IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

COMMONWELATH OF PA	:	
	:	NO: CR-790-2007
	:	
vs.	:	
	:	
	:	
JIMMIE R. FIELDS	:	

O P I N I O N

On May 1, 2007 Jimmie Fields was charged with three (3) counts of Involuntary Deviate Sexual Intercourse, each a felony of the first degree, two (2) counts of Aggravated Indecent Assault, each a felony of the second degree, two (2) counts of Indecent Assault, each a misdemeanor of the first degree, and one (1) count of Endangering the Welfare of a Child, a felony of the third degree.

A non-jury trial was held on November 30, 2007 and the Defendant was found guilty of each of the charges listed above. The Defendant was represented by Attorney Anthony Miele at trial.

On May 14, 2008, Attorney Matthew Zeigler entered his appearance. On June 18, 2008 this Court entered an Order finding the Defendant to be a Sexually Violent Predator in accordance with Pennsylvania's Megan's Law Statute and sentenced the Defendant to an aggregate period of incarceration of twenty (20) to forty (40) years. Post-sentence Motions were filed on July 7, 2008 and denied on September 4, 2008. No direct appeal was filed with the Superior Court.

On April 13, 2009 the Defendant filed a pro se Petition for Post Conviction Relief. On April 21, 2009 Attorney Ryan Gardner was court appointed to represent

the Defendant in his P.C.R.A. petition. On October 7, 2009 following an initial P.C.R.A. conference, Attorney Gardner was instructed to file an Amended P.C.R.A. Petition on or before November 7, 2009.

On November 18, 2009 Attorney Gardner filed an Amended P.C.R.A. Petition which included witness certifications for Anthony Miele, Esquire, Matthew Zeigler, Esquire, Leslie Liddic, Randall Smith and Luis A. Cruz.

On December 7, 2009 this Court entered an Order directing Attorney Gardner to provide additional witness information, specifically, to provide information as to when witness information was communicated to Attorney Miele and information as to how Attorney Miele's failure to produce witness information was prejudicial to the Defendant. Attorney Gardner was directed to request a hearing based on procurement of this information on or before January 7, 2010. Nothing further was filed by Attorney Gardner.

On September 15, 2010 Attorney Donald Martino was appointed to represent the Defendant. On October 15, 2010 Attorney Martino filed a Petition for Evidentiary Hearing in accordance with the Court's Order of December 7, 2009. At the time of the hearing, on January 10, 2011, the Commonwealth objected alleging that they were prejudiced due to the death of trial counsel, Attorney Miele. This Court's Order of January 10, 2011 following the hearing, granted the Defendant leave to file a Second Amended Post Conviction Relief Act Petition with appropriate witness certifications within thirty (30) days.

On January 31, 2011, the Defendant filed a Second Amended Post Conviction Relief Act Petition. Defendant's Second Amended Petition seeks a new trial based

upon trial counsel's ineffectiveness. Defendant specifically asserts that trial counsel was ineffective in three (3) respects: for failing to properly question witnesses, failing to call a fact witness and failing to call character witnesses.

On May 17, 2011, an evidentiary hearing was held to permit the Defendant to present testimony regarding the issues presented in his Second Amended P.C.R.A. Petition.

Issue # 1: Trial Counsel Was Ineffective for Failing to Properly Question Witnesses on Direct Examination.

To establish claims of constitutional error or ineffectiveness of counsel, the petitioner seeking post-conviction relief must plead and prove by a preponderance of the evidence that the system failed. Because counsel is presumed to be effective, the defendant has the burden of establishing ineffective assistance of counsel. Commonwealth v. Speight, 677 A.2d 317 (Pa. 1996). To obtain relief on a claim for ineffective assistance of counsel, post-conviction petitioner must demonstrate that the underlying claim is of arguable merit, no reasonable basis existed for counsel's action or inaction, and counsel's error caused prejudice such that there is a reasonable probability that the result of the proceeding would have been different absent such error. Commonwealth v. Williams, 950 A.2d 294 (Pa. 2008).

The Defendant first asserts that trial counsel, Tony Miele, was ineffective for failing to question the mother of the victim, Katherine Fields, regarding the fact that she continued to allow the Defendant to have contact with her daughter, the victim, after charges were filed against him. As set forth above, in order to prevail, the Defendant must prove that a reasonable basis exists to conclude that the results would have been different absent the alleged error by counsel.

In the case at bar, the Defendant is clearly unable to establish that the result of the proceeding would have been different, had Attorney Miele elicited this testimony at trial. At the time of trial, the victim testified:

Q: What is this a picture of?

A: What Daddy did to me.

Q: And what did Daddy to you? This is one figure in the picture. What – did you draw that?

A: Yes.

Q: What's the picture of?

A: Putting his hand into my pee-pee.

* * * * * * * * * * *

Q: This picture, which is figure two on Commonwealth's Exhibit 2, what is that a picture of?

A: Licking my pee-pee.

* * * * * * * * * * *

Q: I am going to hand you these dolls. Remember these dolls?

