IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE :

I.D. No. 1005008059A

V.

:

ISAIAH W. McCOY,

:

Defendant. :

OPINION and ORDER

Upon Defendant's Motion for New Trial and Findings of the Court after Penalty Hearing

R. David Favata, Esquire and Deborah J. Weaver, Esquire, Deputy Attorneys General, Department of Justice, Dover, Delaware, attorneys for the State.

Isaiah W. McCoy, pro se.

Lloyd A. Schmid, Jr., Esquire and Suzanne MacPherson-Johnson, Esquire, standby counsel for the Defendant.

WITHAM, Resident Judge October 11, 2012

This is the Court's decision on Defendant's post-trial Motion for New Trial and Findings of the Court after Penalty Hearing.¹

Facts & Significant Procedural History

By an indictment filed on July 6, 2010, Isaiah W. McCoy ("McCoy") was originally charged with the following crimes, all occurring on May 4, 2010: Murder in the First Degree (Intentional Murder), Murder in the First Degree (Felony Murder), two counts of Possession of a Firearm During the Commission of a Felony, Robbery in the First Degree, Possession of a Firearm by a Person Prohibited, Kidnapping in the First Degree, Conspiracy in the Second Degree, and Theft of a Motor Vehicle. The State entered a *nolle prosequi* on Kidnapping in the Second Degree and Theft of a Motor Vehicle, and the State severed Possession of a Firearm by a Person Prohibited.

The history of this case indicates that after the arraignment of McCoy on July 15, 2010, effective discovery ensued with a number of pre-trial issues to be resolved by this Court. The Court resolved an issue that pertained to a motion for continuance filed initially by McCoy and joined in by the State when defense counsel requested that a continuance was necessary in order to complete an investigation into mitigating circumstances even though McCoy, himself, asserted that he did not wish to offer mitigation evidence.² This motion was granted on June 20, 2011 and trial was

¹ This Court decided Defendant's motion for rule to show cause on October 1, 2012.

² Outten v. Kearney, 464 F.3d 401, 417-18 (3d Cir. 2006) (adopting ABA Guideline 11.4.1(D)(2)(C) as a standard for competent representation in a capital case).

State v. McCoy
I.D. No 1005008059A
October 11, 2012

continued to January 9, 2012. The Court grappled with McCoy's Motion in Limine to Preclude Gang Related Evidence and granted the motion as it pertained to the guilt phase on November 21, 2011. The Court was then faced with McCoy's Motion for Issuance of a Subpoena for Information Otherwise Privileged filed on December 8, 2011. The Court denied the motion on January 3, 2012.³

Jury selection began on January 9, 2012, with 11 jurors having been seated by January 17, 2012. On January 23, 2012, this Court was faced with the unusual problem of having to continue the case due to the unexpected illness of one of McCoy's trial counsel. A new scheduling order was issued setting jury selection for May 14, 2012. On May 15, 2012, McCoy applied to the Court to proceed *pro se*. After an extensive and appropriate colloquy with McCoy, the Court issued an order allowing him to proceed *pro se* on May 16, 2012. Jury selection was completed on May 24, 2012. Trial began in earnest on May 29, 2012. At the close of the State's case on June 18, 2012, McCoy moved for a judgment of acquittal. The Court reserved decision on the motion and on June 25, 2012, the Court denied McCoy's motion. A written order was issued. The Court charged the jury on June 27, 2012. On June 29, 2012, the jury returned a verdict of guilty on all counts. On July 5, 2012, McCoy filed a motion for a new trial pursuant to Superior Court Criminal Rule 33.

The Court conducted a capital murder penalty hearing pursuant to 11 *Del. C.* § 4209(b) between July 3, 2012 and July 10, 2012. The jury that determined the guilt

³ The Court had other issues in this case, including an eve of trial matter involving the seizure of documents and contraband produced by the Defendant.

phase of the trial was the same jury that heard the evidence during the penalty phase, with the exception of the Court's dismissal, in an abundance of caution, of Alternate Juror 2 for reviewing a newspaper story about the trial. At approximately 2:30 p.m. on July 3, 2012, McCoy voluntarily absented himself from the proceedings despite the best efforts of the Court to persuade him to stay. He returned to the courtroom on July 5, 2012. On July 9, 2012, McCoy renewed his motion for a judgment of acquittal. The Court denied the motion. On the same day at roughly 10:30 a.m., McCoy voluntarily absented himself for a second time, but returned for the afternoon proceedings. On July 10, 2012, McCoy absented himself from the proceedings for a third time, and the State proceeded with its closing for the penalty phase. The Court then instructed the jury on the law and provided a Penalty Phase Interrogatory Form for the jury to use in reporting its findings and recommendation.

