

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

SAHARRIS ROLLINS	:	CIVIL ACTION
	:	
v.	:	00-1288
	:	
MARTIN HORN, COMMISSIONER,	:	
PENNSYLVANIA DEPARTMENT OF	:	
CORRECTIONS, CONNER BLAINE,	:	
JR., SUPERINTENDENT OF THE	:	
STATE CORRECTIONAL INSTITUTION	:	
AT GREENE, JOSEPH P.	:	
MAZURKIEWICZ, SUPERINTENDENT OF	:	
THE STATE CORRECTIONAL	:	
INSTITUTION AT ROCKVIEW	:	

JOYNER, J.

August 17, 2006

MEMORANDUM AND ORDER

Via the motion now before us, Petitioner seeks reconsideration of this Court's Memorandum and Opinion of July 26, 2005. For the reasons set forth below, Petitioner's motion is denied.

I. Background

Petitioner, Saharris Rollins ("Petitioner" or "Rollins"), seeks reconsideration of this Court's decisions set forth in Rollins v. Horn, Civ. A. No. 00-1288, 2005 U.S. Dist. LEXIS 15493 (E.D. Pa. July 26, 2005). On July 26, 2005, this Court considered Rollins' Petition for Writ of Habeas Corpus, and determined that sufficient errors of defense counsel and the Pennsylvania Supreme Court existed with regards to the penalty phase of Petitioner's trial to grant a writ as to Petitioner's sentence of death, but denied the petition as to the underlying

murder conviction.¹ Petitioner now seeks reconsideration of this Court's denial of his petition as to his conviction.

II. Discussion

A motion to alter or amend judgment filed pursuant to Federal Rule of Civil Procedure 59(e) must show (1) an intervening change in controlling law; (2) the availability of new evidence not available previously; or (3) the need to correct clear error of law or fact to prevent manifest injustice. North River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995) (citations omitted). Petitioner does not contend that the controlling law has changed. Petitioner's initial motion seeks reconsideration based on errors of fact or law. Petitioner's supplement to that motion asks this Court to consider new evidence.

A. Batson Challenge

Petitioner asks this court to reconsider its dismissal of his Batson claim. Petitioner contends that the prosecutor struck potential jurors based on their race in violation of Batson v. Kentucky, 476 U.S. 79 (1986), and that the trial court erred in allowing the prosecution to exercise these strikes without holding a hearing or allowing discovery.

¹The factual and procedural history of this case is set forth in detail in this Court's earlier opinion. See Rollins, 2005 U.S. Dist. LEXIS at *1-5.

1. Application of AEDPA Review

Petitioner argues that this Court improperly applied the AEDPA standard of review in considering his Batson claim. (Pet.'s Br. at ¶ 20.) This Court, in its initial analysis of Petitioner's claims and the appropriate standards of review, concluded that Petitioner's claims of prosecutorial misconduct and trial court error were not adjudicated on the merits by the Pennsylvania Supreme Court.² Rollins, 2005 U.S. Dist. LEXIS at

²Our discussion reads, in relevant part, as follows:

From the outset, the Pennsylvania Supreme Court clearly and expressly announced that it would only address Rollins' ineffective assistance of counsel claims, as the claims of trial court error and prosecutorial conduct were waived. Rollins II, 738 A.2d at 440-41. The Pennsylvania Supreme Court discussed Rollins' waived claims only because Pennsylvania law requires a claimant proceeding with an ineffective assistance of counsel claim to show that the underlying claims have arguable merit. Rollins II, 738 A.2d at 441; see Sistrunk v. Vaughn, 96 F.3d 666, 669 (3rd Cir. 1996) (discussing Pennsylvania's three-pronged ineffective assistance of counsel analysis). Generally, where a state court disposes of a federal claim on sufficient state law procedural grounds, but later discusses the merits of that claim in the alternative, the state law grounds control for the purpose of federal habeas review. See Sistrunk, 96 F.3d at 673-75 (honoring, for the purposes of procedural default, the state courts' disposal of a federal Batson claim on procedural grounds, although the state court also discussed the merits of the Batson claim in the context of a second ineffective assistance of counsel claim); see also Harris, 489 U.S. at 264 (holding that federal courts are required to honor state law grounds providing a sufficient basis for the state court's judgment, even when the state court also relies on federal law). Because the Pennsylvania Supreme Court in Rollins II clearly established that Rollins' trial court error and prosecutorial misconduct claims were procedurally barred by the doctrine of waiver, we do not read the Court's later discussions of these issues in the context of the ineffective assistance of counsel as an indication that it was declining to apply that procedural bar.

