

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday, the 8th day of June, 2007.

Teresa Lewis, Petitioner,
against Record No. 042743
Warden of the Fluvanna Respondent.
Correctional Center,

Upon a Petition for a Writ of Habeas Corpus

Upon consideration of the petition for a writ of habeas corpus filed December 27, 2004, the respondent's motion to dismiss, and the reply to the respondent's motion to dismiss, the Court is of the opinion that the motion should be granted and the writ should not issue.

Teresa Wilson Bean Lewis pleaded guilty in the Circuit Court of Pittsylvania County to two counts of capital murder, two counts of conspiracy to commit capital murder, one count of robbery and three counts of use of a firearm. After accepting Lewis' guilty pleas, the circuit court heard evidence with regard to sentencing and thereafter granted Lewis' motion to strike the Commonwealth's evidence of "future dangerousness" under Code § 19.2-264.4(C). However, the circuit court found that the Commonwealth had proven the "vileness" of the crime, a separate predicate to the imposition of a death sentence under Code § 19.2-264.4(C), and sentenced Lewis to death for each conviction of capital murder for hire, to life imprisonment for the robbery conviction, and to 33 years' total imprisonment for the conspiracy and firearms convictions. This Court affirmed Lewis' convictions and approved the sentences of

death in Lewis v. Commonwealth, 267 Va. 302, 593 S.E.2d 220, cert. denied, 543 U.S. 904 (2004).

Petitioner's claims (I), (II), (III), and (VII) are addressed in the published opinion of the Court entered this day. See Lewis v. Warden, 274 Va. ___, ___ S.E.2d ___ (2007) (this day decided).

In claim (IV), petitioner alleges that she was denied the effective assistance of counsel because her trial counsel failed to adequately advise her of her rights pursuant to Apprendi v. New Jersey, 530 U.S. 466 (2000), and Ring v. Arizona, 536 U.S. 584 (2002). Petitioner contends that counsel erred when he failed to advise her that, despite entering a plea of guilty, she retained a constitutional right to have a jury determine the issue of the vileness predicate prior to being sentenced.

The Court holds that claim (IV) does not satisfy the "prejudice" prong of the two-part test enunciated in Strickland v. Washington, 466 U.S. 668, 687 (1984). Petitioner fails to allege that if she had been so advised, she would not have pleaded guilty and that her sentences would have been different if determined by a jury. In addition, petitioner advised the circuit court that she understood that by pleading guilty she was waiving her right to a jury trial and that the trial judge would determine her sentences. Finally, in view of the overwhelming evidence of vileness in this case, petitioner has failed to demonstrate the likelihood that a jury would not have imposed sentences of death. Thus, petitioner has failed to demonstrate that there is a reasonable probability that, but for counsel's alleged errors, she would have pleaded not

guilty, would have proceeded to trial, and the outcome of the proceedings would have been different. See Hill v. Lockhart, 474 U.S. 52, 59 (1985); Strickland, 466 U.S. at 687; Bowles v. Nance, 236 Va. 310, 312-15, 374 S.E.2d 19, 20-21 (1988).

In claim (V), petitioner alleges that she was denied the effective assistance of counsel because her trial counsel failed to adequately preserve her purported rights under Apprendi and Ring to be presented with an indictment that included the aggravating factors upon which she could be sentenced to death. In claim (XII), petitioner alleges that her Fifth, Sixth, Eighth, and Fourteenth Amendment rights were violated because the grand jury failed to specify the elements of any of the aggravating factors that must be found before a death sentence may be imposed.

The Court holds that claims (V) and (XII) are without merit. A defendant in a capital murder case does not have a constitutional right to be presented with an indictment that contains the aggravating factors upon which a sentence of death may be imposed. See Ring, 536 U.S. at 597 n.4 (holding that the Fourteenth Amendment has not been construed to include the Fifth Amendment right to "presentment or indictment of a Grand Jury"); Apprendi, 530 U.S. at 477 n.3; Morrisette v. Warden, 270 Va. 188, 191, 613 S.E.2d 551, 556 (2005); Muhammad v. Commonwealth, 269 Va. 451, 491-93, 619 S.E.2d 16, 39 (2005) cert. denied, ___ U.S. ___, 126 S.Ct. 2035 (2006). Moreover, a defendant in a capital murder case does not have a right to a bill of particulars if the indictment provides the defendant with notice of the "nature and character of the offense." See Morrisette, 270 Va. at 191, 613 S.E.2d at 556; Muhammad, 269 Va. at

