

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

Terrance Williams,	:	
	:	CIVIL ACTION
	:	
Petitioner,	:	
v.	:	NO. 97-7116
	:	
Martin Horn, Commissioner of	:	
the Pennsylvania Department of	:	
Corrections; Benjamin Varner,	:	
Superintendent of the State	:	
Correctional Institution at	:	
Greene,	:	
	:	
Respondents.	:	

MEMORANDUM

ROBERT F. KELLY, J.

JULY , 2000

This is a counseled Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. section 2254 ("the petition"), filed by Terrance Williams ("Petitioner"), who is presently incarcerated at the State Correctional Institution at Greene, Pennsylvania. On February 25, 1985, Petitioner was convicted by a jury in the Philadelphia Court of Common Pleas of third degree murder, theft by unlawful taking, and possession of an instrument of crime in connection with the beating and stabbing death of Herbert Hamilton. The Honorable Albert F. Sabo, who presided at trial, sentenced Petitioner to thirteen and one-half to twenty-seven years imprisonment.¹

¹ Subsequent to this sentencing, Petitioner was convicted in another murder case. The present conviction was used as an aggravating circumstance in that case, resulting in a sentence of

On November 10, 1998, United States Magistrate Judge Thomas J. Reuter filed a Report and Recommendation ("R & R") denying the petition. On January 14, 1999, Petitioner filed objections to the R & R, to which the Commonwealth responded. After a thorough and independent review of the file in this case, for the reasons that follow, this Court adopts the R & R, and the petition is dismissed.

I. STANDARD OF REVIEW.

"[A] district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." Martinez v. Chesney, et al., No.Civ.A. 97-6280, 1999 WL 722818, at *1 (E.D.Pa. Sept. 15, 1999)(quoting 28 U.S.C. § 2254(a)). If objections are filed to the magistrate judge's report, the district court is required to make a de novo determination of those portions of the report or recommendation to which objections are made. Johnson v. Faus, No.Civ.A. 93-6949, 1994 WL 230179, at *1 (E.D.Pa. May 27, 1994). The Court may accept, reject or modify part or all of the magistrate judge's findings and recommendations. Id. (citing 28 U.S.C. § 636(b)). However, although review is de novo, the court is permitted, by statute, to rely upon the magistrate judge's

death.

proposed findings to the extent that, within its discretion, it deems proper. Id. (citing States v. Raddatz, 447 U.S. 667, 676 (1980)).

II. DISCUSSION.

Magistrate Reuter based his R & R on a thorough review of Petitioner's 40-page Memorandum of Law in Support of his Petition for Writ of Habeas Corpus, the Commonwealth's 50-page Response to the Petition for Writ of Habeas Corpus, and Petitioner's 70-page Reply Memorandum of Law. The factual and procedural background in this case has been exhaustively detailed in the R & R, and this Court will not repeat that recitation here. Rather, we will confine our discussion to the merits of Petitioner's claims, which we will address individually.² In his petition, Petitioner raises the following claims:

- (1) the trial court denied Petitioner his constitutional right to compulsory process in refusing to compel the testimony of defense witness Gregory Lowe;
- (2) the trial court erred in failing to instruct the jury that evidence of self-defense negates a finding of malice required for murder; that the Commonwealth is required to prove malice beyond a reasonable doubt, (thereby improperly reducing the prosecution's burden in violation of Petitioner's due process rights); and that to prove malice, the prosecution must disprove self-defense beyond a reasonable doubt;
- (3) trial and appellate counsel were ineffective for failing to properly preserve for appeal the objections

² Petitioner is procedurally barred from bringing these claims as well. However, as we find that Petitioner's claims all lack merit, we will forego an examination of the law of procedural default as to his claims.

to the jury instruction described above in paragraph (2);
(4) the trial court failed to properly charge the jury on unreasonable belief voluntary manslaughter;
(5) trial counsel and appellate counsel were ineffective for failing to properly preserve for appeal the issue raised above in paragraph (4);
(6) trial counsel was ineffective for failing to introduce Petitioner's medical record into evidence at trial, and PCHA counsel was ineffective for failing to raise this issue; and
(7) the prosecutor knowingly made false statements in closing argument, and trial and appellate counsel were ineffective for failing to raise this issue in post verdict motions and on appeal.³

³ In Strickland v. Washington, the Supreme Court of the United States set forth a two-prong test for evaluating a claim of ineffective assistance of counsel. Strickland, 466 U.S. 668 (1984). A finding against Petitioner under either prong is sufficient to find for the government. United States v. Ciancaqlini, 945 F. Supp. 813, 816 (E.D.Pa. 1996).

