

Appendix A

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CRIMINAL ACTION
No. 81CR01377

81-1383

COMMONWEALTH

vs.

ROBERT WILLIAMS, JR.

ORDER ON DEFENDANT'S APPLICATION IN THE NATURE OF WRIT OF ERROR
CORAM NOBIS, TREATED AS MOTION FOR NEW TRIAL

On January 13, 1982, a Middlesex County jury convicted the defendant, Robert Williams, Jr. ("Williams") of first-degree murder, armed robbery while masked, and assault and battery with a dangerous weapon. The convictions arose out of an armed robbery of a Lowell liquor store by Williams and a co-defendant, during which Williams stabbed the clerk, Donald Roberts ("Roberts"), multiple times in the head and upper body. Williams was sentenced to life imprisonment on the murder conviction and life imprisonment on the armed robbery while masked conviction, to be served concurrently. He has been incarcerated since that time.

The Supreme Judicial Court heard Williams' direct appeal, consolidated with his first motion for a new trial, in 1986, and denied relief to Williams. See *Commonwealth v. Williams*, 399 Mass. 60 (1987). Since that decision, Williams:

- In 1988 filed a motion for post-conviction relief alleging ineffective assistance of counsel related to the alleged failure to present evidence concerning the victim's cause of death.
- In 2006 sought to amend his 1988 motion for post-conviction relief, again focused on the victim's cause of death, and Williams' contention that the negligence of the victim's treating physicians, not Williams' stabbing of the victim, caused the victim's death. This motion was denied on December 18, 2006 by the Superior Court (Lauriat, J.).

- In 2007 sought leave to appeal Judge Lauriaf's denial of post-conviction relief, which was denied by Justice Ireland on July 31, 2007.
- In 2009 filed a third motion for a new trial challenging the jury instructions and alleging ineffective assistance as to his trial counsel. The court (Kottmyer, J.) denied that motion on March 12, 2009.

Williams now has filed an Application in the Nature of Writ of Error Coram Nobis.¹

The thrust of Williams' motion is that he should not have been convicted of murder because the actual cause of Roberts' death was the negligent medical treatment provided by Roberts' doctors at the hospital where he was treated for multiple stab wounds. Williams contends, as he has in previous filings, that Roberts' stab wounds to the brain and neck were not life threatening, but Roberts ultimately died from lack of oxygen to the brain when doctors could not intubate him properly at the outset of a surgery, which aimed to mitigate the injury to Roberts' brain caused by Williams' stabbing. Although Williams frames his grounds for relief in terms of ineffective assistance of counsel (for failing to investigate and present evidence on the impact of medical malpractice on causation), the prosecutor's withholding of evidence (of medical malpractice and causation), and "actual innocence" (alleging lack of causation between the stabbing and the victim's death, *not* that Williams did not stab Roberts multiple times), the essence of his motion is that Roberts died due to medical malpractice not Williams' actions. Williams' motion, like his prior motions, makes no reference to his armed robbery while masked conviction.

¹ The court will decide Williams' motion without a hearing because the motion and supporting materials do not raise a sufficiently "substantial issue," Mass. R. Crim. P. 30(c)(3); *Com. v. Denis*, 442 Mass. 617, 628 (2004), and because Williams' evidentiary showing is not adequate to raise a serious issue that warrants an evidentiary hearing. *Com. v. Smith*, 90 Mass. App. Ct. 261, 264 (2016) (in determining whether a substantial issue warranting an evidentiary hearing has been raised, court looks "not only at the seriousness of the issue asserted but to the adequacy of a defendant's showing" (quoting *Com. v. Stewart*, 383 Mass. 253, 257-58 (1981)).

As a threshold matter, the court will treat Williams' application as a motion for new trial pursuant to Mass. R. Crim. P. 30, which was designed to provide the exclusive vehicle for post-conviction relief. Mass. R. Crim. P. 30, Reprs. Notes (rule simplifies post-conviction procedure while maintaining previous scope of relief available). The court denies Williams' motion for a new trial for the following reasons.

First, the issues Williams raises here have already been raised and rejected, in his direct appeal (which included his first motion for new trial) and his second (2006) and third (2009) motions for a new trial. He is directly estopped from litigating these issues again. Where a defendant raises no new factual or legal issue but seeks to re-litigate a motion that was denied previously and rejected on direct appeal, principles of direct estoppel operate as a bar to defendant's attempt to re-litigate issue. *Com. v. Rodriguez*, 443 Mass. 707, 710-11 (2005) (estoppel if issue raised in new motion was actually litigated and determined previously). Here, the Supreme Judicial Court decision in *Williams*, 399 Mass. at 64-65, demonstrates that Williams' first motion for a new trial relied on the purported "new evidence" that medical malpractice caused the victim's death. Both the trial court and the SJC rejected Williams' argument because (i) Williams did not establish that the purportedly new evidence was unknown and unavailable at the time of trial; and (ii) Williams did not establish that the new evidence would be "a real factor with a jury in reaching a decision." 39 Mass. at 64; see *id.* at 65 ("It is at least doubtful that the evidence . . . would affect the result at a new trial.").²

Second, even if the court were to consider the medical malpractice evidence anew, to warrant a new trial the evidence must "cast real doubt on the justice of a defendant's conviction" by raising a "substantial risk" that the jury would have reached a different conclusion. *Com. v.*

² The court also agrees with the original trial judge and the SJC that Williams has not shown that the evidence concerning the victim's medical treatment is new and was not discoverable. See *Williams*, 399 Mass. at 63-64.