As the Pennsylvania Supreme Court's discussion of Petitioner's underlying claims of trial court error and prosecutorial misconduct in the context of his assistance of counsel claim does not constitute an adjudication "on the merits," we must review these underlying claims de novo, rather than applying AEDPA's deferential standard of review. The ineffective assistance of counsel claims are, however, subject to AEDPA review, as they were clearly adjudicated on the merits in Rollins II.

Rollins, 2005 U.S. Dist. LEXIS at *15-19.

*15-19.

In discussing Plaintiff's Batson claim, however, we noted that

Petitioner exhausted these claims on post-conviction review before the Pennsylvania Supreme Court. Rollins II, 738 A.2d at 442-43; See *supra*, Part I.A. While the Pennsylvania Supreme Court did not adjudicate these claims on their merits, Petitioner's substantive Batson claim was addressed on its merits by the PCRA trial court. Thus, we will review the PCRA trial court's decision using the AEDPA's deferential standard of review. See supra, Part II; see generally, Branson v. Vaughn, 398 F.3d 225; 232 (3d Cir. 2005); Hardcastle v. Horn, 368 F.3d 246, 254-55 (3d Cir. 2004).

Rollins, 2005 U.S. Dist. LEXIS at *92 n.23. While these two conclusions might initially seem contradictory, closer inspection reveals that the latter merely narrows the scope of the former.

We concluded that the Pennsylvania Supreme Court did not adjudicate Petitioner's claims of trial court error and prosecutorial misconduct "on the merits" in reviewing the decision of the PCRA trial court. In examining Petitioner's Batson claim, however, we concluded that the AEDPA deferential standard was appropriate because another state court - the PCRA trial court - had adjudicated Petitioner's substantive Batson claim on the merits. In so concluding, we relied on cases that applied the AEDPA standard to a claim even where the Pennsylvania Supreme Court did not adjudicate that claim on its merits when considering a petitioner's appeal of the denial of his PCRA petition. These claims were raised on direct appeal, and had, therefore, been adjudicated on the merits at that stage. While

Petitioner did not raise his Batson claim on direct appeal, he did raise it in his PCRA petition, and it was considered and adjudicated on its merits by the PCRA trial court. See Branson v. Vaughn, 398 F.3d 225; 232 (3d Cir. 2005); Hardcastle v. Horn, 368 F.3d 246, 254-55 (3d Cir. 2004).

Petitioner presents no authority precluding our consideration of earlier state court determinations on the merits where those issues have not been decided on the merits by the highest court. Furthermore, while the latter part of the analysis might have added clarity if included in the section containing the former, the manner in which this Court structures its opinions does not give rise to any clear error of law.

2. Refusal to Consider Certain Arguments

Petitioner argues that this Court wrongfully refused to consider certain arguments offered in support of Petitioner's Batson claim on the basis that they were not presented before the PCRA court. Petitioner asserts that this conclusion is an error of both fact and law.

