

[J-99-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 30 EAP 2001
	:	
Appellee	:	
	:	Appeal from the Judgment of Sentence of
	:	Superior Court entered on 8/31/99 at 4363
v.	:	PHL 1997 affirming the Order entered on
	:	09/25/97 in the Court of Common Pleas,
	:	Philadelphia County, Criminal Division at
	:	9012-4136 1/2
LUIS CRUZ,	:	
	:	
Appellant	:	SUBMITTED: March 22, 2002

OPINION

MR. JUSTICE SAYLOR

DECIDED: June 22, 2004

In this appeal from the denial of a post-conviction petition, Appellant claims that he received disparate treatment on direct appellate review, as compared to that afforded to a co-defendant, and that this offends constitutional due process and equal protection norms and warrants collateral relief.

In October of 1991, an informant advised police that Patricia Melendez sold substantial quantities of cocaine from her residence at 5155 Pennway Street, Philadelphia. Detective Freddie Chaves investigated and developed additional information, which he passed on to other members of a narcotics unit of the district attorney's office, who, in turn, commenced periodic surveillance of the house.

On November 9, 1991, the informant advised Detective Chaves that he had recently purchased cocaine from Melendez. According to the informant, Appellant, who

was in the house and in possession of cocaine at the time of this transaction, supervised the drugs in Melendez's absence. Based on the information gathered, a decision was made to seek judicial authorization for a premises search. While Detective Chaves drafted the warrant application, other detectives returned to maintain surveillance on the residence and await the warrant's issuance.

Subsequently, the surveillance team observed Melendez exiting the rear of the house and entering her vehicle. The detectives stopped her at the end of the driveway, advised her that a search warrant was in process, and asked if she would accompany them into the house, to which Melendez acceded. A detective then searched Melendez's purse for weapons, finding a loaded handgun.¹ The detectives communicated that information via radio to Detective Chaves, who was still at his office drafting the affidavit of probable cause, and he included a general reference to the stop of Melendez's vehicle in the affidavit. Melendez then handed over the keys to the house to the surveillance detectives, who escorted her through the back door while communicating their position to other detectives watching the front.

Those officers then also entered through the unlocked, front door, after having knocked and announced their presence. From the living room, a detective observed Appellant standing by the kitchen sink holding a plastic bag containing a white substance, which Appellant slid into a kitchen drawer upon seeing the detectives.

The surveillance detectives secured the premises and they, Melendez, and Appellant waited in the living room until the search warrant was secured and, thereafter, the officers began the judicially-authorized search of the premises. In Melendez's

¹ Apparently as a consequence of a later search pursuant to the executed warrant, police discovered that Melendez's purse also contained a substantial amount of cash, as well as a tally sheet listing prices and quantities of cocaine.

bedroom, they located a shoe box covered with handwritten notations reflecting drug transactions, a substantial quantity of cash, another loaded handgun, and a digital pager. In Appellant's bedroom, detectives found twelve grams of cocaine, 214 grams of marijuana, and another pager. In the kitchen drawers, detectives found various packages of cocaine, including a one kilogram package (apparently worth at least \$100,000 in drug trafficking circles), along with drug paraphernalia; throughout the kitchen they also located additional records of illicit transactions.

Appellant and Melendez were arrested, charged with drug offenses and conspiracy, and tried jointly. Both filed pretrial motions to suppress all evidence that the police obtained as a result of their entry into and search of Melendez's house; Melendez also challenged the admissibility of the evidence obtained in the search of her purse prior to the entry.

The common pleas court denied suppression, and, following a jury trial, both Appellant and Melendez were convicted. Appellant was sentenced to an aggregate term of incarceration of nine to eighteen years and payment of a \$50,000 fine. Melendez was similarly sentenced.

On appeal, the Superior Court affirmed in separate, memorandum opinions. Thereafter, the cases proceeded on independent time lines, since Appellant sought allowance of appeal in this Court, whereas Melendez initially pursued reargument in the Superior Court.