A: Yes.

Q: Can you – this would be Daddy. This would be you. Can you show the judge – show the judge what picture one is. What exactly did Daddy do?

A: He put his fingers in my pee-pee.

Q: He put his finger where?

A: To my pee-pee.

Q: Did it go in?

A: (Nodded affirmatively).

Q: Answer out loud. Yes or no?

A: Yes.

Q: And do you recall where this happened?

A: In my bedroom.

Q: In your bedroom. Do you know when it happened? Do you remember what grade you were in?

A: I was only in kinder – in Head Start when I got into other –

Q: Before kindergarten?

A: (Nodded affirmatively).

Q: Show the judge what happened in figure two with the dolls. And what does that mean?

A: Licking my pee-pee.

Q: When you say pee-pee do you mean your private?

A: Um-hum.

Q: Do you know how many times that happened?

A: More than one time.

Q: Was it two times?

A: (Shook head negatively).

Q: More?

A: (Nodded affirmatively).

(N.T. 11/30/07, p. 6-8).

Officer William Weber testified that on April 13, 2007 he was contacted by Children and Youth about a sexual abuse assertion and met with the victim that day at her school. (Id. at 59). She told him at that time that her dad licked her pee bug and put his finger in her pee bug. (Id. at 60). She said that the last time it happened was before she went to kindergarten. (Id. at 61).

Officer Weber's opinion on the consistency of the child victim's testimony was as follows:

> Q: Do you think that she's remained consistent?
>
> A: Yes, she's remained extremely consistent with everything that happened, which ironically Mr. Fields corroborated especially by when he told me that the last time anything happened was the summer of 2005, which was the exact same time that Savannah told us at age four or five, so to me that was probably one of the most significant things in this investigation.
>
> (Id. at 69).

Tender Years Doctrine testimony supported the young victim's account at trial.

Moreover, the Defendant confessed to the crimes charged.

The Defendant's testimony regarding this confession at the time of trial was as follows:

> Q: Let me ask you this. Did you tell Caption Weber that you licked Savannah's pee bug with your tongue?
>
> A: I believe I may have, yes.
>
> Q: Did you say that you had rubbed your private all over her body?
>
> A: Yes.
>
> Q: Did you say you might have put your finger in her vagina but you couldn't remember doing it?
>
> A: I believe I may have.
>
> Q: Did you tell Katherine – did you admit to Katherine that these charges were true?
>
> A: Yeah, but then she hung up on me and didn't even let me – if you know the reason why I told Captain Weber this. A few of the times that we talked she'd hang up on me and wouldn't let me finish talking to her.
>
> (N.T. 11/30/07, p. 97).

The Defendant's explanation for this confession was that he believed that the only way that he could get a public defender was by admitting to the charges. (Id. at 91). Based upon the overwhelming testimony which existed at trial, the Defendant is clearly unable to demonstrate that the results of the proceeding would have been any different absent the alleged error by Attorney Miele. Moreover, with respect to whether counsel's acts or omissions were reasonable, defense counsel is accorded broad discretion to determine tactics and strategy. Commonwealth v. Fowler, 670 A.2d 153, 155 (Pa.Super. 1996). The test is not whether other alternatives were more reasonable, employing a hindsight evaluation of the record, but whether counsel's decision had any reasonable basis to advance the interests of the defendant. Commonwealth v. Blackwell, 647 A.2d 915 (Pa.Super. 1994).

Although Mr. Miele is unable to speak to the issue of any strategies employed at the time of trial, from a review of the transcript, it is clear that Mr. Miele's strategy was to blame the charges on someone else. Cross-examination of Katherine Fields by Attorney Miele on this issue was as follows:

Q: Do you know a person by the name of Matt?

A: Matt who? There's many.

Q: I don't know. I'm asking you.

A: Yes, I do know many Matts.

Q: Have you ever had any association with him?

A: Yes.

Q: Beginning when?

A: Back in 2005.

* * * * * * * * * * *

Q: Did you ever tell your mother-in-law, Sharon Liddick, that Matt was the one who did these things that Savannah complained about?

A: No.

* * * * * * * * * * *

Q: When is the last time in June you were at your mother-in-law's home to pick up your children?

A: I honestly do not remember that, sir.

Q: But there was sometime in June?

A: Yes.

Q: And do you recall telling her that Matt was the one – excuse me. Matt was the one who did all these things but your husband Jimmie was supposed to be blamed for it?

A: No, I do not. The conversation went that he was blaming Matt. She told me that Jimmie said it was Matt.

Q: Jimmie was in jail?

A: Yes, but she was – she had visitations with him. She went to see him while he was in jail and they held conversations.

Q: And Jimme told your –

A: She—

Q: Your mother-in-law that it was Matt who did it?

A: Yes.

(N.T. 11/3/07, p. 39- 41, 43).

Direct examination by Attorney Miele of the victim's grandmother, Sharon Liddick, included the following:

Q: What did Jimmie's wife say about Matt concerning this case?

A: That he's the one that molested her.

Q: And not your son?

