

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

JESSE BOND : CIVIL ACTION
 :
 v. :
 : (Death Penalty)
 JEFFREY BEARD, Commissioner, :
 Pennsylvania Department of :
 Corrections, et al. : NO. 02-cv-08592-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

April 24, 2006

Petitioner Jesse Bond was convicted of first degree murder and sentenced to death in 1993. The conviction and sentence were affirmed on direct appeal. Commonwealth v. Bond, 652 A.2d 308 (Pa. 1995). His application for post-conviction relief was denied, and that decision was upheld by the Pennsylvania Supreme Court in Commonwealth v. Bond, 819 A.2d 33 (Pa. 2002). Petitioner then timely filed this application for habeas corpus relief.

I. FACTUAL BACKGROUND

The Commonwealth's evidence was to the effect that, over a two-week period in 1991, petitioner and a co-defendant committed three separate robberies of small fast-food establishments. On each occasion, petitioner shot a victim. Two of the victims died, the third was badly wounded. Petitioner was tried separately for the three crimes. In his first trial, petitioner was convicted of second degree murder and sentenced to

life imprisonment. In the present case, he was convicted of first degree murder and sentenced to death. In the remaining case, petitioner was convicted of attempted murder and related crimes, and received a lengthy jail sentence. In each of the three cases, petitioner has sought habeas corpus relief in this court. The present case, Civil Action No. 02-cv-08592, deals with the capital conviction. The other two cases (Civil Action Nos. 01-cv-02624 and 02-cv-09132) will be disposed of separately.

II. CLAIMS FOR RELIEF

In a commendably thorough presentation, petitioner's counsel assert a large number of claims for relief, as follows:

1. On the basis of statistical studies, petitioner's death sentence was a product of racial discrimination.

2. The jury which tried this case was tainted by the prosecutor's race-based exercises of peremptory challenges, in violation of Batson v. Kentucky, 476 U.S. 79 (1986).

3. Because of prosecutorial misconduct, significant exculpatory evidence was not presented at trial.

4. The trial court's jury instructions as to the elements of the offense, and reasonable doubt, violated petitioner's due process rights.

5. Petitioner's statement to the police was obtained in violation of his Sixth Amendment right to counsel.

6. Petitioner's rights under Bruton v. United States, 391 U.S. 123, 126-131 (1968), were violated because his trial was not severed from that of his co-defendant, and the co-defendant's unredacted confession (naming petitioner as the shooter) was disclosed to the jury.

7. Petitioner was deprived of the effective assistance of counsel at the penalty phase of the trial, contrary to the requirements of Strickland v. Washington, 466 U.S. 668 (1984).

I shall address these claims in substantially the same order as listed above.

III. SCOPE OF REVIEW

As set forth in the AEDPA, 28 U.S.C. § 2254(d):

"(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim -

(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."

Under the "contrary to" rubric, it must appear that the state court's decision is squarely contrary to a decision of the Supreme Court of the United States. Williams v. Taylor, 529 U.S. 362, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000). Under the "unreasonable application" rubric, it is not enough that the federal court disagrees with the state court decision; it must appear that the state court decision was so clearly in error that most reasonable jurists would regard it as erroneous. Lockyear v. Andrade, 538 U.S. 63, 123 S. Ct. 1166, 155 L. Ed. 2d 144 (2003).

IV. ISSUES OF RACIAL DISCRIMINATION

Petitioner is African-American. The victim in this case was of Asian ancestry. Petitioner asserts that Pennsylvania's laws concerning the imposition of the death penalty are unconstitutionally applied, particularly in Philadelphia, on the basis of the race of defendants and the race of victims, and that such racial disparity undermines the validity of petitioner's sentence. In a separate but related argument, petitioner asserts that the selection of the jury in his case was carried out in a racially discriminatory manner.

A. Discriminatory Application of the Death Penalty

Petitioner's counsel have assembled an impressive group of statistical studies which demonstrate that, throughout

Pennsylvania and particularly in Philadelphia, death sentences are much more likely to be imposed if the defendant is black and the victim is white; that defendants who are black are much more likely to receive the death penalty than defendants who are white (regardless of the race of the victim); and that the death penalty is much less likely to be imposed where the victim was black than where the victim was white. Although the jury-selection issues were presented to the state courts and have clearly been exhausted, the statistical argument regarding the death penalty itself has not been ruled upon by the Pennsylvania Supreme Court in this case. There is room for disagreement as to whether this court may now address that claim.