493, 619 S.E.2d at 40. In this case, Lewis had such notice because her indictments stated that she was being charged with capital murder under Code § 18.2-31(2) for the particular offense of murder for hire. See Muhammad, 269 Va. at 493-94, 619 S.E.2d at 39-40; Goins v. Commonwealth, 251 Va. 442, 454, 470 S.E.2d 114, 123, cert. denied, 519 U.S. 887 (1996).

In claim (VI), petitioner alleges that she was denied the effective assistance of counsel because her trial counsel failed to preserve for appeal the issue whether Code § 19.2-257 is constitutional. The Court holds that claim (VI) does not satisfy the "prejudice" prong of the two-part test enunciated in Strickland. Petitioner has failed to demonstrate that there is a reasonable probability that, had this issue been preserved for appeal, she would have obtained a reversal of her death sentences on these grounds. See Hill, 474 U.S. at 59; Strickland, 466 U.S. at 687; Bowles, 236 Va. at 312-15, 374 S.E.2d at 20-21. Accordingly, we hold that petitioner has failed to demonstrate that there is a reasonable probability that, but for counsel's alleged errors, the outcome of the proceedings would have been different. See Strickland, 466 U.S. at 687.

In claim (VIII), petitioner alleges that she was denied the effective assistance of counsel because her trial counsel failed to enforce her rights under Atkins v. Virginia, 536 U.S. 304 (2002), and Ring v. Arizona, 536 U.S. 584 (2002). Petitioner contends that pursuant to Atkins and Ring, she was entitled to have a jury determine the issue whether she is mentally retarded. Petitioner argues that a jury would have found that she is mentally retarded or

that her low level of cognitive functioning undermined any confidence in the outcome of the proceedings.

The Court holds that claim (VIII) does not satisfy the "prejudice" prong of the two-part test enunciated in Strickland. The record, including the exhibits and other evidence presented at the evidentiary hearing, demonstrates that petitioner's claim of mental retardation fails. Lewis bore the burden of proving by a preponderance of the evidence that she is mentally retarded. See Code § 19.2-264.3:1.1(C). None of the witnesses who testified as experts in the fields of psychology and psychiatry at the evidentiary hearing determined that Lewis met the comprehensive statutory definition of mental retardation. Thus, petitioner has failed to demonstrate that there is a reasonable probability that, but for counsel's alleged errors, the result of the proceeding would have been different.

In claim (IX), petitioner alleges that she was denied the effective assistance of counsel because her trial counsel failed to adequately investigate the truth of Lewis's confession that she had offered money to Matthew J. Shallenberger to kill her husband. As a result, Lewis contends that counsel's performance was deficient when they advised her to plead guilty without challenging the Commonwealth's decision to pursue indictments alleging "murder for hire" pursuant to Code § 18.2-31(2).

The Court holds that claim (IX) does not satisfy the "prejudice" prong of the two-part test established in Strickland. Lewis fails to allege that, had counsel conducted further investigation or challenged the indictment alleging "murder for

hire," she would not have entered a guilty plea. Further, Lewis's confession was corroborated by testimony of Rodney L. Fuller, another perpetrator, and by evidence that Lewis paid Shallenberger the contents of her husband's wallet after Shallenberger carried out the murder plan. Thus, petitioner has failed to demonstrate that there is a reasonable probability that, but for counsel's alleged errors, she would have pleaded not guilty, would have proceeded to trial, and the outcome of the proceedings would have been different. See Hill, 474 U.S. at 59; Strickland, 466 U.S. at 687; Bowles, 236 Va. at 312-15, 374 S.E.2d at 20-21.

