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

CAROLINE GUY	:	CIVIL ACTION
	:	
v.	:	
	:	
SHIRLEY MOORE, et al.	:	NO. 04-129

MEMORANDUM

Giles, C.J. August 29, 2005

Presently before this court is the Report and Recommendation of Magistrate Judge Thomas J. Rueter, denying petitioner's *pro se* petition for a writ of habeas corpus and certificate of appealability, filed pursuant to 28 U.S.C. § 2254. Petitioner is currently serving a life sentence at the State Correctional Institution at Muncy, Pennsylvania. This court adopts the Magistrate's Report and Recommendation denying the petition but writes separately for the benefit of the parties.

I. Introduction

On August 28, 1995, petitioner was arrested and charged with first degree murder for the killing of Pamela Hanible. Petitioner shot Ms. Hanible while she was entering the Van Leer Container Corporation, where they both worked. Petitioner chased Ms. Hanible inside the building and down a hallway, shooting her two more times from a distance of five feet. Petitioner brandished the gun at two other employees before leaving the premises. Ms. Hanible died of a gunshot wound to her head. The police stopped petitioner a short distance from the

Van Leer Container Corporation, as she was walking towards her apartment. Petitioner told the responding officer that she was involved in the shooting and that she had a gun. The police found several guns, including the murder weapon, in petitioner's handbag. Their investigation revealed that petitioner purchased the firearm in Philadelphia five days prior to the shooting.

At trial, two defense mental health experts testified that petitioner was legally insane at the time of the killing. The Commonwealth's mental health expert countered, testifying that petitioner understood her actions and was therefore not legally insane at the time of her offense. After a non-jury trial, Judge John J. Rufe found petitioner guilty but mentally ill of first degree murder and sentenced petitioner to life in prison without parole on April 18, 1996.

II. Procedural History

Petitioner's post-sentence motions were denied on October 7, 1996. Petitioner timely appealed to the Superior Court of Pennsylvania. On appeal, petitioner claimed:

> 1. The trial court erred in finding that see had not proved her burden of establishing her insanity at the time of the killing;
> 2. The evidence was insufficient to establish her guilt in that the Commonwealth failed to establish that she was sane at the time of the shooting;
> 3. The verdict of guilty but mentally ill of murder in the first degree was against the weight of the evidence in that the defendant was legally insane at the time of the killing;
> 4. The trial court erred in permitting the Commonwealth to put on rebuttal testimony after the defendant's case because the Commonwealth failed to give proper notice pursuant to Pa. R. Crim. P. 305(C)(1)(c);
> 5. The trial court erred in permitting the Commonwealth's psychiatric expert to sit at counsel table with the district attorney during the testimony of the defense experts; and
> 6. The trial court erred in refusing to suppress evidence recovered from the stop of petitioner shortly after the shooting.

(See Br. for Def.).

On July 9, 1997, the Superior Court denied petitioner's appeal and affirmed the judgment of the Bucks County Court of Common Pleas. Commonwealth v. Guy, A.2d 777 (Pa. Super. Ct. 1997) (Table). The Pennsylvania Supreme Court denied allocatur on March 5, 1998. Commonwealth v. Guy, 717 A.2d 1027 (Pa. 1998) (Table). Petitioner failed to seek appellate review with the United States Supreme Court.

Petitioner filed a timely *pro se* motion for Post Conviction Collateral Relief under the Pennsylvania Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. § 9541 *et. seq.* on June 10, 1998. She alleged only one claim, ineffective assistance of counsel for failing to raise the issue of an invalid jury waiver at trial and on appeal. The Bucks County Court of Common Pleas denied the petition on May 7, 1999. The Superior Court affirmed the judgment on May 23, 2000. Commonwealth v. Guy, 759 A.2d 19 (Pa. Super. Ct. 2000). The Pennsylvania Supreme Court denied allocatur on September 14, 2000. Commonwealth v. Guy, 795 A.2d 972 (Pa. 2000).