In May of 1994, this Court allowed appeal on Appellant's petition on a limited basis, with the issues accepted subsuming Appellant's challenge to the legality of the detectives' warrantless entry into Melendez's home. In November of that year, however, the Court dismissed the appeal as having been improvidently granted, with Messrs. Justice (later Chief Justice) Zappala and Cappy dissenting. See

Commonwealth v. Cruz, 538 Pa. 550, 649 A.2d 657 (1994) (per curiam). Appellant timely petitioned for reconsideration, which was denied.

In the meantime, the Superior Court denied Melendez's petition for reargument, and she filed a petition for allowance of appeal, which was granted. Moreover, Melendez was successful in obtaining relief from her conviction and sentence in this Court. See Commonwealth v. Melendez, 544 Pa. 323, 676 A.2d 226 (1996). Initially, the Court found that warrantless detention and search of Melendez outside of her house was illegal, since police lacked probable cause to believe, and reasonable grounds to suspect, that she was engaged in criminal activity at the time of the stop. See id. at 328-29, 676 A.2d at 228-29 (citing Berger v. New York, 388 U.S. 41, 55, 87 S. Ct. 1873, 1881-82 (1967) (probable cause); Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968) (reasonable suspicion)). In this regard, the Court rejected the Superior Court's conclusion that the stop and search of Melendez were warranted under the exigent circumstances exception to the warrant requirement, since the Court failed to discern any exigency where the detectives could have simply awaited the issuance of the search warrant that was in process. See Melendez, 544 Pa. at 330-31, 676 A.2d at 229. Thus, the Court determined that the evidence obtained from Melendez's purse should have been suppressed under Article I, Section 8 of the Pennsylvania Constitution. See id. at 331, 676 A.2d at 229-30.

Next, the Court considered the lawfulness of the search of Melendez's premises. In this regard, it rejected the Superior Court's conclusions that Melendez consented to return with the police, that exigent circumstances also justified the warrantless entry, and that, even if the entry was illegal in the first instance, the admission of the evidence obtained was nonetheless authorized under the independent source doctrine. Initially, the court found no evidence of free and voluntary consent on Melendez's part; rather, it

viewed her conduct as in the nature of mere acquiescence. See Melendez, 544 Pa. at 331-32 & n.8, 676 A.2d at 230 & n.8. Regarding exigent circumstances, the Court admonished that, to the extent that the concern of the detectives was that Melendez's stop may have been observed by someone in the house who could destroy evidence, such possibility was of no legal consequence, since police may not create their own exigencies to be used as justification for non-adherence to the traditional warrant requirement. See id. at 332, 676 A.2d at 332. In rejecting the Commonwealth's invocation of the independent source doctrine, the Court relied on Commonwealth v. Mason, 535 Pa. 560, 637 A.2d 251 (1993), which departed from prevailing Fourth Amendment jurisprudence to establish, as a general rule, that under Article I, Section 8 of the Pennsylvania Constitution, the exclusionary rule applies to evidence obtained via forcible, warrantless entries, albeit that such entry occurred to secure the premises pending the issuance of a warrant predicated upon independent grounds. See id. at 571-72, 637 A.2d at 257. The Melendez Court recognized that Mason's substantial emphasis on the importance of privacy in Article I, Section 8 jurisprudence raised the question of whether the decision should be understood as establishing a bright-line rule requiring an absolute exclusion of evidence seized after warrantless police intrusions into a home, or whether exceptions to the warrant requirement such as the independent source rule might validly pertain in some circumstances. See Melendez, 544 P. at 334, 676 A.2d at 231.