In claim (X), petitioner alleges that she was denied the effective assistance of counsel due to the combination of trial counsel's failures as set forth in claims (I) through (IX). The Court holds that petitioner's claim (X) is without merit. As addressed previously, petitioner has failed to demonstrate prejudice as a result of counsel's alleged errors. Having rejected each of petitioner's individual claims, this Court concludes that there is no merit in the contention that such actions when considered collectively have deprived petitioner of her constitutional right to effective assistance of counsel. See Lewis v. Warden, 274 Va. ___, ___ S.E.2d. ___; Jackson v. Warden, 271 Va. 434, 443, 627 S.E.2d 776, 786 (2006); Morrisette v. Warden, 270 Va. 188, 194-195, 613 S.E.2d 551, 558 (2005); Lenz v. Warden, 267 Va. 318, 340, 593 S.E.2d 292, 305, cert. denied, 542 U.S. 953 (2004).

In claim (XI), petitioner alleges that her Fifth, Sixth, Eighth, and Fourteenth Amendment rights were violated because Virginia Code § 19.2-257 unconstitutionally requires that a judge,

rather than a jury, determine the existence of aggravating factors in capital murder cases after a defendant pleads guilty. The Court holds that claim (XI) is procedurally defaulted because this non-jurisdictional issue could have been raised at trial and on direct appeal and, thus, is not cognizable in a petition for a writ of habeas corpus. See Slayton v. Parrigan, 215 Va. 27, 29, 205 S.E.2d 680, 682 (1974), cert. denied, 419 U.S. 1108 (1975).

In claim (XIII), petitioner alleges that her guilty plea was not knowing and voluntary because she was not advised of her rights under Apprendi and Ring to have a jury determine proof of the aggravating factors beyond a reasonable doubt. The Court holds that Claim (XIII) is procedurally defaulted because this non-jurisdictional issue could have been raised on direct appeal and, thus, is not cognizable in a petition for a writ of habeas corpus. See Slayton, 215 Va. at 29, 205 S.E.2d at 682.

In claim (XIV), petitioner alleges that her Fifth, Sixth, Eighth, and Fourteenth Amendment rights were violated because the Commonwealth failed to make a substantive determination, in a "constitutionally permissible manner," that she is not mentally retarded. The Court holds that claim (XIV) is procedurally defaulted because this non-jurisdictional issue could have been raised at trial and on direct appeal and, thus, is not cognizable in a petition for a writ of habeas corpus. See Slayton, 215 Va. at 29, 205 S.E.2d at 682.

In claim (XV), petitioner alleges that she is innocent and, thus, that her conviction and death sentence violate her Fifth, Sixth, Eighth, and Fourteenth Amendment rights. The Court holds

that claim (XV) is barred because assertions of actual innocence are outside the scope of habeas corpus review, which concerns only the legality of the petitioner's detention. See Lovitt v. Warden, 266 Va. 216, 259, 585 S.E.2d 801, 827 (2003), cert. denied, 541 U.S. 1006 (2004).

In claim (XVI), petitioner alleges that her Fifth, Sixth, Eighth, and Fourteenth Amendment rights were violated because the circuit court did not conduct two distinct evaluations in determining petitioner's sentences of death. Petitioner asserts that the circuit court first should have considered whether the aggravating factors causing petitioner to be eligible for a sentence of death were established and then determined the sentence to be imposed. The Court holds that claim (XVI) is procedurally defaulted because this non-jurisdictional issue could have been raised at trial and on direct appeal and, thus, is not cognizable in a petition for a writ of habeas corpus. See Slayton, 215 Va. at 29, 205 S.E.2d at 682.

In footnote 22, petitioner states, "[t]rial counsel's failure to preserve and assert the substantive Claims (XI) through (XVI) is incorporated in each such Claim and precludes any finding of waiver or default by [petitioner]." Petitioner does not support this statement with any allegations of fact or argument concerning the duty of counsel to raise any of these substantive claims. Thus, the Court holds that the purported claim raised in footnote 22 is conclusional and will not support the issuance of a writ of habeas

corpus. See Penn v. Smyth, 188 Va. 367, 370-71, 49 S.E.2d 600, 601 (1948).

Accordingly, the writ of habeas corpus shall not issue and the said petition is dismissed.

Chief Justice Hassell did not participate in the consideration of this case.

A Copy,

Teste:

Patricia L. Harrington, Clerk