Petitioner filed a second *pro se* PCRA petition on January 22, 2001. Judge John J. Rufe denied the petition as untimely on September 24, 2001, and petitioner filed two subsequent appeals of this order with the Superior Court. The first appeal, filed on December 4, 2001, challenged the PCRA court's untimeliness decision and further alleged that the trial court failed to properly consider mitigating factors in the case when it sentenced petitioner to life without parole. The Superior Court considered the parties' briefs without oral argument and affirmed the decision of the Bucks County Court of Common Pleas on July 16, 2002. Commonwealth v. Guy, No. 3221 EDA 2001 (Pa. Super. Ct. July 16, 2002). Petitioner's second appeal, filed on December 7, 2001, challenged Pennsylvania's jurisdictional requirements pursuant to 42 Pa.C.S.A. § 9541 *et. seq.* That appeal was ultimately denied and dismissed by the Pennsylvania

Superior Court for failure to comply with Pa. R. App. P. 3517, which requires a docketing statement form to be returned to the prothonotary within ten days of the filing of the notice of appeal.

On January 27, 2003, petitioner filed a petition for writ of habeas corpus in the federal court pursuant to 28 U.S.C. § 2254. Petitioner alleged 1) denial of appellate rights because petitioner was not afforded discretion as a *pro se* mentally ill appellant; 2) ineffective assistance of counsel for failure to follow through with all direct appeals; 3) ineffective assistance of counsel for failure to present an insanity defense and failure to argue degree of guilt at trial; and 4) that the verdict was against the weight of evidence. This court allowed petitioner to withdraw that petition, upon her motion, and dismissed it without prejudice on May 16, 2003. See Guy v. Dragovich, 2003 WL 23211914 (E.D.Pa. May 16, 2003).

On June 5, 2003, petitioner filed a petition for allocatur, *nunc pro tunc* in the Pennsylvania Supreme Court. The Commonwealth declined to answer or argue on the merits. On November 25, 2003, the Pennsylvania Supreme Court denied the petition.

On January 14, 2004, petitioner again filed for a writ of habeas corpus in federal court pursuant to 28 U.S.C. § 2254. On January 15, 2004, this Court ordered the clerk of the court to furnish petitioner with the correct forms for filing a petition. Petitioner re-filed with revised forms on February 17, 2004, raising fourteen grounds for relief. On March 9, 2004, this Court referred the matter to Magistrate Judge Thomas J. Rueter for a Report and Recommendation. On April 28, 2004, Magistrate Judge John J. Rueter issued a Report and Recommendation that the petition for a writ of habeas corpus be denied, and that no certificate of appealability be granted.

III. Discussion

A. Exhaustion and Procedural Default

Before a state prisoner, like petitioner, may obtain federal review of the merits of the claims in her habeas corpus petition, she must demonstrate that she has exhausted all remedies available through the courts of the Commonwealth of Pennsylvania. 28 U.S.C. § 2254(b). This requirement serves the interests of federalism and comity by ensuring that where a state prisoner alleges that her conviction or confinement violates federal law, state courts have the first opportunity to review the claim and provide any appropriate relief. See, e.g., Rose v. Lundy, 455 U.S. 509, 515 (1982). Thus, before a petitioner can present her claims to a federal court, she must "give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999). A petitioner has failed to exhaust her claims if she "has the right under the law of the State to raise, by any available procedure, the question presented." 28 U.S.C. § 2254(c). However, a failure to exhaust in the state courts will be treated as "excused" on the basis of futility if "it is clear that [the habeas petitioner's] claims are now procedurally barred under [state] law." Gray v. Netherland, 518 U.S. 152, 161 (1996) (quoting Castille v. Peoples, 489 U.S. 346, 351 (1989)); Wenger v. Frank, 266 F.3d 218, 223 (3d Cir. 2001).

When further state court review is foreclosed by state procedural law a petitioner's claims are procedurally defaulted. Such claims may only be heard on the merits by a federal court if there is a basis for excusing the procedural default. More specifically, review of a procedurally defaulted federal habeas petition is barred unless the habeas petitioner can show: (1) "cause for the default and actual prejudice as a result of the alleged violation of federal law", or (2) that a

"failure to consider the claims will result in a fundamental miscarriage of justice." Coleman v. Taylor, 501 U.S. 722, 750 (1990).