In the state court, petitioner asserted that the statistical studies upon which the claim is based were first published while his PCRA appeal was pending. He sought leave to amend his appeal to include that claim, but the Pennsylvania Supreme Court declined to permit the amendment (ruling that petitioner would need to file another PCRA petition in the lower court), and refused to consider the issue. So far as the record discloses, petitioner did not file any further PCRA applications. Petitioner's counsel nevertheless argue that the Pennsylvania Supreme Court was given the opportunity to consider the issue, but declined to do so, hence exhaustion has been satisfied.

I am inclined to agree with respondent's argument that this court is precluded from now considering the issue. But I find it unnecessary to resolve that procedural issue definitively, since I am not persuaded by petitioner's statistical argument.

I accept as correct all of the statistical information set forth in petitioner's brief and at the hearing in this matter. Petitioner's counsel make a strong showing that the criminal justice system in Pennsylvania is not immune from the racial flaws which persist in our society. But the statistics do not prove that, in any particular case, racial prejudice infected the verdict.

These statistical studies may provide support for an argument that the death penalty should be abolished, but that is a matter for the legislature, not the judiciary. So long as the law authorizes the death penalty in appropriate cases, the proper way to address the evils which may be inferrable from these statistical studies is to insure that, in every case, the outcome is not tainted by racial discrimination.

B. Batson Issues; Jury Selection

Petitioner's trial took place in February 1993. Five years earlier, in 1988, a deputy district attorney named Jack McMahon conducted a training session for assistant D.A.s, including a videotaped presentation advising about the proper way

to select a jury. The existence of this tape was not publicly disclosed until after petitioner's trial, when Mr. McMahon became a candidate for district attorney in 1997. The videotaped presentation can reasonably be interpreted as advising the listener to take race into account in the course of jury selection, and as providing suggestions as to how to avoid being successfully accused of violating the tenets of Batson v. Kentucky, ___ U.S. ___ (1986). Among other things, Mr. McMahon depicted the ideal jury as composed of four blacks and eight whites.

Mr. McMahon was not the prosecutor in petitioner's trial; the Commonwealth was represented by John Doyle, Esquire. Mr. Doyle had, however, been an assistant district attorney throughout the entire period and presumably could have been exposed to the taped lecture at one time or another. He was not present when the actual lecture was first presented, but the resulting "training tape" was on file in the library of the District Attorney's Offices, although not in the same building where Mr. Doyle was primarily employed.

Mr. Doyle credibly testified in this court that he had never viewed the McMahon tape, and had never discussed jury selection issues with Mr. McMahon. At the hearing in this court, petitioner's counsel presented additional evidence of other training sessions conducted by other assistant district attorneys

on the subject of jury-selection. On behalf of petitioner, it is argued that the evidence as a whole demonstrates an official position on behalf of the District Attorney's Office as to the proper way to select a jury in a criminal case. I agree that this is a reasonable inference, but I do not conclude that it was the policy of the District Attorney's Office to discriminate on racial grounds in the process of selecting juries.

After all, it would be impossible to discuss the implications of the Batson decision, and the correct way to select juries in the wake of that decision, without mentioning the subject of race. The evidence makes clear that assistant district attorneys were urged to try to obtain juries which would be willing to convict, and to avoid jurors believed to be too favorable to the defense side of the case. It was important for assistant district attorneys to adhere to Batson's requirements, so as not to jeopardize convictions. It was equally important for assistant district attorneys to avoid being falsely accused of Batson error. The evidence shows that, at times, it was suggested to assistant district attorneys that, if they intended to challenge a prospective juror who was black, they should make sure that valid reasons were noted, in the event of a Batson challenge by the defense. While such instructions could conceivably be viewed as coaching assistant district attorneys to conceal violations of Batson, I believe the more reasonable

interpretation is that all concerned were attempting to guard against false accusations of racial discrimination. In sum, I conclude that the "official policy" evidence is of minimal assistance to petitioner's contention, and that the issue must be resolved on the basis of what actually occurred at petitioner's trial.

It is clear that Batson issues were on the minds of the attorneys and the trial judge in the course of jury selection. The overall statistics are noteworthy: Mr. Doyle used 11 of 15 (73.3%) of his peremptory challenges against African-Americans; accepted 4 of 15 African-Americans (26.6%); and accepted 20 of 24 (83.3%) Caucasians or other non-African-Americans.

