

IN THE COURT OF COMMON PLEAS OF PIKE COUNTY, PENNSYLVANIA
CRIMINAL

COMMONWEALTH OF PENNSYLVANIA

vs.

ERIC MATTHEW FREIN,

Defendant

:
:
:
:
:
:
:
:
:
:
:

: No. 19 – 2015 - CR

OFFICE OF
PROTHONOTARY
CLERK OF COURTS
2016 JUN 17 PM 3:18
ENTERED FOR RECORD
PIKE COUNTY, PA

ORDER

AND NOW, this 17th day of June, 2016, upon consideration of the Defendant's Motion Regarding Death Penalty Issues, the Defendant's Brief in Support of Motion Regarding Death Penalty Issues, the Commonwealth's Brief in Opposition to Defendant's Motions to Bar the Death Penalty and after hearing held on the Defendant's Motion Regarding Death Penalty Issues, it is hereby ORDERED that the Defendant's Motion Regarding Death Penalty Issues is DENIED.

On February 16, 2016, the Defendant filed his Motion Regarding Death Penalty Issues as well as a Brief in Support thereof. On April 19, 2016, a hearing was held on the Defendant's Motion. Thereafter, on May 3, 2016, the Commonwealth filed its Brief in Opposition to Defendant's Motions to Bar the Death Penalty. The Defendant's Motion Regarding Death Penalty Issues is now ripe for disposition. For the reasons discussed below, we conclude that the Defendant is not entitled to any of the requested relief.

In his Motion, the Defendant alleges, *inter alia*, that this Court should find the Pennsylvania death penalty unconstitutional for the following reasons:

1. That the Capital Sentencing scheme creates impermissible barriers to individualized sentencing;
2. That the Capital Sentencing scheme violates Article I, Sections 9, 10 and 13 of the Pennsylvania Constitution and the Due Process, Equal Protection and Cruel and Unusual Punishment clauses of the United States and Pennsylvania Constitutions;
3. That the Capital Sentencing scheme violates the Fair Trial, Due Process, Equal Protection and Cruel and Unusual Punishment clauses of the United States Constitution and Article I, Sections 6, 9 and 13 of the Pennsylvania Constitution as well as the Pennsylvania Rules of Evidence by allowing for the introduction of victim impact evidence;
4. That the Capital Sentencing scheme violates procedural and substantive due process rights;
5. That the Capital Sentencing scheme impairs the right to a trial by jury; and
6. That Capital Punishment and Lethal Injection constitute cruel and unusual punishment.

In essence, the Defendant asserts that the Pennsylvania death penalty is unconstitutional.

We begin our analysis by recognizing that there is a strong presumption that legislative enactments do not violate the Pennsylvania Constitution. *Commonwealth v. Mikulan*, 504 Pa. 244, 470 A. 2d 1339 (1983). The law imposes a “heavy burden of persuasion upon one who challenges the constitutionality of an Act of the General Assembly.” *Id.*, 504 Pa. at 248, 470 A. 2d at 1340. Further, the legislative act will not be deemed unconstitutional unless it “clearly, palpably and plainly” violates the Constitution. *Id.*, 504 Pa. at 248, 470 A. 2d at 1340 citing *Snider v. Thornburgh*, 496 Pa. 159, 166, 436 A. 2d 593, 596 (1981).

In this case, the Commonwealth has charged the Defendant, Eric Matthew Frein with various criminal charges including Murder of the First Degree and Murder of a Law Enforcement Officer of the First Degree arising out of the fatal shooting of Corporal Bryon K. Dickson, II on September 12, 2014. Pursuant to §1102(a) of the Pennsylvania Crimes Code, a person convicted of one or both of the aforementioned Murder offenses shall be sentenced to death or a term of life imprisonment. 18 Pa. C. S. A. §1102. The determination of the sentence shall be conducted in accordance with §9711 of the Pennsylvania Sentencing Code. 42 Pa. C. S. A. §9711.

The Courts of our Commonwealth have consistently applied the provisions of the aforementioned statutes in capital murder cases. At the present time, the laws of the Commonwealth of Pennsylvania and the United States of America recognize the validity of the death penalty subject to certain restrictions and conditions. Since the Defendant requests this Court to find the Pennsylvania death penalty unconstitutional, we must start with the recognition, as noted above, that the laws of the United States and Pennsylvania are that the death penalty is constitutional. In addition, the Defendant bears the heavy burden of establishing that the death penalty statute “clearly, palpably and plainly violates the Constitution.” *Commonwealth v. Mikulan*, 504 Pa. at 248, 470 A. 2d at 1340 citing *Snider v. Thornburgh*, 496 Pa. 159, 166, 436 A. 2d 593, 596 (1981).

