

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARTIN CRISTIN : CIVIL ACTION  
a/k/a DANNY STANTON :  
 :  
v. :  
 :  
EDWARD BRENNAN, SUPERINTENDENT, :  
THE ATTORNEY GENERAL OF THE :  
STATE OF PENNSYLVANIA and THE :  
DISTRICT ATTORNEY FOR PHILADELPHIA :  
COUNTY : NO. 97-3856

MEMORANDUM AND ORDER

Fullam, Sr. J.

April , 2000

Petitioner Martin Cristin, whose correct legal name may well be Danny Stanton, was sentenced in 1994 to a term of not less than 15 years nor more than 30 years, for illegal fortune telling and theft by deception. He was also sentenced to pay a \$15,000 fine and to make restitution in the sum of \$25,000. The trial and sentencing occurred in petitioner's absence.

In 1997, he filed the petition for habeas corpus in this case. The Magistrate Judge to whom the case was referred recommended, initially, that the petition be dismissed without a hearing, primarily because the petitioner had not adequately sought relief in the state courts, and/or had waived his claims by failing to pursue state-court remedies. (At the time the present petition was filed, petitioner's application for relief under the Post Conviction Relief Act in the trial court had been

pending for nearly two years, without a decision.)

On March 31, 1998, I entered a Memorandum and Order returning the case to the Magistrate Judge so that the state court record could be obtained and considered, and with directions to rule upon petitioner's application for the appointment of counsel, and to hold an evidentiary hearing. After obtaining the state court record, the Magistrate Judge held a series of evidentiary hearings and further proceedings, and, on February 23, 1999, filed a report recommending that petitioner's failure to exhaust state remedies should be excused, and that the case should be considered on its merits. On March 11, 1999, I adopted the Magistrate Judge's recommendation, and directed the respondent to address the merits of petitioner's claims.

Petitioner and his wife are Gypsies. In 1992, they advertised the wife's fortune-telling credentials on a local Spanish-language television station. At least two of the persons who responded to the advertisement eventually turned over their life savings in order to obtain protection against evil and, in one case, a cure of incipient blindness. The money was, of course, supposed to be returned, but petitioner and his wife absconded with the money before the scheduled return date.

The wife was arrested in Houston, Texas on August 8, 1993, and extradited to Philadelphia for trial. The petitioner surrendered, and was arrested, on September 23, 1993.

The trial of both defendants was scheduled for September 14, 1994. Petitioner had signed a subpoena acknowledging his awareness of the scheduled date for trial. It is clear that he did not appear for trial on September 14th.

Initially, a young attorney named Jordan Cohen, an associate in the office of A. Charles Peruto, Jr., had entered an appearance on behalf of petitioner and his wife. But this had been done without Mr. Peruto's knowledge, Mr. Peruto had not been paid, and Mr. Cohen, a recent law school graduate, was neither prepared nor qualified to handle the case.

Another associate of Mr. Peruto, Vincent Campo, Esquire, advised the trial judge on September 14th that he had been informed by Mr. Peruto that the petitioner would be produced for trial on September 16th if the request for a two-day postponement were granted. Since it further appeared that the trial judge was involved in another trial on September 14th, and would not be available to try the case until the 16th, the case was rescheduled for trial beginning September 16th.

Petitioner did not appear for trial on September 16th. The case was rescheduled for October 7th, but the petitioner again failed to appear. Trial was rescheduled to commence on October 11, 1994, and was conducted in absentia when the petitioner again failed to appear. At the conclusion of the trial on October 13, 1994, the jury found the petitioner guilty

on all counts, and he was immediately sentenced as above set forth.

By the time the trial in absentia began, the trial court was aware of the following undisputed facts: Mr. Peruto had disclosed that Mr. Cohen had not been authorized to enter an appearance on behalf of Mr. Peruto or anyone else in his office; that Mr. Peruto had not been paid; that Mr. Peruto had never met petitioner or his wife; that Mr. Campo had never met petitioner or his wife; that Mr. Peruto was furious with petitioner, and would have preferred to prosecute him rather than defend him; and that Mr. Peruto was firmly convinced that actual conflicts of interest precluded any one lawyer from representing both petitioner and his wife.

The trial judge was also made aware that, except for the original September 14th listing, the only evidence that the petitioner had been notified of the various trial listings was Mr. Peruto's statement that he had been informed that the petitioner would not be present for trial.

In pressing for a trial in absentia the prosecutor assured the trial judge that all reasonable efforts to locate and apprehend the petitioner had been exhausted. The investigation established that the petitioner was not known to be in custody anywhere in the United States; and that a visit by a police investigator to the home where petitioner and his wife were

living at the time of their arrest disclosed that they appeared to be still living there, but were not present when the officer visited the property.

Although it is highly doubtful that the prosecutor or the police made adequate attempts to apprehend the petitioner and compel his presence at trial, so as to warrant proceeding in absentia, I conclude that petitioner is probably not entitled to relief on that ground, since the state court record gives rise to a permissible inference that, indeed, the petitioner had decided not to appear for trial, and the petitioner has made no attempt to rebut such an inference. Thus, although the record before the trial court at the time may not have fully justified proceeding in absentia, I conclude that any error in that regard was probably harmless.

But there are more serious problems. The state court record makes it unmistakably clear that the decision to proceed with trial in absentia was predicated upon the fact that the petitioner is a Gypsy. When the trial judge pointed out that, if the normal course were to be followed, he would merely have directed the issuance of a bench warrant, and continued the trial until the petitioner was apprehended the prosecutor protested on the ground that the petitioner was a Gypsy, and that Gypsies were notorious for avoiding trial and concealing each other's whereabouts. The trial judge was assured that the petitioner,

because he was a Gypsy, undoubtedly had access to large amounts of cash and the assistance of fellow-Gypsies.