Although the Melendez Court resolved this question in favor of maintaining the availability of the independent source exception, it found that the exception should not be deemed applicable on the facts before it, based on the concern that police should not be permitted to first request a warrant, conduct an illegal entry, then evade suppression of the evidence which they would later seize pursuant to the warrant. See

Melendez, 544 Pa. at 334, 676 A.2d at 231; see also Mason, 535 Pa. at 573, 637 A.2d at 257-58 (Cappy, J., concurring). To alleviate such concern, Melendez held that “[A]pplication of the “independent source doctrine” is proper only in the very limited circumstances where the ‘independent source’ is truly independent from both the tainted evidence and the police or investigative team which engaged in the misconduct by which the tainted evidence was discovered.” Melendez, 544 Pa. at 334, 676 A.2d at 231 (quoting Mason, 535 Pa. at 573, 637 A.2d at 257-58 (Cappy, J., concurring) (emphasis in original)). In Melendez’s case, the Court found that there was no source of evidence in question that was truly independent of either the tainted evidence or the detectives who engaged in the misconduct. Further, the Court admonished:

The Pennsylvania Constitution does not allow police intrusions exemplified by this case and Mason. Government agents may not enter private dwellings through the use of battering rams as in Mason, or by effecting illegal stops and seizures as in this case, and secure the premises by detaining those who occupy the premises while police wait to learn whether their application for a warrant has been approved. It is difficult to imagine practices more inimical to the fundamental idea that no person shall be subject to unreasonable searches and seizures.

Melendez, 544 Pa. at 334-35, 676 A.2d at 231-32.

In a concurring opinion, Justice Cappy joined the reasoning and holding of the majority, but criticized the Court’s prior action in dismissing Appellant’s petition for allowance of appeal which also challenged the search of Melendez’s premises, characterizing such treatment as unjust and shameful. See id. at 335, 676 A.2d at 232.

On remand, the prosecution entered a nolle prosequi on Melendez’s case, and she was released from custody in June of 1996.

Upon reviewing the Melendez decision, Appellant again sought this Court’s review, either in its appellate capacity or, alternatively, as a matter arising in its original

jurisdiction for purposes of granting habeas corpus relief. Such petition was denied by per curiam order.

Subsequently, in a timely petition requesting relief under the Post Conviction Relief Act, 42 Pa.C.S. §§9541-9546, Appellant complained that his rights of due process and equal protection of law were violated by the disparate treatment that he received on appellate review vis-à-vis that afforded to Melendez. The PCRA court, however, dismissed the petition on the Commonwealth's motion, adopting the reasoning from the Commonwealth's supporting brief.

Appellant then filed an appeal in the Superior Court and a habeas corpus petition in federal court. The district judge, however, dismissed the federal petition without prejudice, to permit the state courts the opportunity to address the issue. In the state appeal proceedings, the Superior Court affirmed the PCRA court's order in a memorandum opinion, indicating that it "recognize[d] the frustration felt as a result of the facial contradiction between appellant's case and that of co-defendant Melendez." It found, however, that no relief was due, as Appellant was improperly attempting to relitigate his search and seizure claim, and was not entitled to "retroactive" application of the Melendez decision. In this regard, the Superior Court relied on its decision in Commonwealth v. Fiore, 445 Pa. Super. 401, 665 A.2d 1185 (1995), cert. granted, 521 U.S. 1038, 119 S. Ct. 1332, question certified, 528 U.S. 23, 120 S. Ct. 469 (1999), certified question answered, 562 Pa. 634, 757 A.2d 842 (2000), judgment rev'd, 531 U.S. 225, 121 S. Ct. 712 (2001) (per curiam).

We allowed appeal, and held the matter in abeyance pending the United States Supreme Court's resolution of the federal habeas corpus proceedings in Fiore, which

occurred in 2001. See Fiore, 531 U.S. at 225, 121 S. Ct. at 712.² We subsequently remanded, however, for the preparation of a proper PCRA court opinion per Commonwealth v. Williams, 557 Pa. 207, 224-25, 782 A.2d 1167, 1176 (1999) (disapproving of the practice of wholesale adoption of a litigant's brief to supply the reasoning for a court's Rule 1925 opinion). In the PCRA court's subsequent opinion, it expressed the view that Appellant was entitled to relief from his conviction and sentence, such as was afforded to Melendez. According to the court,

The simple truth here is that the search [of Melendez's residence] has already been found unconstitutional by the highest court in the Commonwealth, and there is no longer any question that it was improper. Legal niceties aside, the Defendant is surely entitled to the benefit of the Supreme Court's ruling -- even if he was not himself entitled to seek it -- and the fact he remains imprisoned is fundamentally wrong.