Specifically, Petitioner challenges this Court's refusal to consider his arguments that the following supported a prima facie case under Batson: (1) the prosecutor kept a careful record of venirepersons' race, (2) strikes were used against prospective jurors of the same race as Petitioner, and (3) the prosecutor assured the trial court that he would put his race-neutral reasons for his strikes on the record, but never did so. (Pet.'s

Mot. ¶¶ 8(b)-(d); 10.) In deciding not to consider certain arguments, we concluded that it was "clear from review of the PCRA petition that Petitioner did not raise these arguments before the PCRA court; thus, we cannot consider them here." Rollins, 2005 U.S. Dist. LEXIS at *105 (citing Holloway v. Horn, 355 F.3d 707, 723 n. 11. (3d Cir. 2004)).

Petitioner asserts that this conclusion is factually incorrect because arguments (1) and (3) were presented to the PCRA court in Petitioner's Response to Proposed Summary Dismissal ("Response"), which was filed on May 5, 1997. (Pet.'s Mot. ¶ 11.) Petitioner argues that (2) was also part of the Response in that Petitioner noted that he is was an African-American man challenging the use of peremptory challenges to exclude African-Americans from the jury. (Id.) Next, Petitioner further argues that even if these arguments were not presented in state court, they must be considered as long as Plaintiff fairly presented his claim under Batson in state court. (Pet.'s Mot. ¶ 12 (citing Miller-El v. Cockrell, 537 U.S. 322, 347 (2003)).)

Petitioner's assertion that we refused to consider that peremptory challenges were used against members of Petitioner's racial group might support a prima facie case is itself factually incorrect. We discussed at some length that the PCRA trial court acknowledged Petitioner's claim that venirepersons of the same race had been struck, but concluded that the totality of the circumstances did not support a prima facie pattern of

discrimination. Rollins, 2005 U.S. Dist. LEXIS at *101-103.

While both the PCRA trial court and this court concluded that this argument, considered within the circumstances, did not give rise to a prima facie case, neither the PCRA trial court nor this Court declined or refused to consider it.

With regard to Petitioner's arguments that the prosecutor's admitted note-taking and later failure to make a record of those notes or his race-neutral reasons for strikes, Petitioner correctly points out that these arguments were presented, at least to some extent, in the Response. We are not entirely convinced that we must consider them either because of their presence in the Response, or because of the arguable holding of Miller-El. Even if we should have considered these arguments, failure to do so is not a clear error of law or fact resulting in manifest injustice because our conclusion would be the same.³

Petitioner argues that the prosecutor's admission that he was keeping a record of the strikes and the races of the

³Petitioner contends that both the PCRA trial court and this court erred in denying his request for discovery and a hearing because only discovery would afford Petitioner the opportunity to make out a prima facie case. It is within this Court's discretion to permit discovery for good cause shown. See, e.g., Deputy v. Taylor, 19 F.3d 1485, 1493 (3d Cir. 1994). To show good cause, a petitioner must set forth specific allegations that suggest that the petitioner might be entitled to relief if the facts were fully developed. Id. Petitioner has not shown that, even provided the opportunity for discovery, that his Batson claim can provide relief. His proffer with regards to the number of strikes in comparison to the city's population suggests approximately a ten percent difference in the ratio - hardly comparable to the cases he cites. See Marshall v. Beard, N. 03-3308, 2004 U.S. Dist. LEXIS 17507, *12-14 (E.D. Pa. Aug. 26, 2004) (prosecutor struck 7 of 12 African-Americans [53%] as compared to 7 of 24 whites [29.2%] and 11 of 22 women [50%] as compared to 3 of 18 men [16%]); Love v. Jones, 923 F.2d 816, 819 (11th Cir. 1991) (prosecutor's stated reasons included race). Thus, we are not convinced that it was a manifest error to conclude that Petitioner had not shown good cause to allow discovery or an evidentiary hearing.

venirepeople supports a prima facie Batson case. Petitioner relies on Miller-El, which noted that the possibility that strikes were discriminatory "could be reinforced by the fact that the prosecutors marked the race of each prospective juror on their juror cards." First, there is no indication that the prosecutor marked the juror cards or attempted to manipulate the juror cards in the manner used by Texas prosecutors in Miller-El. Second, that the Court concluded that such markings "could" reinforce a conclusion of discriminatory strikes, it did not make a blanket statement that all notations as to race or other reasons for strikes support a prima facie case under Batson.