DiBenedetto, 475 Mass. 429 (2016). In arguing the impact of the alleged medical malpractice, Williams ignores the law that applies to causation and intervening acts, including medical care. See *Com. v. Fernette*, 398 Mass. 658, 667-68 (1986). If the wounds inflicted by Williams were “improperly treated, which treatment contributed to the death of the victim,” Williams is “not relieved of criminal responsibility for his actions.” *Id.* at 668. In addition, Williams places undue evidentiary weight on the medical malpractice’s tribunal’s determination that the victim’s spouse’s action could proceed, as well as on the fact that the case was eventually settled for an unknown amount. Those facts do not establish, as Williams suggests, “medical malpractice.”

Third, whether Williams frames his claim as ineffective assistance of counsel, new evidence, or withholding of evidence, he must persuade the court that “justice may not have been done” at his trial. Williams cannot satisfy that standard here. Notwithstanding his characterization, his is not a claim of “actual, factual” innocence. Williams acknowledges that he stabbed the liquor store clerk multiple times in the head and upper body. His linchpin contention is that substandard care by treating physicians caused the victim’s death. As discussed above, that contention ignores the applicable law. Williams has not identified a basis for a new trial. And, those bases he does identify have been considered and rejected previously.

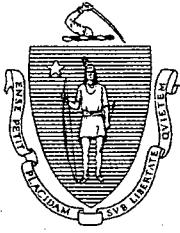
For the reasons set forth above, Williams’ application in the nature of a writ of coram nobis, which the court treats as a motion for a new trial, is denied.

SO ORDERED.



Christopher K. Barry-Smith
Justice of the Superior Court

DATE: April 4, 2018



Appendix B
The Commonwealth of Massachusetts
SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
JOHN ADAMS COURTHOUSE
ONE PEMBERTON SQUARE, SUITE 1300
BOSTON, MASSACHUSETTS 02108-1707

MAURA S. DOYLE
CLERK
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ERIC B. WETZEL (617) 557-1186
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STEPHEN J. CRONIN (617) 557-1185
FACSIMILE (617) 557-1117

April 11, 2019

Robert Williams, Jr., Pro Se
W-38699
MCI Shirley - P.O. Box #1218
Shirley, MA 01464

RE: No. SJ-2018-0327

COMMONWEALTH
v.
ROBERT WILLIAMS, JR.

Middlesex Superior Court
No. 8181CR1383

NOTICE OF DOCKET ENTRY

You are hereby notified that on April 11, 2019, the following
was entered on the docket of the above referenced case:

ORDER: denying application under c. 278, s. 33E for leave to
appeal. (Cypher, J.)

A handwritten signature in black ink, appearing to read "Maura S. Doyle".

Maura S. Doyle, Clerk

To: Robert Williams, Jr.
Emily Kathleen Walsh, Assistant District Attorney
Middlesex Superior Court Dept.



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2018-327

Middlesex Superior Court
No. 8181CR1383

COMMONWEALTH

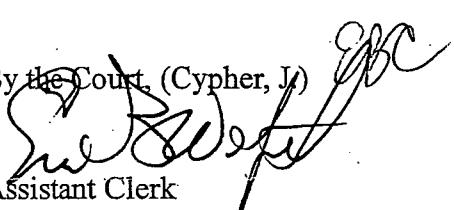
v.

ROBERT WILLIAMS, JR.

ORDER DENYING LEAVE TO APPEAL

This matter came before the Court, Cypher, J., on the defendant's application pursuant to G. L. c. 278, § 33E, for leave to appeal from the April 4, 2018 ruling of the trial court, Barry-Smith, J. Judge Barry-Smith treated the motion as one for a new trial, and denied it after a thorough review. This is defendant's fourth attempt at a new trial. As found in the trial judge's well-reasoned ruling, and supported by the Commonwealth's opposition to this application, defendant has not identified a basis for a new trial, and the bases he has identified have been considered and rejected previously. The application is denied.

By the Court, (Cypher, J.)


Sue Dwyer
Assistant Clerk

Dated: April 16, 2019



COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX COUNTY
Public Docket Report

8181CR01383 Commonwealth vs. Williams,Jr, Robert

CASE TYPE:	Indictment	FILE DATE:	05/12/1981
ACTION CODE:		CASE TRACK:	I - Inventory
DESCRIPTION:		CASE STATUS:	Closed
CASE DISPOSITION DATE	01/13/1982	STATUS DATE:	05/12/1981
CASE DISPOSITION:	Disposed	CASE SESSION:	Criminal 1 Rm 430
CASE JUDGE:			

LINKED CASE

PARTIES

Prosecutor Commonwealth	Attorney for the Commonwealth Kevin J Curtin Middlesex District Attorneys Office Middlesex District Attorneys Office 15 Commonwealth Ave Woburn, MA 01801 Work Phone (781) 897-6831 Added Date: 11/29/2006	553352
Defendant Williams,Jr, Robert	Attorney for the Commonwealth Sandra Rose Weisberger Novo Nordisk Novo Nordisk Work Phone (781) 897-6825 Added Date: 07/11/2017	693053
	Private Counsel Stephen Paul Maidman Massachusetts Bar 1145 Main St Suite 417 Springfield, MA 01103-2123 Work Phone (413) 731-7300 Added Date: 10/20/2003	631882

PARTY CHARGES

#	Offense Date/ Charge	Code	Town	Disposition	Disposition Date

FINANCIAL DETAILS

0.00	0.00	0.00	0.00
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No Financial Data for this report



COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX COUNTY
Public Docket Report

Deposit Account(s) Summary	Received	Applied	Checks Paid	Balance
Total				



COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX COUNTY
Public Docket Report