In addition to the statutory aggravating circumstances mentioned below, the State presented evidence of the following non-statutory aggravating circumstances as to Counts 1 and 2 during the Penalty Phase: propensity for violent criminal conduct, repetitive criminal conduct, custody status at the time of the offense, lack of remorse, lack of amenability, undue depreciation of the offense, inability to conform behavior to the rules and regulations of the Department of Correction, inability to be rehabilitated, and escape risk.

In instructing the jury regarding McCoy's actions and choices during the

⁴ Each time McCoy absented himself from the courtroom, the Court instructed the jury to not take any adverse inference from the fact that McCoy was not present.

Penalty Phase, the Court stated as follows:

The Defendant has chosen not to testify under oath at the penalty phase. That choice must not be construed or commented upon as an indication of the appropriate punishment in this case. The Defendant has a constitutional right to testify as he chooses. In this case, the Defendant has elected not to testify. You must not draw any inference from the Defendant's election not to testify.

McCoy chose not to allocute and did not present any mitigating evidence.

On July 11, 2012, after deliberation, the jury unanimously found that the evidence showed, beyond a reasonable doubt, the existence of the following statutory aggravating circumstances: the defendant was previously convicted of a felony involving the use of, or threat of, force or violence upon another person,⁵ the murder was committed while the defendant was engaged in the commission of a robbery,⁶ and the murder was committed while the defendant was engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit Robbery in the First Degree.⁷ Because the jury unanimously concluded that the evidence showed, beyond a reasonable doubt, the existence of a statutory aggravating circumstance, McCoy is eligible for the death penalty. Further, after weighing all relevant evidence in aggravation and mitigation bearing upon the circumstances or details of the

⁵ 11 Del. C. § 4209(e)(1)(i). This circumstance connects to Count 1 (Intentional Murder).

⁶ Id. § 4209(e)(1)(j). This circumstance connects to Count 1 (Intentional Murder).

⁷ *Id.* § 4209(e)(2). The felony murder count for which McCoy was found guilty made this finding of a statutory aggravating circumstance mandatory.

commission of the offenses and the character and propensities of the offender, the jury found, by a vote of 10 to 2 on Count 1 (Intentional Murder) and on Count 2 (Felony Murder), that the aggravating circumstances outweighed the mitigating circumstances.

The law provides that if a jury has found the existence of at least one statutory aggravating circumstance, beyond a reasonable doubt, the Court is to consider the findings and recommendations without hearing or reviewing any additional evidence. A sentence of death shall be imposed if the Court finds, by a preponderance of the evidence, after weighing all relevant evidence in aggravation or mitigation which bears upon the particular circumstances or details of the commission of the offense and the character and propensities of the offender, that the aggravating circumstances found by the Court to exist outweigh the mitigating circumstances found to exist by the Court. Otherwise, the Court shall impose a sentence of imprisonment for the remainder of McCoy's life without the benefit of probation or any other reduction.

The Court also notes that the findings must be made following a careful, conscientious, and considered weighing process given the aggravating and mitigating circumstances of this case. Then, the Court will give appropriate consideration to the

⁸ *Id.* § 4209(d)(1).

⁹ *Id*.

¹⁰ *Id.* § 4209(d)(2).

jury's sentencing recommendation as required by law.

The Nature and Circumstances of the Offense

James Mumford ("Mumford"), was shot and killed in a drug deal gone awry on the evening of May 4, 2010 at the rear parking lot of the Rodney Village Bowling Alley. Rakeisha Williams, the girlfriend of Mumford, arranged the deal between Mumford and McCoy. Williams and Mumford left his Salisbury, Maryland residence in the early evening of May 4th. The deal was for 200 ecstasy pills to McCoy in exchange for \$750 and 2 grams of crack cocaine to Mumford. McCoy brought his nephew, Deshaun White ("White"), along to the meeting under the guise that McCoy was going to the mall and was going to buy White some clothing.

