

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

ELIAS REFILE	:	CIVIL ACTION
	:	
v.	:	
	:	
DONALD T. VAUGHN, SUPERINTENDENT,	:	
et al.	:	NO. 96-4848

MEMORANDUM AND ORDER

Fullam, Sr. J.

April , 2000

Petitioner is serving a life sentence for first degree murder, imposed after he entered a plea of guilty to murder generally, and the trial judge fixed the degree of guilt at first degree murder. In lengthy post-trial proceedings before the trial and appellate courts, petitioner succeeded in exhausting all available state remedies. Some five years later, he filed the present petition in this court, challenging the validity of his guilty plea, and asserting that the performance of his trial counsel did not rise to constitutional standards. The United States Magistrate Judge to whom the case was referred has filed a detailed and comprehensive report, recommending that the petition be denied on the merits. The petitioner, through pro bono counsel, Henry T. Reath, Esquire, has filed objections to the Magistrate's report, and the matter has been further explored at oral argument. My decision has been unduly delayed.

My difficulties in disposing of the case stem from what

I perceived as significant, and perhaps fatal, flaws in the manner in which petitioner's prosecution proceeded. Under Pennsylvania law, a plea of guilty to homicide admits that the defendant killed the victim, waives trial by jury, and leaves it up to the judge to determine the degree of guilt. In such cases, it is presumed that the defendant is guilty of third degree murder. The burden of proof is upon the Commonwealth to establish the additional elements necessary to constitute murder in the first degree; and the burden of proof is upon the defendant to reduce the level of guilt to voluntary manslaughter or below. But, as in all guilty pleas, before the plea can be entered, the court must be satisfied that there is an adequate factual basis to permit the plea.

In the present case, these steps were telescoped. At the start of the hearing, the prosecuting attorney stated what the Commonwealth's evidence would have been if the case had gone to trial (in order to establish an adequate factual basis to permit the entry of the plea); and defense counsel stated that he had no objection to the prosecutor's outline of the prospective evidence. But after the plea was entered, there was no evidentiary hearing as such. The trial judge merely expressed the view that the evidence outlined by the prosecuting attorney led her to believe that the crime was first degree murder. It was, and is, my view that this method of procedure did not

comport with the requirements of Pennsylvania law, and amounted to a violation of petitioner's rights under the United States Constitution since he was, in effect, deprived of a trial on the issue of degree of guilt. But, since that precise issue had not been addressed by any of the state courts involved (indeed, had not been specifically raised by petitioner in the present case), the availability of relief in this court, on that ground, at this late date, was indeed problematic.

After unduly lengthy deliberations and further review of the record, I am now persuaded that the defects which I discerned in the original plea hearing can be properly regarded as harmless, in view of the later proceedings in the case. At one point, the Superior Court of Pennsylvania remanded the case to the trial court with instructions to hold a further evidentiary hearing, concerning the validity of the plea, and the adequacy of the evidence (among other issues). A full evidentiary hearing was then held, presided over by the same judge who had conducted the original proceedings. The witnesses who, in my view, should have been presented at the original plea hearing (instead of relying upon the prosecutor's outline of proposed testimony) did testify; and the same trial judge determined, anew, that the petitioner had been properly convicted of murder in the first degree. Thus, the defect in the original proceedings was cured.

Petitioner's principal contention in the present case is, as it was in the state courts, that the prosecutor's original outline of the facts was erroneous in some respects, and that petitioner's trial counsel was inadequate for permitting this incorrect versions of the facts to be accepted by the trial judge. The claim is that the prosecutor, in outlining the proposed testimony, conveyed the impression that the petitioner was armed when he approached the victim, whereas actually he did not become armed until immediately before the shooting, when the weapon was passed to him by a companion. Admittedly, the prosecutor's statement can be interpreted that way, although on close reading, a different, and more accurate interpretation is equally feasible. But the issue is of no significance now, given the fact that, in the course of the evidentiary hearing following the Superior Court's remand, the trial judge was made aware that the weapon was passed to the petitioner immediately before the shooting. The trial judge nevertheless concluded that the petitioner had had sufficient time for premeditation, and was not acting under the heat of passion.

I fully agree with the report and recommendation of the United States Magistrate Judge, to the effect that the unassailable factual findings of the state courts on all of the issues raised by the petitioner preclude habeas corpus relief.

I do not doubt that the petitioner feels that he has

been unfairly treated. Petitioner's mother had just informed her son that petitioner's sister, who was already suffering from a broken jaw, had again been physically assaulted this time by the victim. Petitioner and others were urged to take action; and in the ensuing confrontation tempers flared and the victim was killed. The facts could readily have justified reduction of the charge to voluntary manslaughter, but the decision of the trial judge was legally permissible and cannot now be successfully challenged. From the perspective of petitioner and his public-spirited counsel, a decision to grant parole should have been made some time ago and it is unfortunate that commutation and parole seem to be virtually unavailable. But that is not a matter for the federal courts.

The petition for habeas corpus will be denied.

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ORDER

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

1. The report and recommendation of United States Magistrate Judge Thomas Rueter is APPROVED AND ADOPTED.
2. The petition is DENIED.
3. Since there may be valid grounds for an appeal, a certificate of appealability is GRANTED.

John P. Fullam, Sr. J.