The Defendant’s initial assertion is that the Pennsylvania death penalty statute creates impermissible barriers to individualized sentencing and fails to narrowly tailor and give adequate notice of the circumstances on which a sentence of death could be imposed. The Commonwealth correctly notes that the United States Supreme Court has

previously upheld the Pennsylvania death penalty statute as constitutional. *Blystone v. Pennsylvania*, 494 U.S. 299, 110 S. Ct. 1078, 108 L. Ed. 2d 255 (1990). The *Blystone* Court specifically noted that “the Pennsylvania death penalty statute satisfies the requirement that a capital sentencing jury be allowed to consider and give effect to all relevant mitigating evidence.” *Id.*, 494 U.S. at 305, 110 S. Ct. at 1082, 108 L. Ed. 2d at 263.

Section 9711 specifies that the aggravating circumstances to be proven by the Commonwealth at a death penalty sentencing trial are limited to eighteen (18) enumerated circumstances. 42 Pa. C. S. A. §9711(d). The Commonwealth bears the burden of proving all applicable aggravating circumstances beyond a reasonable doubt. *Commonwealth v. Perez*, 625 Pa. 601, 93 A. 3d 829 (2014). In addition, the death penalty statute permits the introduction of evidence of mitigating circumstances. 42 Pa. C. S. A. §9711(e). The listed mitigating circumstances include a catch-all provision for “[a]ny other evidence of mitigation ...” 42 Pa. C. S. A. §9711(e)(8).

The Pennsylvania death penalty statute clearly provides adequate and specific notice of the circumstances which can serve as a basis for the imposition of a sentence of death. The listed factors of aggravation and mitigation, as enumerated in §9711, provide a sentencing jury with ample resources for determining the appropriate sentence on a case by case, individual basis. The Commonwealth and the Defendant must be given the opportunity to present evidence at the sentencing trial and counsel for both parties shall be afforded the right to make argument to the jury for and against

the imposition of death. 42 Pa. C. S. A. §9711(a)(2) and (3). Based on the foregoing, the Defendant's initial argument of unconstitutionality is without merit.

The Defendant next asserts that the Pennsylvania death penalty statute violates Article I, Sections 9, 10 and 13 of the Pennsylvania Constitution and the Due Process, Equal Protection and Cruel and Unusual Punishment clauses of the United States Constitution. In this contention, the Defendant claims that the death penalty statute fails to provide any meaningful check on the discretion of the prosecutor to identify aggravating circumstances pursuant to Pa. R. Crim P. 802 and thus initiate pursuit of a death sentence without affording the defense the opportunity to present evidence of mitigating circumstances.

Rule 802 of the Pennsylvania Rules of Criminal Procedure vests the attorney for the Commonwealth with the discretion to determine whether to seek the death penalty in a particular qualifying case and, if so pursued, to file a written Notice of Aggravating Circumstances consistent with 42 Pa. C. S. A. §9711(d) on or before the date of Arraignment. In this matter, the Commonwealth filed its Notice of Aggravating Circumstances on January 27, 2015 which was prior to the Arraignment Hearing held on January 29, 2015. As such, the Commonwealth complied with its time and notice requirements under Pa. R. Crim. P. 802.

The Defendant has failed to cite any controlling authority for the proposition that he must be given an opportunity to present evidence of mitigating circumstances prior to the Commonwealth's filing of a Notice of Aggravating Circumstances. In fact,

the Rules of Criminal Procedure fail to identify any such right. The timely filing of the Commonwealth's Notice prior to Arraignment provides sufficient notice to the defense of the alleged aggravating circumstances and time to prepare for the sentencing phase, if applicable. Further, as prescribed by 42 Pa. C. S. A. §9711(a)(2) and (3), the Defendant has the right to present evidence of mitigation and make argument against the imposition of death at the sentencing trial. Accordingly, we find Defendant's second contention to be without merit.

The Defendant next claims that the death penalty statute's providing of victim impact testimony violates the Fair Trial, Due Process, Equal Protection and Cruel and Unusual Punishment clauses of the United States Constitution and Article I, Sections 6, 9 and 13 of the Pennsylvania Constitution. The Defendant asserts that the statute creates an "arbitrary and capricious" process by which jurors consider victim impact evidence at a sentencing trial. In addition, the Defendant argues that the prejudicial, confusing or misleading effect of victim impact evidence outweighs any probative value it may have and thus runs afoul of the Pennsylvania Rules of Evidence. Pa. R. E. 401 and 403.