Finally, we are not convinced that the prosecutor's admission that he took notes could give rise to any inference of discrimination sufficient to make out a prima facie case. A Batson challenge in Pennsylvania state court at that time strictly required a detailed analysis of the race of all venirepersons removed by the prosecution, the race of the jurors who served, or the race of jurors acceptable to the Commonwealth who were stricken by the defense. See Commonwealth v. Spence, 627 A.2d 1176, 1182-83 (Pa. 1993). In light of this requirement, notes as to the jurors' race, made by either the prosecution or defense, cannot be viewed as having the same effect as the jury card notations had in Miller-El. Thus, even considering this argument, our conclusion would be the same.

Petitioner contends that the prosecutor's failure to follow up on his assurance that he would put facts on the record in rebuttal of defense counsel's objection. Petitioner asserts that the prosecutor's silence, despite his opportunity to set forth race-neutral reasons for his strikes, supports a prima facie case under Batson. Petitioner offers no authority in support of this conclusion. Given that race-neutral reasons are only required to be presented if a defendant makes out a prima facie case, we cannot conclude that the prosecutor's decision not to volunteer further information where defense counsel had not successfully set forth a prima facie case can, in turn, support a finding that a prima facie case existed. This logic is circular, and would defeat the burden-shifting structure applicable to Batson claims. Particularly in the absence of any authority to support this inference, there has been no clear error that led to a manifest injustice.⁴

Petitioner conflates the question of whether a court considered an argument with that of whether a court was persuaded by that argument. While Petitioner phrases his challenges in terms of whether arguments were "considered," the real issue he

⁴Petitioner also asserts that we could not properly conclude that the PCRA court's reliance on other reasons for strikes was reasonable where no reasons had been placed on the record. Our conclusion, however, was not that Judge Sabo properly speculated as to the reasons, but rather that he was not unreasonable in relying on his own observation that there were facially apparent race-neutral reasons for the challenged strikes. See Rollins, 2005 U.S. Dist. LEXIS at *104. Petitioner has produced no "clear and convincing" evidence that these conclusions were unreasonable. Further, this was not the only item on which the state court relied. Id. Thus, Petitioner has shown no clear error of law or fact that creates a manifest injustice.

seeks to have resolved in his favor is whether the courts reviewing these arguments should have found them persuasive and, therefore, made them part of the basis for their decisions. Even if we were required to expressly "consider" these arguments in our analysis of the totality of the circumstances, we would still conclude that the PCRA court's findings were reasonable. Thus, Petitioner has shown no clear error resulting in manifest injustice.

3. Requirement of a Causal Link for Training Video

Petitioner contends that this Court's analysis of Petitioner's argument with regards to the training video was an error of law. Petitioner further argues that we should consider newly discovered evidence that another member of the Philadelphia District Attorney's Office advocated the use of racial criteria in jury selection.

This Court's conclusion that discriminatory intent cannot be inferred from the mere existence of the training video is hardly novel. Courts have consistently declined to make this inference, with the exception of those cases in which the petitioner was actually prosecuted by the creator of the tape. See Holloway v. Horn, 161 F. Supp. 2d 452, 520 (E.D. Pa. 2001); Peterkin v. Horn, 988 F. Supp. 534, 540-41 (E.D. Pa. 1997); Commw. v. Basemore, 744 A.2d 717, 731 (Pa. 2000).⁵ Where the petitioner's case was

⁵Notably, the Pennsylvania Supreme Court in Basemore reiterated its holding with regards to Petitioner's PCRA claim that the tape itself is not sufficient to infer discrimination. Basemore, 744 A.2d at 731 (citing Rollins, 738 A.2d at 443 n.10).

prosecuted by a different attorney, the courts have required some evidence of a link between that attorney and the tape. Id. Petitioner has presented no facts supporting any direct link between the prosecutor in his case and the training video.⁶ In light of this authority, Petitioner has not shown any manifest error of law or fact in our earlier decision.

