NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
KRISINDA ANN BRIGHT	:	
Appellant	:	No. 1050 WDA 2023

Appeal from the PCRA Order Entered August 9, 2023
In the Court of Common Pleas of Beaver County Criminal Division at No(s): CP-04-CR-0001396-2021

BEFORE: DUBOW, J., KING, J., and BENDER, P.J.E.

MEMORANDUM BY BENDER, P.J.E.: **FILED: October 1, 2024**

Appellant, Krisinda Bright, appeals from the post-conviction court's August 9, 2023 order dismissing her timely-filed petition under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. After careful review, we affirm.

On December 14, 2021, Appellant pled guilty to two counts of first-degree murder. At the plea proceeding, the Commonwealth stated that, had the case proceeded to trial, it would have presented evidence establishing the following facts:

> [On February 22, 2021], Beaver County 911 … received a telephone call, a 911 emergency call from [Appellant] identifying herself and her address as 908 Maplewood Avenue.
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> And during that call[,] in a very calm, collect[ed], and as a matter of fact fashion[,] she indicated that she had just proceeded to shoot both of her children. … After receiving said phone call the operator kept [Appellant] on the phone until a time when the Ambridge Police Department could proceed to that location. …

Officer McQuaide, who is an affiant in the case, as well as Officer Seng from Ambridge proceeded to 908 Maplewood where they found [Appellant] present on the front porch of that property.

They witnessed her appearance immediately at that time. She was clothed, but present on her person was blood spatter as well as various pieces of human matter evidencing the fact that her statement was not simply a ruse. … A search of the residence indicated the presence of two bodies, one in the basement and one on the second floor. It was a very graphic and gruesome scene. The body in the basement belonged to [Appellant's daughter,] 16-year-old Kiara Bright, who preferred to be called JJ. She was assigned the gender female at birth and was transitioning at that present time.

She had suffered … several gunshot wounds to the head and had a significant injury to her right hand, which indicated a defensive wound as if she ha[d] raised her hand to her face where she suffered the gunshot wounds.

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Additionally, [in] the second floor where the second body was located that was found to be the body of 22-year-old Jasmine Cannady, [Appellant's] other daughter. She was asleep in her bed at the time. It was determined she was asleep when she suffered the gunshot wound to the head. It was also a very devastating wound to her, to her head at the time.

It is believed that JJ, who was the victim in the basement, was not immediately killed on the first gunshot wound[,] that it took a second shot to end her life.

The officers did locate the firearm in question. It was a .12-gauge shotgun that was found unloaded on the dining room table exactly where [Appellant] had said it would be located.

That firearm was determined [] to have been purchased by [Appellant] several weeks prior to the incident, and officers were able to track that information and find video of [Appellant] searching for the proper firearm to purchase at two locations.

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> [Appellant] was removed from the scene[,] prior to any processing of that scene[, and taken] to the Ambridge Police Department where she was provided ***Miranda***[1] [w]arnings and waived those rights and proceeded to speak with investigators[.] There she gave a second statement consistent with the statements in the 911 call where she indicated that she had made the decision to purchase this firearm in an effort to take both JJ and Jasmine's [lives], that she had feared that they would be taken from her, but no justification through the investigation was able to be found that that would be the case.
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> She indicated that[,] during the … several weeks that proceeded[,] from the time of the purchase of the firearm until the murders were actually carried out[,] … she made several attempts to actually carry out this act, and it wasn't until February 22nd that she was able to bring herself to do it. She had indicated she had practiced loading and unloading the firearm as part of those efforts.
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> [Appellant] had also indicated what her actions were within the house … as to how she first took Jasmine's life then proceeded to the basement of the residence, had an interaction with JJ, [and] pointed the firearm at her. JJ had indicated she was going to call the police at one point, and [Appellant tried] to operate[] the firearm and shoot JJ, but it had some difficulty. Eventually, she was able to successfully discharge the firearm striking [JJ] in the face, which did not initially bring about her death. It required [Appellant] to proceed back to the second level and retrieve another round, and she went back downstairs and again discharged the firearm into JJ's head finishing the job that she had started.