There were numerous instances of ethnic references throughout the proceedings. Some examples follow:

(September 14, 1994)

"THE COURT: Bench warrant.

MR. ROSEN [The Prosecutor]: There is something different about this case if I could explain to the Court. Briefly, if I could, the charges are theft by deception and fortune-telling in this case. The defendants in this case are Gypsies. Allegedly what they do, they make their living by going from place to place...what's common in cases like this, when they were arrested they were arrested in Texas a year after the warrant was issued...what happens commonly is that they don't appear for trial. Frankly, we had a good idea they were not going to be appearing for trial here because that's what happens in cases involving Gypsies..."

(September 16, 1994)

"THE COURT: Why would I handle this case in any way different than any other case? They have service, bench warrant, bail order sued out.

MR. ROSEN: I'll be happy to explain this. The defendants in this case are Gypsies..."

(October 7, 1994)

"And I have officers here who are experts in these matters -- the defendants are Gypsies and do these type tactics as a matter of course..."

THE COURT: Why don't we seek to put them on NCIC and bring them in on bench warrant?

MR. ROSEN: We have done that and we are trying to do that. The problem with this case, as I have explained to the Court last time, there are two problems involved the first is not only are these not defendants who live

in Philadelphia so we can search with the Philadelphia police, they have a home address in Texas; however, frankly, they have access to a network that can take them anywhere in the country..."

Many additional references to ethnicity occurred in the presence of the jury, in the course of the trial. The prosecutor was not the first, or worst, offender in that regard. In the course of cross-examining a police witness, defense counsel (Mr. Campo) elicited testimony to the effect that the defendants were indeed Gypsies; that the police officer specialized in investigating Gypsy crimes; that Gypsies made a practice of preying on older persons; and that Gypsies, in general, had a reputation for being con artists and for conducting fraudulent schemes. The prosecutor then seized the opportunity to elaborate upon these assertions, in redirect examination and, to some extent, in closing argument.

Thus, I am persuaded that petitioner's constitutional rights were infringed because, in being subjected to trial in absentia, he was treated differently than he would have been but for his ethnicity, and because the trial itself was tainted with ethnic discrimination. There may be little doubt that the petitioner was actually guilty of the crimes with which he was charged, but the Constitution entitles him to a fair trial on those charges.

A further, separate, defect arises from the quite obvious fact that the petitioner did not receive constitutionally

adequate representation by counsel. Over their objections, both Mr. Peruto and Mr. Campo were directed to represent both petitioner and his wife, even though (1) Mr. Campo had never met or discussed the case with either petitioner or his wife, and Mr. Peruto had had only a telephone call from the petitioner; (2) Mr. Peruto had expressed, in no uncertain terms, his animosity toward the petitioner for having broken his alleged promise to pay a fee; and (3) representing both petitioner and his wife presented serious conflict of interest problems. For example, counsel were unable to argue (as they had represented they would have liked to do) either that, since the wife was the fortune-teller, petitioner's involvement in the entire scheme was trivial, even non-criminal, or that petitioner's wife was merely following his orders and was much less culpable than he.

It can be argued that Mr. Campo, who carried the laboring oar at trial, did the best he could under the circumstances. On the other hand, the arguments he presented seem singularly unlikely to persuade a rational juror (the victims and the defendants may all have shared a religious belief that the "treatments" proposed by petitioner's wife would be efficacious, for example). And I cannot believe that constitutional requirements can be deemed to have been satisfied when an attorney, appointed by the court without the defendants' knowledge and in their absence, with whom they have never

consulted, purports to "defend" them by advancing arguments based upon ethnic stereotyping.

Finally, as a matter of constitutional right, petitioner was entitled to have his sentence determined in accordance with the law. And that includes the right to have argument presented in his behalf, to have state statutes complied with, and to be treated in the same fashion as other defendants. In this case, however, although the prosecutor was permitted to argue for a lengthy prison sentence, there was no attempt at allocution or argument on behalf of petitioner; the trial judge merely announced that he was going to depart from the sentencing guidelines, and then proceeded to impose the maximum permissible sentence on each count, to run consecutively. For indulging in illegal fortune-telling, and for defrauding innocent victims of \$22,000, petitioner (who, so far as the record discloses, was a first offender) was sentenced to 15 to 30 years in prison, plus a \$15,000 fine, plus \$25,000 in restitution. Aggravated rapes, bank robberies and even many homicides do not result in sentences of that magnitude. Although petitioner's sentence did not exceed the statutory maximum, and is therefore not illegal in that sense, it does, in my view, represent a clear violation of the equal protection clause. Petitioner was treated more harshly simply because of ethnic stereotyping.

Viewed in its entirety, the state court record in this

case presents a shocking example of disregard for constitutional requirements. I find it disturbing indeed that the attorneys for the Commonwealth would even attempt to justify what occurred in this case.

For all of the foregoing reasons, petitioner is entitled to relief in this action.

An Order follows.

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ORDER

AND NOW, this day of April, 2000, IT IS ORDERED:

1. The petition of Martin Crispin, also known as, Danny Stanton, is GRANTED. Unless petitioner is granted a new trial, consistent with constitutional safeguards, within 120 days, petitioner shall be discharged from imprisonment.

2. The Court expresses appreciation to Elizabeth K. Ainslie, Esquire for her pro bono representation of the petitioner.

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John P. Fullam, Sr. J.