[J-99-2000]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 247 CAPITAL APPEAL DOCKET
	:	
Appellee	:	Appeal from the Order entered October
	:	20, 1998 in the Court of Common Pleas of
	:	Philadelphia County Criminal Trial Division
v.	:	at Nos. 2362-2367 AUGUST TERM 1984
	:	
	:	
TERRANCE WILLIAMS,	:	
	:	
Appellant	:	SUBMITTED: June 6, 2000

OPINION

MR. JUSTICE EAKIN[1] **DECIDED: December 22, 2004**

Terrance Williams appeals from the order denying his petition for relief under the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546.

On June 11, 1984, appellant and Marc Draper lost their money gambling on a street corner. Appellant left to get money from the victim, Amos Norwood, and returned with $10. Later, Norwood drove up to the two. Appellant told Draper they were going to take some money from Norwood, and the three men left in Norwood's car. Appellant directed Norwood to a secluded area where he and Draper forced Norwood out of the car, bound and gagged him, and then took money and other items from him. Appellant,

[1] This case was reassigned to this author.

with a tire iron, and Draper, with a wrench, beat Norwood to death and fled. Later that night, appellant returned and burned the body.

On February 3, 1986, a jury convicted appellant of first degree murder, robbery, and conspiracy. After a penalty hearing, the jury found two aggravating circumstances: (1) appellant committed the killing while perpetrating a felony;[2] and (2) appellant had a significant history of felony convictions involving the use or threat of violence to the person.[3] The jury, after considering the mitigating evidence presented,[4] found no mitigating circumstances, and sentenced appellant to death. See 42 Pa.C.S. § 9711(c)(iv).

Newly assigned counsel filed post sentence motions, including claims of trial counsel's ineffectiveness. The motions were denied after a hearing; appellant filed a direct appeal to this Court, which affirmed the judgment of sentence. Commonwealth v. Williams, 570 A.2d 75 (Pa. 1990).

Appellant filed a pro se PCRA petition in 1995; new counsel was appointed and filed an amended petition in 1996. After hearings, argument, and a careful review of the record, the PCRA court denied appellant's petition. New counsel was appointed and this appeal followed.

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[2] 42 Pa.C.S. § 9711(d)(6).

[3] Id., § 9711(d)(9).

[4] Defense counsel presented mitigating evidence of appellant's age at the time of the crime, id., § 9711(e)(4), and appellant's character and record, id., § 9711(e)(8).

Appellant raises 23 issues in his brief which have been reordered for ease of discussion:[5]

1. Was trial counsel ineffective for failing to investigate and present significant indicia of appellant's incompetency?

2. Did the Commonwealth use its peremptory strikes in a racially discriminatory manner, thus depriving appellant of his rights under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 1, 9, 13, & 26 of the Pennsylvania Constitution? Was appellant denied a full and fair opportunity to litigate his claim? Were all prior counsel ineffective for failing to litigate this claim?

3. Did the prosecutor use false evidence during the guilt phase of the trial? Were all prior counsel ineffective for failing to litigate this claim?

4. Did the prosecution fail to disclose portions of plea agreements with two prosecution witnesses? Were all prior counsel ineffective for failing to litigate this claim?

5. Did the trial court err when it failed to grant a motion for mistrial made after the Commonwealth failed to provide discovery concerning an identification of appellant by the victim's wife? Were all prior counsel ineffective for failing to litigate this claim?

6. Were references to cocaine and to appellant's incarceration contained in letters allegedly written by appellant improperly admitted at trial? Were all prior counsel ineffective for failing to litigate this claim?

7. Did the trial court err when it denied a mistrial motion based upon the Commonwealth's repeated efforts to present testimony concerning appellant's intent to deceive at the time he provided handwriting exemplars? Were all prior counsel ineffective for failing to litigate this claim?

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[5] This Court is aware of the felt need to leave no stone unturned when counsel presents a capital appeal. However, we note that the quality of representation is not measured by the number of issues raised. It is not necessary to raise patently unavailing matters in order to ward off fears of a later finding of ineffectiveness; a good attorney will not disguise and thus weaken good points by camouflaging them in a flurry of makeweight issues which clearly have no merit.

8. Did the trial court err when it denied a motion for mistrial based upon the prosecutor's prejudicial statement made in front of the jury? Were all prior counsel ineffective for failing to litigate this claim?

9. Did the prosecutor make an improper and prejudicial reference to appellant's failure to call witnesses at trial? Were all prior counsel ineffective for failing to litigate this claim?

10. Were all prior counsel ineffective for failing to litigate the impropriety of the prosecutor's summation in which her personal opinion was expressed concerning the credibility of appellant's testimony?

11. Did the trial court's accomplice instructions, which implied appellant was involved in the commission of the offense when the defense asserted was alibi, violate appellant's right to due process? Were all prior counsel ineffective for failing to litigate this claim?

12. Was trial counsel ineffective at capital sentencing? Were prior counsel ineffective under the same standards for failing to litigate trial counsel's ineffectiveness?

13. Did the application of the "D6" aggravating circumstance to appellant, who the jury may have found guilty as an accomplice, violate the plain meaning of the death penalty statute, and result in the arbitrary and capricious imposition of a death sentence? Were all prior counsel ineffective for failing to litigate this claim?

14. Is Pennsylvania's "significant history" of violent felony convictions aggravating circumstance unconstitutionally vague on its face and as it was applied to appellant? Were all prior counsel ineffective for failing to litigate this claim?

15. Did the constitutional infirmities in appellant's prior conviction result in an arbitrary and capricious finding of the “significant history” aggravating circumstance? Were all prior counsel ineffective for failing to litigate this claim?