INFORMATIONAL DOCKET ENTRIES

Date	Ref	Description	Judge
05/12/1981	1	Indictment returned	
01/13/1982		See docket sheet for previous entries	
01/13/1982		Case disposed as of this date	
10/20/2003	41	Appointment of Counsel Stephen Paul Maidman	
08/12/2006	55	NOTICE OF DOCKET ENTRY: You are hereby notified that on August 7, 2009 the following was entered on the docket of the above referenced case: Memorandum and Order..."For these reasons, it is ORDERED that the petition be DENIED, and a judgment dismissing the petition be entered." (Botsford,J)	
08/17/2006	41.1	Motion by Deft: Amended Motion for Post conviction Relief with Affidavit of John H.M. Austin, M.D. and Affidavit of Richard I. Clayman	
08/23/2006	42	Procedural Order: The defendant has filed a motion for post-conviction relief. The court ORDERS that the Commonwealth file a response to the defendants pending motion on or before November 20, 2006. (Lauriat, J) Copies mailed.	
08/30/2006	43	Letter received from CPCs: Dear Clerk Because the defendant in the above-entitled case has no automatic right to counsel under the laws of the Commonwealth or the rules of the supreme judicial court (GL c 211D, Sec. 5) in this proceeding, I assigned this case to a member of the Committee for public counsel services Post-conviction Collateral Screening Panel. The Assigned attorney was directed to review this case and advise my designee, CPCs Director of Criminal Appeals, private Counsel division, whether we should exercise my statutory authority of c 211D Sec 6(b)(iii) to appoint private counsel. We have decided not to assign counsel in this matter. The Committee has informed the defendant of that decision. We have also explained that we have a packet of materials describing how a prisoner can proceed pro se. Thank you for your attention to this matter. William J Leahy, Chief Counsel	
08/31/2006	44	MOTION by Deft: Pro Se Amended Motion For Post Conviction Relief With Memorandum Of Law In Support With Affidavits	
09/07/2006		Motion (P#44) This motion is treated as a second motion for new trial. The Commonwealth shall file its written response to this motion by or before November 7, 2006. (Lauriat, J.) both sides notified.	
11/20/2006	45	MOTION by Commonwealth: to enlarge time to file commonwealth's opposition to motion for new trial	
11/28/2006		MOTION (P#45) allowed until 12-11-06 (Lauriat,Justice). Copies mailed 11/29/2006	
12/11/2006	46	Commonwealth Files Opposition To Motion For New Trial	



**COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX COUNTY
Public Docket Report**

12/18/2006	Upon review of this motion the Commonwealth's opposition there to, and for the reasons set forth in that opposition, this motion is denied without a hearing. Defendant has failed to raise any new issue that was not previously raised, addressed and determined in prior proceedings. (Lauriat, J) copies mailed.	
06/04/2007	47	MOTION by Deft: Motion To Late File Pro Se Defendant's Motion For Leave To Appeal Pursuant To M .G.L.c. 278, S 33E (Defendant has to file application with the SJC
08/02/2007	48	You are hereby notified that on July 31, 2007, the following was entered on the docket of the above referenced case: Order: denying applicatio under c. 278, s. 33E for leave to appeal (Ireland, J)
08/27/2007	49	NOTICE OF DOCKET ENTRY: You are hereby notified that on August 20, 2007, the following was entered on the docket of the above referenced case: Defendant's pro se motion for reconsideration of the single justice denial of defendant's leave to appeal pursuant to GL c 278s33E filed by Robert Williams, Jr with certificate of service (8-24-07 Defendant's pro Se motion for reconsideration is DENIED WITHOUT HEARING. (By the court, Ireland, J)
01/09/2009	50	MOTION by Deft: Third Pro Se Motion for New Trial
01/09/2009	51	Deft files Pro se memorandum of Law In Support of his Verified Motion for New Trial
01/14/2009	52	ORDERED: Procedural Order: The defendant has filed a motion for post conviction relief. The court ORDERS that the commonwealth file a response to the defendants pending motion on or before February 25/2009 (Diane M. Kottmyer, Justice)
02/11/2009	53	Commonwealth files Opposition to Defendant's Second Postdirect Appeal Motion for New Trial (Sent to Kottmyer, J)
03/09/2009	54	Deft Files Reply To Commonwealth's Opposition To Defendant's Second Motion For New Trial
03/12/2009		MOTION (P#51) The defendants motion for new trial is DENIED for the reasons set forth in the Commonwealths opposition (Diane Kottmyer, Justice): Copies mailed
12/10/2009	56	Letter from Advisory Board Of Pardons, Natick, MA regarding copies of indictment and docket sheets. Copies mailed.
04/13/2017		General correspondence regarding ENTIRE CASE FILE mailed to defendant @ MCI Shirley
06/16/2017	57	Pro Se Defendant's Application in The Nature Of Writ Of Error Coram Nobis
06/16/2017	57.1	Robert Williams,Jr's Memorandum in support of Application In the Nature Of Writ Of Coram Nobis
06/16/2017	57.2	Affidavit filed by Defendant Robert Williams,Jr in support of Application In The Nature Of Writ Of Error Coram Nobis
06/16/2017	58	Pro Se Defendant's Motion for Screening By CPCs



COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX COUNTY
Public Docket Report