Petitioner's supplemental motion argues that a 1990 presentation by Bruce Sagel, who served as the Training Director for the Philadelphia District Attorney's office at that time, paralleled the training video and, therefore, establishes a pattern and practice of using discriminatory strikes that extends to the entire District Attorney's office. (Pet.'s Second Supp. ¶¶ 5-17.) We cannot find, however, that a training lecture that took place three years after Petitioner's trial⁷ is sufficient to infer any discriminatory pattern or practice at the time of Petitioner's trial, or any specific discriminatory intent on the part of the prosecutor who handled his case. Furthermore, this argument suffers from the same deficiency as Petitioner's assertions with regard to the training video. Attorney Sagel was not the prosecutor on Petitioner's case, and Petitioner has not shown anything suggesting that the prosecutor in his case was

⁶Petitioner's supplemental motion asserts that "[i]n the Supplement to the Rule 59(e) motion, Petitioner showed that there is evidence of a 'causal link'." (Pet.'s Second Supp. ¶ 4.) Petitioner, however, has filed only the initial motion (Doc. No. 36) and his Second Supplement (Doc. No. 45), and only the information and arguments contained in those documents is currently before us.

⁷Petitioner was sentenced on March 6, 1987. The alleged Sagel lecture took place on August 14, 1990. (Pet.'s Second Supp. ¶ 8.)

aware of or attended the alleged lecture.⁸ As in the case of the video, the mere existence of statements with regard to misuse of the jury selection process is not sufficient to infer a prima facie Batson claim. Thus, this new evidence has no effect on our earlier decision.

4. Certificate of Appealability

Petitioner asserts that, at a minimum, this Court should grant Petitioner a Certificate of Appealability ("COA") on the question of whether a hearing is appropriate to resolve the Batson claim. A COA is appropriate where a petitioner shows that "reasonable jurists could debate whether (or for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.'" Miller-El I, 537 U.S. at 336 (quoting Slack v. McDaniel, 529 U.S. 473, 483 (2000)). As discussed above, we are not persuaded of the existence of any clear error of law or fact in the substance of our opinion. Nor are we convinced that, given the supporting authority, reasonable jurists would find differently.

B. Blood Type Evidence

Petitioner argues that this Court should grant a COA on his claim that his counsel's response, or lack thereof, to blood type evidence was prejudicially ineffective. Petitioner's claim of

⁸There are no facts before this court as to whether the prosecutor in Petitioner's case was even still employed by the District Attorney's office in 1990, or whether Sagel was Training Director at any time when that prosecutor was employed by the District Attorney.

ineffective assistance of counsel is subject to AEDPA review. Rollins, 2005 U.S. Dist. LEXIS at *70 n.18. This Court previously found that the Pennsylvania Supreme Court's decision that Rollins was not prejudiced by counsel's approach to this evidence was reasonable. Id. at 70-71. In doing so, we noted that the Pennsylvania Supreme Court considered the defect of defense counsel's clumsy response to have been cured by the combination of a stipulation at trial as to Petitioner's blood type and defense counsel's summation arguments as to the potentially exculpatory effect of such evidence. Id. In light of these considerations and the deference accorded the state court on AEDPA review, we are not convinced that any reasonable jurors would disagree as to whether this conclusion was unreasonable. Thus, we are not persuaded that our decision not to issue a COA on this question is a clear error of fact or law.

For the reasons set forth above, Petitioner's motion for reconsideration is denied pursuant to the attached order.

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ORDER

AND NOW, this 17th day of August, 2006, upon consideration of Petitioner's Motion to Alter or Amend Judgment (Doc. Nos. 36, 45), it is hereby ORDERED that the motion is DENIED.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.