

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 04-11,019
	:	CRIMINAL DIVISION
DARRELL B. HARROLD,	:	
Defendant	:	PCRA

OPINION AND ORDER

Before this Honorable Court, is the Defendant’s October 21, 2006 Petition for Relief under the Post Conviction Relief Act (hereinafter “Petition”). A “no merit” letter has been submitted to the Court by PCRA counsel for the Defendant, Paul J. Petcavage, Esq., under the guise of compliance with the requirements of *Commonwealth v. Turner*, 518 Pa. 491, 544 A.2d 927 (1988).¹ After an independent review of the entire record, the Court finds that the Defendant has failed to raise any meritorious issues in his October 31, 2006 *pro se* Petition and therefore, announces its intent to dismiss said Petition.

Background

On May 8, 2004, Officer Thomas Bortz of the Williamsport Bureau of Police accompanied Lycoming County Children and Youth to a residence on Trenton Avenue in the City to investigate allegations that the mother of children residing within was using and/or selling illegal narcotics. When they arrived, Officer Bortz testified that the Defendant answered

¹ It is clear to this Court that appointed PCRA counsel did little more than review the Defendant’s *pro se* Petition prior to submitting to this Court his April 24, 2007 *Turner* letter. Counsel’s letter states that he finds the Defendant’s Petition to be meritless for lack of specificity but it is not clear whether counsel made any attempts to clarify the Defendant’s contentions in his Petition (e.g. in his *Turner* letter, PCRA counsel does not indicate that after a review of the record he cannot substantiate the Defendant’s contentions but instead states that the Defendant was not specific enough; nor does counsel indicate that he communicated with the Defendant in order to clarify the contentions in his *pro se* Petition). Unfortunately, the burden now falls on the Court to review the entire record and attempt to ascertain whether the Defendant’s claims are meritorious without the benefit of speaking to the Defendant directly.

the door dressed in boxer shorts and, according to Officer Bortz, had an erection. The Defendant stated that he was alone in the home with the mother's children; neither Officer Bortz nor the Children and Youth representatives inquired further, entered the home, or sought to see or speak with the children. The next day, the Williamsport Police Department received a report of child sexual abuse at the Trenton Avenue residence; specifically, the report indicated that the Defendant had performed oral sex on two boys, ages six and eight, who were staying at the home the previous evening. Investigators interviewed the two boys who confirmed the report. The Defendant was arrested on May 21, 2004 and charged with several counts ranging from corruption of minors to involuntary deviate sexual intercourse with a child. After a two day trial, the jury found the Defendant guilty of five counts of involuntary deviate sexual intercourse, two counts of aggravated indecent assault and indecent assault, and one count each of endangering the welfare of a child and corruption of minors for which the Court, on February 15, 2005, sentenced the Defendant to 20 – 40 years incarceration and 10 consecutive years of probation.

On March 10, 2005, the Defendant filed a timely appeal alleging that the Court erred by failing to merge, for purposes of sentencing, the aggravated indecent assault and involuntary deviate sexual intercourse charges and in May 2006, the Superior Court of Pennsylvania affirmed this Court's decision. On October 21, 2006, the Defendant filed a timely *pro se* Petition for Relief under the Post Conviction Relief Act. The Court appointed counsel and, on April 16, 2007, the Court granted the Defendant thirty days in which to amend his Petition. On April 24, 2007, appointed counsel notified the Court, via letter, that it was his belief that the Defendant's Petition was without merit. For the following reasons, the Court agrees with appointed counsel's opinion.

Discussion

To be eligible for relief under the PCRA, the Defendant (1) must have been convicted of a crime in Pennsylvania, and at the time the relief is granted, must be currently serving a sentence of imprisonment, probation or parole; (2) said conviction must have been the result of a violation of the Constitutions of the Commonwealth and/or the United States, ineffective assistance of counsel, an unlawfully induced guilty plea, and/or improper government obstruction to the Defendant's appellate rights; (3) said allegation(s) of constitutional violations were not previously waived or litigated; and (4) the failure to previously litigate the issue was not a rational, strategic or tactical decision by counsel. 42 Pa.C.S. § 9543.

Here, on November 23, 2004, a jury found the Defendant guilty of five counts of involuntary deviate sexual intercourse, two counts of aggravated indecent assault and indecent assault, and one count each of endangering the welfare of a child and corruption of minors for which the Court, on February 15, 2005, sentenced the Defendant to 20 – 40 years incarceration and 10 consecutive years of probation. The Defendant contends that trial counsel was ineffective for failing to keep him apprised of “options throughout the proceedings,” that this issue was not previously waived or litigated, and that failure to previously waive this issue was not a rational, strategic, or tactical decision by counsel.²

After a review of the entire record, the Court is at a loss as to what options the Defendant alleges his trial counsel failed to keep him apprised of throughout the proceedings that would satisfy the requirements under the Act (i.e. render the jury's verdict constitutionally infirm). Accordingly, the Court finds that, no purpose would be served by conducting any further

² Although the Defendant's *pro se* Petition did not clearly articulate why he is entitled to relief under the Post Conviction Relief Act, the Court, after a review of said Petition, extracted the aforesaid analysis from his Petition and the record.

hearing, and therefore none will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure No. 907(1), the parties are hereby notified of this court's intention to deny the petition. The Defendant, through his counsel, may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an Order dismissing the petition.

ORDER

AND NOW, this _____ day of June 2007, it is ORDERED and DIRECTED as follows that the Defendant is hereby notified that it is the intention of the Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty(20) days of today's date.

By The Court,

Nancy L. Butts, Judge

cc: DA
Paul J. Petcavage, Esq.
Darrell B. Harrold, GC9988
SCI Albion
10745, Route 18
Albion, PA 16475-0002
Hon. Nancy L. Butts
Laura R. Burd, Esq. (Law Clerk)