16. Did the prosecutor knowingly use false evidence during the penalty phase? Were all prior counsel ineffective for failing to litigate this claim?

17. Did the prosecutor improperly inject her personal opinion regarding the propriety of the death penalty? Were all prior counsel ineffective for failing to litigate this claim?

18. Is appellant entitled to sentencing phase relief because the trial court's penalty phase jury instruction violated Mills v. Maryland? Were all prior counsel ineffective for failing to litigate this claim?

19. Did the trial court's failure to instruct the jury that "life imprisonment" means life without possibility of parole violate appellant's constitutional rights? Were all prior counsel ineffective for failing to litigate this claim?

20. Was appellant's death sentence a product of improper racial discrimination in violation of the Pennsylvania capital sentencing statute, the Pennsylvania Constitution, and the United States Constitution? Were all prior counsel ineffective for failing to litigate this claim?

21. Did the "proportionality review" performed by this Court violate due process and deny appellant meaningful appellate review? Were all prior counsel ineffective for failing to litigate this claim?

22. Were all prior counsel ineffective for failing to litigate the claims raised in this appeal?

23. Is appellant entitled to relief from his conviction and sentence because of the cumulative effect of the errors described herein?

To be entitled to relief under the PCRA, appellant must show, as to each claim, that the allegation of error has not been previously litigated or waived, 42 Pa.C.S. § 9543(a)(3), and that "the failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel." Id., § 9543(a)(4). An issue is previously litigated if "the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue…." Id., § 9544(a)(2).[6]

Appellant's claim that the trial court's penalty phase jury instruction violated Mills v. Maryland, 486 U.S. 367 (1988), has been previously litigated on direct appeal. Mills requires a death sentence be vacated if there is a substantial probability the trial court's

[6] Issues 3, 4, 5, 6 and 17 were raised in post trial motions and decided adversely to appellant. However, since the highest court in which appellant was entitled to review as a matter of right has not ruled on the merits of these issues, they are not previously litigated. See 42 Pa.C.S. § 9544(a)(2).

jury instruction could have led reasonable jurors to conclude they could only consider those mitigating factors which they unanimously found to exist. Id., at 384. On direct appeal, this Court relied on Commonwealth v. Frey, 554 A.2d 27 (Pa. 1989), which held where jury instructions stated a unanimous verdict is necessary to impose a death sentence, no further instruction is required regarding the fact that mitigating factors need not be found unanimously, since Pennsylvania's death penalty statute does not require unanimity in establishing mitigating circumstances. Williams, at 82. Accordingly, we rejected appellant's Mills claim, and he is not entitled to revive it under the PCRA.[7] See Commonwealth v. Bracey, 795 A.2d 935, 939 n.2 (Pa. 2001) (appellant cannot obtain post conviction relief of claims previously litigated on direct appeal by alleging ineffectiveness of prior counsel and presenting new theories of relief).

Appellant's claim that the aggravating factor in § 9711(d)(6) (killing committed during perpetration of felony) was improperly applied to him because he was an accomplice has also been previously litigated. On direct appeal, this Court addressed appellant's argument that this aggravating circumstance did not apply to him "because there was no proof presented that appellant, rather than his co-brutalizer, Draper, landed the fatal blow." Williams, at 83. This Court concluded: "This argument, when raised in the context of the penalty stage, does not even reach the level of

[7] Furthermore, the United States Supreme Court recently held Mills does not apply retroactively. See Beard v. Banks, 124 S.Ct. 2504 (2004). Since appellant's trial occurred in 1986, two years prior to Mills, the rule in Mills does not apply to his case.

speciousness; it is simply ludicrous." Id. We will not address the same claim, cloaked in a different theory of relief, in the collateral setting.[8]

All except two of appellant's remaining issues assert trial counsel's ineffectiveness during the guilt and penalty phases, as well as appellate counsel's ineffectiveness for failing to raise these issues on direct appeal. Any alleged error during the guilt and penalty phases has been waived because of trial counsel's failure to raise it; however, appellant may still obtain relief for trial counsel's ineffectiveness if he is able to demonstrate appellate counsel was ineffective for failing to pursue the claims. See Commonwealth v. Rush, 838 A.2d 651, 656 (Pa. 2003) (citing Commonwealth v. McGill, 832 A.2d 1014, 1022 (Pa. 2003) (when court is faced with "layered" ineffectiveness claim, only viable ineffectiveness claim is that related to most recent counsel, appellate counsel)).

We set forth the standard for preserving such "layered" ineffectiveness claims in McGill and Rush:

> In order to preserve a claim of ineffectiveness, a petitioner must "plead, in his PCRA petition," that appellate counsel was ineffective for failing to raise all prior counsel's ineffectiveness. Additionally, a petitioner must "present argument on, i.e. develop each prong of the Pierce test" as to

[8] Appellant contends Commonwealth v. Lassiter, 722 A.2d 657 (Pa. 1998) (plurality), mandates reversal of his death sentence. Lassiter held "[§] 9711(d)(6) may not be applied to an accomplice who does not 'commit' the killing in the sense of bringing it to completion or finishing it." Id., at 662. However, aside from the fact Lassiter was decided after appellant's judgment of sentence became final, the jury also found appellant had a significant history of violent felony convictions. Thus, another aggravating circumstance, § 9711(d)(9), existed, and no mitigating circumstances were found; the penalty would still have been death. See Commonwealth v. Christy, 515 A.2d 832, 842 (Pa. 1986) (since jury found one aggravating circumstance and no mitigating circumstances, death sentence upheld even though another aggravating circumstance is held invalid) (citing Commonwealth v. Beasley, 475 A.2d 730, 738 (Pa. 1984)); see also 42 Pa.C.S. § 9711(c)(1)(iv).