First, Petitioner must show that counsel's performance was deficient, meaning that counsel made errors so serious as to deprive Petitioner of the "counsel" guaranteed by the Sixth Amendment. Strickland, 466 U.S. at 687. This evaluation must be based upon the facts of the case at the time of counsel's conduct. Id. at 690. "[T]he right to effective assistance of counsel does not guarantee that an attorney will never err." Diggs v. Owens, 833 F.2d 439, 446 (3d Cir.), cert. denied 485 U.S. 979 (1988). Therefore, to satisfy this prong, Petitioner must show that counsel's performance fell below an objective standard of reasonableness under the prevailing professional norms. Id. at 688. However, "[a]n attorney is presumed to possess skill and knowledge in sufficient degree to preserve the reliability of the adversarial process and afford his client the benefit of a fair trial." Diggs, 833 F.2d at 444-445. Consequently, great deference is given in evaluating counsel's performance, and there is a strong presumption that counsel's challenged actions constitute sound trial strategy. Strickland, 466 U.S. at 689.

Second, even if the court finds counsel's conduct to have been deficient, Petitioner must nevertheless show that his defense was prejudiced by the deficient performance in order to justify setting aside the verdict. United States v. Griffin, No. Crim. 91-612, 1993 WL 34927, at *5 (E.D.Pa. Feb. 9, 1993). To establish the requisite prejudice under this second prong,

A. The Testimony of Gregory Lowe.⁴

Petitioner argues that his Sixth Amendment right to compulsory process was violated by the trial court's failure to compel the testimony of Gregory Lowe. To sustain a claim that he was denied compulsory process, Petitioner must prove that: (1) he was denied the opportunity to present evidence in his favor; (2) that the excluded testimony would have been material and favorable to his defense at trial; and (3) the deprivation was arbitrary or disproportionate to any legitimate evidentiary or procedural purposes. United States v. Cruz-Jiminez, 977 F.2d 95, 100 (3d Cir. 1988)(citations omitted).

In the instant case, Petitioner claims a constitutional violation of his rights occurred when Judge Sabo refused to compel the testimony of Gregory Lowe, another prisoner, who had already once indicated to the court that he did not wish to testify, it was later discovered, because of a "deal" he had

Petitioner must show that counsel's errors were so serious as to deprive him of a fair trial, i.e., one having a reliable result. Strickland, 466 U.S. at 694. In order to do so, Petitioner must establish a reasonable probability that but for counsel's errors, the result of the trial would have been different. Id. A reasonable probability is one which is sufficient to undermine confidence in the outcome of the trial. Id. This second prong must be evaluated by a totality of the circumstances existing at the time of the trial since "a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support." Griffin, 1993 WL 34927, at *5 (quoting Strickland, 466 U.S. at 696).

⁴ Gregory Lowe is also known as Gregory Lee.

struck with a Detective Cimino in his own homicide case. Judge Sabo refused, not wanting to further delay the trial. Trial counsel did not object to this denial, explaining later at the September 10, 1990 evidentiary hearing ("the evidentiary hearing") required by the Superior Court on remand from Petitioner's appeal nunc pro tunc, that he did not know what the nature of Lowe's testimony would be and was afraid it would harm Petitioner's case.

We agree with Magistrate Reuter that Petitioner has failed to establish that Lowe's testimony would have been material and favorable to his defense. Judge Sabo heard what would have been Lowe's proposed testimony at the evidentiary hearing. Lowe claimed he would have testified that another individual, Marc Draper, told him that he, and not Petitioner, had actually killed the victim, having gone to the victim's house after Petitioner left the victim still alive, and stabbed him. Judge Sabo found that this testimony was incredible, and also that Lowe's several *crimen falsi* convictions weakened his credibility.