The existence of cause for procedural default generally turns upon whether the petitioner can show that some "objective factor external to the defense" impeded a petitioner's, or counsel's, attempt to comply with the state's procedural rule. Murray v. Carrier, 477 U.S. 478, 488 (1986). Cause may exist where the "factual or legal basis for a claim was not reasonably available to counsel" or where "some interference by officials made compliance impracticable." Id. (internal citations omitted). Ineffective assistance of counsel may constitute cause, but only under limited circumstances. Id. at 488-89; Edwards v. Carpenter, 529 U.S. 446, 451-53 (2000). Even if a petitioner establishes cause for the procedural default of her claims, she must still demonstrate that she experienced "actual" prejudice, such that the error in the proceedings "worked to his [her] actual and substantial disadvantage" and was of "constitutional dimensions." United States v. Frady, 456 U.S. 152, 170 (1982). Further, the "fundamental miscarriage of justice" exception to procedural default has been narrowly interpreted to apply only "where a constitutional violation has probably resulted in the conviction of one who is actually innocent." Murray, 477 U.S. at 496.

Petitioner currently asserts fourteen claims in her federal habeas petition, discussed below, which were not properly raised or pursued in the state appellate courts. Accordingly, such claims are unexhausted. O'Sullivan v. Boerckel, 526 U.S. 838 (1999). Petitioner's unexhausted claims could be raised only in a third PCRA petition, but are procedurally defaulted because the one-year statute of limitations. Although petitioner's initial petition was timely, subsequent petitions are time-barred. See 42 Pa.C.S.A. § 9545(b); Whitney v. Horn, 280 F.3d 240, 251 (3d

Cir. 2002) ("It is now clear that this one-year limitation is a jurisdictional rule that precludes consideration of the merits of any untimely PCRA petition, and it is strictly enforced in all cases."), cert. denied, 537 U.S. 1195 (2003).

Petitioner has not claimed, nor can she demonstrate, any factor external to the defense that precluded her from raising and/or litigating the claims she made on appeal to the Pennsylvania Superior Court, before the PCRA court, or in her petition for allocatur to the Pennsylvania Supreme Court. Petitioner's mental illness, to the extent that it might still exist, would not constitute "cause" within this circuit. Hull v. Freeman, 991 F.2d 86, 91 (3d Cir. 1993).[1]

Petitioner must also demonstrate that she experienced "actual" prejudice, such that the error in the proceedings "worked to his [her] actual and substantial disadvantage" and was of "constitutional dimensions." United States v. Frady, 456 U.S. at 170. Petitioner has not claimed nor established the required prejudice to excuse the procedural default. In her current petition, petitioner is primarily challenging the judge's determination that she was guilty but mentally ill

[1]Petitioner has not put this issue directly before the court. Nonetheless, other circuits that have addressed this issue in detail have set a high standard for when mental illlness establishes "cause". See Cawly v. DeTella, 71 F.3d 961, 696 (7th Cir. 1995) (finding petitioner's depression is not sufficient because it is not an external impediment); Ervin v. Delo, 194 F.3d 908, 915 (8th Cir. 1999) (holding mental illness may be cause for default where petitioner makes conclusive showing that he was suffering from a mental disease, disorder, or defect that may substantially affect his capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation." (citations omitted)); Holt v. Bowersox, 191F.3d 970 (8th Cir. 1999) (requiring determination of whether petitioner's highly symptomatic schizoaffective disorder prevented him from making rational decisions during period for post-collateral review); Tacho v. Martinez, 862 F.2d 1376, 1381 (9th Cir. 1998) (finding diagnosis as "borderline mental defective" did not establish cause); Smith v. Newsome, 876 F.2d 1461, 1465 (11th Cir. 1989) (suggesting petitioner would have to establish that he "lacked the mental capacity to understand the nature and object of habeas proceedings" to establish cause for procedural default of state claim).

of first degree murder and claims that her sentence is unfair.