> appellate counsel's deficient representation. "Then, and only then, has the petitioner preserved a layered claim of ineffectiveness for the court to review; then, and only then, can the court proceed to determine whether the petitioner has proved his layered claim."

Rush, at 656 (citations and footnote omitted); see also McGill, at 1021-23.

The "Pierce test" requires appellant to prove, with respect to appellate counsel's performance, that: (1) the underlying claim of trial counsel's ineffectiveness has arguable merit;[9] (2) appellate counsel had no reasonable basis for failing to pursue the claim; and (3) but for appellate counsel's ineffectiveness, the result on direct appeal would have differed. See McGill, at 1022-23. This "performance and prejudice" test was first enunciated in Strickland v. Washington, 466 U.S. 668 (1984), and was recognized in Commonwealth v. Pierce, 527 A.2d 973 (Pa. 1987), as the proper test under the Pennsylvania Constitution. Failure to satisfy any prong of the test will defeat an ineffectiveness claim. Basemore, at 738 n.23 (citing Rollins, at 441) (ordinarily, post conviction claim of ineffective assistance of counsel may be denied by showing petitioner's evidence fails to meet single one of three prongs for claim).

Appellant has met the pleading requirement with respect to his remaining issues, as he alleges the ineffectiveness of both trial and appellate counsel. In his statement of questions presented, appellant inserts boilerplate ineffectiveness claims into many of his issues, asserting all prior counsel were ineffective for failing to litigate the issue.

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[9] An assessment of this prong requires appellant to establish each Pierce prong with respect to trial counsel's performance; failure to establish any one of the prongs concerning trial counsel will defeat the entire claim. Commonwealth v. Basemore, 744 A.2d 717, 738 n.23 (Pa. 2000) (citing Commonwealth v. Rollins, 738 A.2d 435, 441 (Pa. 1999)). This "merit" prong has been referred to as containing a "nested" argument--trial counsel's performance must be addressed in order to determine whether appellate counsel was ineffective for failing to argue trial counsel's ineffectiveness. See Rush, at 656.

Appellant also includes a general boilerplate assertion of "all prior counsel's" ineffectiveness as a separate issue. He presents argument concerning his underlying claims of trial counsel's ineffectiveness, thus satisfying the first prong of Pierce with respect to appellate counsel. However, he fails to develop the remaining two prongs concerning appellate counsel's stewardship; thus, he has failed to preserve his claims of appellate counsel's ineffectiveness as required by McGill.

Where the appellant has established the arguable merit of his underlying claim of trial counsel's ineffectiveness, remand may be warranted for the opportunity to correct his deficient pleading of the remaining two prongs regarding appellate counsel's ineffectiveness. Rush, at 657.

> Nevertheless, there is simply no need to remand a PCRA petition when the petitioner has not carried his Pierce burden in relation to the underlying claim of trial counsel's ineffectiveness, since even if the petitioner were able to craft a perfectly layered argument in support of his claim, the petitioner's claim would not entitle him to relief.

Id., at 657-58. Thus, we need not remand if appellant has not met his burden of proving his underlying claims of trial counsel's ineffectiveness.

As discussed below, appellant has not demonstrated his entitlement to relief on any of these underlying claims. Since all of appellant's underlying claims of trial counsel's ineffectiveness fail, his claims of appellate counsel's ineffectiveness are necessarily defeated as well. McGill, at 1023. Therefore, we need not remand in order for him to develop the remaining two prongs of Pierce with respect to appellate counsel. See Rush, at 657-58; McGill, at 1025.

Appellant first claims trial counsel was ineffective for failing to raise the issue of his competency to stand trial. Although no separate competency hearing was held, the issue was addressed at appellant's PCRA hearing, in conjunction with his claim that

counsel should have presented psychiatric mitigating evidence. The PCRA court reviewed the following evidence: a 1985 presentence psychiatric evaluation, for an unrelated offense, conducted 10 months prior to trial for the instant offense, which stated appellant was competent to proceed to sentencing; a defense expert's testimony that there was not enough information in the presentence report to determine competency, but appellant "may have been" impaired in his ability to assist counsel; another defense expert's testimony that appellant was not chronically psychotic, but that his ability to talk with his attorney about his past was impaired by his post traumatic stress disorder; two defense experts' testimony that appellant suffered no substantial organic impairment; defense counsel's testimony that although appellant had the opportunity to enter a plea bargain and receive a life sentence, appellant insisted he was not guilty and wanted to go to trial; and the entire trial record.

The PCRA court weighed all the evidence before it and concluded the presentence evaluation was most relevant, as it was conducted closest in time to appellant's trial; the current opinions of the defense experts concerning appellant's mental state at trial 12 years ago were, appropriately, afforded less weight. Furthermore, these experts had been retained for the purpose of evaluating appellant's claim that trial counsel should have presented psychiatric mitigating evidence, not to evaluate appellant's competency to stand trial. Most significantly, the testimony of defense counsel and the trial record revealed that while appellant may have been troubled at the time of his trial, he was not suffering from any mental impairment which would have rendered him unable to understand or participate in the proceedings. See 50 Pa.C.S. § 7402(a) (person is incompetent to stand trial when he is substantially unable to understand nature or object of proceedings against him or to participate in his

own defense). We perceive no abuse of the PCRA court's discretion in making this determination; accordingly, appellant is not entitled relief.