We concur with Magistrate Reuter and Judge Sabo that Lowe's testimony that Marc Draper admitted killing the victim was incredible and would not have contributed favorably to Petitioner's defense. Lowe would have testified that hours after leaving the victim's house, Petitioner told Marc Draper that he

had seen nude photos of Draper at the victim's house and that Draper asked Petitioner for the victim's keys, went to the victim's house, robbed him, and stabbed his inanimate body "a couple of times." Additionally, this already incredible testimony was contradicted by the testimony of Detective Cimino and Marc Draper at the evidentiary hearing, and the physical evidence that was introduced during trial. Detective Cimino denied that he and Lowe had ever discussed Petitioner's case. Marc Draper denied even knowing Lowe or ever telling him that he had killed the victim. Judge Sabo determined at the evidentiary hearing that Draper's testimony was credible. Moreover, the physical evidence established that in order for Draper to have been the killer, as Lowe would have testified, he would have had to inflict more serious and forceful wounds upon the victim than the "couple of times" Lowe claims Draper said he stabbed the victim. Further, by the time Lowe would have placed Draper at the scene, the physical evidence indicated that the victim was already dead or nearly dead. Finally, the medical examiner testified that the victim died of both stab wounds and blunt injuries; Petitioner admitted to inflicting blunt injuries with a baseball bat, albeit allegedly in self-defense. Lowe would not have testified that Draper inflicted any blunt injuries, only that he stabbed the victim a couple of times. Accordingly, the physical evidence showed that Petitioner did, in fact, kill the

victim, even if Lowe's testimony were believed. As such, Lowe's testimony would not have been favorable or material to Petitioner's defense. Accordingly, we agree with Magistrate Reuter that this claim is meritless.⁵

B. The Jury Instructions.

Petitioner claims that Judge Sabo failed to instruct the jury on the following points: (1) that evidence of self-defense negates a finding of malice; (2) that the prosecution is required to prove malice beyond a reasonable doubt; (3) and that the prosecution must disprove self-defense beyond a reasonable doubt. He also claims that the trial court failed to properly instruct the jury with regard to unreasonable belief voluntary manslaughter.⁶

Judge Sabo instructed the jury, in pertinent part, as follows:

It is not the defendant's burden to prove that he is not guilty. Instead, it is the Commonwealth that always has the burden of proving each and every element of the crime charged and that the defendant is guilty

⁵ Petitioner's argument that the trial court erred by failing to conduct a mid-trial hearing to determine whether Lowe was properly asserting his Fifth Amendment privilege is also meritless. Lowe did not assert his Fifth Amendment privilege.

⁶ The Commonwealth, citing to United States Supreme Court authority, argues that such challenges to a state court's application of state law do not provide a basis for habeas relief. However, again, we concentrate our analysis on the merits of Petitioner's claim only, as such determinations are clearly dispositive.

beyond a reasonable doubt. (N.T. at 778).⁷

The difference between murder and manslaughter lies in the fact that to constitute murder the unlawful killing must have been done with malice. Where an unlawful killing has been done without malice, the crime rises no higher or greater than manslaughter.

Malice may be of two kinds, either expressed malice as where there existed a particular ill will against a particular person, or implied malice which may be inferred from the surrounding circumstances or the character of the defendant's acts Thus malice is the thing which distinguishes murder from other types of homicide. Therefore, to determine whether a homicide constitutes murder, you must first determine whether malice was present. You must determine whether at the time of the killing the slayer was motivated by malice.

If there was no malice, there was no murder of any degree.

Please note that legal malice may be inferred and found from the attending circumstances. As a matter of law, you may infer legal malice from the intentional use without legal excuse or justification of a deadly weapon on a vital part of the body of the victim. . . . If you find that there were any qualifying facts indicating a contrary intent, such facts would prevent application of this principle by you. You may infer from such conduct that the act was done with malice. But if you find facts from the circumstances surrounding the defendant's conduct indicating a contrary intent on his part, you would not infer malice. (N.T. at 800-803).

Because the Commonwealth has the burden of disproving the defense of justification or self-defense, you may find the defendant guilty only if you are satisfied beyond a reasonable doubt that he did not reasonably believe that the use of deadly force was then and there necessary to protect himself against death or serious bodily injury. . . .

⁷ Citations to "N.T." are to the transcript of the trial, beginning on February 14, 1985.

In other words, if you're satisfied beyond a reasonable doubt that the defendant was not reasonable in his belief that the use of deadly force was then and there necessary to protect himself from the danger of death or serious bodily injury, then you may find the defendant guilty and the defense of justification would not be appropriate.

If you find as a fact from the evidence that Herbert Hamilton may have used force against the defendant, you may find the defendant guilty if you are satisfied beyond a reasonable doubt that he used deadly force . . . after provoking the victim, Herbert Hamilton, to use force against him

Also, you may find the defendant guilty if you are satisfied beyond a reasonable doubt that the defendant knew he could avoid the necessity of using deadly force with complete safety by retreating from the victim, Herbert Hamilton. . . .