Petitioner has not shown that the federal court's failure to consider the claim will result in a fundamental miscarriage of justice such that the procedural default should be excused. Murray, 477 U.S. at 496. Petitioner admits that she shot Pamela Hanible, and is therefore not innocent of causing her death.

Magistrate Judge Reuter's Report and Recommendation effectively explains why each of petitioner's current claims are procedurally defaulted, and that issue will not be readdressed here. However, even assuming that the court could excuse petitioner's procedural default and reach the merits of her individual claims, each of her current allegations are without merit and are legally frivolous.

B. Petitioner's Claims

1. Denial of right to appeal

Petitioner's first claim is that she was denied her right to appeal because the state court dismissed her PCRA appeal as time-barred. Petitioner states that, because she did not have knowledge of the law and was mentally ill, the state dismissed her most recent PCRA petition as untimely, denying her right to appeal as a *pro se* filer. (Pet'r Mot. at 9). A petitioner has one year from the date on which her conviction becomes final to file a PCRA petition, subject to certain limited exceptions. See 42 Pa.C.S.A. § 9545. This statute of limitation is jurisdictional in nature, and therefore cannot be waived or equitably tolled. See Commonwealth v. Fahy, 737 A.2d 214, 218 (Pa. 1999). The Pennsylvania Supreme Court has ruled that a state court may not consider any claims raised in an untimely petition. See Commonwealth v. Hall, 771 A.2d 1232, 1236 (Pa. 2001). Petitioner's June 5, 2003 "Petition for Leave to File Allowance of Appeal,

Nunc Pro Tunc" in the Pennsylvania Supreme Court was determined by that court to be untimely, as it was filed more than one year after her conviction became final, and thus, was denied. Petitioner's allegations regarding this ruling are not grounds for relief from her conviction.

The court also understands petitioner's first claim to be, in part, that the federal court should not have allowed her to withdraw her previous petition, filed in Civil Action Number 03-356, given that any PCRA filing would be time-barred in the state court. However, the court dismissed petitioner's previous petition in response to her Motion to Withdraw (Docket No. 8). In that motion, petitioner represented that she had intended to submit her previous petition to the Pennsylvania Supreme Court and not the U.S. District Court and specifically requested that her petition be dismissed without prejudice. See Guy v. Dragovich, 2003 WL 23211914 (E.D.Pa. May 16, 2003). The fact that the Pennsylvania Supreme Court subsequently denied the petition for allocatur is not a basis for habeas corpus relief.

Furthermore, petitioner was not denied her right to appeal, insofar as defense counsel filed a timely appeal following her conviction.

2. Ineffective assistance of appellate counsel

Petitioner's second claim is that her defense counsel failed to follow all of her direct appeals to at least the Supreme Court. Petitioner further claims that the sentence was not found to represent the crime of a mentally ill defendant. (Pet'r Mot. at 10).

Petitioner was represented by counsel through the direct appeal process in the state court system. Commonwealth v. Guy, A.2d 777 (Pa. Super. Ct. 1997) (Table) and Commonwealth v. Guy, 717 A.2d 1027 (Pa. 1998) (Table). Due process entitles a criminal defendant to effective assistance of counsel on her first appeal as of right. United States v. Cross, 308 F.3d 308, 315

(3d Cir. 2002) (citing Evitts v. Lucey, 469 U.S. 387, 396 (1985)). The two-pronged standard of Stickland v. Washington, 466 U.S. 668 (1984) applies to claims of ineffective appellate counsel. Cross, 308 F.3d at 315 (citations omitted). Under Strickland, a petitioner must establish that: 1) counsel's performance was deficient, and 2) that there was a reasonable probability that she would have prevailed on the appeal if counsel's representation was not seriously deficient. Id. at 694-95. Petitioner has not set forth any facts which support a finding that appellate counsel was ineffective.