(emphasis in original).

Presently, Appellant maintains that, throughout the course of the criminal trial and direct appeal proceedings, he and Melendez were identically situated, since both had standing to seek, sought, and were denied suppression; both were convicted in the same forum on the same evidence; and both received equivalent treatment in the Superior Court. Accordingly, Appellant asserts that the disparate treatment by this Court of his petition for allowance of appeal constituted an arbitrary act, violative of his constitutional entitlement to fundamental fairness, due process, and equal protection of the law. See generally Evitts v. Lucey, 469 U.S. 387, 393, 105 S. Ct. 830, 841 (1985) (observing that equal protection "emphasizes disparity in treatment by a State between

² As both parties recognize, the resultant decision of the United States Supreme Court is not dispositive here, since the Court rested its holding on the Commonwealth's failure to establish a basic element of the crime at issue. See Fiore, 531 U.S. at 228-29, 121 S. Ct. at 714.

classes of individuals whose situations are arguably indistinguishable” (citation omitted)); id. at 401, 105 S. Ct. at 838-39 (indicating that even discretionary acts of the state must comport with constitutional norms). Appellant highlights that two courts of this Commonwealth have recognized the unfairness visited upon him by his unequal treatment on direct appeal. Although Appellant recognizes the substantial burden that he bears to obtain relief in the post-conviction setting, he notes that this Court and others have found relief available in the interests of justice in analogous circumstances. See Commonwealth v. Tyson, 535 Pa. 391, 394-95, 635 A.2d 623, 624-25 (1993); Walter v. United States, 969 F.2d 814, 817 (9th Cir. 1992) (“When the federal courts have treated differently two identically-situated co-defendants, the way must be open to correct their error.”). According to Appellant, retroactivity principles are not controlling, since he is not seeking retrospective application of any new rule of law, particularly since no such new controlling rule was announced in Melendez. Rather, his complaint is that the Court did not apply already existing and controlling precedent (Mason) to his case while it was on direct appeal, although it applied the same precedent to his identically situated co-defendant. Appellant also contends that the Superior Court’s reliance on its rationale in Fiori was misplaced, as this Court itself has since discredited such analysis. See Fiore, 562 Pa. at 644-46, 757 A.2d at 848-49.

Finally, Appellant recognizes, that, read literally, he would not appear to be entitled to relief under the PCRA, on account of its prejudice component, (which is couched in terms of the reliability of the truth-determining process), see 42 Pa.C.S. §9543(a)(2)(i)), since his complaint asserts a breakdown in the appellate process, not trial. Appellant, however, invokes decisions in which this Court has reconciled the “sole means” language and substantive limitations of the PCRA with the constitutional prohibition against suspension of the availability of habeas corpus review by channeling

the widest category of matters possible into the statutory post-conviction procedure. See, e.g., Commonwealth v. Chester, 557 Pa. 358, 375-76, 733 A.2d 1242, 1250-51 (1999); Commonwealth v. Lantzy, 558 Pa. 214, 223, 736 A.2d 564, 569-70 (1999).

The Commonwealth, on the other hand, disputes Appellant's contention that he and Melendez were similarly situated. The Commonwealth rests its position in this regard on the fact that, in the Superior Court, Melendez did not independently list the legality of the warrantless entry of the home among her complaints (although the Commonwealth candidly acknowledges that Appellant did). The Commonwealth emphasizes that, in granting Melendez relief, this Court agreed with her primary claim -- unique to her and not raised by Appellant -- that the detectives improperly stopped and searched her in the driveway behind her house, and that there were no exigencies to excuse the officers' conduct outside the house. Although the Commonwealth recognizes that the Melendez Court expressly disapproved the warrantless entry into Melendez's house, the Commonwealth characterizes such discussion as dictum. Since the Commonwealth views the Melendez case as having been decided on grounds unique to Melendez, it asserts that Appellant cannot credibly maintain that he was denied due process or equal protection where this Court merely exercised its discretionary review prerogative and concluded that the concerns it harbored in Melendez's case simply did not apply to a distinctly situated litigant. Even if, arguendo, Appellant and Melendez had been identically situated, the Commonwealth describes Appellant's claim as previously litigated on direct appeal; indicates that Appellant cannot be entitled to retroactive application of Melendez since it announced no new rule of law and was not issued during the pendency of his direct appeal; and asserts that Appellant's claim does not implicate the truth-determining process or otherwise warrant habeas corpus relief.