(N.T. 816-818).

With regard to the instructions on voluntary manslaughter, Judge Sabo explained that the Commonwealth had the burden to disprove self-defense beyond a reasonable doubt. (N.T. at 816). He explained that voluntary manslaughter is "the intentional and unlawful killing of a human being without malice, either express or implied, but under the immediate influence of a sudden and intense passion resulting from serious provocation by the individual killed. The absence of malice is the controlling element which reduces an unlawful killing to voluntary manslaughter." (N.T. at 812). He instructed that self-defense or legal justification of the killing is a defense if Petitioner reasonably believed the force he used was immediately necessary to protect himself from force used by the victim. (N.T. at 815).

He instructed the jury that they must be satisfied beyond a reasonable doubt that Petitioner was not unreasonable in his belief that he needed to use deadly force to protect himself from the victim, and that they could find Petitioner guilty of voluntary manslaughter if they found that his belief that he needed to defend himself was unreasonable. (N.T. at 817).

"A jury charge must be viewed as a whole, and it must be determined whether the charge, taken as a whole, fairly and adequately submits the issues in the case to the jury." United States v. Dent, No.Civ.A. 99-2878, 1999 WL 717114, at *7 (E.D.Pa. Sept. 10, 1999)(citing Ely v. Reading Co., 424 F.2d 758, 760-61 (3d Cir. 1970)); Ayoub v. Spencer, 550 F.2d 164 (3d Cir. 1977)(citation omitted); Commonwealth v. Prosdocimo, 578 A.2d 1273, 1274 (Pa. 1990). Moreover, the failure to give a particularly worded instruction does not require reversal in the absence of prejudice, i.e., unless the jury charge improperly guided the jury in such a way as to violate due process. Dent, 1999 WL 717114, at *7 (citing United States v. Schlei, 122 F.3d 944, 969 (11th Cir. 1997)).

Petitioner first claims that Judge Sabo erred in giving the instruction on unreasonable belief voluntary manslaughter by instructing that if the jury found that Petitioner was unreasonable in his belief that the use of deadly force was necessary to defend himself, they could find him "guilty,"

without specifying that they could find him guilty only of voluntary manslaughter. This argument is without merit. As explained by Magistrate Reuter, the context within which this part of the instruction was made clearly established that Judge Sabo was referring to voluntary manslaughter. Further, by the time Judge Sabo gave this instruction, he had been discussing voluntary manslaughter, and not murder, for a period of time which spanned five pages of transcript. Accordingly, there is no indication that the jury did not comprehend that the reference to a finding of "guilty" pertained to voluntary manslaughter. Judge Sabo's jury charge on unreasonable belief voluntary manslaughter was proper and, we note, in conformity with 18 Pa.C.S.A. section 2503(b).⁸

Petitioner also claims that Judge Sabo's jury instructions were not in conformity with Commonwealth v. Heatherington, 385 A.2d 338 (Pa. 1978). The Heatherington court explained that a trial court must instruct the jury of the following: (1) in order to prove murder, the prosecution must

⁸ 18 Pa.C.S.A. section 2503(b) states

Unreasonable belief killing justifiable,- - A person who intentionally or knowingly kills an individual commits voluntary manslaughter if at the time of the killing he believes the circumstances to be such that if they existed, would justify the killing under Subchapter 5 of this title [relating to general principles or justification], but his belief is unreasonable.

prove beyond a reasonable doubt that the killing was malicious; (2) that evidence of self-defense tends to negate the malice required for murder; and (3) that in order to meet its burden of proof on the element of malice, the prosecution must disprove self-defense beyond a reasonable doubt. Heatherington, 385 A.2d at 341. Contrary to Petitioner's assertions, the Heatherington court did not require a verbatim recitation of the above language. Rather, the court instructed that while these concepts must be conveyed during the charge, "the trial court is free to use its own language in instructing the jury." Id.

Petitioner contends that, in violation of Heatherington, Judge Sabo failed to instruct the jury that the prosecution must disprove self-defense beyond a reasonable doubt. This contention is devoid of merit. As Magistrate Reuter pointed out, Judge Sabo expressly stated that "the Commonwealth has the burden of disproving the defense of justification or self-defense, and you may find the defendant guilty only if you are satisfied beyond a reasonable doubt that he did not reasonably believe that the use of force was then and there necessary to protect himself against death or serious bodily injury." (N.T. at 816).