It is true that petitioner's attorneys did not file a petition for certiorari. However, the United States Supreme Court has clearly held that there is no constitutional right to representation for discretionary appeals, including petitions for certiorari. See Ross v. Moffit, 417 U.S. 600, 610 (1974). Thus, plaintiff was not entitled to have her appellate attorney's file a petition for certiorari and her claim of ineffective assistance, on this basis, is without merit.

Inasmuch as petitioner also claims that her sentence was not found to represent the crime of a mentally ill defendant, the court finds that this argument is frivolous. The possible sentences for first degree murder in Pennsylvania are either the death penalty or life imprisonment. See 18 Pa.C.S.A. § 1102. A defendant found guilty but mentally ill, like petitioner, "may have any sentence imposed on him which may lawfully be imposed on any defendant convicted of the same offense." 42 Pa.C.S.A. § 9727. As petitioner was sentenced to life imprisonment without parole, she was lawfully sentenced by the state trial court.

3. Ineffective assistance of counsel - Insanity Defense

Petitioner's third claim is that trial counsel was ineffective because "counsel failed to present an insanity and/or degree of responsibility defense which would have lessened the

sentence imposed." (Pet'r Mot. at 10). She further attempts to justify her actions by stating "Defendant was trying to get rid of the threatening voices, and the only way to do that was to get rid of the person tormenting her constantly in her head, which was the victim, Pamela Hanible." (Id.)

The standard for ineffective assistance of trial counsel is articulated in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, a petitioner must establish that: 1) counsel's performance was deficient, and 2) as a result of counsel's seriously deficient performance the defendant did not receive a fair trial. Id. at 687. To satisfy the first prong of Strickland, petitioner must show "that counsel made errors so serious that counsel was not functioning as the 'counsel guaranteed by the Sixth Amendment.'" Id. Hence, petitioner must "show that counsel's representation fell below an objective standard of reasonableness." Hill v. Lockhart, 474 U.S. 52, 58 (1985). The second prong of Strickland requires petitioner to show that "the deficient performance prejudiced petitioner." Strickland, 466 U.S. at 687. To prove that she was prejudiced by counsel's conduct, the petitioner must "demonstrate a reasonable probability that, but for the unprofessional errors, the result would have been different." Frey v. Fulcomer, 974 F.2d 348, 358 (3d Cir. 1992).

Petitioner has not offered any evidence that counsel failed to present an insanity defense or was professionally deficient in calling defense witnesses. In fact, the evidence is overwhelming that trial counsel prepared and presented an insanity defense. At trial, defense counsel presented numerous witnesses who testified that petitioner "heard voices" and suffered from a delusion in which she believed that Pamela Hanible had planted electronic transmitters or "bugs" in her apartment, in the vents in their workplace, and on her person. In addition, they

called Dr. Irma Csanalosi from the Veteran's Administration Clinic in Philadelphia, who had diagnosed petitioner as suffering from chronic paranoid schizophrenia when she sought out-patient services on July 18, 1995. (N. Tr. 4/17/96 at 84). Counsel also called Dr. David Nover, a psychiatrist who provides services at the Bucks County Correctional Facility, who interviewed petitioner on September 6, 1995 and diagnosed her as suffering from paranoid schizophrenia and Ms. Doris Morgan, the staff psychologist at Bucks County Correctional Facility, who was responsible for petitioner's day to day care. (N. Tr. 4/18/96 at 22 and 36). Finally, counsel proffered two mental experts, Dr. Richard Saul and Dr. Kenneth Kool, who testified as to defendant's insanity at the time of the shooting. (N. Tr. 4/18/96 at 60-66, 77, and 93-95). Simply because Judge Rufe, as the fact finder, credited the testimony of the Commonwealth's mental health expert, Dr. Edwin P. Camiel, that petitioner knew the nature and quality of her actions when she killed Pamela Hanible and that she knew what she was doing was wrong, rather than the opinions of the defense's witnesses, does not mean, by any stretch, that petitioner's counsel failed to present a defense.