Appellant next claims the prosecutor exercised her peremptory challenges in a racially discriminatory manner, in violation of Batson v. Kentucky, 476 U.S. 79 (1986). Appellant also claims he should have been permitted to view the prosecutor's notes from voir dire, in order to establish his claim of purposeful discrimination. Appellant's claim is a derivative one, raised in the context of ineffective assistance, since trial counsel did not raise a Batson objection during voir dire. In Commonwealth v. Uderra, 2004 Pa. LEXIS 2499 (October 21, 2004), this Court held, "[I]n order to succeed on an unpreserved claim of racial discrimination in jury selection,…a post-conviction petitioner may not rely on a prima facie case under Batson, but must prove actual, purposeful discrimination by a preponderance of the evidence,…in addition to all other requirements essential to overcome the waiver of the underlying claim." Id., at 28-29 (citation omitted).

Beyond baldly asserting the prosecutor used 14 of 16 peremptory strikes against African-American jurors, appellant has not made the requisite showing. He provides no information concerning the race of the jurors who were acceptable to the Commonwealth but stricken by the defense, nor does he provide the racial composition of the final jury. However, the PCRA court noted its own records reflected that, of a possible 20 peremptory challenges, 14 were used against African-Americans, two were used against Caucasians, and four were unused. Furthermore, out of 111 venire persons, 43 were African-American, and the final composition of the jury was five

African-Americans and seven Caucasians. Based on these facts, the PCRA court properly concluded appellant had failed to establish he was entitled relief.[10]

Appellant's next claim focuses on the prosecutor's impeachment of defense witness Portie Robinson, who testified on direct examination that his fellow inmate, Marc Draper, had told him someone other than appellant committed the murder with him. To establish Robinson's bias against Draper, the prosecutor attempted to show Draper's father, a police officer, had participated in an investigation which led to Robinson's convictions. When Robinson denied this, the prosecutor presented the rebuttal testimony of the prosecutor from Robinson's trial, who stated he had provided Robinson's attorney with the name of Draper's father.

Appellant contends this rebuttal testimony was false; he argues Draper's father was never listed as a Commonwealth witness. However, the record belies appellant's argument; Draper's father was never called as a witness, so his name was not on the Commonwealth's witness list, but rather was given to defense counsel during an informal conversation, identifying him as one of the investigating officers. N.T. Trial, 1/31/86, at 1522-24. Accordingly, appellant's claim is meritless.

Appellant next claims the prosecutor failed to disclose to appellant, or to the jury, the full terms of co-defendant Marc Draper's plea agreement and the complete criminal

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[10] Appellant asserts the prosecutor's notes were essential to him at the PCRA hearing, because the prosecutor referred to them during her testimony and used them to prepare her testimony, and because they were relevant to the issue of whether she exercised racial bias in selecting the jury. However, the PCRA court permitted appellant to inspect a summary of the prosecutor's notes, from which she testified; appellant does not explain why the summary was an insufficient aid in his cross-examination of the prosecutor, and fails to demonstrate exceptional circumstances existed which required production of the actual notes. 42 Pa.C.S. § 9545(d)(2) ("No discovery, at any stage of proceedings under this subchapter, shall be permitted except upon leave of court with a showing of exceptional circumstances.").

history of Commonwealth witness Renee Rucker. Draper received a life sentence in exchange for pleading guilty to second degree murder and agreeing to testify against appellant. Appellant contends there were other charges against Draper arising from a previous robbery he had committed with appellant which the Commonwealth agreed to nolle pros in exchange for his testimony. This contention is meritless; other than his own assertion, appellant provides no support for this allegation. The record reveals Draper's full plea agreement was read into the trial record, and Draper acknowledged it was the full extent of his agreement. N.T. Trial, 1/22/86, at 661-63. Appellant's uncorroborated allegation does not entitle him to relief.

Appellant contends Renee Rucker was not cross-examined concerning her prior crimen falsi convictions under a different name. Appellant points to the fact there were two listings for "Renee Rucker" in Philadelphia County's data base, and one listing also had an alias and included four theft convictions. However, appellant acknowledges these two listings have different photo identification numbers, and he fails to show they are actually the same person. Thus, appellant's claim fails.

Appellant's next issue focuses on his identification by the victim's wife, Mamie Norwood. At trial, Mrs. Norwood testified she had seen appellant on her front porch the night of the murder. Appellant contends that, prior to trial, there was no indication this witness could identify him; however, during trial preparation, the prosecutor was informed the witness recognized appellant as the man on her porch, after seeing his picture in the newspapers three or four weeks before trial and then seeing him at the preliminary hearing. Appellant argues the trial court should have granted a mistrial because the defense was not notified of the witness's ability to identify appellant, and was thereby deprived of the opportunity to file a suppression motion.

"A defendant seeking relief from [a] discovery violation must demonstrate prejudice in order to be entitled to a new trial." Commonwealth v. Jones, 668 A.2d 491, 512 (Pa. 1995) (citation omitted). It appears from the sidebar discussion concerning this issue that the witness's ability to identify appellant was not known to the Commonwealth until one month before trial, when Mrs. Norwood mentioned the photos in the paper while being interviewed by the prosecutor in preparation for trial. See N.T. Trial, 1/14/86, at 191-94. The witness's trial testimony reveals she was never asked to identify the man on her porch, and she did not come forward with her recognition of appellant's newspaper photo until after the preliminary hearing. Id., at 129-30. There is no indication this information was deliberately withheld by the Commonwealth, nor has appellant demonstrated he was prejudiced by not being able to move for suppression of this testimony. Nothing in the record warrants the conclusion this identification was obtained by suggestive means or by any other means in violation of appellant's constitutional rights; therefore, a motion to suppress would have been futile. Finally, trial counsel vigorously cross-examined Mrs. Norwood concerning the conditions under which she saw the man on her porch, her initial inability to identify him, and her subsequent identification of appellant as that person. See id., at 117-132, 141-46. Accordingly, appellant has not demonstrated he is entitled to relief.