Petitioner next asserts that the jury instructions did not state that the prosecution was required to prove malice beyond a reasonable doubt; this claim is likewise meritless.

Judge Sabo told the jury repeatedly that the Commonwealth had the burden of proving every element of the charged offense beyond a reasonable doubt, and also that malice is an essential element of murder. As Magistrate Reuter explained, viewed as a whole, Judge Sabo's instructions clearly and adequately conveyed this concept.

Finally, Petitioner claims that Judge Sabo failed to instruct that evidence of self-defense tends to negate malice. Again, this claim lacks merit. Viewing the totality of the charge, Judge Sabo instructed the jury that malice is an essential element of murder, and that without malice, there can be no murder. Judge Sabo further stated that malice may be inferred from the unjustified or unexcused use of a deadly weapon on a vital part of the victim's body, but that if the jury found a contrary intent, malice was not to be inferred. Judge Sabo instructed the jury that a killing without malice could only rise to voluntary manslaughter. Later, when charging on unreasonable belief voluntary manslaughter, Judge Sabo again stated that the Commonwealth had the burden of disproving self-defense beyond a reasonable doubt. These instructions were sufficient to convey to the jury that self-defense tends to negate malice. Judge Sabo imparted that the Commonwealth must prove malice beyond a reasonable doubt to support a finding of murder, and that malice requires the absence of legal justification. He stated that self-defense constitutes legal justification of the use of a

deadly weapon upon the victim. He also conveyed that the Commonwealth has the burden of disproving self-defense beyond a reasonable doubt. As such, this claim fails.⁹

C. The Medical Record.

Petitioner next argues that trial counsel was ineffective for failing to have his "medical record" admitted into evidence at trial. The "medical record" is a one-page document which does not identify its creator or its subject. It is unsigned. Portions of it are illegible. The legible portions at most establish that Petitioner was given sutures for a wound on his forehead.

The doctor who treated Petitioner for the wounds allegedly reflected in this document refused to speak with trial counsel. Judge Sabo offered to produce the doctor at trial, but trial counsel declined. Trial counsel did not attempt to contact the custodian of records at the medical institution where Petitioner was allegedly treated.

We agree with Magistrate Reuter that, even if the

⁹ Because these claims lack merit, they also fail as challenges of ineffectiveness of former counsel for failing to preserve or raise these claims. See United States v. Sanders, 165 F.3d 248, 253 (3d Cir. 1999) ("There can be no Sixth Amendment deprivation of effective counsel based on an attorney's failure to raise a meritless argument"); Martinez v. Chesney, No.Civ.A. 97-6280, 1999 WL 722818, at *3 (E.D.Pa. Sept. 15, 1999) (holding counsel cannot be held ineffective for failing to raise meritless claims since the result of the proceeding would not have been different had the claims been pursued) (citing Strickland v. Washington, 466 U.S. 668 (1984)).

failure to introduce this record was deficient, which is a logical stretch, Petitioner suffered no prejudice from this lapse. The medical record, if introduced, was not reasonably likely to change the outcome of the trial. It merely established that Petitioner had a cut on his forehead. It was more likely, in fact, to harm Petitioner's defense by highlighting that despite the fact that the physical altercation between himself and the victim was brutal enough to have caused such serious injuries to the victim, Petitioner emerged from the fray with minimal wounds. Such evidence was certainly not likely to have caused the jury to have reached a different verdict. Accordingly, this claim is meritless as to all former counsel.

D. Prosecutor Misconduct.

Petitioner challenges the prosecutor's comment during closing that there was "no evidence" that the victim ever "forced anyone to do anything." Petitioner claims that this remark was false in light of the excluded testimony of Bernard Collins, who would have testified that the victim had in the past threatened Collins for refusing to provide sexual favors. Judge Sabo excluded this testimony on the ground that Petitioner was not aware of the victim's alleged violent tendencies at the time of the killing. This ruling was correct under Pennsylvania law. Commonwealth v. Stewart, 647 A.2d 597, 598 (Pa.Super.), aff'd, 690 A.2d 195 (Pa. 1995) ("Where the evidence sought to be admitted

is a prior act of violence [by the victim] not reduced to a criminal conviction, the law requires that the violent act or acts be known to the defendant at the time of the homicide")(citations omitted). Moreover, Petitioner concedes that he is not challenging the correctness of this ruling. (Pet.'s Objections to November 10, 1998 R & R at 80, n.46).