Petitioner's ineffective assistance of counsel claim is without merit, since it is clear beyond cavil that defense counsel presented an insanity defense during her trial.

4. The evidence did not support the verdict

Petitioner's fourth claim is that the trial judge "erred in finding her sane at the time she committed the shooting and that such a finding lacked sufficient evidence and was against the weight of the evidence." (Pet'r Mot. at 10). Petitioner raised this claim on direct appeal to the Superior Court of Pennsylvania. Commonwealth v. Guy, No. 03695 Phila. 1996, slip op. at 1 (Pa. Super. Ct. July 9, 1997). Petitioner now claims that her attorneys proved that she was insane

under both the M'Naghten and the New Hampshire Rule " with numerous witnesses and past history." She claims that the judge's finding of guilty of first degree murder but mentally ill was contrary to her capabilities.

In Pennsylvania, legal insanity means that when the offense was committed "the actor was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if the actor did know the quality of the act, that he did not know that what he was doing was wrong." 18 Pa.C.S.A. § 315. This is essentially a statutory codification of the common law test for insanity, M'Naghten's Rule. See 18 Pa.C.S.A. § 314 (d) (stating "Nothing in this section shall be deemed to repeal or to otherwise abrogate the common law defense of insanity (M'Naghten's Rule) in effect in this Commonwealth"). The trial found that petitioner was not legally insane at the time of the homicide. This finding was affirmed on appeal by the Pennsylvania Superior Court, which found that there was sufficient evidence to support the verdict. In response to petitioner's claim that the trial court erred in finding her not legally insane at the time of the offense, it stated:

> The fact that the court chose Dr. Camiel's testimony as the most convincing and discounted the testimony of Drs. Kool and Saul does not render the verdict against the weight of the evidence, nor does it render a finding of legal sanity unsupported by the evidence. It merely reflects the court's resolution of conflicting testimony, which it must do. Consequently, we find no reversible error in the court's verdict.

Commonwealth v. Guy, No. 03695 Phila. 1996, slip op. at 2 (Pa. Super. Ct. July 9, 1997).

This court is bound by the state courts' previous factual findings regarding petitioner's sanity at the time of her offense. Under the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), a federal court may not overturn a state court's resolution of any claim that was

adjudicated on the merits in a state court unless that adjudication "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) 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." 28 U.S.C. §§ 2254 (d)(1)-(2). There is ample evidence supporting Judge Rufe's determination that petitioner was not legally insane at the time she killed Pamela Hanible. Her claim to the contrary is without merit.

5. The "[p]rosecution failed on burden of proof of defendant's sanity"

Petitioner's fifth claim is that the prosecution did not prove her sanity beyond a reasonable doubt. She also claims she was unable to participate in making a rational defense and was not competent to stand trial. (Pet'r Mot. at 10 back).

Pennsylvania law expressly places the burden to prove insanity on the defense. See 18 Pa.C.S.A. § 315 and Commonwealth v. Sohmer, 546 A.2d 601, 605 (Pa. 1988). Specifically, 18 Pa.C.S.A. §315 (a) states that insanity "shall only be a defense to the charged offense when the actor proves by a preponderance of the evidence that the actor was legally insane at the time of the commission of the offense." See Id. Thus, there was no burden on the prosecution to prove that petitioner was not legally insane at the time she killed Pamela Hanible and petitioner's claim is without merit.

As to petitioner's claim that she was not competent to stand trial, this court is bound by the state courts' previous factual findings regarding petitioner's mental competency. Under Maggio v. Fulford, 462 U.S. 111 (1983), federal courts reviewing habeas petitions are obligated to defer to state court determinations of mental competency. Id. at 116-18. By allowing

petitioner's case to go to trial, Judge Rufe made a determination that she was competent to stand trial. This court must defer to his decision.

In addition, petitioner's claim that she was not able to participate in her defense is without merit. On the first day of trial, Judge Rufe specifically asked her whether she had had various opportunities to meet with defense counsel and to discuss the various defenses available to her. (N.T. 4/16/96 at 8). She responded "yes" to both inquiries. There is no evidence that petitioner was not able to participate in her defense.

