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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 95-9000

IN RE: KEITH ZETTLEMOYER

ALDONA DeVETSCO; THOMAS SCHMIDT;
and KEITH ZETTLEMOYER,
Petitioners/Appellants
v.

MARTIN HORN, Commissioner, Pennsylvania
Department of Corrections; and JOSEPH P.
MAZURKIEWICZ, Superintendent of the State
Correctional Institution at Rockview

On Appeal from the United States District Court
For the Middle District of Pennsylvania
(D.C. No. 95-cv-00660)

Argued May 1, 1995

Before: SLOVITER, Chief Judge,
GREENBERG and NYGAARD, Circuit Judges

ORDER AMENDING OPINION OF THE COURT

It is ordered that Footnote 2 in the above opinion,
filed on May 1, 1995, is amended by adding thereto the following:

Chief Judge Sloviter notes: I dissented from this
court's affirmance of the dismissal of the previous
petition for habeas corpus because, inter alia, I would
have required the district court to hold an evidentiary
hearing on Mr. Zettlemyer's claim of ineffective

assistance of counsel at sentencing. I took the position that as a result of the "plainly unenthusiastic case made on behalf of Mr. Zettle-moyer's life," we had no evidence from any "clergyman, former employer, teacher, neighbor, or friend who was willing to come forward to show that despite his crime, Zettle-moyer's life is still worth preserving." 923 F.2d at 315. That issue is no longer before us but I feel compelled to add that after reading Mr. Zettle-moyer's testimony given in the district court on April 29, 1995 in the proceeding before us and the letter of March 28, 1995 that he wrote to counsel for the State Department of Corrections, I retain my belief that in other counsel's hands, such as those who have sought to pursue this petition for habeas corpus, the sentence may very well have been different.

By the Court,

/s/ Dolores K. Sloviter
Chief Judge

Dated: May 2, 1995