Mumford and Williams initially parked in the bowling alley's side parking lot, but McCoy did not wish to meet there, and he requested meeting in the back lot. Mumford and Williams then waited a short time before McCoy arrived with White. After arriving, McCoy and White approached the passenger side of the vehicle, and McCoy entered the rear passenger side and spoke with Mumford for one to two minutes while White waited outside. Mumford sat in the driver's seat and Williams sat in the front passenger side seat. After the short conversation, McCoy then pulled out a revolver pointing it between the seats at Mumford. McCoy previously borrowed a revolver from the son of Loretta Williams. She reported to the Dover Police Department that her revolver was missing. The revolver was never recovered. Rakeisha Williams asked McCoy if she could leave the vehicle. McCoy agreed to the request, and she fled. McCoy ordered White to go around to the passenger side of the

vehicle. Shortly thereafter, McCoy fired several shots at Mumford. One of the shots struck Mumford in the chest at a downward angle. Mumford fled the vehicle and collapsed in front of the bowling alley. He was taken to Kent General Hospital where he was later pronounced dead.

Back at the vehicle, McCoy told White to get into the driver's seat, and they drove to a nearby address, 302 Samuel Painter Drive, Dover, Delaware. McCoy instructed White to wipe down the vehicle. They abandoned the vehicle and proceeded to McCoy's mother's house. McCoy's sister, Daria White, picked up Williams at the direction of McCoy a short time later. Williams spent two days in McCoy's basement before McCoy's mother returned Williams to her Seaford, Delaware home. After Police discovered and searched the abandoned vehicle, they found identification belonging to Williams. This led Police to Williams, who over the course of several interviews, implicated McCoy. After several interviews, White also implicated McCoy in the crimes for which he was convicted.

MCCOY'S RULE 33 MOTION FOR A NEW TRIAL

As noted above, on July 5, 2012, McCoy filed a motion for a new trial pursuant to Superior Court Criminal Rule 33. Superior Court Criminal Rule 33 states:

The court on motion of a defendant may grant a new trial to that defendant if required in the interest of justice. If trial was by the court without a jury the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may

grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 7 days after verdict or finding of guilty or within such further time as the court may fix during the 7-day period.

McCoy files this motion for a new trial on grounds other than newly discovered evidence. As such, the motion must be made "within 7 days after verdict or finding of guilty or within such further time as the court may fix during the 7-day period."¹¹ The jury issued a verdict on June 29, 2012, and McCoy filed his motion for a new trial in Court on July 5, 2012. Therefore, McCoy's motion is timely.

McCoy states four reasons for his motion for a new trial. First, he states that there is no physical evidence linking him to the crimes for which he was convicted. Second, he argues that the State's case rested solely on the testimony of White and Williams. Third, McCoy states that, as a whole, the testimony of White and Williams was hearsay. Fourth, McCoy argues that the testimony of White and Williams was contradicted by other evidence in the case. The Court will address each of McCoy's arguments in turn.

First, there is nothing in the law requiring physical evidence to convict a defendant. This assertion, in and of itself, does not raise a proper ground for a new trial.

Second, although the State's case did rely heavily on the testimony of White and Williams, their testimony was not the only evidence against McCoy. The Court

¹¹ Super. Ct. Crim. R. 33; State v. Garnett, 1998 WL 442706, at *1 (Del. Super. May 6, 1998).

heard testimony from several others including Loretta Williams and her son regarding McCoy borrowing the alleged murder weapon, as well as Da'Janiel Smith who sampled a new supply of ecstasy pills that McCoy obtained around the time of the murder. Other evidence included phone and text message records from McCoy and Rakeisha Williams before and after the crimes. Further, even if the testimony of White and Williams was the State's only evidence against McCoy, it would have been well within the province of the jury to determine their testimony to be more credible than the sum of McCoy's evidence.¹²

Third, there are two issues with McCoy's hearsay criticism of White's and Williams's testimony. "Counsel must preserve alleged errors committed by the Court, by timely and sufficient objections and requests . . . if he wishes to assert such matters as grounds for [a] new trial." During the course of jury selection, McCoy opted to represent himself *pro se* after an appropriate colloquy by the Court. Although Delaware Courts allow some leeway for *pro se* litigants, such *pro se* parties are still required to know and comply with Court rules. McCoy does not state, and the Court, upon review of the trial transcript does not find or recall, a contemporaneous objection that, as a whole, the testimony of White and Williams was hearsay.

Further, even if the Court were to excuse the lack of a contemporaneous

¹² See Hutchins v. State, 153 A.2d 204, 207 (Del. 1959).