Petitioner also claims that the prosecutor's statement that Petitioner's self-defense claim was unsupported by physical evidence, and that the only support for it was Petitioner's own testimony, was false in light of the medical record, which was not introduced into evidence.

These claims lack merit. There was indeed no evidence introduced at trial that the victim ever forced anyone to do anything against his will. Petitioner testified only that the victim attacked him. The trial court had excluded Collins' testimony¹⁰, and the medical record had not been introduced into evidence. We agree with Magistrate Reuter that the prosecutor could properly fashion her closing argument upon the evidence which was made part of the record, and was not required to credit evidence that was either not introduced or was excluded by refraining from commenting on its absence. Courts regularly

¹⁰ Incidentally, we note that Collins would not actually have testified that the victim ever "forced anyone to do anything," but instead would have testified that the victim threatened him when he indicated he did not want to have sex with a particular man in the victim's residence.

caution that prosecutors must confine their arguments to facts adduced at trial and legitimate inferences therefrom. See e.g., Commonwealth v. Goosby, 301 A.2d 673, 674 (Pa. 1973); Commonwealth v. Sanders, 551 A.2d 239, 249 (Pa.Super. 1988).

Logically, if prosecutors are not permitted to make reference to evidence favorable to them that is not introduced at trial, they should not be expected to give consideration to evidence outside the record for the sake of the defense.¹¹

Moreover, even if the prosecutor's comments were deemed to be improper, this claim would still lack merit.

"Prosecutorial misconduct merits a new trial when it materially affects the outcome." United States v. Coleman, 862 F.2d 455,

¹¹ In opposition to this position, Petitioner relies largely on Christy v. Horn, 28 F.Supp.2d 307 (W.D.Pa. 1998). Christy is not only not binding authority on this Court, but it is distinguishable. In Christy, defense counsel failed to introduce testimony from the defendant's physicians. Id. at 314. The defendant's medical records were excluded. Id. The prosecutor's closing argument depicted the defendant's mental illness defense as a sham. Id. at 317. The court found that the prosecutor's arguments were false and misleading, given the fact that the prosecutor knew first hand of the defendants' mental problems, having personally been involved in six involuntary commitment proceedings involving the defendant. Id. at 318. The prosecutor had also compiled records which specifically attested to the defendant's mental illness. Id. at 314. Unlike here, the Christy court was faced with a situation in which the prosecutor was certain of not only the existence, but the likely reliability, of the excluded evidence. Moreover, importantly, while the Christy court characterized the prosecutor's conduct as false and misleading, it could not conclude, in light of the evidence produced at trial, that the prosecutor's lack of candor before the jury had, with reasonable probability, affected the outcome.

457 n.2 (3d Cir. 1988)(citing Smith v. Phillips, 455 U.S. 209, 219 (1982)). However, the comments in this case do not rise to that level. The fact is that the medical record and Collins' testimony were not part of the record. The prosecution's allusion to that fact did not make it any less true, and as such would not have caused the jury to have reached a different verdict. Accordingly, this claim fails.¹²

An appropriate Order follows.

¹² Again, because this claim lacks merit, Petitioner's assertion that former counsel were ineffective for failing to raise it post-trial and on appeal also fails. See n. 8, supra.

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

Terrance Williams,	:	CIVIL ACTION
	:	
Petitioner,	:	
v.	:	NO. 97-7116
	:	
Martin Horn, Commissioner of	:	
the Pennsylvania Department of	:	
Corrections; Benjamin Varner,	:	
Superintendent of the State	:	
Correctional Institution at	:	
Greene,	:	
	:	
Respondents.	:	

ORDER

AND NOW, this day of July, 2000, upon careful and independent consideration of the Petition for Writ of Habeas Corpus, and after review of the Report and Recommendation of United States Magistrate Judge Thomas J. Reuter, and of Petitioner's Objections thereto, it is hereby ORDERED that:

- (1) The objections filed to the Report and Recommendation are DENIED.
- (2) The Report and Recommendation is APPROVED and ADOPTED.
- (3) The Petition for Writ of Habeas Corpus is DISMISSED.

(4) There is no probable cause for appeal.

BY THE COURT:

Robert F. Kelly,

J.