PCRA Court Opinion (PCO), 7/3/23, at 8-9 (cleaned up; quoting N.T. Guilty Plea/Sentencing, 12/14/21, at 21-27).[2]

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[1] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[2] This opinion, titled "Preliminary Opinion and Notice of Court," accompanied the PCRA court's Pa.R.Crim.P. 907 notice of its intent to dismiss Appellant's petition without a hearing, and was relied upon by the court in lieu of a Pa.R.A.P. 1925(a) opinion. ***See*** Rule 1925(a) Opinion, 10/30/23, at 1 (single page).

Appellant was arrested and charged with various offenses. Ultimately, she pled guilty to two counts of first-degree murder in exchange for the Commonwealth's not seeking the death penalty. ***See*** N.T. Plea/Sentencing at 33-34. That same day, Appellant was sentenced to two consecutive terms of life imprisonment, without the possibility of parole. She did not file a post-sentence motion or appeal from her judgment of sentence.

Instead, on November 28, 2022, Appellant filed a timely, *pro se* PCRA petition. Counsel was appointed and filed an amended PCRA petition on April 21, 2023, contending that Appellant's trial counsel was ineffective for failing to secure a mitigation specialist and/or pursue a diminished capacity defense. On July 3, 2023, the PCRA court issued a Rule 907 notice of its intent to dismiss Appellant's petition without a hearing. Appellant filed a timely response, but on August 9, 2023, the court dismissed her petition.

Appellant filed a timely notice of appeal, and she and the court complied with Pa.R.A.P. 1925. Herein, Appellant states one issue for review: "Whether the PCRA [c]ourt erred in dismissing … Appellant's PCRA [p]etition without first holding an evidentiary hearing to address her meritorious claims?" Appellant's Brief at 3.

"This Court's standard of review from the grant or denial of post-conviction relief is limited to examining whether the lower court's determination is supported by the evidence of record and whether it is free of legal error." ***Commonwealth v. Morales***, 701 A.2d 516, 520 (Pa. 1997)

(citing ***Commonwealth v. Travaglia***, 661 A.2d 352, 356 n.4 (Pa. 1995)).

We also recognize that:

> A criminal defendant has the right to effective counsel during a plea process as well as during trial. A defendant is permitted to withdraw his guilty plea under the PCRA if ineffective assistance of counsel caused the defendant to enter an involuntary plea of guilty.
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> > We conduct our review of such a claim in accordance with the three-pronged ineffectiveness test under section 9543(a)(2)(ii) of the PCRA, 42 Pa.C.S.[] § 9543(a)(2)(ii). The voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases.
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> > In order for [an a]ppellant to prevail on a claim of ineffective assistance of counsel, he must show, by a preponderance of the evidence, ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. [The a]ppellant must demonstrate: (1) the underlying claim is of arguable merit; (2) that counsel had no reasonable strategic basis for his or her action or inaction; and (3) but for the errors and omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different. The petitioner bears the burden of proving all three prongs of the test.

Commonwealth v. Orlando, 156 A.3d 1274, 1280–81 (Pa. Super. 2017) (cleaned up).

Instantly, Appellant contends that her trial counsel acted ineffectively by not retaining a mitigation specialist to "fully develop her mental health history" so that counsel could have then "zealously pursue[d] a diminished capacity defense…." Appellant's Brief at 8. According to Appellant, this case is similar to ***Commonwealth v. Solano***, 129 A.3d 1156 (Pa. 2015), a capital

case where our Supreme Court remanded for a new penalty-phase hearing due to defense counsel's "failure to investigate and present mitigating evidence regarding Solano's traumatic, abusive childhood and its neurophysiological impact on him." ***Id.*** at 1181. At the penalty-phase hearing in ***Solano***, defense counsel presented four witnesses: a Children and Youth Services (CYS) caseworker who had been assigned to Solano's family, Solano's mother, and his foster mother and father. ***Id.*** at 1181-82. However, "[a]t the PCRA hearing, Solano presented additional mitigating evidence," including testimony by "two mental health experts, four family members, three teachers, a mitigation specialist, and a CYS caseworker." ***Id.*** at 1183 (footnote omitted). Ultimately, our Supreme Court concluded that Solano's trial counsel had no reasonable basis for failing "to research the readily available background information possessed by family and contained in the records[,]" which ultimately resulted in her failing to "present a coherent case for mitigation." ***Id.*** at 1196-97.

