STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC **SUPERIOR COURT**

(FILED – MAY 2, 2012)

JEREMY M. MOTYKA	**:**	
	:	
VS.	**:**	**C.A. No. NM/09-0249**
	:	
STATE OF RHODE ISLAND	**:**	

DECISION

THUNBERG, J. This matter is before the Court for decision on Petitioner Jeremy M. Motyka's (Petitioner) second (*pro se*) request to be granted post-conviction relief.

On February 22, 2011, Petitioner's former post-conviction relief counsel, Attorney Kevin Dwyer, submitted a "No Merit Shatney Attorney Report" in which he opined that Petitioner would "be unable to carry his burden of proof under the [Post-Conviction Relief] Act." (Shatney Report at 2). Petitioner had claimed that his trial counsel's representation was ineffective, deficient and prejudicial in that counsel: (1) failed to bar the introduction of inculpatory DNA evidence by the State; and (2) ignored his (Petitioner's) instructions to refrain from presenting a diminished capacity defense and to present an "actual innocence" defense.

Attorney Dwyer concluded that if any errors on the part of trial counsel to comport with the foregoing directives did occur, such errors were "harmless." (Shatney Report at 2).

After Attorney Dwyer was allowed to withdraw as counsel, Petitioner filed, *pro se*, a plethora of motions to continue his quest for post-conviction relief.

Petitioner first argues that he was illegally sentenced to Count One in the indictment, murder in the first degree; and Count Two, first degree sexual assault, because the latter is a lesser included offense of the former. Petitioner asserts that the double jeopardy clause "bars the imposition of separate punishment for the crimes of rape and felony murder based on rape." (Pet'r's Mem. regarding Illegal Sentence at 3). This argument is procedurally and substantively frivolous.

Petitioner was sentenced on the murder charge to life imprisonment without the possibility of parole and on the sexual assault charge to a concurrent life sentence. After conviction, the jury was instructed to determine whether Motyka's murder of Ms. Spence-Shaw involved torture or an aggravated battery and/or was an intentional killing by Motyka while he was engaged in the commission of the first degree sexual assault. Although G. L. 1956 § 11-23-2 requires that only one of these circumstances be present before the Court may impose a sentence of life imprisonment without the possibility of parole, the jury found beyond a reasonable

doubt that both of these aggravating factors were present in the instant case.[1] State v. Motyka, 893 A.2d 267, 288 (R.I. 2006).

In his direct appeal, Petitioner argued, in part, that the trial justice had erred when she declined to instruct the jury "on the lesser-included offense of voluntary manslaughter due to diminished capacity." The Supreme Court found that "[b]ased upon the evidence presented at [Petitioner's] trial, no rational jury could have found that [Petitioner's] intoxication was of such a degree as to negate the specific intent necessary for murder." Id. at 287.

The Petitioner's contention that the "lesser-included offense" doctrine applies to his case, in any fashion, presents a conceptual and legal impossibility.

Moreover, Super. R. Crim. P. 12(b)(2) mandates that the defense of double jeopardy be raised by pre-trial motion or be considered waived.

Therefore, the Petitioner's Motion to Correct Illegal Sentence is denied. Likewise, his Motion to Dismiss his convictions "in the interest of justice" is denied.

The Petitioner next moves to "suppress DNA evidence and DNA expert's testimony with prejudice" based on his assertion that the Rhode Island Department

[1] The Supreme Court "overwhelmingly" concurred with the jury's conclusion, citing the victim's "horrific" and "extensive" injuries, her "ability to experience pain . . . throughout the violent attack," and the torturous sexual assault she endured before she was murdered and drowned. Motyka, 893 A.2d at 290, 291.

of Health "illegally gained access to the FBI's national database of DNA profiles without the development and enforcement of quality assurance standards."

Prior to the commencement of Petitioner's trial, the trial justice conducted a motion in limine hearing, "lasting several days" and issued a written decision holding that the "DNA evidence at issue . . . was admissible." Id. at 279.

She did so "out of an abundance of caution" and "despite her skepticism as to whether conducting such an analysis or even a pre-trial hearing was still required in DNA cases." Id. at 279 n.19.

Petitioner is barred by *res judicata* from raising the aforementioned issue and thus his motion to suppress DNA evidence and testimony is denied.

This Court is compelled to record the observation that there is both overlap and duplicity contained within the numerous filings the Petitioner has submitted. The Court is verifying that it has read and substantively considered every document, motion and claim regardless of how they have been styled, entitled or asserted.

Conclusion

The record in this matter is desolate of any conceivable ground upon which post-conviction relief could be granted and Petitioner's request for same must be denied and dismissed. The State will prepare an Order in conformance with the Court's decision.