1997

Defendant was represented by court-appointed counsel QQ.
Court-appointed counsel QQ provided ineffective assistance in:

(3) Comm v. Billa, CP-51-CR-0136311-1987

(22) Comm v. Ronald Hanible, CP-51-CR-0409021-1999

(38) Comm. v. Reginald Lewis, CP-51-CR-0205851-1983

(41) Comm. v. Nathaniel McNair, CP-51-CR-1224591-1987

(52) Comm. v. Kevin Pelzer, CP-51-CR-1031752-1988

19. Gregory Powell - CP-51-CR-0100741-1998

Defendant was represented by court-appointed counsel AAA.
Counsel AAA provided ineffective assistance in:

- (13) Comm. v. Bernard Cousar, CP-51-CR-0607431-1999
- (19) Comm v. Lester Fletcher, CP-51-CR-0709931-2001

20. Derrick Ragan - CP-51-CR-0926161-1990

Defendant was represented by counsel KKL.
Counsel KKL provided ineffective assistance in:

- (31) Commonwealth v. Willard Moran, CP-51-CR-1130901-1981

21. Anthony Reid - CP-51-CR-0602521-1989

Defendant was represented by court-appointed counsel C.
Counsel C provided ineffective assistance in:

- (5) Comm. v. Aquil Bond, CP-51-CR-0502971-2004
- (6) Comm. v. Jesse Bond, CP-51-CR-2217781-1992
- (72) Comm. v. Derrick White, CP-51-CR-0012991-2010

22. Rivera, William - CP-51-CR-0902431-1996

Defendant was represented by court-appointed penalty counsel AAA.
Counsel AAA provided ineffective assistance in:

- (13) Comm. v. Bernard Cousar, CP-51-CR-0607431-1999
- (19) Comm. v. Lester Fletcher, CP-51-CR-0709931-2001

23. Christopher Roney - CP-51-CR-0208663-1996

Defendant was represented by counsel KKL.
Counsel KKL provided ineffective assistance in:

- (31) Commonwealth v. Willard Moran, CP-51-CR-1130901-1981

24. Larry Rush - CP-51-CR-0708711-1987

Defendant was represented by counsel H.
Counsel H provided ineffective assistance in:

(22) Comm. v. Donald Hall, CP-51-CR-0210711-1982

25. Rasheen Simpson - CP-51-CR-1103161-1996

Defendant was represented by counsel FFF.
Counsel FFF provided ineffective assistance in:

(29) Comm. v. Kareem Johnson, CP-51-CR-1300424-2006

26. Melvin Speight - CP-51-CR-1036271-1992

Defendant was represented by court-appointed counsel G.
Counsel G provided ineffective assistance in:

(15) Comm. v. Junious Diggs, CP-51-CR-0709781-2002

27. Dante Thomas - CP-51-CR-0606781-2006

Defendant was represented by counsel KKL.
Counsel KKL provided ineffective assistance in:

(31) Commonwealth v. Willard Moran, CP-51-CR-1130901-1981

28. Roy Williams - CP-51-CR-0124571-1991

Defendant was represented by court-appointed counsel Y.
Counsel Y provided ineffective assistance in:

(4) Comm. v. John M. Blount, CP-51-CR-0124901-1990

APPENDIX - PART III

Philadelphia Death Sentences Imposed Before and After February 2012

In **152 (98%)** of the 155 Philadelphia capital cases, the defendant was convicted and sentenced prior to 2012. In 73 of the 74 IAC cases, the conviction occurred before 2012. In 38 of the 38 cases overturned on other grounds, the conviction occurred before 2012. In 43 of the 45 cases where the defendant remains sentenced to execution, the conviction occurred before 2012.

A. CONVICTIONS PRIOR TO 2012

(i) 73 out of 74 IAC cases

1. **Commonwealth v. Lawrence Baker**, CP-51-CR-0629891-1981
Conviction date: 5/23/83
2. **Commonwealth v. Lee Baker**, CP-51-CR-0405062-1984
Conviction date: 10/4/84
3. **Commonwealth v. Billa**, CP-51-CR-0136311-1987
Conviction date: 6/12/87
4. **Commonwealth v. John M. Blount**, CP-51-CR-0124901-1990
Conviction date: 2/25/91
5. **Commonwealth v. Aquil Bond**, CP-51-CR-0502971-2004
Conviction date: 7/26/05