At the outset, we disagree with the Commonwealth's contention that the holding of Melendez is confined to the validity of the stop of Melendez's vehicle, or the consequences of the invalidity of that stop. The Court, in fact, expressly deemed the premises-search question to be before it, see Melendez, 544 Pa. at 331, 676 A.2d at 230 ("Next, we address the claim that the search of the premises was illegal."); used the case as a vehicle to clarify the holding of Mason, another case involving a premises search, see id. at 334, 676 A.2d at 231; and framed its ultimate holding as encompassing its conclusion concerning the invalidity of the warrantless entry of Melendez's premises. See id. at 334-35, 676 A.2d at 231-32. To the extent that the Commonwealth seeks to differentiate Melendez's claims from Appellant's on the basis that her arguments focused on the vehicle-stop question, the argument seems to go more to the propriety of granting Melendez relief in the first instance than to Appellant's entitlement to relief on the merits, since the Commonwealth concedes that Appellant properly raised and preserved the premises-search question throughout. For purposes of Melendez's holding, we view Melendez and Appellant as identically (or at least as similarly enough) situated.³

We also agree with Appellant that Melendez announced no new, controlling law. Certainly the decision clarified that Mason's broad language did not entirely supplant all exceptions to the warrant requirement. See Melendez, 544 Pa. at 334, 676 A.2d at 231. Both Melendez and Appellant, however, would have been entitled to relief under the bright-line interpretation of Mason that was rejected by the Melendez Court (namely,

³ Although it appears from the record that Appellant was staying in the house as Melendez's guest, overnight guests are afforded standing under both the Fourth Amendment and Article I, Section 8 of the Pennsylvania Constitution. See, e.g., Minnesota v. Olson, 495 U.S. 91, 98-100, 110 S. Ct. 1684, 1689-90 (1990).

that all evidence obtained in connection with a warrantless entry is subject to exclusion), and under the narrower view that Melendez adopted, which preserved exceptions to the warrant requirement but nevertheless found those exceptions inapplicable under the facts presented. See Melendez, 544 Pa. at 334, 676 A.2d at 231.

It is well settled that differential treatment in terms of fact finding is not generally actionable,⁴ and there are certainly an unlimited number of circumstances that may, in a given case, validly support differential treatment among co-defendants in their subsequent efforts to obtain relief on appellate review. Here, however, we find insufficient reasons to support the contrary treatment of Appellant and Melendez in the course of this Court's discretionary review and thereafter. Accord Commonwealth v. Brown, 494 Pa. 380, 385, 431 A.2d 905, 908 (1981) ("Evenhanded decision-making requires that similarly situated individuals on direct appeal be treated the same." (citation omitted)), overruled on other grounds Commonwealth v. Geschwendt, 500 Pa. 120, 134, 454 A.2d 991, 999 (1982).

It is unclear whether federal equal protection or due process concepts will ultimately be construed by the United States Supreme Court to require consistently equal treatment of co-defendants with respect to purely legal issues on appeal. See generally Sanders v. Moore, 156 F. Supp. 2d 1301 (M.D. Fla. 2001) (observing that "there are no reported Supreme Court decisions holding that anyone has a

⁴ See, e.g., Harris v. Rivera, 454 U.S. 339, 345, 102 S. Ct. 460, 464 (1981) ("Inconsistency in a verdict is not a sufficient reason for setting it aside[;] [w]e have so held with respect to inconsistency between verdicts on separate charges against one defendant, and also with respect to verdicts that treat codefendants in a joint trial inconsistently." (citations omitted)); Commonwealth v. Travaglia, 541 Pa. 108, 130, 661 A.2d 352, 363 (1995) (finding a federal court's resolution of a factual dispute involving a co-defendant did not invalidate a post-conviction court's resolution on a nearly identical record).

constitutional right, through equal protection or otherwise, to consistent decisions from an appellate court”).⁵ We find, however, that this question need not be fully resolved, as we are inclined here to grant relief in favor of Appellant on the underlying issue.