07/10/2017	59	ORDER: PROCEDURAL ORDER: The Defendant has Filed a motion for Post-Conviction Relief. The court ORDERS that the Commonwealth file a response to the defendants pending motion on or before August 21, 2017. Charge: Murder; Type Of Motion: Application in the Nature of Writ Of Error Coram Nobis; Motion Filed by: Defendant; Sentencing Judge: Morse. By The Court (Pierce, J.) Mary Aufiero, Deputy Assistant Clerk (COPIES MAILED BOTH SIDES ADA SANDRA WEISBERGER AND DEFT.)	Pierce
07/11/2017		General correspondence regarding COPIES OF (P# 57, 57.1, 57.2, AND 59) MAILED TO ADA SANDRA WEISBERGER	
07/12/2017		General correspondence regarding CASE FILE IS IN PROCEDURAL ORDER	
08/14/2017	60	Commonwealth's Memorandum in opposition to Defendants "Application in the Nature of Writ of Error Coram Nobis" Sent to Pierce,J	
08/28/2017	61	ORDER: Order of Assignment	Pierce
09/14/2017	62	Pro Se Defendant's Objection in Reply to Commonwealth's Memorandum in Opposition to Defendant's "Application in the Nature of Writ of Error Coram Nobis SENT TO JUDGE PIERCE	
09/14/2017		General correspondence regarding (P#62) SENT UP TO JUDGE BARRY SMITH IN COURTROOM 530	
09/14/2017		General correspondence regarding COPY OF (P#62) MAILED TO ADA SANDRA WEISBERGER @ DA'S OFFICE	
12/06/2017		General correspondence regarding Copy of Docket Entries sent to Robert Williams, Jr.	
03/22/2018	63	Defendant's Motion for Hearing On The Merits (PLACED IN 430 BOX)	
03/22/2018	64	Defendant's Motion for Appointment of Counsel (PLACED IN 430 BOX)	
04/04/2018	65	ORDER: Order On Defendant's Application in the nature of Writ of Error Coram Nobis, treated as Motion for New Trial. Williams' application in the nature of a writ of coram nobis, which the court treats as a motion for a new trial, is DENIED. SO ORDERED (Christopher K.Barry-Smith, Justice of the Superior Court) DATE: April 4,2018 (COPIES MAILED BOTH SIDES ADA SANDRA WEISBERGER AND DEFT.)	Barry-Smith
		Judge: Barry-Smith, Hon. Christopher K	
04/04/2018		The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Robert Williams,Jr Attorney: Sandra Rose Weisberger, Esq.	

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT WILLIAMS, *
*
Plaintiff, *
*
v. * Civil Action No. 18-cv-12575-ADB
*
*
MINDY HULL, Chief Medical Examiner, *
*
Defendant. *

MEMORANDUM AND ORDER

BURROUGHS, D.J.

Pro se plaintiff Robert Williams brings this action under 42 U.S.C. § 1983 (“§ 1983”) in which he asks that the Court order the Commonwealth’s Chief Medical Examiner, Mindy Hull, to amend the death certificate of the person of whose death Williams was convicted. Williams has paid the filing fee. For the reasons set forth below, the Court will direct the plaintiff to show cause why this action should not be dismissed.

I. BACKGROUND

Williams is serving a prison sentence for the 1981 murder of Donald Roberts. See *Commonwealth v. Williams*, 503 N.E.2d 1 (Mass. 1987).¹ According to evidence at trial, Williams and another defendant stabbed Roberts during the robbery of a package store in Lowell, Massachusetts on March 4, 1981. See *id.* at 3. The next day, the victim lost consciousness while in the hospital. See *id.* He remained unconscious until he died two weeks later. *Id.* During the January 1982 criminal trial, the medical examiner testified that Roberts died as a result of multiple stab wounds that perforated the brain. *Id.* The same cause of death

¹ The Court takes judicial notice of *Commonwealth v. Williams*, 503 N.E.2d 1 (Mass. 1987).

appeared on the death certificate, which is dated March 23, 1981. *Id.*; Compl. Exs. [ECF No. 1-2] at 2.

In the present complaint, Williams maintains that “evidence will overwhelmingly establish that the death certificate is incorrect, in that it states that the victim died from stab wounds to the skull and brain.” Compl. [ECF No. 1] ¶ 1. He represents that said evidence establishes that Roberts died because of the gross negligence of physicians who treated Roberts at the hospital after the assault and robbery. *See id.* ¶ 10. Williams attaches to the complaint affidavits, notes, and other documents by doctors and other medical providers who concluded that Roberts’ immediate cause of death was oxygen deprivation caused by the malpractice of physicians treating the victim’s wounds. *See Compl. Exs.*

Williams asks that the Court “afford” the Commonwealth’s Chief Medical Examiner “an opportunity to amend the cause of death on the death certificate of Donald E. Roberts.” Compl. at 11. Williams further requests that “[i]f that does not occur,” the Court order the defendant “to amend the death certificate to include the true cause of death . . . that Donald E. Roberts died from severe hypoxia and cardiac arrest.” *Id.*

I. DISCUSSION

Under federal law, the Court is obligated to conduct a preliminary review of a complaint filed by a prisoner who “seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). The Court may dismiss the complaint *sua sponte* if it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

Here, Williams’ complaint is subject to dismissal because it fails to state a claim upon which relief may be granted. Section 1983 provides a private right of action against a person

acting under state law who has deprived the plaintiff of a right secured by federal law. *See* 42 U.S.C. § 1983. Williams invokes the Fourteenth Amendment to the United States Constitution. Compl. ¶ 27. The Court assumes that Williams is referring to the Due Process Clause of the Fourteenth Amendment. This guarantee of due process “protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake.” *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005).

Williams has not alleged facts supporting that he has a life, liberty, or property interest in the amendment of Roberts’ death certificate. Williams argues that the Fourteenth Amendment “guarantees Robert Williams, Jr., and all others, that all death certificates must be correct and list the correct cause of death predicated upon the correct medical reporting and that the result must be articulated and based upon correct medical testing and results.” Compl. ¶ 27. However, the cases he cites in support of this conclusion merely illustrate that a death certificate can be amended in appropriate circumstances. They do not hold that all individuals have a protected interest in the death certificates of others.

Further, the Court does not discern any basis for concluding that Williams has a protected interest in the amendment of Roberts’ death certificate in particular. The fact that the death certificate identifies a stab wound as the cause of death does not interfere with Williams’ ability to raise, in the appropriate proceeding, evidence of the physicians’ malpractice. Williams’ widow, who sued the treating physicians for malpractice in September 1981, was apparently successful in obtaining a favorable ruling from the medical malpractice tribunal, notwithstanding that the death certificate identified a stab wound to the head as the cause of death. *See Williams*, 503 N.E.2d at 3–4.