6. Ineffective assistance of counsel - failure to provide a rigorous defense

Petitioner's sixth claim is that, although her defense counsel knew of her history and mental illness, they were ineffective because they failed in "providing a rigorous defense, which is a constitutional right of any defendant". (Pet'r Mot. at 10 back). This is essentially the same argument as raised in petitioner's third claim. Again, the court finds that trial counsel provided a professionally responsible defense, by calling multiple witnesses to describe petitioner's erratic behavior, proffering evidence of her chronic paranoid schizophrenia, and presenting two experts who opined that she was legally insane at the time of the killing. Applying the Strickland test, described above, there is no basis for petitioner's claim of that her counsel was ineffective. Merely because she was convicted of killing Pamela Hanible, which she did, does equate to a failure to provide a rigorous defense.

7. First degree murder verdict is unsupported by the evidence

Petitioner's seventh claim is that the evidence did not support the first degree murder verdict. She states that she wholeheartedly believed that Pamela Hanible was bugging her apartment and that she was "out to get her." (Pet'r Mot. at 10 back). This claim is essentially an

attempt to relitigate the issue of petitioner's sanity at the time of her offense, as petitioner does not deny that she fired a gun at Ms. Hanible, resulting in her death.

First degree murder is defined in Pennsylvania as a criminal homicide "committed by an intentional killing." 18 Pa.C.S.A. § 2502 (a). Judge Rufe found that petitioner intentionally killed Ms. Hanible, and that she was mentally ill, but not legally insane, when she committed the offense. These findings were affirmed on appeal by the Pennsylvania Superior Court. Commonwealth v. Guy, No. 03695 Phila. 1996 (Pa. Super. Ct. July 9, 1997).

This claim is not a ground for habeas corpus relief.

8. Prosecutorial error

Petitioner's eighth claim is her proffered mental health experts were cross-examined by the prosecutor in order to discredit her and to focus on her guilt rather than her mental status. (Pet'r Mot. at 10 back). There is nothing in the record that suggests that there was anything improper about the kinds of questions the prosecutor asked Dr. Saul and Dr. Kool. This claim is without merit and is not a ground for habeas corpus relief.

9. Ineffective assistance of counsel - failure to build M'Naghten defense

Petitioner's ninth claim is that she received ineffective assistance of counsel because "defense counsel did not build a defense surrounding the McNaughten (sic) Rule." (Pet'r Mot. at 11 back). This contention is contrary to the trial testimony. During trial, petitioner's counsel proffered two mental experts, Dr. Richard Saul and Dr. Kenneth Kool, who testified as to defendant's insanity, under the M'Naghten Rule, at the time of the shooting. (N. Tr. 4/18/96 at 60-66, 77, and 93-95). As previously stated, counsel's representation and attempt to prove petitioner's insanity was constitutionally sufficient under Strickland. Strickland v. Washington,

466 U.S. 668 (1984). Merely because the trial court found the testimony of Dr. Edwin P. Camiel more credible than that of the defense experts does not mean that defense counsel was deficient in any way.

10. Verdict is unsupported by the evidence

Petitioner's tenth claim is that the "verdict did not support evidence." Petitioner claims that the defense laid the ground of the New Hampshire Rule by substantiating that the defendant felt compelled by the "voices" to switch rooms in her rooming house, eventually moving to a new residence. She further states that she purchased a new gun to shoot Pamela Hanible, attributing this action to the insane impulses that had been steadily growing for over a year. (Pet'r Mot. at 11 back).

This claim is legally frivolous. While multiple mental health professionals agreed during petitioner's trial that she suffers from chronic paranoid schizophrenia, such an illness does not mean that she was legally insane when she killed Ms. Hanible. This is the determination that Judge Rufe made when he found petitioner guilty but mentally ill of first degree murder. As previously stated in the discussion of petitioner's fourth claim, this court is bound by the trial court's finding that petitioner was not legally insane at the time she committed her offense.