Appellant's next two issues focus on letters he allegedly wrote to Marc Draper while in prison, in an effort to convince Draper to lie at trial. Appellant argues these letters were improperly admitted into evidence at trial because they contained prejudicial references to drug activity and to appellant's incarceration. He further argues the trial court should have granted a mistrial based upon the prosecutor's questions to the handwriting expert who identified the letters as having been written by appellant.

With respect to appellant's argument that the letters contained prejudicial references to prior bad acts, it was made clear to the jury that the references to drug activity were merely part of the "story" concocted by appellant in order to disassociate himself from the murder; Marc Draper testified this story was clearly fiction. N.T. Trial, 1/22/86, at 732, 739, 748. Appellant's prison number and address were not redacted from the letters, but the trial court ruled there was no prejudice to appellant by leaving this information on the letters, since "the testimony clearly indicates that the [appellant] was in prison at the time; the inference being that he was awaiting trial on this case…." Id., at 756-57. Appellant's argument that the address revealed he was in state prison instead of county jail, and thus was serving time for a prior murder, is baseless. There was no evidence presented concerning appellant's prior conviction, and the address on the letters did not name the correctional facility or indicate it was a state prison; therefore, appellant's contention that the jury drew this inference is meritless.

Appellant argues the prosecutor's questions to the handwriting expert prejudiced him by suggesting he had tried to disguise his handwriting when he provided samples to the expert. The prosecutor's questions were asked in response to the expert's description of how he is able to detect attempts to alter or disguise one's handwriting; when the prosecutor asked if the expert could ascertain whether appellant had attempted to disguise his writing, defense counsel objected and the trial court sustained the objection. The expert never answered the prosecutor's questions, and the jury was later instructed counsel's questions do not constitute evidence. N.T. Trial, 2/3/86, at 1790. See Commonwealth v. LaCava, 666 A.2d 221, 231 (Pa. 1995) (it is well established that attorney's questions and statements are not evidence; juries are presumed to follow trial court's instructions). Accordingly, we perceive no prejudice to appellant.

Appellant's next three issues challenge the propriety of statements made by the prosecutor during the guilt phase. Appellant is entitled to a new trial on the basis of prosecutorial misconduct only where the unavoidable effect of the prosecutor's comments was to prejudice the jurors, forming in their minds a fixed bias and hostility toward appellant, such that they were incapable of weighing the evidence objectively and rendering a true verdict. Id., at 231. The prosecutor's comments cannot be viewed in isolation, but must be considered in the context in which they were made. Commonwealth v. Carpenter, 617 A.2d 1263, 1267 (Pa. 1992).

On redirect examination of appellant, defense counsel asked whether he was eligible to return to college that fall, and if he had been planning to return. The prosecutor, knowing this line of questioning would open the door to character evidence, which would permit her to rebut this testimony with evidence of appellant's prior convictions, stated, "Objection, your honor. You know, if we may see you at sidebar, I think counsel is opening up an area that he, indeed, will regret." N.T. Trial, 1/30/86, at 1392. Appellant argues this remark prejudiced him because the jurors could have inferred there was other damaging evidence against him which they were not allowed to consider. The trial court, however, after overruling the prosecutor's objection and admonishing her not to "characterize anything about what the defense is doing," id., immediately reminded the jurors the remarks of counsel were not evidence and instructed them to disregard the remark. Id., at 1397. Since the jury is presumed to have followed the trial court's instructions, LaCava, at 231, appellant has not demonstrated counsel's remark prejudiced him.

Appellant next claims the prosecutor impermissibly commented on his failure to call certain witnesses. During closing, the prosecutor stated:

> Now, ladies and gentlemen, this case is not a case of [trial counsel] against the Commonwealth. Bear in mind that the defendant's resources

> do not rely exclusively on his attorney. The defendant's case is the defendant's case, and whatever the defendant has or knows about this event, and if it were truthful, he has his opportunity, through his attorney, to bring in witnesses, to subpoena witnesses, to do what needs to be done on cross examination to bring out that truth.

N.T. Trial, 2/3/86, at 1660-61 (emphasis added).

A prosecutor may respond to defense arguments and is free to present her case with logical force and vigor. Commonwealth v. Koehler, 737 A.2d 225, 240 (Pa. 1999). The prosecutor's statements, viewed in the context in which they were made, were proper response to defense counsel's assertion in his closing argument that the defense does not have the "tremendous resources" the prosecution does:

> Generally, I would come before you and say what Terrence Williams has in his defense is [trial counsel]. The Commonwealth, as is their burden, has a tremendous amount of resources that they have available to it in order to build that case. Terrence Williams does not have access. I do not have access to those resource[s]….

Id., at 1627-28. The prosecutor's comments were fair response, and appellant's claim fails.

Appellant next claims the prosecutor, during closing, impermissibly expressed her personal opinion concerning the credibility of his testimony:

> Mar[c] Draper's deal, as it were, is not one of the happiest moments of a prosecutor. Prosecutors don't, generally speaking, like to make deals with murderers; however, I think that a distinction can be made between two persons who commit the same atrocious act, one of whom does everything he can, after committing the act, to right his wrong. Obviously, he can't bring the victim back to life but he can do what is necessary to bring all responsible to justice in this case. Compare that with a person who commits atrocious, murderous, malicious acts and then spends the rest of his days lying, covering up, suborning perjury, trying to make things seem as they're not. I think a distinction can be made in such a case.

