

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 26**Session of
2003

INTRODUCED BY HELFRICK, KUKOVICH, KITCHEN, HUGHES, FUMO,
M. WHITE, COSTA, ERICKSON, SCHWARTZ, O'PAKE, LAVALLE,
A. WILLIAMS, FERLO, C. WILLIAMS AND MELLOW, JANUARY 22, 2003

AS AMENDED ON SECOND CONSIDERATION, JUNE 16, 2003

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, prohibiting the
3 imposition of the death sentence in cases of mental
4 retardation.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Sections 9543(a)(2) and 9545(b)(1) of Title 42 of
8 the Pennsylvania Consolidated Statutes are amended to read:

9 § 9543. Eligibility for relief.

10 (a) General rule.--To be eligible for relief under this
11 subchapter, the petitioner must plead and prove by a
12 preponderance of the evidence all of the following:

13 * * *

14 (2) That the conviction or sentence resulted from one or
15 more of the following:

16 (i) A violation of the Constitution of this
17 Commonwealth or the Constitution or laws of the United
18 States which, in the circumstances of the particular

1 case, so undermined the truth-determining process that no
2 reliable adjudication of guilt or innocence could have
3 taken place.

4 (ii) Ineffective assistance of counsel which, in the
5 circumstances of the particular case, so undermined the
6 truth-determining process that no reliable adjudication
7 of guilt or innocence could have taken place.

8 (iii) A plea of guilty unlawfully induced where the
9 circumstances make it likely that the inducement caused
10 the petitioner to plead guilty and the petitioner is
11 innocent.

12 (iv) The improper obstruction by government
13 officials of the petitioner's right of appeal where a
14 meritorious appealable issue existed and was properly
15 preserved in the trial court.

16 (vi) The unavailability at the time of trial of
17 exculpatory evidence that has subsequently become
18 available and would have changed the outcome of the trial
19 if it had been introduced.

20 (vii) The imposition of a sentence greater than the
21 lawful maximum.

22 (viii) A proceeding in a tribunal without
23 jurisdiction.

24 (ix) The petitioner claims he is a person with <—
25 EXISTENCE OF mental retardation as defined in section <—
26 9711(p) (relating to sentencing procedure for murder of
27 the first degree).

28 * * *

29 § 9545. Jurisdiction and proceedings.

30 * * *

1 (b) Time for filing petition.--

2 (1) Any petition under this subchapter, including a
3 second or subsequent petition, shall be filed within one year
4 of the date the judgment becomes final, unless the petition
5 alleges and the petitioner proves that:

6 (i) the failure to raise the claim previously was
7 the result of interference by government officials with
8 the presentation of the claim in violation of the
9 Constitution or laws of this Commonwealth or the
10 Constitution or laws of the United States;

11 (ii) the facts upon which the claim is predicated
12 were unknown to the petitioner and could not have been
13 ascertained by the exercise of due diligence; [or]

14 (iii) the right asserted is a constitutional right
15 that was recognized by the Supreme Court of the United
16 States or the Supreme Court of Pennsylvania after the
17 time period provided in this section and has been held by
18 that court to apply retroactively[.]; or

19 (iv) the petitioner claims he is a person with
20 mental retardation as defined in section 9711(p)
21 (relating to sentencing procedure for murder of the first
22 degree) and the time for raising that claim has expired
23 as of the effective date of this subparagraph. Any
24 petition invoking this exception must be filed within 365
25 days of the effective date of this subparagraph or of the
26 conclusion of any appeal pending on the effective date of
27 this subparagraph from the judgment of sentence or from
28 the denial of a previous petition under this chapter.

29 * * *

30 Section 2. Sections 9546 and 9711 of Title 42 are amended by

1 adding subsections to read:

2 § 9546. Relief and order.

3 * * *

4 (a.1) Mental retardation.--Upon a finding that evidence has
5 been presented that is sufficient to establish, by a
6 preponderance of the evidence, that the petitioner is a person
7 with mental retardation as defined in section 9711(p) (relating
8 to sentencing procedure for murder of the first degree), the
9 court shall direct that the sentence of death be vacated and
10 that the defendant be sentenced to life imprisonment.

11 * * *

12 § 9711. Sentencing procedure for murder of the first degree.

13 * * *

14 (e.1) Mental retardation.--

15 (1) No person with mental retardation shall be eligible
16 for the death penalty.

17 (2) (i) At least ~~30~~ 90 days before the commencement of <—
18 trial or later upon just cause shown to the court,
19 counsel for the defendant may, upon written motion
20 alleging reasonable cause to believe that the defendant
21 is a person with mental retardation, apply for an order
22 directing that a hearing to determine if the defendant is
23 not eligible for the death penalty because he is a person
24 with mental retardation be conducted prior to trial. The
25 written motion shall set forth in particular the reasons
26 and grounds to support the reasonable cause to believe
27 that the defendant is a person with mental retardation.

28 (ii) Upon receipt of a motion for a determination
29 that the defendant is not eligible for the death penalty
30 because he is a person with mental retardation, the trial

1 court shall conduct a hearing for the presentation of
2 evidence regarding the defendant's mental retardation.
3 Both the Commonwealth and the defendant shall have the
4 opportunity to present evidence, including expert
5 testimony. The court ~~may~~ SHALL order an expert <—
6 psychiatric or psychological examination of the
7 defendant, to be performed by a licensed psychiatrist or
8 licensed psychologist who is an expert in the diagnosis
9 and evaluation of mental retardation. The defendant shall
10 prove he is a person with mental retardation by a
11 preponderance of the evidence.