¹³ State v. Halko, 193 A.2d 817, 830 (Del. 1963) (citation omitted).

¹⁴ See Briscoe v. State, 606 A.2d 103, 108 (Del. 1992); Zhai v. Stein, 2012 WL 1409358, at *6 (Del. Super. Jan. 6, 2012).

objection, this ground raised by McCoy is completely unfounded. D.R.E. 801(c) clearly states the definition of hearsay: "Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Simply put, McCoy misapprehends hearsay as White and Williams testified at trial regarding their first hand experiences of the events leading up to and occurring after the murder of James Mumford on May 4, 2010.

Reviewing McCoy's fourth ground, conflicting testimony, in and of itself, is not a ground for a new trial. "It is a well-settled general rule of law that the jury are the sole judges of the degree of credit to be given to the testimony [at trial]" ¹⁵ McCoy is correct in stating that the testimony presented by the State and by McCoy was conflicting. Nevertheless, as the Court noted in its ruling on McCoy's motion for a judgment of acquittal, there was sufficient evidence for conviction on all counts before the Court. Even if the Court interprets McCoy's argument that White and Williams were contradicted by other evidence as an argument that the verdict was against the great weight of the evidence, the decision on such a ground is addressed to the sound discretion of the trial court. ¹⁶ After presiding over the trial and examining all of the evidence presented by both sides, it is the ruling of this Court that the verdict rendered by the jury was proper and not against the great weight of

¹⁵ *Hutchins*, 153 A.2d at 207.

¹⁶ *Id.* at 206.

the evidence, nor is there any reason for the Court to believe that a new trial is required in the interests of justice. Therefore, McCoy's motion for a new trial is hereby *denied*.

FINDINGS OF THE COURT AFTER PENALTY HEARING

By a 10-2 vote, a jury has recommended a sentence of death. In light of the jury recommendation, under 11 *Del. C.* § 4209(d) the Court must determine, paraphrasing, whether:

- a. Beyond a reasonable doubt at least one statutory aggravating circumstance exists; and
- b. By a preponderance of the evidence, after weighing all relevant evidence in aggravation or mitigation bearing on the offense and the character and propensities of McCoy, the aggravating circumstances outweigh the mitigating circumstances.¹⁷

Under Delaware's capital punishment law, if the Court finds that one statutory aggravating circumstance exists and that, by a preponderance of the evidence all the relevant aggravators outweigh the relevant mitigators, "[a] sentence of death shall be imposed." "Otherwise, the court shall sentence Defendant to imprisonment for the remainder of Defendant's natural life without benefit of probation or parole or any other reduction." The court must consider the jury's recommendation, but it is not

¹⁷ State v. Taylor, 2001 WL 1456688, at *1 (Del. Super. July 5, 2001).

¹⁸ 11 *Del. C.* § 4209(d)(1).

¹⁹ 11 Del. C. § 4209(d)(2).

conclusive.²⁰ These are the written findings required by 11 Del. C. § 4209(d)(4).

The Aggravating Circumstances

At the completion of the evidence in the Penalty Phase, the Court instructed the jury regarding the statutory framework of the Delaware death penalty statute and how their deliberations should be conducted. As noted above, the jury returned its sentencing recommendation on July 11, 2012 and found, beyond a reasonable doubt, as follows: (1) the defendant was previously convicted of a felony involving the use of, or threat of, force or violence upon another person, (2) the murder was committed while the defendant was engaged in the commission of a robbery, and (3) the murder was committed while the defendant was engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit Robbery in the First Degree. The jury found, by a vote of 10 to 2 on both Count 1 (Intentional Murder) and Count 2 (Felony Murder), that the aggravating circumstances outweighed the mitigating circumstances. Therefore, McCoy is qualified for the death penalty.

Since the nature of the crime has already been described, it is now appropriate for the Court to conduct its own independent inquiry in consideration of the jury's findings. The Court, therefore, makes the following findings in this case. The Court acknowledges the jury's findings of guilt, particularly as to Murder in the First Degree (Intentional Murder), Murder in the First Degree (Felony Murder), and

²⁰ State v. Cohen, 604 A.2d 846, 856 (Del. 1992) (Although jurors are not the "final arbiters of punishment," as the "conscience of the community" they play "a vital and important role in the sentencing procedure.").

