

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-1792-2011  
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 SAMANTHA MATHERS, : Notice of Intent to Dismiss PCRA without  
 Defendant : Holding an Evidentiary Hearing and Granting  
 : Counsel's Motion to Withdraw

**OPINION AND ORDER**

This matter came before the court on Defendant's Post Conviction Relief Act (PCRA) petition. The relevant facts follow.

Defendant was charged with criminal conspiracy to commit involuntary deviate sexual intercourse of a child, criminal conspiracy to commit aggravated indecent assault, sexual exploitation of children, endangering the welfare of a child as a parent, and corruption of a minor. The charges arise out Yahoo chats between Defendant and Richard Lafayette in which they discuss sexually abusing young children and an incident that occurred in April 2011 when Richard Lafayette, with Defendant's consent and assistance, sexually molested Defendant's three year old daughter.

Following an extensive, on the record colloquy, Defendant waived her right to a jury trial and proceeded to a case stated nonjury trial on April 26, 2012. The court found Defendant guilty of all the charges in an Opinion and Verdict entered on April 27, 2012. The court sentenced Defendant to undergo an aggregate term of 12 ½ to 25 years of incarceration in a state correctional institution.<sup>1</sup> Defendant did not file a post sentence motion or a direct

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<sup>1</sup>Defendant was represented by different counsel at sentencing than at trial, because trial counsel's contract to

appeal.

Defendant filed a timely PCRA petition in which she alleged trial counsel was ineffective, because he did not adequately prepare or explain to her what was taking place and he told her she would not be taking the stand, but she was put on the stand at the last minute. She also asserted that there was no real defense made and key points were ignored in her case, but she did not state what those key points were.

The court appointed counsel to represent Defendant and gave counsel an opportunity to amend. Counsel filed an amended petition in which he asserted trial counsel was ineffective in the following respects:

- a. Previous counsel's decision not to contact or meet with the client concerning trial matters until minutes before her trial is so unreasonable that no competent lawyer would have chosen it.
- b. A decision is not reasonable if previous counsel offers no explanation for the act or omission in question.
- c. Because a stipulation to documentary evidence made the outcome of trial a foregone conclusion, previous counsel's decision to enter into a case stated trial with out [sic] a colloquy by the court to ensure the defendant has been effectively counseled cannot be reasonable.

Amended PCRA, para. 7 (citations omitted). Counsel also made a request to reserve the right to file additional reasons to pursue the petition once the trial transcript was complete.

The court noted that the amended petition, in several respects, did not comply with Rule 902 of the Pennsylvania Rules of Criminal Procedure, which governs the content of PCRA petitions. The court directed the court reporter to prepare the trial transcript and gave counsel a further opportunity to amend Defendant's PCRA petition so that it complied

with Rule 902. After reviewing the trial transcript, corresponding with trial counsel, and sending several letters and emails to Defendant without receiving a response, counsel filed a no merit letter pursuant to Commonwealth v. Turner, 518 Pa. 491, 544 A.2d 927 (1988) and Commonwealth v. Finley, 379 Pa. Super. 390, 550 A.2d 213 (1988) and a motion to withdraw.

After a thorough review of the record in this case, the court finds that Defendant's claims lack merit.

In each of her claims, Defendant asserts ineffective assistance of counsel.

As the Pennsylvania Supreme Court recently stated in **Commonwealth v. Spotz**, 84 A.3d 294 (Pa. 2014):

Counsel is presumed effective, and to rebut that presumption, the PCRA petitioner must demonstrate that counsel's performance was deficient and that such deficiency prejudiced him. In Pennsylvania, we have refined the Strickland performance and prejudice test into a three-part inquiry. Thus, to prove counsel ineffective, the petitioner must show that: (1) his underlying claim is of arguable merit; (2) counsel had no reasonable basis for his action or inaction; and (3) the petitioner suffered actual prejudice as a result. If a petitioner fails to prove any of these prongs, his claim fails. Generally, counsel's assistance is deemed constitutionally effective if he chose a particular course of conduct that had some reasonable basis designed to effectuate his client's interests. Where matters of strategy and tactics are concerned, a finding that a chosen strategy lacked a reasonable basis is not warranted unless it can be concluded that an alternative not chosen offered a potential for success substantially greater than the course actually pursued. To demonstrate prejudice, the petitioner must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability that is sufficient to undermine confidence in the outcome of the proceeding.

84 A.3d at 311-12 (quotations, quotation marks, and citations omitted). With this

legal framework in mind, the court will address Defendant's claims.

Defendant first asserts that counsel was ineffective for failing to adequately meet with her, prepare for trial or explain to her what was taking place. Defendant, however, failed to plead any facts to support these claims or to establish prejudice.

Defendant did not allege in her petition any facts regarding the number of times or the amount of time that counsel met with her prior to trial. Defendant also did not respond to PCRA counsel's letters and emails, which sought this information. Trial counsel, though, sent PCRA counsel a letter in which trial counsel indicated that he met with Defendant on numerous occasions at the Lycoming County Prison and he spoke to her at length about her case and her defense while they were at the Magisterial District Judge's office on two different occasions. Moreover, Defendant indicated on the record during the colloquy waiving her right to a jury trial that she had enough time to discuss her case with trial counsel, there weren't any areas that she wanted trial counsel to investigate or pursue, and she was satisfied with trial counsel's representation. N.T., April 26, 2012, at 43, 46.

