

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**DARRELL B. HARROLD,**  
**Defendant**

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**No. 04-11,019**  
**CRIMINAL DIVISION**  
**PCRA**

**OPINION AND ORDER**

On October 21, 2006, Defendant filed a Pro Se Petition under the Post Conviction Relief Act (PCRA). On September 17, 2008, an Amended PCRA Petition was filed by court appointed conflict counsel Ryan C. Gardner, Esq, and a Second Amended PCRA Petition was filed on October 29, 2008. In his Second Amended Petition, the Defendant alleges ineffective assistance of Trial Counsel. For the following reasons, the Court finds the Defendant has not established sufficient grounds for relief under the PCRA.

***Background***

Shortly after 9:30 p.m. on May 8, 2004, Officer Thomas Bortz (Bortz) of the Williamsport Bureau of Police (WBP) accompanied by two Lycoming County Children and Youth Representatives went to a residence on Trenton Avenue to investigate allegations that the mother of the children residing in the residence was using and/or selling cocaine. When they arrived, the Defendant answered the door wearing only white boxer shorts and according to Bortz, had an erection. The Defendant informed Bortz and the Children and Youth Representatives that he was alone in the home with the mother's children; neither Bortz or Children and Youth Representatives inquired further. The next day, The WBP received a report that the Defendant had performed oral sex on two boys, ages six and eight at the Trenton Avenue

residence the previous evening. The two boys were interviewed and confirmed the abuse. The boys also revealed that the Defendant anally abused them.

On November 23, 2004, after a two-day jury trial, Defendant was found guilty of five counts of Involuntary Deviate Sexual Intercourse at 18 Pa. C.S.A. § 3123, two counts of Aggravated Indecent Assault at 18 Pa. C.S.A. § 3125, two counts of Indecent Assault at 18 Pa. C.S.A. § 3126, one count of Endangering the Welfare of a Child at 18 Pa. C.S.A. § 4304, and one count of Corruption of Minors at 18 Pa. C.S.A. § 6301. On February 15, 2005, Defendant was sentenced to fifteen (15) to thirty (30) years of incarceration in a State Correctional Institution and ten (10) years of consecutive probation with the Pennsylvania Board of Probation and Parole.

On March 10, 2005, 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. On April 3, 2006, the Pennsylvania Superior Court affirmed this Court's decision. On October 21, 2006, the Defendant filed a timely *pro se* PCRA Petition. Paul Petcavage, Esq. was appointed to represent the Defendant for purposes of his PCRA. On April 16, 2007, the Defendant was granted thirty days in which to amend his Petition. Via letter on April 27, 2007, Attorney Petcavage notified the Court that he believed the Defendant's Petition was without merit. On June 14, 2007, the PCRA announced its intent to dismiss the Defendant's Petition and on July 12, 2007, the Petition was dismissed. On July 25, 2007, the Court granted Attorney Petcavage's Motion to Withdraw.

Defendant filed a timely *pro se* Notice of Appeal. On July 30, 2007, Gregory Drab was appointed as appellate counsel. Attorney Drab timely filed a Concise Statement of Matters Complained of on Appeal. The Defendant alleged two claims of ineffective assistance of

counsel: (1) whether Attorney Petcavage was ineffective for failure to consult with Defendant prior to filing a “no-merit” letter and (2) whether Trial Counsel, Jason Poplaski, Esq. was ineffective for failure to call character witnesses has arguable merit. This Court, in its 1925(a) Opinion, noted that because Attorney Petcavage in his “no-merit” letter did not state that he conducted a review of the record in this case, the Court conducted an independent review of the Defendant’s PCRA Petition and the entire record. The Court dismissed the Defendant’s Petition because the Court could not address the specific issue as Attorney Petcavage determined it to be without merit and the Court’s review did not highlight the issue. In his Concise Statement of Matters Complained of on Appeal, the Defendant clarified his allegations of ineffective assistance of Counsel. This Court then requested the Superior Court remand the matter for further proceedings based upon the possibility that the Defendant’s underlying claim could be of arguable merit. After review of the record, the Superior Court adopted this Court’s reasoning and reversed and remanded the case.

### *Discussion*

Defendant contends in his PCRA Petition that prior counsel, Jason Poplaski, Esq., was ineffective for failing to present character testimony at trial and failing to advise the Defendant prior to trial regarding the importance of obtaining character witnesses. Defendant specifically asserts that had he been informed of his right to call character witnesses, he would have given the names of several witnesses who would have been available to testify that he had a good reputation for being an honest and law abiding citizen.

In order to make a claim for ineffective assistance of counsel, the Defendant must demonstrate:

1) an underlying claim of arguable merit; 2) no reasonable basis for counsel's act or omission; and 3) prejudice as a result, that is, a reasonable probability that but for counsel's act or omission, the outcome of the proceeding would have been different. Counsel is presumed to have been effective. A failure to satisfy any prong of this test is fatal to the ineffectiveness claim.

Commonwealth v. Cooper, 941 A.2d 655, 664 (Pa. 2007) (and cases cited therein).

“Failure to present available character witnesses may constitute ineffective assistance of counsel.” Commonwealth v. Harris, 785 A.2d 998, 1000 (Pa. Super. Ct. 2001). An individual on trial for a criminal offense “is permitted to introduce evidence of his good reputation in any respect which has ‘proper relation to the subject matter’ of the charge at issue.” Id. (quoting Commonwealth v. Luther, 463 A.2d 1073, 1077 (Pa. Super. 1983)). Although, “where the prosecution has merely introduced evidence denying or contradicting the facts to which the defendant testified, but has not assailed the defendant's community reputation for truthfulness generally, evidence of the defendant's alleged reputation for truthfulness is not admissible.” Commonwealth v. Fulton, 830 A.2d 567, 573(Pa. 2003).

In the instance case, current Defense Counsel has provided this Court with Witness Certification Pursuant to 42 Pa. C.S.A. 9545(d) regarding the anticipated character testimony of witnesses Denise Allen and La Vern Allen<sup>1</sup>. Both witnesses related to Defense Counsel that if called they would testify that the Defendant has a good reputation for truthfulness and honesty in the community. The Court finds that this testimony would be inadmissible as the evidence does not have a proper relation to the subject matter of the crimes charges and at trial the prosecution did not assail the Defendant’s community reputation for truthfulness. Therefore, trial counsel was not ineffective and the Defendant’s claim is without merit.

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<sup>1</sup> Defense Counsel informed the Court by memorandum that another witness Gwendlyn Reeves would also testify on Defendant’s behalf and that her testimony would be consistent with the above two witnesses. Defense Counsel also informed the Court that he attempted to contact another witness, Patricia Coker, who resides with Ms. Reeves, but Ms. Coker has not responded.

***Conclusion***

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant's PCRA petition. Additionally, the Court finds that no purpose would be served by conducting any further hearing. None will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of this court's intention to deny the Petition. Defendant 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 March 2009, the Defendant and his attorney are 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

xc: DA (KO)  
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