Robbery in the First Degree. The Court finds that some of the additional non-statutory aggravating circumstances have been established by a preponderance of the evidence.

For a young man, at age twenty-five, McCoy has shown a propensity for violent criminal conduct. McCoy pleaded guilty to Attempted Robbery in 2004 in an incident in which he held a knife within inches of the victim's neck.

McCoy has a long record of repetitive criminal conduct. McCoy's adult criminal history includes 7 felony convictions and 3 misdemeanor convictions. His juvenile criminal history includes 11 adjudications of delinquency—2 for committing felonies. McCoy's record indicates an escalating pattern of criminality. He has demonstrated no desire to change his approach to life. He seems to relish the fact that he is a successful drug dealer. In fact he smiled during testimony related to his drug selling activity and seems to demonstrate to a large degree of defiance to conforming to the law.

McCoy was out on bail at the time the above offenses were committed.

McCoy has shown no remorse or acceptance of responsibility for the offenses committed herein. When one examines the record, I am struck by McCoy's churlish acceptance of what one is willing to do to promote illegal drug activity.

McCoy has shown a lack of amenability to lesser sanctions. He continues to engage in unlawful activity. If released, I have no doubt he will return to the streets as a drug dealer and engage in conduct endangering the citizens of Delaware.

Undue depreciation of the offense is an aggravating factor given McCoy's

cavalier approach to being a drug dealer and knowingly running the risk of death in conducting this transaction in the manner found by the Jury.

McCoy has shown an inability to conform his behavior to the rules and regulations of the Department of Correction. He engaged in an assault against a Correctional Officer the day after his arrest on these charges. This includes a threat toward a Correctional Officer in which he stated, "I have a body." He also punched a Correctional Officer in the face. It took four correctional officers to subdue him after this battery. The Department of Correction has documented a number of other incidents involving anger, threats, verbal abuse, and sexual misconduct. Evidence was developed by the State as to McCoy's association with and his promoting or being a member of the "Bloods" criminal gang. Such gang activity within the prison poses a significant threat to others and does not bode well for his future success as a prisoner if he receives a life sentence.

The testimony from Mrs. Creekmore, the mother of James Mumford, indicates that the loss of Mr. Mumford will be an ongoing difficult hardship for his family.

McCoy has shown an inability to be rehabilitated. An employee of the Division of Youth Rehabilitative Services testified that McCoy attended several alternative schools or boot camps including the Brown School, Cumberland Hall in Tennessee, Vision Quest, and the Ferris School and was largely unsuccessful.

McCoy is an escape risk. McCoy has been convicted twice of Escape After Conviction, including a conviction that involved walking away from a work release

²¹ This is a reference to the fact that McCoy had murdered someone.

October 11, 2012

program and remaining at large for three months.

The Mitigating Circumstances

The Court is confronted by the rare circumstance of a *pro se* capital murder defendant.²² In addition, the Court has before it the equally rare circumstance of a defendant who did not put on a mitigation case or allocute. He has been very consistent in this decision <u>not</u> to present any mitigation circumstances or defense from the beginning to the end of the case. In fact, the Court repeatedly gave opportunities to McCoy to reconsider and urged him to put matters in mitigation. With a great deal of reluctance, as well as urging by the Court, he did, however, allow a "mitigation notebook" to be admitted as a court exhibit into the record that he did not wish for the jury to see. Title 11, section 4209(d)(1) of the Delaware Code states in pertinent part:

If a jury has been impaneled and if the existence of at least 1 statutory aggravating circumstance as enumerated in subsection (e) of this section has been found beyond a reasonable doubt by the jury, the Court, after considering the findings and recommendation of the jury and without hearing or reviewing any additional evidence, shall impose a sentence of death if the Court finds by a preponderance of the evidence, after weighing all relevant evidence in aggravation or mitigation which bears upon the particular circumstances or details of the commission of the offense and the character and propensities of the offender, that the aggravating circumstances found by the Court to exist outweigh the

 $^{^{22}}$ Note: the Court did compliment McCoy for his dress and a degree of respect so long as things seemed to go his way, in his view.

mitigating circumstances found by the Court to exist.²³

A plain reading of the statute leads the Court to the conclusion that it has no discretion to review a mitigation notebook which the jury was not allowed to see. Prior to the Court accepting the mitigation notebook as a court exhibit, McCoy offered two mitigating circumstances for the Court to consider in sentencing: residual doubt and victim involvement. However, McCoy, even after urging by the Court to take advantage of the opportunity to consult with standby counsel, refused to proceed to offer evidence as to these mitigating circumstances.