Even if Defendant alleged that trial counsel only spent a limited amount of time discussing her case with her, she would not be entitled to relief because the "shortness of time which counsel spends in consultation with a defendant does not alone establish ineffective assistance." **Commonwealth v.**

**Thomas**, 539 A.2d 829, 837 (Pa. Super. 1988).

Defendant also cannot establish prejudice in this case. Even if trial counsel did not explain what was taking place, the court did when it conducted an extensive colloquy about her decision to proceed with a case stated, nonjury trial and the risks she was taking by proceeding with that option. N.T., April 26, 2012, at 3-47. Furthermore, Defendant specifically indicated that she understood that she could receive a greater sentence than her co-defendant, but she did not think that the plea agreement offered was a favorable one, because she did not believe she committed conspiracy to commit involuntary deviate sexual intercourse and she felt that she was less culpable than her co-defendant. N.T., April 26, 2012, at 27-30.

Defendant also claims that because a stipulation to documentary evidence made the outcome of trial a foregone conclusion, previous counsel's decision to enter into a case stated trial without a colloquy by the court to ensure the defendant has been effectively counseled cannot be reasonable. This contention is not supported by the record.

As previously stated, the court conducted an extensive colloquy with Defendant. Furthermore, although the defense ultimately was not successful, trial counsel presented the only arguable defense that Defendant had in this case, i.e., renunciation.

Defendant was going to have great difficulty contesting the facts in this case, because she made statements admitting the facts to the police and to the

court during the colloquy. Under the unique facts and circumstances of this case, the decision to stipulate to the documentary evidence was not patently unreasonable. The documentary evidence was transcripts of Yahoo chats that the police found as a result of a forensic examination of Defendant's computer.<sup>2</sup> During an interview with police and during the colloquy at trial, Defendant admitted that these chats occurred. As part of his plea agreement, the co-defendant agreed to testify against Defendant. If trial counsel had not stipulated to the authenticity of the Yahoo chats, the Commonwealth would have called the co-defendant as a witness. The co-defendant had made statements that Defendant was the one who first placed the vibrator against the child's vagina. As part of the stipulation, the Commonwealth agreed that the co-defendant was the one who placed the vibrator against the child's vagina in April 2011, and that Defendant removed the child from the co-defendant's presence without any further sexual acts occurring. This stipulation was helpful to trial counsel's argument that Defendant was less culpable than her co-defendant and that she renounced the conspiracy to commit involuntary deviate sexual intercourse and aggravated indecent assault. Although trial counsel's arguments ultimately were not successful, such does not diminish the fact that the concessions made by the Commonwealth as part of the stipulation were

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<sup>2</sup> According to the affidavit of probable cause, the charges in this case came to light, because Defendant allegedly was the victim of a sexual assault and had told the police that the perpetrator had admitted in an instant message chat that he sexually assaulted her. When the attorney representing the alleged perpetrator wanted to search Defendant's hard drive for the instant message chat, Defendant consented to a search of her computer. A copy of the hard drive was turned over to the attorney for the alleged perpetrator. The attorney noticed Defendant's instant message chats with Mr. Lafayette and notified an assistant district attorney.

helpful to the defense.

The court is reminded of the old saying “you can lead a horse to water, but you cannot make it drink.” Defendant was aware of the plea agreement offered by the Commonwealth but, for whatever reason, she did wish to take it. After she received a longer sentence than she would have received if she had pled guilty, Defendant filed a PCRA petition challenging trial counsel’s effectiveness. To be entitled to an evidentiary hearing on a PCRA petition, though, a defendant must allege facts to support her claims and provide witness certifications for the individuals who would testify at an evidentiary hearing. See Pa.R.Cr.P. 902. Unfortunately, she has failed or refused to plead any facts to support her claims or even respond to PCRA counsel’s letters and emails. Therefore, the court is constrained to conclude that Defendant is not entitled to an evidentiary hearing and her claims lack merit.

Accordingly, the following order is entered:

**ORDER**

**AND NOW**, this 8<sup>th</sup> day of May 2014, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the parties are hereby notified of the court’s intention to dismiss Defendant’s PCRA petition without holding an evidentiary hearing. Defendant may respond to this proposed dismissal within twenty (20) days. The response should be sent to the Lycoming County Prothonotary, 48 W. Third Street, Williamsport PA 17701. The response should provide specifics concerning what

counsel did that he should not have done or what he didn't do that he should have done and how those actions or failures to act affected her case. If the court does not receive a response within the twenty-day period, the court will enter an order dismissing the petition.

The court grants counsel's motion to withdraw. If Defendant files a response that would require an evidentiary hearing, the court will reappoint counsel at that time.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Gerald Lynch, Esquire  
Samantha Mathers, #OT5802  
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