6. **Commonwealth v. Jesse Bond**, CP-51-CR-2217781-1992
Conviction date: 7/28/93
7. **Commonwealth v. Billy Brooks**, CP-51-CR-0128471-1991
Conviction date: 1/23/92
8. **Commonwealth v. Samuel Carson**, CP-51-CR-0228371-1994
Conviction date: 7/18/95
9. **Commonwealth v. Ronald Clark**, CP-51-CR-1241151-1993
Conviction date: 12/6/94
10. **Commonwealth v. Rodney Collins**, CP-51-CR-0815881-1992
Conviction date: 5/18/93
11. **Commonwealth v. Ronald Collins**, CP-51-CR-0614771-1992
Conviction date: 10/21/94
12. **Commonwealth v. Robert Cook**, CP-51-CR-0826512-1987
Conviction date: 11/15/88
13. **Commonwealth v. Bernard Cousar**, CP-51-CR-0607431-1999
Conviction date: 5/11/01
14. **Commonwealth v. Dewitt Crawley**, CP-51-CR-0201551-1984
Conviction date: 6/10/85
15. **Commonwealth v. Junious Diggs**, CP-51-CR-0709781-2002
Conviction date: 3/9/04
16. **Commonwealth v. Daniel Dougherty**, CP-51-CR-0705371-1999
Conviction date: 10/6/00

17. **Commonwealth v. Joseph Elliott**, CP-51-CR-0410911-1994
Conviction date: 12/8/94
18. **Commonwealth v. Henry Fahy**, CP-51-CR-0222831-1981
Conviction date: 1/24/83
19. **Commonwealth v. Lester Fletcher**, CP-51-CR-0709931-2001
Conviction date: 8/22/02
20. **Commonwealth v. Kenneth Ford**, CP-51-CR-1032221-1989
Conviction date: 3/9/92
21. **Commonwealth v. William Gribble**, CP-51-CR-1220811-1992
Conviction date: 6/30/93
22. **Commonwealth v. Donald Hall**, CP-51-CR-0210711-1982
Conviction date: 6/18/87
23. **Commonwealth v. Ronald Hanible**, CP-51-CR-0409021-1999
Conviction date: 6/13/01
24. **Commonwealth v. John Harris**, CP-51-CR-0903421-1992
Conviction date: 2/21/95
25. **Commonwealth v. Donetta Hill**, CP-51-CR-0518391-1991
Conviction date: 3/11/93
26. **Commonwealth v. William Holland**, CP-51-CR-1014291-1984
Conviction date: 2/7/86
27. **Commonwealth v. Arnold Holloway**, CP-51-CR-0613051-1985
Conviction date: 5/23/86

28. **Commonwealth v. Steven Hutchinson**, CP-51-CR-0408581-1998
Conviction date: 12/10/99
29. **Commonwealth v. Kareem Johnson**, CP-51-CR-1300424-2006
Conviction date: 7/3/07
30. **Commonwealth v. William Johnson**, CP-51-CR-0936052-1991
Conviction date: 5/17/94
31. **Commonwealth v. Damon Jones**, CP-51-CR-0907121-1982
Conviction date: 12/30/87
32. **Commonwealth v. James Jones**, CP-51-CR-1024861-1980
Conviction date: 6/6/85
33. **Commonwealth v. Thomas Jones**, CP-51-CR-0403101-1982
Conviction date: 8/4/82
34. **Commonwealth v. Alexander Keaton**, CP-51-CR-0319251-1993
Conviction date : 11/29/94
35. **Commonwealth v. Joseph Kindler**, CP-51-CR-0827471-1982
Conviction date: 11/16/83
36. **Commonwealth v. Michael LaCava**, CP-51-CR-0711041-1990
Conviction date: 6/29/91
37. **Commonwealth v. Robert Lark**, CP-51-CR-0120121-1980
Conviction date: 6/28/85

38. **Commonwealth v. Reginald Lewis**, CP-51-CR-0205851-1983
Conviction date: 8/12/83
39. **Commonwealth v. Steven McCrae**, CP-51-CR-0204521-1999
Conviction date: 11/27/00
40. **Commonwealth v. Bernard McGill**, CP-51-CR-0339201-1990
Conviction date: 7/28/92
41. **Commonwealth v. Nathaniel McNair**, CP-51-CR-1224591-1987
Conviction date: 11/21/88
42. **Commonwealth v. Christopher McNeil**, CP-51-CR-0500461-1991
Conviction date: 4/10/92
43. **Commonwealth v. William Mikell**, CP-51-CR-0716051-1987
Conviction date: 1/30/89
44. **Commonwealth v. Mikal Moore**, CP-51-CR-0701141-1998
Conviction date: 6/28/99
45. **Commonwealth v. Salvador Morales**, CP-51-CR-1012921-1982
Conviction date: 5/18/83
46. **Commonwealth v. Willard Moran**, CP-51-CR-1130901-1981
Conviction date: 7/2/82
47. **Commonwealth v. Kelvin Morris**, CP-51-CR-0704091-1982
Conviction date: 11/30/83