Midway through the jury selection process, after Mr. Doyle had exercised challenges to excuse three white jurors in a row, Mr. Doyle accused the defense of systematically excluding white jurors. The court responded:

"Quite the contrary. I'm concerned about the Commonwealth's actions here, not about the defense. The defense has had the opportunity to strike 13 whites. Of the 13 opportunities, they have accepted 6 and struck 7. It makes no sense for you to even raise this issue.

With respect to your striking of blacks, you have had the opportunity to strike 5, and of that, you have preempted 4, which is a much higher percentage.

Beyond that, there seems to be a difference in pattern before you made this motion. Previously, you were accepting many white jurors and suddenly you struck 3 in a row, and

it seems to me it may be leading up to this kind of a statement.

I reject your position. I don't want to hear any more about it."

When petitioner's counsel thereafter objected to some of the peremptory challenges exercised by the prosecutor, the court required the prosecutor to explain his actions on several occasions. In each instance, the trial judge found the explanation satisfactory (Although, on one occasion, he rejected the prosecutor's original excuse, and accepted a further explanation by the prosecutor.). These findings were upheld on appeal. The question for this court is whether the state court's findings were so plainly unreasonable and unsupportable as to absolve this court of its obligation to accord the findings great deference.

For several reasons, I believe the state court findings were erroneous. For example, Mr. Doyle's final challenge was to an African-American lady named Joyce Hinton. Her father was a retired Philadelphia police officer, and she stated she would be able to impose a sentence of death in an appropriate case. Mr. Doyle then asked her if she was sure about that, and the juror responded, "Are you asking me will I have a problem?" The prosecutor responded, "I'm asking you." The defense counsel interposed an objection, which was sustained in part. The judge then asked Ms. Hinton whether she could consider both

alternatives and in a proper circumstance find the death penalty, and she responded, "That's what I said, yes." The prosecutor was required to explain his challenge of this juror and stated that she "clearly hesitated" about the death penalty. The judge then stated, "She didn't hesitate, in this court's opinion," and noted that it was not appropriate for the prosecutor to ask "Are you sure?" with respect to the death penalty. Mr. Doyle then stated that he did not strike Ms. Hinton because she hesitated on the death penalty, but because he perceived that "she resented my asking, are you sure. She is the first witness of this entire two days who took offense when I asked the question." The trial judge accepted this as a race-neutral explanation.

In addition to this episode, it should be noted that, throughout the jury selection process, Mr. Doyle asked many more questions of black potential jurors than of whites, including, specifically, whether they were "sure" about the death penalty.

Although I harbor significant misgivings on the subject, I conclude that it would be inappropriate for me to substitute my analysis of the evidence for that of the state courts. The trial judge was present, was familiar with counsel and their proclivities, and was plainly making efforts to avoid Batson problems. Given the restrictions imposed by the AEDPA upon federal courts' review of state court findings, I conclude that habeas relief on Batson issues is precluded.

V. REMAINING ISSUES AFFECTING THE GUILT PHASE

A. Bruton Issues

Petitioner and his co-defendant, Wheeler, were tried together. Each had separately confessed to the crime and named the other as a participant. Wheeler's confession named petitioner as the person who did the shooting. Before trial, it was apparently agreed between the prosecutor and petitioner's counsel that, assuming Wheeler did not testify at trial so that he could be cross-examined by petitioner, the Wheeler statement would be redacted by replacing petitioner's name with "another guy" wherever it appeared.

Unfortunately, in his opening address to the jury, the prosecutor made frequent references to Wheeler's confession, and instead of using the agreed-upon redaction, substituted the words "the killer" for petitioner's name. Petitioner's counsel did not object at the time, and the trial judge appears to have considered that counsel had agreed upon this version of the redaction. Be that as it may, toward the end of the prosecutor's opening address, while reading Wheeler's statement to the jury, he "inadvertently" omitted the redaction, and actually used petitioner's name in place of "the killer."

Both petitioner and his co-defendant moved for a mistrial, and requested that a new jury be impaneled. After lengthy discussion, petitioner's counsel for the first time

suggested that redaction was inappropriate in the first place, and that the petitioner's trial should have been severed from that of Mr. Wheeler. Although obviously troubled by the problem, the trial judge eventually decided that it would suffice if he simply told the jury that statements in opening addresses did not constitute evidence, and that they should disregard the prosecutor's statements about petitioner.