11. Verdict did not support "mentally ill reduced degree of responsibility"

Petitioner's eleventh claim is that the verdict violates her constitutional rights because it does not recognize the reduced degree of responsibility afforded to the mentally ill. Specifically, although she admits to murdering Pamela Hanible, she believes that the defense proved that she was functioning at a diminished capacity, and that her mental state negated the specific intent needed to validate a first or second degree murder conviction defense. (Pet'r Mot. at 11 back).

This is essentially the same argument that petitioner raised in her fourth, seventh and tenth claims. Contrary to petitioner's assertion, the trial court's determination that she was not legally insane at the time of the killing is a legitimate factual finding to which this court must defer. In addition, Judge Rufe's finding that she was guilty but mentally ill did take into account that she suffered from a mental illness, but it did relieve her of culpability for the killing.

This claim is frivolous and is not a ground for habeas corpus relief.

12. Verdict did not support evidence of first degree murder

Petitioner's twelfth claim is that the verdict did not support evidence of first degree murder. Petitioner claims that her daily behavior leading up to the killing showed an "extreme disturbance in her ability to reason and disintegration of her personality shows an abundance of evidence in her ability to show specific intent." (Pet'r Mot. at 12 back).

The court understands this claim to be that petitioner lacked the specific intent to commit homicide because of her mental illness rendered her legally insane. This is the same argument petitioner raised in her fourth, seventh, tenth, and eleventh claims, and it is similarly without merit.

13. Violation of due process

Petitioner's thirteenth claim is that her right to due process was violated because she should not have stood trial. She claims that she was "required to have a babysitter while in custody of county jail, showing that on a regular basis officials were concerned with defendant's thought process and decision making skills in simple daily rituals." (Pet'r Mot. at 12 back). The connection between the petitioner's babysitter in prison and her due process rights is unclear, although it appears that petitioner is again challenging the trial court's findings that she was

mentally competent to stand trial and that she not legally insane at the time of her offense.

The Fifth Amendment to the U.S. Constitution provides that "No person shall...be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. There is no evidence that petitioner's due process rights were violated in this matter. While defense counsel did proffer Tonya Boldon, another inmate whose job was to record petitioner's actions while she was on acute watch in October 1996, this evidence was not determinative of whether she was legally insane at the time she killed Pamela Hanible. (See N.T. 4/17/96 at 60-64). As previously stated, Judge Rufe found that petitioner was not legally insane, and that she was guilty but mentally ill of the charged offense.

This claim is repetitive and without merit. Petitioner does not state a ground for habeas corpus relief.

14. Ineffective assistance of counsel - performance lacked a reasonable basis

Petitioner's fourteenth claim is that her counsel's performance lacked a reasonable basis and that absent the ineffective assistance of counsel, the outcome of this case would have been different. (Pet'r Mot. at 12 back). This is the same claim petitioner raised in her third, sixth, and ninth claims, and is similarly without merit.

As previously stated, petitioner's counsel presented a constitutionally sufficient defense under Strickland. Strickland v. Washington, 466 U.S. 668 (1984). They presented copious evidence of petitioner's mental illness and offered two experts in support of her insanity defense. In addition, there is no evidence to suggest that the outcome of petitioner's trial would have been different, but for their efforts. Therefore, the court cannot find that petitioner's counsel was ineffective.

IV. Conclusion

For the forgoing reasons, petitioner's § 2254 petition is denied. As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROLINE GUY,	:	CIVIL ACTION
	:	
v.	:	
	:	
SHIRLEY MOORE, et al.	:	NO. 04-129

JUDGMENT ORDER

AND NOW, this 29th day of August, 2005, upon consideration of Petitioner's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, the Government's response thereto, and the record, it is hereby ORDERED as follows:

1. Petitioner's motion is DENIED for the reasons stated in the court's Memorandum.

2. A Certificate of Appealability shall not issue inasmuch as petitioner has not made a substantial showing of the denial of a constitutional right.

BY THE COURT:

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JAMES T. GILES C.J.