48. **Commonwealth v. Craig Murphy**, CP-51-CR-0925231-1985
Conviction date: 7/21/86
49. **Commonwealth v. William Nieves**, CP-51-CR-1009681-1993
Conviction date: 10/24/94
50. **Commonwealth v. Kelley O'Donnell**, CP-51-CR-1220812-1992
Conviction date: 7/1/93
51. **Commonwealth v. Lamont Overby**, CP-51-CR-1006081-1996
Conviction date: 7/22/98
52. **Commonwealth v. Kevin Pelzer**, CP-51-CR-1031752-1988
Conviction date: 11/14/89
53. **Commonwealth v. Curry Perry**, CP-51-CR-0418121-1989
Conviction date: 11/15/90
54. **Commonwealth v. Otis Peterkin**, CP-51-CR-0207841-1982
Conviction date: 11/22/82
55. **Commonwealth v. Michael Rainey**, CP-51-CR-0419613-1990
Conviction date: 12/1/93
56. **Commonwealth v. Wilfredo Ramos**, CP-51-CR-0100891-1999
Conviction date: 1/11/00
57. **Commonwealth v. Lloyd Reid**, CP-51-CR-0405461-1991
Conviction date: 11/15/91

58. **Commonwealth v. Timothy Rice**, CP-51-CR-0906231-1996
Conviction date: 10/16/97
59. **Commonwealth v. Delores Rivers**, CP-51-CR-0335191-1988
Conviction date: 10/3/91
60. **Commonwealth v. Florencio Rolan**, CP-51-CR-0228931-1984
Conviction date: 5/21/84
61. **Commonwealth v. Saharris Rollins**, CP-51-CR-0405851-1986
Conviction date: 5/11/87
62. **Commonwealth v. James Melvin Smith**, CP-51-CR-0717891-1983
Conviction date: 2/6/85
63. **Commonwealth v. Willie Sneed**, CP-51-CR-0606741-1984
Conviction date: 4/2/86
64. **Commonwealth v. Brian Thomas**, CP-51-CR-0827161-1985
Conviction date: 8/7/86
65. **Commonwealth v. LeRoy Thomas**, CP-51-CR-1207001-1994
Conviction date: 7/26/95
66. **Commonwealth v. Michael Thomaston**, CP-51-CR-0400541-1995
Conviction date: 2/27/97
67. **Commonwealth v. Andre Thompson**, CP-51-CR-0221931-1993
Conviction date: 3/18/96