Id., at 1695 (emphasis added). Viewed in context, these statements were not an opinion concerning appellant's credibility; the prosecutor was contrasting the evidence

of the Commonwealth's witness, Marc Draper, with that of appellant. Throughout trial, and during closing argument, defense counsel had attacked Draper's credibility; therefore, the prosecutor's comments were fair response. See Commonwealth v. Miller, 819 A.2d 504, 516 (Pa. 2002) (as long as prosecutor does not assert personal opinions, she may comment on witness's credibility, especially when witness's credibility has previously been attacked by defense). Further, the prosecutor was summarizing appellant's actions after the murder; evidence of appellant's attempts to escape responsibility had been presented at trial. The prosecutor's use of the phrase "I think," viewed in context, does not transform her comparison of appellant and Draper into personal opinion. Therefore, appellant's argument is baseless.

Finally, regarding the guilt phase, appellant claims the jury instruction regarding Draper's liability as an accomplice violated appellant's due process rights because it did not incorporate appellant's alibi defense, thus implying he had admitted complicity in the murder. In reviewing an allegation of an incorrect jury instruction, the charge must be viewed as a whole. Commonwealth v. Saranchak, 675 A.2d 268, 276 (Pa. 1996). Jury instructions will be upheld if they adequately and accurately reflect the law and are sufficient to guide the jury properly in its deliberations. Commonwealth v. Thompson, 674 A.2d 217, 219 (Pa. 1996). Here, the trial court instructed the jury:

> [W]hen a Commonwealth witness was so involved in the crime charged that he was an accomplice, his testimony has to be judged by certain precautionary rules.
>
> * * *
>
> In view of the evidence of Marc Draper's criminal involvement, you must regard him as an accomplice in the crimes charged and apply the special rules to his testimony. These are the special rules that apply in accomplice testimony: First, you should view the testimony of an accomplice with disfavor because it comes from a corrupt and polluted source….

N.T. Trial, 2/3/86, at 1773-74. Viewed in its entirety, the instruction adequately and accurately conveyed to the jury it should view Draper's testimony as coming from a corrupt source; it did not, as appellant contends, imply that because Draper was considered an accomplice, so was appellant. Furthermore, the jury had just been instructed regarding appellant's alibi defense: "The defendant's evidence that he was not present, either by itself or together with other evidence, may be sufficient to raise a reasonable doubt of his guilt in your mind." Id., at 1772. Accordingly, appellant's claim is meritless.

With respect to the penalty phase, appellant first argues trial counsel was ineffective for failing to investigate and present psychiatric mitigating evidence. Specifically, appellant contends counsel relied only upon appellant's unstable mother to suggest potential mitigation witnesses, and counsel never investigated appellant's records for mental health mitigation evidence. Appellant claims, had trial counsel properly investigated, he would have discovered numerous lay witnesses who would have testified concerning appellant's abusive upbringing and dysfunctional family history; he further claims counsel should have utilized the 1985 presentence psychiatric evaluation of Dr. Edwin Camiel, appellant's prison health records, and transcripts from appellant's previous murder trial. Based on these sources, appellant contends, trial counsel would have learned "[a]ppellant's adult mental illness (e.g., his psychosis, anxiety, delusions, paranoia and schizophrenic condition) all resulted from his [post traumatic stress disorder], which itself resulted from his abusive upbringing." Appellant's Brief, at 29.

"[T]his Court has declined to find counsel ineffective for failing to proffer testimony from a mental health professional to establish a mitigating circumstance where there is no showing that such testimony…would have been beneficial in terms of

altering the outcome of the penalty phase hearing." Commonwealth v. Howard, 719 A.2d 233, 238 (Pa. 1998). Appellant has not met this heavy burden.

At the PCRA hearing, appellant presented three mental health experts who testified that, had they seen Dr. Camiel's 1985 evaluation, they would have conducted further investigation concerning appellant's mental health. It is unclear, however, what beneficial information concerning any mental impairment at the time of the murder would have surfaced, given the evaluation's statement that appellant "denied any past psychiatric history." Report of Edwin P. Camiel, M.D., 2/27/85, at 2. While acknowledging appellant's very apparent mental agitation and expressing a concern that appellant was developing a psychotic disorder necessitating treatment, the evaluation clearly notes, "[t]his is the first evidence of psychiatric illness in this Defendant…." Id., at 3. Thus, based on the information in the evaluation, appellant's alleged mental illness surfaced after his incarceration; the evaluation gives no indication of any mental impairment at the time of the murder. Accordingly, trial counsel was not ineffective for failing to rely on this report.

The three mental health experts also testified that, at the time of the murder, appellant was acting under extreme mental disturbance and his capacity to appreciate the criminality of his conduct or to conform it to the requirements of the law was substantially impaired. See N.T. PCRA Hearing, 4/8/98, at 106; 4/9/98, at 375, 425; 4/13/98, at 551, 560. However, the PCRA court, weighing this testimony in context of the entire proceeding, along with the record evidence before it, concluded it was outweighed by testimony from these same experts that appellant "directed his hurt onto other people and that he was likely to respond to stressful situations in a manner without regard to the consequences." PCRA Court Opinion, 1/13/99, at 14. The PCRA court further noted the manner in which appellant planned and carried out the killing, as

well as his subsequent attempts to cover up the murder by burning the body. Id., at 15. Accordingly, we perceive no abuse of discretion by the PCRA court in weighing the evidence, and we will not disturb the court's determination. See Commonwealth v. Abu-Jamal, 720 A.2d 79, 93-94 (Pa. 1998) (this Court is bound by PCRA court's credibility determinations where there is record support for those determinations).