12 (iii) Prior to the time set for the hearing on the
13 pretrial motion, the Commonwealth shall have the same
14 rights of discovery as exist under the Pennsylvania Rules
15 of Criminal Procedure, including, but not limited to, the
16 production of reports from experts and production of any
17 information that will further a full, fair and
18 expeditious resolution of the determination of whether
19 the defendant is a person with mental retardation.

20 (iv) At the hearing on the pretrial motion to
21 determine whether the defendant is a person with mental
22 retardation, the defendant shall have the burden of
23 proving that he is a person with mental retardation by a
24 preponderance of the evidence. The court shall consider
25 the existence or absence of documentation, and any
26 reasons for the EXISTENCE OR absence of documentation, of <—
27 the manifestation of mental retardation before 18 years
28 of age.

29 (v) The court shall find that the defendant is not
30 eligible for the death penalty, if it finds, by a

1 preponderance of the evidence, that the defendant is a
2 person with mental retardation. If the court finds that
3 the defendant is a person with mental retardation, the
4 trial shall proceed as a noncapital trial.

5 (VI) IF THE COURT ENTERS AN ORDER UNDER SUBPARAGRAPH <—
6 (V) FINDING THAT THE DEFENDANT IS A PERSON WITH MENTAL
7 RETARDATION, THE COMMONWEALTH MAY APPEAL AS OF RIGHT FROM
8 THE ORDER UNDER PA.R.A.P. 311 (A)(8) (RELATING TO
9 INTERLOCUTORY APPEALS AS OF RIGHT). THE TAKING OF AN
10 APPEAL BY THE COMMONWEALTH UNDER THIS SUBSECTION STAYS
11 THE EFFECTIVENESS OF THE COURT'S ORDER AND ANY ORDER
12 FIXING A DATE FOR TRIAL FOR PURPOSES OF PA.R.CRIM.P. 600
13 (RELATING TO PROMPT TRIAL) AND SPEEDY TRIAL RIGHTS UNDER
14 THE CONSTITUTION OF THE UNITED STATES AND THE
15 CONSTITUTION OF PENNSYLVANIA.

16 ~~(vi)~~ (VII) If the court finds that the defendant is <—
17 eligible for the death penalty, the trial may proceed as
18 a capital case.

19 ~~(vii)~~ (VIII) The pretrial determination of the court <—
20 shall not preclude the defendant from raising any legal
21 defense ~~during the trial~~ OR FACTUAL EVIDENCE INCLUDING, <—
22 BUT NOT LIMITED TO, THE EXISTENCE OF MENTAL RETARDATION
23 DURING THE TRIAL OR THE SENTENCING PHASE OF A CAPITAL
24 TRIAL UNDER THIS SECTION.

25 ~~(viii)~~ (IX) The jury shall not be informed of the <—
26 prior proceedings or the court's findings concerning the
27 defendant's motion with respect to the issue of mental
28 retardation.

29 (3) If a defendant has already been sentenced to death
30 as of the effective date of this subsection and postsentence

1 motions are still pending or a direct appeal is still
2 pending, pursuant to rule of court a defendant may file a
3 motion raising a claim that he is ineligible for a death
4 sentence because he is a person with mental retardation. The
5 trial court that imposed the sentence on the defendant shall
6 conduct an evidentiary hearing on the motion and determine
7 whether the defendant is a person with mental retardation as
8 defined in subsection (p).

9 * * *

10 (p) Definition.--As used in this section, the term "a person
11 with mental retardation" means an individual who has
12 significantly subaverage intellectual functioning existing
13 concurrently with substantial related deficits in adaptive
14 behavior in two or more of the following adaptive skill areas:
15 communication, self-care, home living, social/interpersonal
16 skills, use of community resources, self-direction, health and
17 safety, functional academic skills, leisure and work.
18 Significantly subaverage intellectual functioning may be
19 demonstrated by an A FULL-SCALE intelligence quotient of 70 or <—
20 below on an individually administered intelligence quotient test
21 or tests accounting for all possible margins of error. The
22 mental retardation must manifest itself during the development
23 period before the individual attains 18 years of age.

24 Section 3. (a) This act shall apply to persons who are
25 sentenced on or after the effective date of this act.

26 (b) If a defendant who has already been sentenced to death
27 as of the effective date of this section wishes to raise the
28 issue of mental retardation, and postsentence motions are still
29 pending, the defendant may, pursuant to court rule, amend the
30 postsentence motions to raise the claim that imposition of the

1 death penalty would have been barred under section 9711(e.1) if
2 it had been in effect at the time of the sentencing hearing. The
3 trial court that imposed the sentence on the defendant shall
4 conduct an evidentiary hearing on the motion. Upon a finding
5 that evidence has been presented sufficient to establish that
6 the defendant is a person with mental retardation as provided
7 under section 9711(e.1), the court shall vacate the sentence of
8 death and shall sentence the defendant to life imprisonment.

9 (c) If a defendant who has already been sentenced to death
10 as of the effective date of this section wishes to raise the
11 issue of mental retardation and direct appeal is still pending,
12 the defendant may, pursuant to court rule, after disposition of
13 the appeal, raise the issue in a Post Conviction Relief Act
14 petition ~~pursuant to~~ UNDER section 9545(b) after the disposition <—
15 of the appeal.

16 Section 4. This act shall take effect immediately.