The Court asked the parties to review *State v. Taylor* including the sentencing decision,²⁴ the direct appeal,²⁵ the Superior Court's Post Conviction Relief pursuant to Rule 61 decision²⁶ and the Supreme Court's review of the decision of the Superior Court on Taylor's Rule 61.²⁷ The Court asked the parties to review these matters and return to Court on July 10, 2012 for a final decision.

After the overnight review, the State took the position that if McCoy produced the individual who compiled the mitigation notebook to authenticate the content

²³ 11 Del. C. § 4209(d)(1) (emphasis added).

²⁴ 2001 WL 1456688 (Del. Super. July 5, 2001).

²⁵ Taylor v. State, (Taylor I), 872 A.2d 1052 (Del. Super. 2003), cert. denied, 540 U.S. 931 (2003).

 $^{^{26}\,}$ State v. Taylor, 2010 WL 3511272 (Del. Super. Aug. 6, 2010).

²⁷ Taylor v. State, (Taylor II), 32 A.3d 374 (Del. 2011).

thereof, the State would not oppose and the notebook may go to the jury. However, if a witness is not available, the State would stipulate to the authenticity of the documents contained in the notebook and the notebook could still go to the jury, apparently without any cross examination. However, the State properly, yet unwisely, argued that the Court cannot see nor consider evidence in mitigation that the jury has not seen and considered.

As a consequence of the State's position, McCoy chose not to put on any case whatsoever and further asked that the notebook be withdrawn. This would mean that there would be no mitigation evidence presented either to the Court or the jury - not a development that the Court would welcome in light of the seriousness of the case. Unlike *Taylor*, this Court would be faced with almost certain fatal consequences for McCoy.

After more discussion McCoy relented with respect to the notebook and allowed the mitigation notebook to remain as the sole mitigation evidence in the record.²⁸ McCoy refused to offer any evidence nor proceed with a residual doubt nor a victim involvement mitigation defense. This Court, as in *Taylor*, attempted to scramble together a mitigation defense from the evidence presented to include a review of the mitigation notebook provided by the defense. The Court notes, however, that the court in *Taylor* reviewed a mitigation notebook that was not

Note: McCoy never did anything about the placement of the notebook in evidence so the jury may review it.

presented to the jury.²⁹ The Delaware Supreme Court made no comment regarding the trial judge's review of the mitigation notebook in light of § 4209(d)(1).

Furthermore, the Court believes that ignoring the mitigation notebook would be a violation of the Due Process Clause of the United States Constitution, which states, "[N]or shall any state deprive any person of life, liberty, or property, without due process of law "30 The State is attempting to deprive McCoy of his life. The State also argues for a strict interpretation of § 4209(d)(1), which would, as written, deprive him of his life without first allowing the Court to review every piece of relevant evidence submitted in his favor. The Court believes that, in this particular case, with the unusual circumstances faced, the Due Process Clause requires a judge to take a holistic view of the person with no restraint as to evidence in the record when making a decision of death versus life in prison. The Due Process Clause must override a strict reading of § 4209(d)(1). 31

Therefore, for the above-stated reasons, the Court has reviewed the mitigation notebook provided to the Court by McCoy.

If the Court considers the statutory balancing process in the strictest manner designed by the Legislature, the way seems clear. McCoy presented no mitigation defense to the jury during the Penalty Phase. I must and will go beyond such a

²⁹ Taylor II, 32 A.3d at 389.

 $^{^{30}\,}$ U.S. Const. amend. XIV, § 1; see also Del Const. art. I, § 7.

³¹ Taylor II, 32 A. 3d at 389.

stringent agenda as noted above. The two mitigating circumstances originally proposed, yet later withdrawn by McCoy, which directly relate to the particular details of the commission of the offenses are the lack of residual doubt and victim involvement.

Residual doubt was raised as a mitigating circumstance related to a potential lingering doubt with respect to McCoy's state of mind and intent to commit the murder. McCoy suggested and argued (at least in the Penalty Phase) that the conflicting statements of the eyewitnesses Rakeisha Williams and DeShaun White suggest a lingering uncertainty about the facts, and perhaps, a state of mind existing somewhere between beyond a reasonable doubt and absolute certainty.³² However, given the fact that McCoy did not allocute and that the jury found the existence of a statutory aggravating circumstance unanimously and beyond a reasonable doubt, residual doubt is not an effective argument even if pursued in the Penalty Phase.

