

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

<b>ROBBIE THOMAS</b>	:	<b>CIVIL ACTION</b>
<b>Petitioner,</b>	:	
<b>vs.</b>	:	<b>NO. 00-5948</b>
	:	
<b>KENNETH D. KYLER, et al.;</b>	:	
<b>THE DISTRICT ATTORNEY OF</b>	:	
<b>PHILADELPHIA COUNTY; and,</b>	:	
<b>THE ATTORNEY GENERAL OF</b>	:	
<b>THE STATE OF PENNSYLVANIA</b>	:	
<b>Respondents.</b>	:	

**ORDER AND MEMORANDUM**

**ORDER**

**AND NOW**, this 7<sup>th</sup> day of September, 2005, upon consideration of the Petition for Writ of Habeas Corpus Filed Under 28 U.S.C. § 2254 by *pro se* petitioner, Robbie Thomas, Respondents' Opposition, the Report and Recommendation of United States Magistrate Judge Diane M. Welsh dated September 17, 2004, the separate Objections filed by *pro se* petitioner, and the numerous additional Motions and documents filed by petitioner, **IT IS ORDERED** as follows:

1. The Report and Recommendation of United States Magistrate Judge Diane M. Welsh dated September 17, 2004, is **APPROVED** and **ADOPTED**;
2. All Objections filed by petitioner are **OVERRULED**;
3. The Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 filed by petitioner is **DENIED** and **DISMISSED**;
4. All Motions filed by petitioner other than those specifically ruled upon in separate Orders dated September 7, 2005, are **DENIED**; and,
5. Because petitioner has failed to make a substantial showing of the denial of a constitutional right, there is no basis for issuing a certificate of appealability.

## MEMORANDUM

### **I. PROCEDURAL HISTORY**

On January 24, 1992, petitioner pleaded *nolo contendere* to two counts of murder in the first degree. *See Commonwealth v. Thomas*, Nos. 5387-5392 Oct. Term 1990, Mem. Op. at 1 (C.P. Phila. filed Apr. 21, 1999). He was sentenced to two concurrent terms of life in prison. *Id.* Petitioner did not file a direct appeal.

On December 11, 1996, petitioner filed a *pro se* petition under the Pennsylvania Post-Conviction Relief Act (“PCRA”), 42 Pa. C.S.A. § 9541-46. Counsel, subsequently appointed, filed an amended PCRA petition on November 21, 1997. The PCRA Court dismissed the amended petition on January 27, 1999, following an evidentiary hearing.

On May 5, 2000, the Superior Court of Pennsylvania affirmed the PCRA Court’s dismissal of the petition. The Supreme Court of Pennsylvania denied an application for allowance of appeal on September 19, 2000.

On November 22, 2000, petitioner filed in this Court a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 in which he asserted various grounds for relief. On September 9, 2004, petitioner filed a Motion to Strike claims from the habeas petition. The Motion to Strike was granted by Order dated February 28, 2005. The granting of the Motion to Strike left only two claims in the habeas petition for adjudication, as follows:

1. “The violation of due process rights through the use of sexual favors by Philadelphia Homicide Detectives to influence nolo guilty plea; and,
2. The propriety of a nolo contendere in a capital case wherein the law forbids such a plea in capital cases. The initial adoption of PA. R. Crim. P. 319 in 1964 *codified* common

law permitting *nolo contendere* pleas, but did not add or detract from the existing law forbidding such pleas in capital cases. At the time of the said plea no case had overruled *Com. v. Shrope*, 264 PA 246, 107 A&L 729. This issue holds strongly as well as #1 a due process and equal protection violation.”

## **II. DISCUSSION**

The Magistrate Judge addressed the two remaining issues in the case in some detail in her Report and Recommendation - claimed violations of due process by police use of sexual favors to influence *nolo* plea and propriety of *nolo contendere* plea - and recommended that such claims be rejected. Petitioner has filed a myriad of Objections which are very difficult to follow. The Court will, however, address each of the Objections it gleans from the documents filed by petitioner after the issuance of the Report and Recommendation.