Here, although Appellant acknowledges that "***Solano*** is distinguishable[,] … since … Appellant entered into a plea agreement[,]" she nevertheless "argues that the rationale applied by the Court in ***Solano*** applies here." Appellant's Brief at 9. She explains:

> In order to enter a knowing, intelligent and voluntary plea, … Appellant should have had her [t]rial [c]ounsel make every effort to discover all reasonably available mitigating evidence. … Appellant contends that [t]rial [c]ounsel had only acquired a rudimentary knowledge of her mental health history from a narrow set of sources.

> Here, the very limited underlying record reveals that the only sources of mitigating evidence came from the mental health specialist's two reports and the personal interaction between the Appellant and her [t]rial [c]ounsel. Moreover, following the rationale applied by the Court in ***Solano***, the PCRA [c]ourt here abused it's [*sic*] discretion in concluding that there was a reasonable basis for [t]rial [c]ounsel's actions. … Appellant posits that the only way to fully address her meritorious PCRA claim is to first develop an evidentiary record that explores [t]rial [c]ounsel's efforts to marshal the aforementioned mitigating evidence.

Id. Additionally, in regard to prejudice, Appellant briefly states that, had counsel "fully developed [a] mitigation defense[, it] would have assisted in the entry of a truly knowing, intelligent[,] and voluntary plea or, in the alternative, assisted in presenting a diminished capacity defense at trial." ***Id.*** at 10.

In assessing Appellant's ineffectiveness claim, the PCRA court first concluded that she had established the arguable merit prong, as a "defense of diminished capacity was legally available to [Appellant] and was a course that could have been pursued." PCO at 4. However, the PCRA court determined that Appellant had not demonstrated that her counsel acted unreasonably. The court explained:

> Trial [c]ounsel did retain a mental health specialist, Dr. Pass,[3] who conducted an assessment at the defense's request on May 3, 2021. According to [t]rial [c]ounsel[']s statements to the court at Appellant's plea/sentencing hearing], Dr. Pass reached a conclusion[,] within a reasonable degree of professional forensic mental health certainty[,] that [Appellant] was competent to stand trial at that time.

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[3] Dr. Pass's first name is not provided in the transcript of Appellant's plea/sentencing hearing.

Trial [c]ounsel also averred at the [p]lea and [s]entencing [h]earing that, subsequent to Dr. Pass'[s] assessment, [t]rial [c]ounsel obtained an additional assessment by Dr. Pass'[s] office of [Appellant], specifically to explore potential defenses. The assessment showed that [Appellant] had adequate language skills, was coherent and oriented, and she did not exhibit any thought process related difficulties.

Trial [c]ounsel also stated to the [c]ourt that[,] "in terms of our interaction with [Appellant], she has been able to participate in her defense with us throughout … the process." The [c]ourt also inquired (on the record) as to [t]rial [c]ounsel's pursuit of potential defenses regarding [Appellant's] mental health and competency, and his discussions about the same with [Appellant]:

> [Trial Counsel]: I have gone over that with her, and I've had, Dr. Pass'[s] office has obviously [been notified] … of the potential insanity and mental deformity or diminished capacity defenses. Dr. Pass has addressed those issues. I have gone over those with [Appellant]. And based on his opinions and where we were going it was, it was not until we received the most recent reports regarding where we stood with those defenses[,] and then in my meeting with [Appellant,] that we decided to go forward with pursuing the Commonwealth's offer of a plea here today.
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> Mostly, and I think also these reports and the findings and some of the mental history is what made the Commonwealth open to the potential of removing the death penalty. So to some extent we had agreed to wait and let the doctors do these assessments, both sides, rather than, I had gone to the Commonwealth early to talk to them about what potential plea arrangements could be made, and they were open to me pursuing all available avenues in terms of psychiatric assessments and defenses without putting a time limit on me in going forward…[. T]hey left that offer open to allow us to make those, pursue those avenues.
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> THE COURT: Okay. So suffice it to say based on the psychiatric opinions, [and] the other documents you were able to review[,] … you determined that a potential, realistic potential existed that if this case went to trial the death penalty could be a very realistic possibility; is that correct?
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> [Trial Counsel]: I believe[,] based on the availability of our defenses[,] I would say … specifically that[,] in terms of our

> defense of insanity[,] we would not be pursuing that at trial based from the report[, in which] they indicated that[, regarding] the defense of insanity[,] they could not make an opinion to a … reasonable degree of medial certainty that those mental conditions existed.
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> We do, however, have diagnoses of mental health disorders, bipolar disorder with psychotic features, that would still leave the door open to a diminished capacity defense.
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> I've discussed what that meant with [Appellant] that, specifically that if we went to trial we could still proceed with a diminished capacity defense, which could take a first[-] degree charge … to a third[-]degree [offense. B]ased on the evidence that the Commonwealth has presented and even [Appellant's] recollection of the events, the evidence that the Commonwealth would present without any defense would clearly lead to a first[-]degree murder conviction.
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> There is a definite deliberate killing, and the evidence supports that[,] based on her open admissions to the Commonwealth from the very beginning in terms of the investigation.
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> The only question we have is could the evidence of the mental health conditions lead to a lesser conviction. I believe the potential … is there for [a] third[-]degree murder [conviction], but I also believe that the potential is there that the evidence could lead to a jury['s] finding her guilty of first[-]degree murder, and that based on the aggravating circumstances[,] the potential is there that the Commonwealth could obtain a penalty of death.
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> I met with [Appellant] many times. Ultimately[,] I let her know that … she's got to make that decision. You know, the options are available to her … in terms of a defense, but the exposure is clearly there in terms of a penalty of death. And she has indicated to me, and I'm confident that she is making a knowing decision, that she wishes to go forward with … the guilty plea as we presented to the [c]ourt today.

Trial [c]ounsel informed the [c]ourt that he told [Appellant] that, ultimately, the decision as to which course to take was up to her; that it is her life and she has to make that choice. Trial [c]ounsel informed the [c]ourt that he made himself available on many occasions to discuss these matters with [Appellant], and that

> taking the plea deal offered by the Commonwealth is the choice he would recommend to [Appellant], based on the evidence and the circumstances and the risks, and that he believes she made the decision for herself.
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> Following this discussion with [t]rial [c]ounsel, the [c]ourt asked [Appellant], "Is that accurate, [Appellant]?" to which she responded, "Yes, your Honor."
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> Trial [c]ounsel did prepare to pursue a diminished capacity defense; however, after all the preparation and assessments, when pitted against the facts of the case, [t]rial [c]ounsel determined, in his professional experience, that the defense was likely to fail. This was his advice to [Appellant], who, seeing the rationale and agreeing with it, made the decision to take a plea. Ultimately, this [c]ourt finds that [t]rial [c]ounsel did not fail to pursue a diminished capacity defense, it was [Appellant's] choice to abandon that defense and accept the course that ensured she would not receive the death penalty.

PCO at 5-7 (cleaned up; footnoted citations to the record omitted).