In addition, amendment of the death certificate to include only the immediate cause of Roberts' death would not absolve Williams of criminal liability. In upholding the denial of Williams' motion for a new trial to include evidence of the medical malpractice lawsuit, the Supreme Judicial Court concluded that "a jury would not be warranted in considering evidence that the victim's wounds were negligently treated unless there also was evidence that that treatment was the only cause of the victim's death." *Id.* at 4; *see also id.* ("We have said that '[i]f a person inflicts a wound with a deadly weapon in such manner as to put life in jeopardy, and death follows as a consequence of this felonious and wicked act, it does not alter its nature or diminish its criminality to prove that other causes cooperated in producing the fatal result.'") (alteration in original) (quoting *Commonwealth v. Fernette*, 500 N.E.2d 1290, 1296 (Mass. 1986)).²

III. CONCLUSION

In accordance with the foregoing, the Court hereby orders:

- (1) Williams must show cause, within forty-two (42) days of the date of this order, why this action should not be dismissed for failure to state a claim upon which relief may be granted. Failure to comply with this order may result in dismissal of this action.
- (2) The motion for pro bono representation [ECF No. 9] is DENIED.

² It is unclear whether Williams is taking the position that death certificate falsely states that Roberts received a stab wound to the head, or simply that it was the medical malpractice, not the stab wound to the head, that caused Roberts' death. *See Compl.* ¶¶ 1, 16, 19. To the extent Roberts' theory is the former, the evidence he has submitted belies that position. Even assuming that the newly-digitized x-ray of the victim he submitted does not show a stab wound to the head, *see id.* ¶¶ 9, 17, the materials from the malpractice case he filed with the complaint indicate that the surgery during which the malpractice occurred was undertaken to address internal bleeding caused by the stab wound to the head. *See, e.g.*, Compl. Exs. at 5, 30-31.

(3) The motion to serve defendant Mindy Hull by certified mail is DENIED [ECF No. 10] because that method of service is not authorized by Rule 4 of the Federal Rules of Civil Procedure.

(4) The motion to be supplied with summons [ECF No. 11] is DENIED.

(5) The motion for an extension of time to complete service [ECF No. 13] is DENIED as unnecessary because a summons has not issued pending the Court's preliminary review of the action. If the Court later orders that a summons issue, Williams will be afforded adequate time to complete service.

SO ORDERED.

April 18, 2019

/s/ Allison D. Burroughs
ALLISON D. BURROUGHS
DISTRICT JUDGE



Appendix D

**The Commonwealth of Massachusetts
SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
JOHN ADAMS COURTHOUSE**

ONE PEMBERTON SQUARE, SUITE 1300
BOSTON, MASSACHUSETTS 02108-1707

WWW.SJCCOUNTYCLERK.COM

MAURA S. DOYLE
CLERK

May 9, 2019

CASE INFORMATION (617) 557-1100

FACSIMILE (617) 557-1117

ATTORNEY SERVICES (617) 557-1050

FACSIMILE (617) 557-1055

Robert Williams, Jr., Pro Se
W-38699
MCI Shirley - P.O. Box #1218
Shirley, MA 01464

RE: No. SJ-2018-0327

COMMONWEALTH
v.
ROBERT WILLIAMS, JR.

Middlesex Superior Court
No. 8181CR1383

NOTICE OF DOCKET ENTRY

You are hereby notified that on May 9, 2019, the following
was entered on the docket of the above referenced case:

ORDER ON RECONSIDERATION: as on file. (Cypher, J.)

A handwritten signature in black ink, appearing to read "Maura S. Doyle".

Maura S. Doyle, Clerk

To: Robert Williams, Jr.
Emily Kathleen Walsh, Assistant District Attorney
Middlesex Superior Court Dept.



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2018-327

Middlesex Superior Court
No. 8181CR1383

COMMONWEALTH

V.

ROBERT WILLIAMS, JR.

ORDER ON RECONSIDERATION

This matter came before the court, Cypher, J., on the defendant's application pursuant to G. L. c. 278, § 33E, for leave to appeal from the April 4, 2018 ruling of the trial court, Barry-Smith, J. The application was denied on April 11, 2019. The defendant now asks for reconsideration, suggesting there are issues overlooked and misapprehended.

The court has reconsidered the matter, and orders that the ruling entered on April 11, 2019 stands. The application is denied.

By the Court, (Cypher, J.)

Assistant Clerk

Dated: May 9, 2019

Commonwealth of Massachusetts
 SUPREME JUDICIAL COURT
 FOR SUFFOLK COUNTY
 Docket Sheet

SJ-2018-0327
COMMONWEALTH v. ROBERT WILLIAMS, JR.

CASE HEADER			
Entered	07/23/2018	Docket Type	SJC Single Justice
Case Status	Active	Status Date	07/23/2018
Case Nature	gatkpr - Gatekeeper c 278 s 33E	Sub-Nature	monewtrtl - Mot for New Trial
Justice		Under Advisement	
Clerk	EW	Public	Partially Impounded
Disposition		Disposition Date	
Other Court Information			
Lower Court	Trial Court	Pet Role LCt	Defendant in lower court
Case Type	CR	TC Not App Dt	
Trial Court	Middlesex Superior Court (smiddl)		
TC Number	8181CR1383	TC Dispo	Motion denied
TC Ruling Dt	04/04/2018	Role(s)	Heard Motion
Lower Ct Judge(s)	Christopher Barry-Smith, J.		
INVOLVED PARTY		ATTORNEY APPEARANCE	
Robert Williams, Jr., W-38699 Defendant/Petitioner MCI Shirley P.O. Box #1218 Shirley, MA 01464 Active 07/23/2018 Entitled,			
Commonwealth Plaintiff/Respondent Active 07/23/2018			
Middlesex Superior Court Dept. (Lower Court: criminal) Clerk for Criminal Business 200 TradeCenter Woburn, MA 01801 Phone: 781-939-2700 Active 07/23/2018			

Commonwealth of Massachusetts
SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
Docket Sheet

SJ-2018-0327
COMMONWEALTH v. ROBERT WILLIAMS, JR.