Post-trial, both the trial court and the Supreme Court recognized that a Bruton error had indeed occurred, but both ruled that, in view of the corrective action by the trial judge, and particularly in view of the strength of the other evidence presented by the government, the Bruton error was harmless.

Here again, if I were deciding the matter in the first instance, I would have great difficulty characterizing the error as harmless.

It also bears mentioning that, in Harvey v. Klem, 2005 WL701713 (E.D. Pa. Mar. 28, 2005), my colleague Judge Yohn was confronted with a similar "inadvertent" disclosure by another Philadelphia prosecutor. A cynic might infer that, just as Mr. McMahon coached prosecutors to evade the requirements of Batson, someone may have been coaching Philadelphia prosecutors on how to evade Bruton as well.

Notwithstanding my reservations on this issue, I conclude that jurists of reason could conclude that the error was

indeed harmless in petitioner's case, and that the state court findings in this case must be accorded deference.

B. Failure to Present Exculpatory Evidence

A witness named Beulah Sheppard was interviewed by police before trial, and gave a statement which implicated petitioner as a perpetrator of the crime. When called as a witness at trial, however, Ms. Sheppard recanted, and stated that she only gave the statement to the police in the hope of obtaining a reward. The prosecutor was then permitted to impeach her on the basis of her previous statement, and to argue to the jury that her previous statement was true, and her trial testimony false. Petitioner now seems to be arguing that it was improper for the prosecutor to contend that the previous statement was true, and that petitioner was thereby deprived of the benefit of Ms. Sheppard's trial testimony. I reject that contention, and conclude that no error occurred.

Petitioner contends that two other witnesses would have presented exculpatory testimony if called at trial, and that his trial counsel was constitutionally ineffective for failing to interview these witnesses and present their testimony at trial. The factual basis for this argument is totally lacking. Although there is evidence suggesting that these witnesses were in the vicinity of the crime, and offered descriptions of the perpetrators which, at least arguably, did not resemble

petitioner, there is no evidence as to whether or not petitioner's trial counsel interviewed these individuals. Neither in the PCRA, nor in this court, was trial counsel (Mr. Bruno) questioned about this issue. Accordingly, even assuming that this court is not precluded from addressing the matter, see Jacobs v. Horn, 395 F.3d 92 (3d Cir. 2005), no relief can be predicated upon this issue.

A further argument is presented to the effect that petitioner has not been permitted to have the benefit of a post-trial recantation of the confession previously given by his co-defendant, M. Wheeler. Mr. Wheeler did not testify at trial, but his confession as to his own involvement was presented to the jury. He was sentenced to life imprisonment. Six months later, he executed an affidavit recanting his confession. He stated that his confession had been coerced and had been induced by promises of lenient treatment. He stated that he had no knowledge of the crime, and therefore his statement that petitioner was the shooter was baseless.

The recantation affidavit was presented to the PCRA court, but Mr. Wheeler was not called as a witness. The court ruled that the recantation was not worthy of belief, and did not constitute a reason for granting a new trial. I, likewise, fail to see the relevance of the recantation to this case: Mr. Wheeler did not testify at trial, and the confession constituted evidence

against Mr. Wheeler only. The recantation, if accepted at face value, undermines the conviction of Mr. Wheeler, but does not exonerate the petitioner.

C. Jury Instructions

Petitioner argues that the charge to the jury was incorrect and inadequate, because it did not properly instruct the jury that the prosecution had the burden of proving each and every element of the crime beyond a reasonable doubt, and because the instruction as to accomplice liability and the liability of co-conspirators was incomplete and inaccurate. Since no objections were expressed at trial, these claims charge trial counsel with inadequacy for failing to object, and failing to raise the issue on direct appeal.

Actually, this claim was not even raised in the PCRA court, but first saw the light of day during the PCRA appeal. It has not been exhausted, and has been waived. Moreover, while I agree that the court's charge to the jury was not perfect, I am satisfied that, viewed in its entirety, it was constitutionally sufficient.

D. Admissibility of Petitioner's Confession

I am satisfied that the state courts have properly rejected petitioner's claims with respect to the voluntariness

and admissibility of his confession, and see no need to unduly lengthen this opinion by further discussing the issue.