A: Yes.

Q: Why did she want to put the blame on your son?

A: She wanted to have her freedom.

Q: She told you that?

A: Yes.

(Id. at 75).

Although Mr. Miele did not ask the victim's mother, Katherine Fields, whether she continued to allow the Defendant to have contact with her daughter after charges were filed against him, it is clear the Attorney Miele's strategy was not to focus attention upon the Defendant, but rather to deflect it upon a previous acquaintance of the victim's mother, a man named "Matt." The test for this Court is not whether other alternatives were more reasonable, and defense counsel is accorded broad discretion to determine tactics and strategy.

Issue # 2: Trial Counsel Was Ineffective for Failing to Call an Essential Witness at Trial.

Defendant next contends that trial counsel was ineffective for failing to call an essential witness, Randall Smith, at trial. Randall Smith was the Defendant's mother's boyfriend. Mr. Smith began living with the Defendant's mother, Sharon Liddick in 2004. If called, Randall Smith would have testified that he overheard the victim tell her grandmother, Sharron Liddick, that the victim was told by her mother, Katherine Fields, to say that her Daddy did "this and that." Mr. Smith could not

recall exactly what the victim relayed that the victim's mother told her to say, he just remembered that the victim said that her mother wanted her to say "something." As set forth above, trial counsel is presumed effective. It is part of the Defendant's burden to prove that the result of the proceeding would have been different absent the alleged error. In reviewing the testimony of Mr. Smith, it is clear that Mr. Smith had nothing of merit to add to the evidence presented, just vague, general recollections of a conversation between the victim and her grandmother. Moreover, testimony regarding the victim's mother's alleged coaching of the victim was extensively covered during cross-examination of the victim. This testimony was as follows:

Q: Did your mother ever tell you what to say?

A: I don't know.

Q: No?

A: I don't know.

Q: Do you know what I'm saying? Do you understand my question?

A: (Shook head negatively).

Q: Did your mother ever tell you to blame these things on your father?

A: Yes.

* * * * * * * * * * *

Q: Did you ever tell your grandmother about these things?

A: Yes.

Q: What did you tell her?

A: Couple things.

Q: Did you tell her that your mother told you to blame it on your father?

A: We already went over that one.

Q: I'm sorry?

A: We already went over that one.

Q: We're talking about your grandmother now.

A: Yes.

Q: So you told your grandmother Sharon, that is your father's mother, that it was your mother who told you to blame everything on your father, isn't that right?

A: Um-hum.

(Id. at 12-13,16-17).

Although during re-direct examination, the victim testified that her mother never told her to lie, and that she was telling the truth about what her dad did to her, evidence regarding alleged coaching of the victim by the victim's mother was clearly elicted through the testimony of the victim.

It is obvious that there is no reasonable probability that the verdict would have been different based upon the testimony of Randall Smith, this Court finds that the Defendant cannot meet his burden of proof under the P.C.R.A. Act.

Issue # 3: Trial Counsel Was Ineffective for Failing to Call Character Witnesses at Trial.

Defendant's final claim relates to his assertion that trial counsel was ineffective for failing to call character witnesses at trial. In his Second Amended P.C.R.A. Petition the Defendant asserts that Luis A. Cruz, Randall Smith and Sharon Liddick were available to testify that the Defendant had a reputation in the community for being non-violent. Randall Smith and Sharon Liddick could have

additionally offered evidence that the Defendant had a reputation in the community for being a truthful person. As set forth above, to obtain relief on a claim for ineffective assistance of counsel, post-conviction petitioner must demonstrate that no reasonable basis existed for counsel's action or inaction, and counsel's error caused prejudice such that there is a reasonable probability that the result of the proceeding would have been different absent such error. This Court notes that the undersigned was the fact-finder during the trial proceedings. The testimony at trial, which included an admission by the Defendant of his guilt, was more than sufficient to convict the Defendant. This Court finds that any failure to elicit character testimony did not cause prejudice such that there was a reasonable probability that the result of the trial would have been different, and the Defendant has failed to establish trial counsel's ineffectiveness.

O R D E R

AND NOW, this 12th day of July, 2011, the Defendant's request for a new trial is DENIED and the Defendant's Second Amended PCRA Petition is DISMISSED.

Defendant is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. The appeal is initiated by the filing of a Notice of Appeal with the Clerk of Courts at the county courthouse, with notice to the trial judge, the court reporter and the prosecutor. The Notice of Appeal shall be in the form and contents as set forth in Rule 904 of the Rules of Appellate Procedure. The Notice of Appeal shall be filed within thirty (30) days after the entry of the order from which the appeal is taken. Pa.R.A.P. 903. If the Notice of Appeal is not filed in the

Clerk of Court's office within the thirty (30) day time period, the Defendant may lose forever his right to raise these issues.

A copy of this order shall be mailed to the Defendant by certified mail, return receipt requested.

BY THE COURT,

_____
Richard A. Gray, J.

cc: Ken Osokow, Esquire

Donald F. Martino, Esquire

Gary Weber, Esquire

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