DATE	P#	ENTRY
07/23/2018		Case entered.
07/23/2018	1	Affidavit of Indigency & Request for Waiver, Substitution or State Payment of Fees & Costs pursuant to G.L. c. 261, s.27A-G. (IMPOUNDED)
07/23/2018	2	Defendant — Appellant's Application to a Single Justice, the Gatekeeper, of this Supreme Judicial Court From an Order of the Middlesex County Superior Court with attachments filed by Robert Williams, Jr., Pro Se.
07/23/2018	3	Letter to Clerk Maura S. Doyle from Robert Williams Jr., Pro Se.
07/30/2018	4	Letter to Robert Williams, Jr. re: service of process and enclosing sample certificate of service.
07/30/2018	5	Determination Regarding Fees & Costs by Clerk ALLOWED FORTHWITH.
07/30/2018	6	X-ray films and CD filed by Robert Williams, Jr., Pro Se. (IMPOUNDED)
08/13/2018	7	Certificate of service of paper filed by Robert Williams, Jr.
10/01/2018	8	Letter to Clerk Maura S. Doyle from Robert Williams, Jr. saying "May I please have an updated docket entry sheet. And may I request to correct the exhibit number on the X-rays film presented to the court on 7-24-18 of the victim, Mr. Donald Roberts. I believe the number I placed on them were exhibit (7) but it should be exhibit (17). Thank you kindly."
10/02/2018	9	Letter to Robert Williams, Jr. from Clerk Maura S. Doyle saying, "Pursuant to your 9/25/2018 request received on 10/01/2018, enclosed please find a copy of the docket sheet."

Commonwealth of Massachusetts
 SUPREME JUDICIAL COURT
 FOR SUFFOLK COUNTY
 Docket Sheet

SJ-2018-0327
COMMONWEALTH v. ROBERT WILLIAMS, JR.

CASE HEADER

Entered	07/23/2018	Docket Type	SJC Single Justice
Case Status	Under advisement	Status Date	02/27/2019
Case Nature	gatkpr - Gatekeeper c 278 s 33E	Sub-Nature	monewtr1 - Mot for New Trial
Justice	Cypher, J.	Under Advisement	02/27/2019
Clerk	EW	Public	Partially Impounded
Disposition		Disposition Date	

Other Court Information

Lower Court	Trial Court	Pet Role LCt	Defendant in lower court
Case Type	CR	TC Not App Dt	
Trial Court	Middlesex Superior Court (smiddl)		
TC Number	8181CR1383		
TC Ruling Dt	04/04/2018	TC Dispo	Motion denied
Lower Ct Judge(s)	Christopher Barry-Smith, J.		
			Role(s) Heard Motion

ATTORNEY APPEARANCE

Robert Williams, Jr.	Pro Se
Defendant/Petitioner	Active 07/23/2018 Entitled,

W-

38699

MCI Shirley - P.O. Box #1218
Shirley, MA 01464

Active 07/23/2018

Commonwealth	Emily Kathleen Walsh
Plaintiff/Respondent	Assistant District Attorney
Active 07/23/2018	Middlesex District Atty's Office
	15 Commonwealth Ave
	Woburn, MA 01801
	Phone: 781-897-8732
	678212 Active 02/27/2019 Entitled, eMail Only (APC)

Middlesex Superior Court Dept.

(Lower Court: criminal)
 Clerk for Criminal Business
 200 TradeCenter
 Woburn, MA 01801
 Phone: 781-939-2700
 Active 07/23/2018 Entitled,

Commonwealth of Massachusetts
 SUPREME JUDICIAL COURT
 FOR SUFFOLK COUNTY
 Docket Sheet

SJ-2018-0327
COMMONWEALTH v. ROBERT WILLIAMS, JR.

DATE	P#	ENTRY
07/23/2018		Case entered.
07/23/2018	1	(IMPOUNDED)Affidavit of Indigency & Request for Waiver, Substitution or State Payment of Fees & Costs pursuant to G.L. c.261, s.27A-G filed by Robert Williams, Jr., pro se.
07/23/2018	2	Defendant --- Appellant's Application to a Single Justice, the Gatekeeper, of this Supreme Judicial Court From an Order of the Middlesex County Superior Court with attachments filed by Robert Williams, Jr., Pro Se.
07/23/2018	3	Motion to Allow Late Filing of Appeal filed by Robert Williams Jr., Pro Se.
07/30/2018	4	Letter to Robert Williams, Jr. re: service of process and enclosing sample certificate of service.
07/30/2018	5	Determination Regarding Fees & Costs by Clerk:ALLOWED FORTHWITH.
07/30/2018	6	(IMPOUNDED) X-ray films and CD filed by Robert Williams, Jr., pro se.
08/13/2018	7	Certificate of Service filed by Robert Williams, Jr., pro se.
10/01/2018	8	Letter to Clerk Maura S. Doyle from Robert Williams, Jr. saying "May I please have an updated docket entry sheet. And may I request to correct the exhibit number on the X-rays film presented to the court on 7-24-18 of the victim, Mr. Donald Roberts. I believe the number I placed on them were exhibit (7) but it should be exhibit (17). Thank you kindly."
10/02/2018	9	Letter to Robert Williams, Jr. from Clerk Maura S. Doyle saying,"Pursuant to your 9/25/2018 request received on 10/01/2018, enclosed please find a copy of the docket sheet."
02/27/2019	10	Commonwealth's Memorandum In Opposition To Defendant's Petition For Leave To Appeal From The Denial Of His Fourth Motion For New Trial Pursuant to G. L. c. 278, § 33E with Certificate of Service filed by ADA Emily Walsh.
02/27/2019	11	Record Appendix filed by ADA Emily Walsh.
02/27/2019		Under advisement. (Cypher, J.).
03/08/2019	12	Defendant Robert Williams, Jr's Response and Reply to Commonwealth's Memorandum In Opposition to Defendant's Petition for Leave to Appeal from the Denial of his Fourth Motion for New Trial Pursuant to G.L. c. 278, § 33E filed by Robert Williams, Jr., with attached Certificate of Service.
03/28/2019	13	Letter to Clerk from Robert Williams, Jr., pro se saying ... "Can you please confirm filing of documents were received." ... filed.
03/28/2019	14	Letter to Robert Williams, Jr., pro se from Maura S. Doyle, Clerk saying "Pursuant to your 03/24/2019 request received on 03/28/2019, enclosed please find a copy of the docket sheet in the above-entitled matter."