For all of the reasons discussed above, petitioner's challenge to his conviction must be rejected.

VI. THE PENALTY PHASE

Petitioner is on firmer ground in challenging the constitutional adequacy of his trial counsels' performance at the penalty phase of the trial. Initially, James Bruno, Esquire was appointed by the court to represent the petitioner in all of his cases. At that time, the Defender Association did not handle capital cases, but it had been decided that the Defender Association would accept such appointments in the near future. Accordingly, it became necessary for lawyers in the Defender Association office to gain experience with capital trials. In furtherance of that goal, an attorney named Dean Owens, Esquire was appointed as co-counsel with Mr. Bruno. Mr. Owens was present during the guilt phase of the trial, but did not participate in conducting the defense. Mr. Owens was not qualified to handle a capital case, in accordance with Philadelphia Criminal Rule 406.

After the jury found petitioner guilty of first degree murder, it was agreed between Mr. Bruno and Mr. Owens that the latter would take the lead during the penalty phase. Although petitioner argues that this was done without petitioner's

consent, and served to deprive him of counsel of his choice, I conclude that the real issue is whether, in its totality, petitioner's representation by counsel at the penalty phase complied with constitutional requirements. I have no hesitation in concluding that it did not.

Petitioner had had a particularly deplorable upbringing. He was abandoned by his father at a very early age, was frequently absent from school because he had no shoes or warm clothing to wear, was physically beaten by siblings at the behest of his mother, who was an alcoholic and largely bereft of maternal instincts. According to his school records, he was, at best, borderline retarded, and suffered from learning disabilities and other psychological problems. As a teenager, he was struck in the head with a metal jack-handle, and suffered severe injuries. He was hospitalized for nine days, and at least two expert witnesses have now opined that he suffered permanent brain damage as a result.

It is very clear that, if counsel had fulfilled their obligation of conducting a reasonable investigation, see Rompilla v. Beard, 125 S. Ct. 2456 (2005), very significant evidence could have been presented to the jury in mitigation of the penalty.

Mr. Bruno did interview some of the family members before any of the trials, and also arranged to have petitioner interviewed by a psychologist, Dr. Tepper. Dr. Tepper

interviewed petitioner for a period of about an hour and a half, and gave Mr. Bruno a written report of his findings, which were rather non-committal and non-specific. Apparently, Mr. Bruno sought Dr. Tepper's advice primarily on the issue of whether petitioner had the mental capacity to understand his Miranda warnings, and to validly waive his right to counsel before giving his confession.

Mr. Bruno had not obtained any of petitioner's school records, or the hospital records concerning his head injury, and Dr. Tepper did not consider any of the information disclosed by those records.

Mr. Bruno and Mr. Owens did not actually begin to prepare for the penalty phase in this case until after the jury had found petitioner guilty of first degree murder. At that point, they notified petitioner's mother and arranged to have various family members available to testify and, apparently in consultation with other lawyers from the Defender Association, decided what their trial strategy would be. It was agreed that Mr. Owens would take the lead in presenting the case to the jury, because he was the son of a prison official, and had more knowledge of prison conditions than Mr. Bruno. It was thought that Mr. Owens might be able to persuade the jury that, on the one hand, prison life itself provided severe punishment for

crime, and, on the other hand, that many prisoners could be successfully reformed and rehabilitated.

At the start of the penalty-phase trial, petitioner's counsel proceeded on the assumption that both lawyers would be able to make an opening presentation to the jury, but the trial judge (understandably enough) ruled that only one lawyer could make an opening statement, and that only one lawyer could examine each witness.

Mr. Owens then proceeded to present the testimony of petitioner's mother, sister, and other family members. The apparent intent of counsel was to establish that petitioner had had a difficult childhood, with few advantages; that he was fun-loving and good-humored, that he had been close to his "stepfather" who had recently died, and had been devastated by that loss; and that he was extremely disappointed because he had narrowly failed to pass the exam for his GED.

Unfortunately, the trial record makes clear that Mr. Owens had not given much thought to the specific questions he would ask each witness; more importantly, it is clear that the witnesses did not know what questions to expect, and were frequently surprised and caught off guard by the questions that were asked. Mr. Owens did establish, with some difficulty, that, on occasion, petitioner had been known to help out older people by running errands, without accepting compensation. No evidence

contained in, or derived from, petitioner's school records or medical records was presented.