68. **Commonwealth v. Louis Thompson**, CP-51-CR-0436071-1990

Conviction date: 7/31/92

69. **Commonwealth v. William Tilley**, CP-51-CR-1210781-1985

Conviction date: 11/24/87

70. **Commonwealth v. Philip Trivigno**, CP-51-CR-0100861-1996

Conviction date: 9/27/96

71. **Commonwealth v. Vinson Washington**, CP-51-CR-0310321-1994

Conviction date: 11/4/94

72. **Commonwealth v. Christopher Williams**, CP-51-CR-0417523-1992

Conviction date: 8/6/93

73. **Commonwealth v. Craig Williams**, CP-51-CR-0525631-1987

Conviction date: 6/17/88

(ii) *38 of the 38 cases overturned due to reasons other than IAC*

1. **Commonwealth v. Jose DeJesus**, CP-51-CR-0704671-1998

Conviction date: 10/28/99

2. **Commonwealth v. James Dennis**, CP-51-CR-0104841-1992

Conviction: 6/17/93

3. **Commonwealth v. Calvin Floyd**, CP-51-CR-0813171-1980

Conviction date: 10/5/82

4. **Commonwealth v. Donald Hardcastle**, CP-51-CR-0632881-1982
Conviction date: 12/8/82
5. **Commonwealth v. James Lambert**, CP-51-CR-0803432-1983
Conviction date: 2/18/86
6. **Commonwealth v. Cam Ly**, CP-51-CR-1125561-1986
Conviction date: 3/16/88
7. **Commonwealth v. Lawrence Smith**, CP-51-CR-1001002-2000
Conviction date: 3/4/02
8. **Commonwealth v. Anthony Washington**, CP-51-CR-1210371-1993
Conviction date: 12/9/94
9. **Commonwealth v. Terrence Williams**, CP-51-CR-0823621-1984
Conviction date: 7/1/87
10. **Commonwealth v. Zachary Wilson**, CP-51-CR-0929501-1986
Conviction date: 1/25/88
11. **Mumia Abu-Jamal**, CP-51-CR-0113571-1982
Conviction date: 5/25/83
12. **Commonwealth v. Sam Bannerman**, CP-51-CR-1033281-1984
Conviction date: 6/10/86
13. **Commonwealth v. James Bryant**, CP-51-CR-1023791-1983
Conviction date: 10/22/84
14. **Commonwealth v. Kevin Chandler**, CP-51-CR-0832561-1993
Conviction date: 5/5/95

15. **Commonwealth v. Willie Clayton**, CP-51-CR-1127941-1984
Conviction date: 2/25/86
16. **Commonwealth v. George Goins**, CP-51-CR-0829421-1981
Conviction date: 2/15/84
17. **Commonwealth v. William Green**, CP-51-CR-0427361-1982
Conviction date: 11/12/82
18. **Commonwealth v. Eric Grier**, CP-51-CR-0334871-1989
Conviction date: 10/16/90
19. **Commonwealth v. Derrick Harvey**, CP-51-CR-0307631-1998
Conviction date: 3/19/99
20. **Commonwealth v. Andrew Huffman**, CP-51-CR-0511051-1989
Conviction date: 10/18/90
21. **Commonwealth v. Alfred Jasper**, CP-51-CR-0613941-1984
Conviction date : 5/6/86
22. **Commonwealth v. Marcus Lloyd**, CP-51-CR-0501982-1998
Conviction date: 12/20/99
23. **Commonwealth v. Michael Overby**, CP-51-CR-0105802-1995
Conviction date: 4/30/98
24. **Commonwealth v. Ernest Porter**, CP-51-CR-0622491-1985
Conviction date: 6/27/86

25. **Commonwealth v. Paul Rizzuto**, CP-51-CR-0132391-1994
Conviction date: 11/17/98
26. **Commonwealth v. Bobby Sims**, CP-51-CR-0500751-1982
Conviction date: 3/8/84
27. **Commonwealth v. Edward Bracey**, CP-51-CR-0632821-1991
Conviction date: 10/5/92
28. **Commonwealth v. Joseph D'Amato**, CP-51-CR-1219941-1981
Conviction date: 2/8/83
29. **Commonwealth v. Harrison Graham**, CP-51-CR-0839481-1987
Conviction date: 5/3/88
30. **Commonwealth v. Melvin Howard**, CP-51-CR-0304271-1988
Conviction date: 9/14/89
31. **Commonwealth v. Raymond Whitney**, CP-51-CR-1114161-1981
Conviction date: 2/3/83
32. **Commonwealth v. Simon Pirela**, CP-51-CR-0121431-1983
Conviction date: 3/12/84
33. **Commonwealth v. Kevin Hughes**, CP-51-CR-0116881-1980
Conviction date: 10/27/83
34. **Commonwealth v. Percy Lee**, CP-51-CR-0511562-1986
Conviction date: 4/25/91

35. **Commonwealth v. Neil Ferber**, CP-51-CR-0710481-1981
Conviction date: 10/1/84
 36. **Commonwealth v. Kenneth Miller**, CP-51-CR-0902382-1998
Conviction date: 12/23/99
 37. **Commonwealth v. Jose DeJesus**, CP-51-CR-1103501-1997
Conviction date: 8/17/99
 38. **Commonwealth v. DeJesus**, CP-51-CR-1103511-1997
Conviction date: 9/29/98
- (iii) *43 of the current 45 death row cases*
1. **Ralph Birdsong** - CP-51-CR-0140802-1989
Conviction date: 10/27/89
 2. **John W. Brown** - CP-51-CR-0738881-1990
Conviction date 7/25/91
 3. **Kenneth Brown** - CP-51-CR-1124661-1993
Conviction date: 2/21/95
 4. **Lavar Brown** - CP-51-CR-0208091-2004
Conviction date: 8/17/05
 5. **Jerry Chambers** - CP-51-CR-1101421-2003
Conviction date: 5/26/05