Turning now to "victim involvement." Clearly there was some degree of victim involvement since Mumford knew full well the risks of the trade having been in the "business" of selling drugs, along with McCoy. If one gives credit to the suggested evidence that Mumford had bullets in his vehicle, and accepting the evidence that McCoy had a hand gun in the vehicle, both McCoy and Mumford understood that potential violence with gun play could result in death. I must recognize and find that some victim involvement is present.

McCoy suggests that one of the reasons he presented the mitigation notebook

³² Zebroski v. State, 822 A.2d 1038, 1049 (Del. 2003).

was because his mother and sister suggested it. This implies that he has those who care and love him and will miss him. The content of the notebook itself suggests that he was physically and probably sexually abused as a child with a father figure lacking in his life. His mitigation notebook shows that he was also subjected to abuse even in out-of-state facilities. He has a history from the early age of nine of exposure to drugs and alcohol, criminal activity, and being neglected by his mother. His mother describes him as a "very angry little boy." Without parental support he was often kept out of the home to live in the streets. He has an extensive history of criminal activity and of repeated placements in juvenile schools to correct his behavior. This Court must consider that some mitigating circumstances exist. He lacked guidance, including parental support as a child. McCoy has suffered neglect and emotional and sexual abuse as a child. He has not been given effective counseling.

The notebook showed that he had attended a different school in each of the first four years of his education, including kindergarten. He was evaluated for Special Education Services in 1996 when he was in the 3^{rd} grade. A letter from his mother indicates that he did have some academic promise since he was on the Honor Roll in the 6^{th} grade.

He does have a history of doing better in a structured environment as a child, yet still tends to be disruptive. A report dated June 24, 2010 from the Department of Social Services does indicate that from a developmental point of view "he is on target".

No family member was called to speak on his behalf in the Penalty Phase.

The Court will give credit to him in establishing these matters in mitigation. However, without further evidentiary development, other than a review of the notebook, these factors are insufficient.

It is apparent, however, that he has shown no remorse. In fact, he has said this to the Court. Yet he maintains he is innocent. He does not fully appreciate the consequences of what he did nor has he apologized. In fact, he revels in the fact that he is a successful drug dealer. He readily admits he will continue to do this illegal activity in the future. He is a menace to others, particularly in the prison system given his inability to conform to a prison environment with the numerous write-ups.

CONCLUSION

The Court gives the jury's recommendation the consideration it deems appropriate in light of the particular circumstances or details of the commission of the offenses as well as the character and propensities of McCoy as found by the Court to exist.

The same jury determined by a preponderance of the evidence that the aggravating circumstances outweighed the mitigating circumstances and recommended the death penalty by a vote of 10 - 2. The law provides that the Court must give appropriate weight to the jury's recommendation. I do so recognizing that I am not bound by the jury's recommendation if the evidence leads me to a different conclusion.

The aggravating factors in the case are serious and substantial. The factual record established by the evidence is overwhelming. The circumstances of the crimes

State v. McCoy

I.D. No 1005008059A

October 11, 2012

are unnecessary and avoidable, and within the control of McCoy. While there are

mitigating factors present, they are not substantial when compared to the aggravating

factors.

After carefully weighing all relevant evidence in aggravation or mitigation

which bears upon the particular circumstances or details of the commission of the

offenses and the character and propensities of McCoy, I find that the aggravating

circumstances found to exist outweigh the mitigating circumstances found to exist.

McCoy engaged knowingly and consciously in conduct which resulted in a needless

death. He indulged in a life of crime.

McCoy has not been a productive member of society at any stage and he

presents a real danger in the confined environment of a prison. He is not likely to be

rehabilitated and thus the Court agrees with the jury. I will impose a sentence of

death.

IT IS SO ORDERED this 11th day of October, 2012.

/s/ William L. Witham, Jr.

Resident Judge

WLW/dmh

oc:

Prothonotary

xc:

R. David Favata, Esquire

Deborah J. Weaver, Esquire

Mr. Isaiah W. McCoy, JTVCC

Lloyd A. Schmid, Jr., Esquire

23

State v. McCoy I.D. No 1005008059A October 11, 2012

Suzanne MacPherson-Johnson, Esquire