With respect to the violation of due process rights through the use of sexual favors by the police to influence a *nolo* plea, petitioner argues in the Objections that he did not receive a fair hearing and there was no basis for making a credibility determination against petitioner, and his fiancé, Medina Jones. The record belies petitioner’s claim.

The promise of sexual favors claim was addressed by Judge Carolyn Temin, the PCRA Judge, in her opinion dated April 19, 1999. In that opinion, she listed the dates on which the evidentiary hearing on this issue took place - July 27, 1998, August 14, 1998, September 1, 1998, October 5, 1998, October 26, 1998, and November 9, 1998. The hearing was completed on November 17, 1998, following which, on January 27, 1999, the PCRA petition was formally dismissed.

Judge Temin’s April 19, 1999 opinion summarizes the evidence presented at the hearing

and the arguments made by petitioner. Judge Temin correctly stated that, to be eligible for PCRA relief on the ground that the *nolo contendere* plea was obtained through the use of sexual favors, petitioner was required to plead and prove that his *nolo contendere* plea was unlawfully induced “where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent,” citing 42 Pa.C.S.A. § 9543(a)(2)(iii). Judge Temin concluded that petitioner had not met this burden, stating as follows:

“This Court finds that the testimony of Medina Jones and Robbie Thomas is wholly incredible. There has been no reliable evidence that suggests that Thomas was promised anything apart from the Commonwealth’s agreement that it would seek only two life sentences to be served concurrently. Moreover, the Court engaged Thomas in an extensive colloquy on whether any other promises or inducements were made to him in exchange for his plea. Thomas repeatedly answered ‘no.’”

The Superior Court made similar comments about the credibility of the testimony of petitioner and Medina Jones with respect to the sexual favors claim.

Petitioner, in his Objections, challenges the state court’s determination of a factual issue. The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. § 2244(d), increases the deference federal courts must give to the factual findings of state courts. *Werts v. Vaughn*, 228 F.3d 178, 196 (3d Cir. 2000). Federal habeas corpus relief is precluded as to any factual based claim adjudicated on the merits in state court unless such adjudication resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. *Id.* Pursuant to 28 U.S.C. § 2254(e)(1), a state court’s determination of a factual issue is “presumed to be correct.” A habeas petitioner “shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.” *Id.*; *Chatwick v. Janecka*, 312 F.3d 597, 607 (3d Cir. 2002); *Duncan v. Morton*, 256 F.3d 189, 196

(3d Cir. 2001). This presumption applies to the factual determinations of both state trial and appellate courts. *Duncan*, 256 F.3d at 196. Moreover, under Supreme Court and Third Circuit precedent, the presumption of correctness under the habeas statute applies to implicit factual findings as well as the express findings of state courts. *See Campbell v. Vaughn*, 209 F.3d 280, 285-86, 290 (3d Cir. 2000), *cert denied*, 531 U.S. 1084 (2001).

Judge Temin's determination of the factual issues presented - the question whether petitioner's *nolo contendere* plea was obtained through use of sexual favors - is presumed to be correct. Petitioner has the burden of rebutting that presumption by clear and convincing evidence, and he has failed to do so. He has presented no new evidence. Instead, he argues that Judge Temin had no basis for making a credibility determination. The Court rejects that argument; it provides no basis for habeas relief in this case. For all of the foregoing reasons, petitioner's objections to that part of the Report and Recommendation which addresses the use of sexual favors claim are overruled.

The second claim presented by petitioner is that the plea of *nolo contendere* is not permitted in a capital case under state law. The Magistrate Judge rejected that claim on the ground that it was presented in state court as a state issue, not a federal issue. A review of the record, as supplemented, discloses that, although the sexual favors issue was presented in state court as a federal issue, the unlawfulness of the *nolo contendere* plea was presented only as a state issue. Thus, petitioner's argument that this Court should address the alleged unlawfulness

of the *nolo contendere* plea is rejected and his objection to that part of the Report and Recommendation is overruled.

**BY THE COURT:**

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**JAN E. DUBOIS, J.**