Appendix F

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

ROBERT WILLIAMS, JR.,)
Petitioner,)
v.) CIVIL ACTION NO. 07-11920-PBS
STEVEN O'BRIEN,)
Respondent.)

)

MEMORANDUM AND ORDER

August 21, 2008

Saris, U.S.D.J.

Pro se habeas petitioner Robert Williams, Jr., who was convicted of first degree murder and armed robbery in 1982, brings this habeas petition pursuant to 28 U.S.C. § 2254, asserting five separate grounds for habeas relief. The government vigorously opposes, and argues that all of the petitioner's claims are procedurally defaulted or otherwise futile. After a review of the submissions, the petition is **DENIED**.

I. BACKGROUND

In May 1981, petitioner Robert Williams, Jr. was charged with three offenses: (1) first degree murder; (2) armed robbery while masked; and (3) assault and battery by means of a dangerous weapon. These charges stemmed from a March 4, 1981 liquor store robbery, during which a store clerk was stabbed in the head. The clerk died two weeks later, purportedly from the stab wounds.

Following a jury trial in Middlesex Superior Court in January 1982, Williams was convicted of all three charges and was given concurrent life sentences on the murder and armed robbery charges. The assault and battery charge was dismissed.

In January 1984, petitioner appealed his conviction and separately filed a motion for a new trial under Mass. R. Crim. P. 30(b). In his motion petitioner argued that newly discovered evidence showed that the victim had died as a result of medical malpractice rather than from stab wounds. The Superior Court denied the motion on March 21, 1985. Petitioner then moved for further hearing or reconsideration of the motion on April 8, 1985. The Superior Court denied the subsequent motion on July 22, 1985.

Petitioner then filed a second notice of appeal and his two appeals -- one from his conviction, and one from the denial of his motion for a new trial -- were consolidated. Petitioner's conviction was affirmed as was the denial of his motion for a new trial. See Commonwealth v. Williams, 399 Mass. 60 (1987).

On December 23, 1988, petitioner filed a pro se second motion for a new trial, which he later amended in August 2006. The Superior Court denied the second motion on December 18, 2006.¹ On June 4, 2007, petitioner filed a "gatekeeper" petition

¹ Nothing in the record explains the delay following the filing of petitioner's second motion for a new trial. The record only shows that the motion remained on the docket and unresolved

seeking leave to appeal the denial of the second motion. On July 31, 2007, a single justice denied petitioner's application because he had "not raised any new and substantial issues." (See Docket No. 9 Exh. L). On August 20, 2007, petitioner filed a pro se motion for reconsideration of the denial of leave to appeal. His motion was denied on August 24, 2007.

Having exhausted his state law remedies, petitioner filed his pro se habeas corpus petition asserting five claims:

1. Petitioner was denied due process because the prosecution withheld material exculpatory evidence at trial (Ground One);
2. Petitioner's Sixth Amendment rights were violated due to ineffective assistance of counsel (Ground Two);
3. Petitioner was denied due process because the prosecution was relieved of its burden to prove every element of the murder charge, namely the causation of victim's death (Ground Three);
4. Petitioner is entitled to an evidentiary hearing because he alleges he has evidence of actual innocence (Ground Four); and
5. Petitioner is entitled to re-sentencing for the armed robbery conviction because the life sentence (based on the murder charge) is inadequate once the murder charge is reversed (Ground Five).

(See Docket No. 11 at vi). All of the grounds relate to his claim that the cause of death of the victim was medical malpractice, not the stabbing.

until the petitioner amended it in 2006.

II. DISCUSSION

A. Procedural Default

The government argues that all of Williams's claims are procedurally defaulted. In general, "[i]n all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review is barred." Obershaw v. Lanman, 453 F.3d 56, 67-68 (1st Cir. 2006) (quoting Coleman v. Thompson, 501 U.S. 722, 750 (1991)). "The SJC consistently enforces the rule that unpreserved claims are forfeited." Horton v. Allen, 370 F.3d 75, 81 (1st Cir. 2004) (citing Gunter v. Maloney, 291 F.3d 74, 79 (1st Cir. 2002)).

Williams' primary contention is Ground Three. He argues that his due process rights were violated because the trial judge's instructions on causation effectively relieved the Commonwealth of its burden to prove each element of the offense charged beyond a reasonable doubt -- namely proximate cause. However, as pointed out by the SJC in its decision affirming Williams' conviction, "counsel for both defendants told the judge that there was no dispute about causation." Williams, 399 Mass. at 62 (emphasis added). "Williams did not request a different instruction nor object to the one that was given." Id. at 63.

