

PROCEDURAL HISTORY

1. Petitioner was arrested on March 13, 1982 and charged with first degree murder and related offenses (Philadelphia Court of Common Pleas Nos. 4576-89, March Session, 1982) for the killing of Mary Louise Figueroa, Eugene Jefferson, and Peter Santangelo during a robbery of Smokin' Joe's Corner, a restaurant in Philadelphia, Pennsylvania.

2. Jury selection began on June 27, 1983, and the jury trial began on July 7, 1983. On Friday, July 22, 1983, that jury found Petitioner guilty of three counts of first degree murder and the related charges. Following a brief sentencing hearing on Monday, July 24, 1983, the jury returned three verdicts of death.

3. On June 9, 1987, after post-verdict motions were filed and disposed of, the court formally imposed three death sentences, and a term of years on the remaining related charges.

4. At trial, Petitioner was represented by Malcolm H. Waldron, who had been appointed by order dated April 19, 1983, just weeks before trial began and after prior counsel, Dennis Cogan, was permitted to withdraw. New counsel, Norris E. Gelman, was appointed to represent Petitioner on post-verdict motions. The Commonwealth was represented at trial and through post-verdict proceedings by ADA Roger King, of the Philadelphia District Attorney's Office. The Honorable Robert Albert Latrone presided over the trial, sentencing, and post-verdict motions.

5. The Pennsylvania Supreme Court affirmed Petitioner's convictions and sentences of death on direct appeal on October 6, 1992. Stokes – I. There was no majority opinion. Justice Cappy wrote the Opinion Announcing the Judgment of the Court, in which Chief Justice Flaherty and Justice Zappala joined; Justices Nix, Larsen and Papadakos concurred in the result.

Justice McDermott did not participate. In the lead opinion, the Court reversed the jury's finding regarding one of the two aggravating circumstances: that Petitioner created a grave risk of death (42 Pa. C.S. § 9711(d)(7) ("In the commission of the offense the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense")). This left Petitioner's death sentence intact based upon the sole aggravating circumstance that Petitioner committed the killings during the course of the robbery (42 Pa. C.S. § 9711 (d)(6) ("The defendant committed a killing while in the perpetration of a felony")).

6. Norris Gelman continued to represent Petitioner for direct appeal. The Commonwealth was represented by Hugh Burns, Esquire.

7. Petitioner's conviction and sentence became final on January 4, 1993, when the time for filing a petition seeking a writ of *certiorari* in the United States Supreme Court expired, without such a petition having been filed.

8. Petitioner filed a timely *pro se* petition for state post-conviction relief, which was received by the clerk of court on November 14, 1996. Samuel C. Stretton, Esquire, was appointed to represent him. Mr. Stretton did not file an amended petition. On November 21, 1997, Mr. Stretton was permitted to withdraw as counsel, and, on December 30, 1997, the court appointed Bernard Seigel, Esquire to represent petitioner. On March 13, 2000, Mr. Siegel filed an amended petition for post-conviction relief. On April 20, 2000, he filed a supplemental amended petition and a motion for discovery.

9. The Commonwealth filed a motion to dismiss the amended petition. On August 22, 2000, it filed a supplemental motion to dismiss.

10. At a September 20, 2000, listing of the case, the Honorable C. Darnell Jones, to

whom the case was reassigned upon the death of Judge Latrone, announced his intent to deny the defense request for a hearing and to deny the petition for post-conviction relief. The judge noted that his opinion was already written (NT 9/20/2000, 4). However, he continued the matter until October 30, 2000, with the intent to dismiss on that date “pursuant to Rule 1509”² (NT 9/20/2000, 5). On October 11, 2000, Petitioner filed a *Response to Rule 1507 and 1509 Notice*.

11. On October 30, 2000, Judge Jones dismissed the petition without an evidentiary hearing. Petitioner filed a Notice of Appeal from Judge Jones’s dismissal order on November 28, 2000.

12. On December 30, 2003, the Pennsylvania Supreme Court affirmed Judge Jones’s order. Justice Nigro concurred in the result. Justice Saylor dissented, joined by Justice (now Chief Justice) Cappy.

13. In anticipation of the impending issuance of a Governor’s Warrant of Execution, Petitioner, on February 23, 2004, filed in this Court a Motion for Stay of Execution, Request for Appointment of Counsel and Leave to Proceed in Forma Pauperis. This Court’s Order of February 24, 2004, granted the stay request; permitted Petitioner to proceed as a poor person; appointed undersigned counsel and provided counsel with 120 days to file the instant Petition.

²The Court was referring to Rule 1509, Pa.R.Crim.P., which has since been renumbered as Rule 909.