At the PCRA hearing, appellant also presented the testimony of several friends and family members concerning his abusive childhood, claiming counsel should have called these witnesses during the penalty phase. It does appear from the record of the penalty proceedings that the three mitigation witnesses counsel presented were not compelling;[11] however, counsel testified at the PCRA hearing it was his impression the mitigation witnesses utilized in appellant's first murder trial were not willing to cooperate as witnesses at this, his second. See N.T. PCRA Hearing, 4/17/98, at 767, 771-72. Counsel also testified, had he reviewed the presentence reports from appellant's prior trials, he would not have considered the issues of family dysfunction; rather, his tactic was to present appellant as a promising athlete, a well-liked and outgoing young man, for whom these charges were an extreme aberration. Id., at 765. Counsel further testified that towards the end of the guilt phase, he became concerned because "I had asked Mr. Williams for cooperation that [sic] I wasn't getting it." Id., at 791. Based upon this testimony, the PCRA court concluded appellant had not met his burden of demonstrating, had counsel presented such evidence during the penalty phase, there

[11] The witnesses were: appellant's mother, who testified concerning appellant's athletic accomplishments and only mentioned appellant's abusive upbringing briefly during cross-examination by the prosecutor; appellant's girlfriend, who testified appellant was a good father to their infant daughter and a sweet, honest person; and appellant's cousin, who gave a rambling narrative, peppered with Biblical references, about appellant being pressured by his teammates and getting into fights.

was a reasonable probability appellant would have received a life sentence. We will not disturb the PCRA court's credibility determination, and find no abuse of discretion by the court in this instance. Accordingly, appellant is not entitled relief on this claim.[12]

The next three issues concern the jury's finding appellant had a "significant history of violent felonies." 42 Pa.C.S. § 9711(d)(9). Appellant argues this aggravating circumstance is unconstitutionally vague on its face; he further contends the prior convictions on which it was based in his case were constitutionally infirm, and that the prosecutor presented false evidence concerning the facts of one of these convictions.

This Court has repeatedly rejected the argument that § 9711(d)(9) is unconstitutionally vague. See Commonwealth v. Hill, 666 A.2d 642 (Pa. 1995); Commonwealth v. Rivers, 644 A.2d 710 (Pa. 1994); Commonwealth v. Fahy, 516 A.2d 689 (Pa. 1986); Commonwealth v. Goins, 495 A.2d 527 (Pa. 1985); Commonwealth v.

[12] In his reply brief, appellant points to Williams v. Taylor, 529 U.S. 362 (2000), in which the United States Supreme Court found counsel ineffective for failing to conduct sufficient investigation of potential mitigating circumstances. Appellant contends counsel's preparation in that case was more extensive than that of appellant's counsel, and the high Court still found counsel's performance deficient and prejudicial. However, the mitigating evidence of the defendant's nightmarish childhood in Williams was significantly different than that in appellant's case; the neglect and abuse in Williams was so extensive as to require the parents' incarceration. Furthermore, as the PCRA court and this Court have concluded, appellant has not met his burden of demonstrating there was reasonable probability the presentation of this evidence would have resulted in a life sentence instead of the death penalty. Appellant had a significant history of violent felony convictions; this was not his first murder conviction. Therefore, we reject appellant's attempt to analogize Williams. See Commonwealth v. Williams, J-204-2002 (mitigation evidence would not have had reasonable probability of changing outcome of proceedings, where records were replete with indications of appellant's violent and aggressive history).

Beasley, 475 A.2d 730 (Pa. 1984). Appellant presents no compelling reason for us to overturn this line of cases.[13]

The prior convictions used to support this aggravating circumstance were appellant's 1982 conviction for robbery and burglary, and his 1984 murder conviction. Appellant now claims these convictions were obtained in violation of his constitutional rights, and recycles some of his arguments made on direct appeal of these convictions to the Superior Court. However, these convictions were affirmed on direct appeal, and have long since become final. See, e.g., Commonwealth v. Williams, No. 03247 Philadelphia 1996, unpublished memorandum (Pa. Super. filed November 12, 1997). Thus, appellant's claim fails.

Furthermore, there is no support for appellant's claim that the prosecutor introduced false testimony concerning the underlying circumstances of the 1982 robbery and burglary. Specifically, appellant claims testimony concerning his holding a rifle to the neck of one victim and firing it over the head of the other victim was false because his demurrer to the weapon possession charge in that case was sustained. However, the record belies appellant's claim; the Superior Court's opinion on direct appeal reveals appellant brandished the rifle and fired it to intimidate the victims. Id., at 3. Accordingly, appellant's claim is baseless.[14]

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[13] Appellant attempts to distinguish Proffitt v. Florida, 428 U.S. 242 (1976), on which this line of cases relied; he argues Proffitt involved a challenge to an allegedly vague mitigating circumstance. However, as this Court noted, Proffitt drew no such distinction: "a jury's evaluation of the aggravating and mitigating circumstances, as enumerated, requires no more line drawing than is commonly required of a factfinder in any law suit." Beasley, at 737 (citing Proffitt, at 257) (emphasis added).

[14] Further, even if this aggravating circumstance was not applicable to appellant, the jury found another aggravating circumstance, § 9711(d)(6), existed, and no mitigating circumstances were found; the penalty would still have been death. See n.8, supra.