At the PCRA hearing, petitioner's new counsel presented the testimony of two experts, Dr. Barry Crown and Dr. Richard Dudley, who testified that the petitioner has organic brain damage which substantially impaired his ability to conform his conduct to the requirements of law, and that he suffered from Post-Traumatic Stress Syndrome. The PCRA court found that petitioner's trial counsel satisfied the Strickland standard because the testimony of petitioner's experts was "thoroughly refuted by Dr. John Gordon, a neuropsychologist, who testified for the Commonwealth at the July 16, 1997 PCRA hearing." This factual finding is, in my view, not supported by the record. Although Dr. Gordon disagreed with some of the conclusions expressed by the other two experts, he simply did not address all of their opinions, and certainly did not "thoroughly refute" their testimony. Moreover, and more importantly, I believe the state courts have addressed the wrong issue. The issue is whether petitioner's counsel did or did not conduct a reasonably adequate investigation (clearly, they did not), and whether, if they had, they would have unearthed evidence which might very well have persuaded the jury that there were mitigating circumstances of sufficient weight to justify a sentence of life imprisonment.

It must be remembered that petitioner's counsel at trial suggested only two possible mitigating factors - petitioner's young age (but he was 25) and his alleged lack of a previous history of criminal violence (but, by stipulation, he had just committed felony-murder a few days before the killing involved in this case). Petitioner's counsel cannot be held responsible for the weakness of the two mitigating factors which were tendered to the jury, but they were patently ineffective in a constitutional sense for failing to investigate and to uncover readily available evidence in support of additional specific mitigating factors.

The failure to conduct a reasonable investigation in preparation for the penalty-phase trial would, without more, warrant vacating the death sentence in this case. But there is more: petitioner's counsel seemed to be operating on the assumption that sympathy for the defendant's plight could be accepted by the jury as a reason for choosing a life sentence. Indeed, Mr. Owens submitted a point for charge to that effect, and argued to the jury in that vein. Under Pennsylvania law, however, sympathy is not to be considered unless it arises from the evidence of other, authorized, mitigating factors. Under the governing statute, the jury was permitted to consider two specific mitigating factors (age of the defendant, and absence of previous crimes of violence) and a "catch-all" factor based upon

evidence concerning the circumstances of the crime and the characteristics of the defendant. Thus, if the jury was paying attention to the judge's charge in this case, the only valid mitigating factor presented by defendant's counsel which the jury could properly consider, was the age of the defendant. And, as noted above, he had attained the age of 25.

In addition to the constitutional ineffectiveness of petitioner's counsel at the penalty phase, the jury arguments advanced by the prosecutor are a cause for concern. The prosecutor's opening address, and closing argument at the guilt-phase trial were decidedly aggressive, replete with expressions of the prosecutor's own opinions about the case, etc. The closing argument at the penalty phase went even further, and seems designed to create a lynch-mob mentality on the part of the jury. At the very least, it represents an unacceptable appeal to class prejudice, an "us against them" approach to the case. It is to be hoped that, if there is to be a retrial of the penalty phase, these errors will be avoided.

VII. CONCLUSION

For the reasons set forth above, the petition of Jesse Bond for a writ of habeas corpus is denied with respect to the petitioner's conviction of first degree murder, and is granted with respect to petitioner's sentence. The sentence will be

vacated, and the case remanded to the state courts for further proceedings.

An Order follows.

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

JESSE BOND	:	CIVIL ACTION
	:	
v.	:	
	:	(Death Penalty)
JEFFREY BEARD, Commissioner,	:	
Pennsylvania Department of	:	
Corrections, et al.	:	NO. 02-cv-08592-JF

ORDER

AND NOW, this 24th day of April 2006, upon consideration of the Petition of Jesse Bond for a Writ of Habeas Corpus, and the response thereto, IT IS ORDERED:

1. Insofar as the Petition seeks reversal of the judgment of conviction of first degree murder, the Petition is DENIED, but a certificate of appealability is ISSUED.

2. With respect to the penalty of death, the Petition is GRANTED. The petitioner's sentence is VACATED, and the case REMANDED to the state courts for further proceedings. Unless the petitioner is afforded a new sentencing hearing within 120 days, he shall be sentenced to life imprisonment in this case.

3. There is probable cause to appeal the denial of relief with respect to the conviction.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.