We are aware of, and generally enforce according to its plain terms, the statutory bar against relitigation of claims on collateral review under the PCRA. See 42 Pa.C.S. §9543(a)(2). As Appellant notes, however, by its effort to channel the broadest category of post-conviction claims into the statutorily-prescribed procedures, the Legislature implemented a scheme that must necessarily be deemed to take into account facets of traditional habeas corpus jurisprudence, see Chester, 557 Pa. at 375-76, 733 A.2d at 1250-51; Lantzy, 558 Pa. at 223, 736 A.2d at 569-70, under which previous litigation does not function as a never-yielding bar to the possibility of collateral relief. See, e.g., Darr v. Burford, 339 U.S. 200, 214-15, 70 S. Ct. 587, 596 (1950) (“All authorities agree that res judicata does not apply to applications for habeas corpus. The courts must be kept open to guard against injustice through judicial error.”), overruled in part on other grounds, Fay v. Noia, 372 U.S. 391, 435-36, 83 S. Ct. 822, 847 (1963); accord Duncan v. Kerby, 851 P.2d 466, 468-69 (N.M. 1993), cited with approval in Commonwealth v. Grant, 572 Pa. 48, 63-64 & n.13, 813 A.2d 726, 735-36 & n.13 (2002). Indeed, in other instances involving unique circumstances embodying manifest error or irregularity in the chain of previous litigation, this Court and others

⁵ In recognizing “selective application of new rules violates the principle of treating similarly situated defendants the same,” see Griffith v. Kentucky, 497 U.S. 314, 323, 107 S. Ct. 708, 713 (1987), however, the United States Supreme Court appears to be building from the underlying premise that selective application of existing rules violates the same principle. Accord Myers v. Ylst, 897 F.2d 417, 421 (9th Cir. 1990) (“Although the state court has the right to make a ruling retroactive, prospective, or permit limited retroactivity, once it has established a rule it must apply it with an even hand.” (citation omitted)).

have found that the doctrine need not be regarded as dispositive on collateral review. See Commonwealth v. Tyson, 535 Pa. at 394-95, 635 A.2d at 624-25 (granting post-conviction relief to equalize the treatment of similarly situated co-defendants);⁶ accord Walter v. United States, 969 F.2d at 817 (citing Davis v. United States, 417 U.S. 333, 346-47, 94 S. Ct. 2298, 2305 (1974)).⁷

We hold that Melendez establishes Appellant's entitlement to relief on his underlying Article I, Section 8 claim, and such relief is presently available on collateral review in the particularized circumstances presented.

The order of the Superior Court is reversed, Appellant's judgment of sentence is vacated, and the case is remanded for a new trial in accordance with this opinion.

Mr. Justice Eakin did not participate in the decision of this case.

Mr. Justice Castille files a dissenting opinion.

⁶ We acknowledge that the Tyson Court crafted its holding narrowly, tethering it to the Court's notation, in an order denying the petitioner's previous motion to stay effectuation of the judgment of sentence, that such denial was without prejudice to post-conviction review. See Tyson, 535 Pa. at 394-95, 635 A.2d at 624-25. The Tyson decision does not suggest, however, that there was any form of detrimental reliance on the part of the petitioner upon this without-prejudice proviso. The Court's focus, therefore, can be viewed as much as a reflection of its intention to closely constrain exceptions to the previous litigation doctrine as it can be understood to represent material reliance on the without-prejudice proviso as the operative predicate justifying the post-conviction relief afforded.

⁷ We also take a similar view, accepting Appellant's argument with respect to the PCRA's prejudice formulation. See supra.