Appellant next claims the prosecutor improperly injected her personal opinion regarding the propriety of the death penalty into her closing argument during the penalty phase: "He terrorized, he robbed, he blundered, and he killed, and he continued to kill, and I tell you, ladies and gentlemen, that if the death penalty doesn't apply to Terrance Williams, I don't know who it would apply to." N.T. Trial, 2/3/86, at 1876 (emphasis added).

"During the sentencing phase of a capital case, a prosecutor must be afforded reasonable latitude in arguing [her] position to the jury and [she] may employ oratorical flair in arguing in favor of the death penalty." Commonwealth v. Stokes, 839 A.2d 226, 231-32 (Pa. 2003) (internal citations omitted). Furthermore, "[a]t the penalty phase, the prosecutor has more latitude in presenting argument since the presumption of innocence is no longer applicable." Commonwealth v. Rompilla, 721 A.2d 786, 790 (Pa. 1998).

Viewed in the context of the entire statement, the underlined comment of which appellant complains was nothing more than oratorical flair; the prosecutor summarized the evidence of appellant's criminal acts and argued, from that evidence, that the jury should impose a death sentence. Accordingly, this claim is meritless.

Appellant next argues he was entitled to have the jury instructed that "life" means "life without parole," because Draper's testimony left the jury with the impression a prisoner serving a life sentence would be eligible for parole.[15] Draper testified that when

[15] Although such instruction is mandated in cases where the defendant's future dangerousness is at issue and defense counsel requests such instruction, see Simmons v. South Carolina, 512 U.S. 154 (1994); Commonwealth v. Christy, 656 A.2d 877 (Pa. 1995), Simmons was decided four years after appellant's judgment of sentence became final and thus is inapplicable to his case. Furthermore, appellant's future dangerousness was not at issue.

he first agreed to plead guilty in exchange for a life sentence, he was under the impression he would later be eligible for parole if he testified against appellant. N.T. Trial, 1/23/86, at 784-86. Appellant contends "[t]his incorrect information was never corrected by the prosecutor, defense counsel or the court…," Appellant's Brief, at 76; however, the record belies this claim. During the same line of questioning which revealed Draper's former misconception about his plea agreement, defense counsel queried, "But it is your understanding now that that's not part of your agreement?" and Draper responded, "Yes." N.T. Trial, 1/23/86, at 786-87. Defense counsel also stated during closing, while arguing for the imposition of a life sentence, that appellant would "never enjoy the fruits of being a father, because he will spend his entire life in jail." N.T. Trial, 2/3/86, at 1880. Furthermore, it was clear from Draper's testimony that he believed he might later be paroled because of his testimony against appellant; there was no similar cooperation with the Commonwealth by appellant. Therefore, appellant's claim is meritless.

Appellant next claims his death sentence was the product of improper racial discrimination, citing a 1998 study conducted by Professors David Baldus and George Woodworth which concluded the odds of an African-American defendant being sentenced to death in Philadelphia are more than four times greater than for other defendants. See David C. Baldus, et al., Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview, with Recent Findings from Philadelphia, 83 Cornell L. Rev. 1638 (1998). Appellant also relies on the "McMahon tape," a 1987 videotape in which a Philadelphia assistant district attorney, Jack McMahon, revealed a policy of racial discrimination in jury selection by members of that office. See Commonwealth v. Wharton, 811 A.2d 978 (Pa. 2002).

This Court has repeatedly rejected similar arguments on the basis that the mere existence of the tape does not demonstrate prejudice in a particular case. Rollins, at 443 n.10; see also Commonwealth v. Marshall, 810 A.2d 1211, 1228-29 (Pa. 2002); Commonwealth v. Lark, 746 A.2d 585, 588-89 (Pa. 2000). Similarly, we have rejected speculative arguments based on the study. See Commonwealth v. Morris, 822 A.2d 684, 698 (Pa. 2003) (citing Marshall, supra; Lark, supra). Although appellant discusses the Baldus study and the McMahon tape at length, he fails to demonstrate how these alleged discriminatory trends affected the jury selection in his case. He attempts to provide statistical evidence of the prosecutor's routine practice of striking African-Americans from jury panels, but, given the actual jury composition in this case was 41.6% African-American, he fails to show discrimination by the prosecutor. As appellant does not provide a link between the study/tape and the facts and circumstances of his particular case, his claim does not warrant relief.

Appellant next challenges this Court's proportionality review of his sentence on direct appeal, essentially claiming the data compiled by the Administrative Office of Pennsylvania Courts is unreliable and flawed. A similar argument was addressed in Commonwealth v. Gribble, 703 A.2d 426, 440-41 (Pa. 1997) (finding nothing arbitrary or capricious in proportionality review scheme), and rejected; appellant presents no compelling reason for us to revisit this issue. Furthermore, appellant fails to demonstrate any specific error resulting from this Court's application of the data to his case. Accordingly, this claim is meritless.

Finally, appellant claims the cumulative effect of all the alleged errors entitles him to relief. However, as this Court has repeatedly stated, "no number of failed claims may collectively attain merit if they could not do so individually." Commonwealth v. Williams, 615 A.2d 716, 722 (Pa. 1992) (emphasis in original). Accordingly, we affirm the PCRA

court's denial of relief; the Prothonotary of the Supreme Court is directed to transmit the complete record of this case to the Governor, pursuant to 42 Pa.C.S. § 9711(i).

Order affirmed. Jurisdiction relinquished.

Mr. Justice Baer files a concurring opinion.

Mr. Justice Nigro files a dissenting opinion.

Mr. Justice Saylor files a dissenting opinion.