

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. 01-10,803
	:	
	:	
vs.	:	CRIMINAL DIVISION
	:	Post-Sentence Motion
TIMOTHY A. GOODREAU,	:	
Defendant	:	

OPINION AND ORDER

On October 25, 2001, following a jury trial, Defendant was convicted of corrupting the morals of a minor and harassment. On December 17, 2001 he was sentenced to 15 to 30 months incarceration on the charge of corrupting the morals of a minor, and an adjudication of guilt without further penalty was entered with respect to the summary harassment offense. Defendant filed a Post-Sentence Motion on December 21, 2001 and argument thereon was heard January 11, 2002. A transcript of the trial was requested at that time. That transcript has been completed and the matter is now ripe for decision.

In his Post-Sentence Motion, Defendant contends the verdict was against the weight of the evidence, the evidence was insufficient to support the charge of corrupting the morals of a minor, and he was rendered ineffective assistance of counsel. These will be addressed seriatim.

In order to find the verdict against the weight of the evidence, the Court must find the verdict so contrary to the evidence as to shock one's sense of justice. Commonwealth v Rodgers, 605 A.2d 1228 (Pa. Super. 1992), appealed denied, 615 A.2d 1311 (Pa. 1992). At trial, the fourteen year old victim testified that she was staying overnight at the residence where Defendant lived with his wife and daughter, that she had gone to bed and had been in bed for about ten minutes, was lying on her side when Defendant came in and crawled under the covers into bed with her. She testified that he

reached over her and put a video tape into the VCR and turned on the TV, which were within arm's length, and that when she opened her eyes she saw naked girls on a beach doing sexual things to themselves. She further testified to other details of the video tape and indicated that when Defendant started to touch her under her arm she got up and left and went into another room where she remained the rest of the night. Detective Lanny Reed testified that he viewed the video tape and then had the victim describe what she had seen, that it was his opinion she was describing the same tape, that he showed her a portion of the video (not the same portion she testified to having been shown by Defendant), and that the victim identified the actor as being the same person she saw in the video tape shown to her by Defendant. Although Defendant presented evidence that the video tape was owned by his mother (the victim's grandmother) and that she kept the tape on a shelf in her closet and that since the victim often visited her home, the victim could have seen the tape at Defendant's mother's home, that the jury found the victim's testimony credible and discounted this theory raised by Defendant does not shock the Court's sense of justice. The Court therefore finds that the verdict was not against the weight of the evidence.

The test for sufficiency of the evidence is whether, viewing all evidence admitted at trial, together with all reasonable inferences deducible therefrom, in the light most favorable to the Commonwealth, the trier of fact could have found the defendant's guilt established beyond a reasonable doubt. Commonwealth v Collins, 702 A.2d 540 (Pa. 1997). In addition to the victim's testimony and the testimony of Detective Reed, the Commonwealth also showed to the jury the portion of the video tape described by the victim. The Court finds that all of this evidence, viewed in the light most favorable to the Commonwealth, was sufficient to have allowed the jury to find Defendant guilty beyond a reasonable doubt.

Defendant's allegation of ineffective assistance of counsel raises three (3) grounds: the failure of trial counsel to move to suppress the video tape prior to trial, the failure of trial counsel to object to introduction of the video tape at trial, and the failure of defense counsel to object to various aspects of Detective Reed's testimony. With respect to the first two (2) grounds, the Court finds that trial counsel was not ineffective for failing to move to suppress the video tape, nor for failing to object to introduction of the video tape, as any motion to suppress would have been denied and any objection

to the tape being introduced would have been denied. Pursuant to Commonwealth v Shirey, 494 A.2d 420 (Pa. Super. 1985), overruled in part (on other grounds) by Commonwealth v Anderson, 550 A.2d 807 (Pa. Super. 1988), the conviction for corruption of the morals of a minor could not be supported without having introduced the video tape in order to allow the trier of fact to determine whether or not the tape was obscene, and thus tended to corrupt the morals of a minor.

With respect to Defendant's allegation of ineffective assistance of counsel for failing to object to various aspects of Detective Reed's testimony, since Defendant has failed to indicate specifically which aspects of Detective Reed's testimony he finds objectionable, the Court can comment no further.

Finally, at argument, new defense counsel also indicated ineffective assistance of trial counsel existed inasmuch as Defendant wished to testify at trial but was advised by trial counsel to not testify. The Court finds that Defendant has waived his objection in this regard since the Court questioned him thoroughly regarding his decision to refrain from testifying on his own behalf. See notes of testimony, October 25, 2001, at pages 101-104.

ORDER

AND NOW, this 8th day of February, 2002, for the foregoing reasons, Defendant's Post-Sentence Motion is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
John Gummo, Esq.
Gary Weber, Esq.