We agree with the PCRA court that the record demonstrates that Appellant made a knowing, intelligent, and voluntary decision to plead guilty after counsel reasonably advised her of the risks and possible outcomes of proceeding to trial. Counsel had mental health assessments conducted of Appellant, which showed that, although she suffers from certain issues, it was not clear that a diminished capacity defense would be successful. In particular, Dr. Pass opined that Appellant "did not exhibit any thought process related difficulties." N.T. Plea/Sentencing at 14. As the PCRA court observed, "[t]o establish a diminished capacity defense, a defendant must prove that his cognitive abilities of deliberation and premeditation were so compromised, by mental defect or voluntary intoxication, that he was unable to formulate the specific intent to kill." PCO at 7-8 (quoting ***Commonwealth Hutchinson***, 25

A.3d 277, 312 (Pa. 2011)). Clearly, Dr. Pass's evaluation and conclusions regarding Appellant's cognitive abilities would undercut a diminished capacity defense. Counsel understood this possibility, and reasonably advised Appellant regarding the potential that she could be convicted of first-degree murder and face the death penalty if she chose to proceed to trial. Ultimately, counsel told Appellant that it was her decision, and she chose to plead guilty.

To the extent that Appellant claims that counsel should have retained a mitigation specialist to delve further into her mental health history, she does not explain what, if any, mitigation evidence a specialist might have uncovered that would have supported a diminished capacity defense. Unlike in ***Solano***, where the petitioner presented several witnesses who offered mitigation evidence before the PCRA court, here, Appellant offers nothing. While a hearing was not conducted in this case, as it was in ***Solano***, Appellant did not sufficiently demonstrate to the PCRA court what witnesses or evidence she would present at a hearing to support her ineffectiveness claim. For instance, in Appellant's *pro se* PCRA petition, she listed three witnesses she intended to call at a hearing: Peggy Hoffman, Melissa Gebauer, and Chloe Gebauer. However, in the section under each witness labeled "Witness Testimony," Appellant simply wrote: "Is witness to state of my mental health leading up to crime." *Pro Se* PCRA Petition, 11/28/22, at 7. This is insufficient to demonstrate that these witnesses would have offered mitigation evidence that would support a diminished capacity defense.

Additionally, although Appellant did present some discussion of her alleged mental health issues in her *pro se* petition, she did not attach any documentation to support those claims. For instance, she stated that she was diagnosed at "the Veterans Hospital" with post-traumatic stress disorder, depression, and schizophrenia. ***Id.*** at 4. She also averred that she spent 10 days in the Veterans Hospital in November of 2020[,] and that after she "was released and put on medication[,]" she "stopped taking [it]… because [she] thought [she] was being poisoned." ***Id.*** Appellant claimed that she was suffering from hallucinations and hearing voices before and during the commission of the murders. ***Id.*** However, Appellant never produced – in either her *pro se* or amended petitions - any medical records to support her claims. She also did not state that any of her proposed witnesses would be able to testify about these specific hospitalizations, diagnoses, or medications. Moreover, Appellant never claimed in her petition, and does not argue on appeal, that Dr. Pass's assessment of her was inadequate or incomplete in any regard, or that he was unaware of her alleged treatment at the Veterans Hospital, or her prior medical diagnoses and medications.

Accordingly, Appellant has failed to demonstrate that there are genuine issues of material fact regarding her claim of trial counsel's ineffectiveness. Again, counsel explained at the plea/sentencing hearing that he had Appellant assessed by Dr. Pass for both competency and mental health issues that might warrant an insanity or diminished capacity defense. After receiving Dr. Pass's report, counsel ruled out the possibility of an insanity defense and questioned

the likelihood of a successful diminished capacity defense. He met with Appellant numerous times to discuss these defenses and the Commonwealth's plea offer. He advised her of the risks associated with proceeding to trial and the potential of her receiving the death penalty. Ultimately, counsel properly informed Appellant that she had to make the final decision about whether to enter a plea or go to trial, and she chose to plead guilty. Appellant has not produced any evidence, or developed any discussion, regarding what a mitigation specialist might have uncovered that Dr. Pass did not, and/or what other mitigation evidence could have supported a diminished capacity defense. Accordingly, Appellant has not demonstrated that her trial counsel acted ineffectively.

Order affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 10/01/2024