Under Massachusetts' contemporaneous objection rule, failure to object to an instruction precludes state appellate review. See

Commonwealth v. Fluker, 377 Mass. 123, 130-31 (1979).

Furthermore, as the First Circuit has repeatedly recognized, the limited review undertaken by the SJC "does not work [as] a waiver of the contemporaneous objection required" typically imposed by the Massachusetts courts. Horton, 370 F.3d at 81; Obershaw, 453 F.3d at 68. Accordingly, petitioner's third ground for relief is procedurally defaulted.

Petitioner's other grounds are also procedurally defaulted. Petitioner raised grounds one, two, four, and five for the first time on his second motion for a new trial. (See Docket No. 9 Exh. H). The trial court rejected the grounds because they "failed to raise any new issues." (Id.). A single justice denied leave to appeal for the same reason. (Id. Exh. L ("[T]he defendant has not raised any new and substantial issues.")). More importantly, the premise for all four grounds, the issue of causation, was initially raised in petitioner's first motion for a new trial. Even then, the trial court held that the petitioner "had ample opportunity to . . . raise the issue of causation," and the SJC affirmed. See Williams, 399 Mass. at 64 (quoting decision on motion for new trial). In short, the state court has found that the petitioner's other grounds were procedurally defaulted multiple times.

B. Excuse of Procedural Default

Petitioner contends that the default should be excused

because he can show cause and prejudice for the procedural default and that there is a risk of miscarriage of justice.

Lynch v. Ficco, 438 F.3d 35, 45 (1st Cir. 2006) (noting these exceptions to procedural default). To show ineffective assistance of counsel as cause and prejudice, petitioner must show (1) "that counsel's representation fell below an objective standard of reasonableness" and (2) that "any deficiencies in counsel's performance must be prejudicial to the defense," such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 688, 692-93 (1984).

In the instant case, counsel was not ineffective by not pressing the causation argument based upon negligent medical treatment because:

The longstanding rule in this Commonwealth is that '[i]f a person inflicts a wound with a deadly weapon in such manner as to put life in jeopardy, and death follows as a consequence of this felonious and wicked act, it does not alter its nature or diminish its criminality to prove that other causes cooperated in producing the fatal result.'

Commonwealth v. Fernette, 398 Mass. 658, 668 (1986) (quoting Commonwealth v. Hackett, 84 Mass. 136, 142 (2 Allen 1861)). In Fernette, for example, the Court rejected a claim that the trial court erred in failing to instruct the jury that "the defendant is relieved of liability if the jury finds that poor medical

treatment intervened between the shooting of the victim and his death," since "even if the jury finds that the wounds of the victim were improperly treated, which treatment contributed to the death of the victim, the defendant is not relieved of criminal responsibility for his actions." Id. (citing Hackett); see also 1 Wayne R. LaFave, Substantive Criminal Law § 6.4(f)(5) at 485-86 (2d ed. 2003) (pointing out that mere negligence in medical treatment is not so abnormal as to absolve petitioner of liability). Moreover, in its decision affirming petitioner's convictions, the SJC held "that a jury would not be warranted in considering evidence that the victim's wounds were negligently treated unless there is also evidence that the treatment was the only cause of the victim's death." Williams, 399 Mass. at 64 (emphasis added). It held "it is at least doubtful that the evidence on which Williams relies would affect the result at a new trial". Id. at 65.

Here, petitioner's ineffective assistance of counsel claim is without merit. As noted by the SJC, there was evidence that petitioner inflicted "multiple stab wounds with perforation of the skull and the brain" upon the victim. Williams, 399 Mass. at 62. More importantly, petitioner has presented no evidence that the victim's only cause of death was the negligent medical treatment. Accordingly, counsel was not ineffective for failing to contest causation.

C. Actual Innocence

In a somewhat different twist of the same argument, petitioner argues that he is actually innocent of first-degree murder because the purported medical malpractice caused the death. To establish actual innocence, petitioner must demonstrate that based on new and reliable evidence, "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." House v. Bell, 547 U.S. 518, 537 (2006) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)). The actual innocence exception "is very narrow, reserved for truly exceptional cases." Walker v. Russo, 506 F.3d 19, 21 (1st Cir. 2007) (citation omitted).

The argument fails for two reasons. First, petitioner's alleged exculpatory evidence does not qualify as new evidence because the evidence was available at the time of trial. "Without any new evidence of innocence, even the existence of a concededly meritorious constitutional violation is not in itself sufficient to establish a miscarriage of justice that would allow a habeas court to reach the merits of a barred habeas claim." Schlup, 513 U.S. at 316 (emphasis added). In denying petitioner's first motion for a new trial, the trial judge observed that "the malpractice action was entered in September 1981, and the tribunal finding was made in January, 1982 . . . If the victim's widow was able to gather enough evidence to make an

offer of proof to the tribunal [before] January, 1982, the [petitioner] also had ample opportunity to examine the hospital records and raise the issue of causation" at petitioner's trial, which proceeded from January 6 through January 12, 1982. See Williams, 399 Mass. at 64. Thus, the evidence of medical malpractice that constitutes petitioner's actual innocence evidence was "as available to Williams before trial as it had been to the victim's widow," id. at 64, and does not qualify as "new" evidence sufficient to support a claim of actual innocence.

Second, even if the evidence was new, petitioner cannot show that "no reasonable juror would have found him guilty beyond a reasonable doubt" because a causation defense based on negligent medical treatment is not viable under state law.

ORDER

For the reasons stated, Williams' petition for a writ of habeas corpus (Docket No. 1) is DENIED.

S/PATTI B. SARIS
United States District Judge