- 6. Jermont Cox - CP-51-CR-0231581-1993**
Conviction date: 4/12/95
- 7. Russell Cox - CP-51-CR-0511561-1986**
Conviction date: 4/25/91
- 8. Henry Daniels - CP-51-CR-1031751-1988**
Conviction date: 4/23/90
- 9. Anthony Fletcher - CP-51-CR-0360011-1992**
Conviction date: 2/5/93
- 10. Gibson, Ronald- CP-51-CR-0128091-1991**
Conviction date: 10/10/91
- 11. Daniel Gwynn - CP-51-CR-1207051-1994**
Conviction date: 11/6/95
- 12. Sheldon Hannibal - CP-51-CR-0428351-1993**
Conviction date: 10/25/94
- 13. Darien Houser - CP-51-CR-0605180-2004**
Conviction date: 3/13/06
- 14. Aaron Jones - CP-51-CR-1035061-1991**
Conviction date: 2/28/94
- 15. Lewis Jordan (aka John Lewis) - CP-51-CR-0000455-2008**
Conviction date: 11/24/09

16. **Emanuel Lester** - CP-51-CR-1103001-1990
Conviction date: 11/14/91
17. **Antoine Ligons** - CP-51-CR-0500861-1998
Conviction date: 6/1/99
18. **Jerome Marshall** - CP-51-CR-1117211-1983
Conviction date: 11/6/85
19. **Craig Murphy** - CP-51-CR-0126101-1984
Conviction date: 11/1/90
20. **Ricardo Natividad** - CP-51-CR-0400131-1997
Conviction date: 11/12/97
21. **Donyell Paddy** - CP-51-CR-0709621-1993
Conviction date: 12/19/95
22. **Borgela Philistin** - CP-51-CR-0709691-1993
Conviction date: 2/9/95
23. **Ernest Porter** - CP-51-CR-0622491-1985
Conviction date: 6/27/86
24. **Gregory Powell** - CP-51-CR-0100741-1998
Conviction date: 11/28/00
25. **Derrick Ragan** - CP-51-CR-0926161-1990
Conviction date: 3/18/92

26. **Anthony Reid** - CP-51-CR-0602521-1989
Conviction date: 8/14/90
27. **Larry Rush** – CP-51-CR-0708711-1987
Conviction date: 6/29/88
28. **Christopher Roney** - CP-51-CR-0208663-1996
Conviction date: 10/30/96
29. **Rasheed Simpson** - CP-51-CR-1103161-1996
Conviction date: 12/22/97
30. **Christopher Smith** - CP-51-CR-0502972-2004
Conviction date: 7/26/05
31. **Melvin Speight** - CP-51-CR-1036271-1992
Conviction date: 2/24/94
32. **Ralph Stokes, Ralph** - CP-51-CR-0345761-1982
Conviction date: 6/9/87
33. **Dante Thomas** - CP-51-CR-0606781-2006
Conviction date: 9/19/07
34. **Herbert Watson** - CP-51-CR-0932031-1982
Conviction date: 5/17/84
35. **Wharton, Robert** - CP-51-CR-0222581-1984
Conviction date: 9/24/86

36. Roy Williams - CP-51-CR-0124571-1991

Conviction date: 9/14/93

37. Sam, Thavirak – CP-51-CR-0743591-1989

Conviction date: 7/2/91

38. Rivera, William - CP-51-CR-0902431-1996

Conviction date: 3/20/98

39. Uderra, Jose - CP-51-CR-1051452-1991

Conviction date: 6/8/93

40. Fahy, Henry - CP-51-CR-0222831-1981

Conviction date: 11/2/83

41. Richard Hackett – CP-51-CR-0933912-1986

Conviction date: 7/18/88

42. Ogrod, Walter - CP-51-CR-0532781-1992

Conviction date: 11/8/96

43. Pierce, Michael - CP-51-CR-0813121-1989

Conviction date: 11/1/90

A. CONVICTIONS AFTER 2012 (Total 3)

1. Derrick White - CP-51-CR-0012991-2010

Conviction date: 2/29/12

2. Omar Cash - CP-51-CR-0000573-2009

Conviction date: 11/15/13

3. Le, Tam - CP-51-CR-0002231-2015

Conviction date: 12/1/16