Section 9711(a)(2) provides that evidence concerning the victim and the impact the death has had on the family of the victim is relevant at a death penalty sentencing hearing. Our Supreme Court has likewise recognized that evidence concerning the victim and the impact on the victim's family are relevant at the sentencing hearing in a capital case. *Commonwealth v. Eichinger*, 591 Pa. 1, 915 A. 2d 1122 (2007).

Accordingly, we find the Defendant's assertions as to the evidence of victim impact to be without merit.

Defendant's next assertion is that the death penalty statute violates substantive and procedural due process rights guaranteed by the United States and Pennsylvania Constitutions. First, the Defendant fails to cite any factual basis for violation of substantive or procedural due rights in this matter. Second, the Defendant fails to cite any controlling authority for his contention. Third, the record of this case contradicts the Defendant's assertion of due process violations.

In this matter, the Commonwealth's Criminal Information sets forth the exact criminal offenses charged. The Commonwealth's Notice of Aggravating Circumstances spells out the allegations in support of its pursuit of a death sentence as required by 42 Pa. C. S. A. §9711(d). In addition, two (2) capital certified defense attorneys, with extensive criminal law experience, have been appointed as counsel for the Defendant. Counsel have sought and obtained the appointment of various experts in preparation of a defense of this case. Based on the record before the Court, we find no violation of any substantive or procedural due process rights herein.

The Defendant next claims that separate juries should be utilized to ensure a fair and impartial jury in the guilt and punishment stages of these proceedings. As the Commonwealth correctly points out, our Supreme Court has recognized the propriety of the same jury deciding both the guilt and punishment stages of a capital case. *Commonwealth v. Woodward*, 129 A. 3d 480 (Pa. 2015); *Commonwealth v. Mattison*, 623 Pa. 174, 82 A. 3d 386 (2013). The Supreme Court noted that the death penalty statute mandates that the guilt phase jury, after a finding of guilty and prior to being discharged, proceed to determine whether the Defendant should be sentenced to death

or life imprisonment. *Mattison*, 82 A. 3d at 397; See also 42 Pa. C. S. A. 9711(a)(1). Accordingly, Defendant's contention that separate juries must be utilized herein is DENIED.

The Defendant's final argument on the constitutionality of the Pennsylvania death penalty is that it constitutes cruel and unusual punishment in violation of the United States and Pennsylvania Constitutions. The Defendant specifically avers that the use of lethal injection as the means of carrying out a death sentence is cruel and unusual punishment. As set forth below, the Pennsylvania Supreme Court has found the death penalty to be appropriate punishment in qualifying cases.

In *Commonwealth v. Smith*, 131 A. 3d 467 (2015), the Pennsylvania Supreme Court noted that it previously "rejected the notion that excessive delays in carrying out a death sentence constitute cruel and unusual punishment." *Smith*, 131 A. 3d at 472. In addition, the Supreme Court has generally upheld the constitutionality of the Pennsylvania death penalty as not being cruel and unusual punishment.

Commonwealth v. Walters, 119 A. 3d 255 (Pa. 2015), *Commonwealth v. Koehler*, 558 Pa. 334, 737 A. 2d 225 (1999) and *Commonwealth v. Crews*, 552 Pa. 659, 717 A. 2d 487 (1998). Further, the Defendant provides no federal or state case law authority that the Pennsylvania lethal injection death penalty procedures are cruel and unusual punishment and thus unconstitutional.

The Court likewise agrees with the Commonwealth that consideration of the Defendant's claim that the imposition of a death sentence by lethal injection in

Pennsylvania is unconstitutional is premature. The Defendant's claim can certainly be renewed in the event of a conviction of one or both of the qualifying capital charges in this matter, the imposition of a sentence of death and the subsequent issuance of a death warrant as required by Pennsylvania law. 61 P.S. §4302(a); *Commonwealth v. Baumhammers*, 599 Pa. 1, 960 A. 2d 59 (2008). Accordingly, the Defendant's assertion that Pennsylvania's use of lethal injection is cruel and unusual punishment is DENIED as premature.

Finally, as stipulated to by the parties at the April 19, 2016 hearing held in the above matter, the remaining claims for relief set forth in the Defendant's Motion Regarding Death Penalty Issues, not otherwise addressed above, are reserved for determination at a later date. The Commonwealth and the Defendant are granted leave to file a motion requesting that the remaining claims be scheduled for hearing and/or oral argument prior to trial in this matter.

BY THE COURT:


HON. GREGORY H. CHELAK,

OFFICE OF
PROTHONOTARY
CLERK OF
COURTS
2016 JUN 12 PM 3:18
ENTERED FOR RECORD
PIKE COUNTY PA

c- Pike County District Attorney
Michael E. Weinstein, Esquire
William Ruzzo, Esquire
Court Administrator