IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-1079-2008; CR-110-2009**
	:	**CR-844-2009; CR-896-2009;**
vs.	**:**	**CR-1606-2009; 1632-2009**
	:	
	:	
GREGORY A. BARTO,	**:**	
Defendant	**:**	**PCRA**

OPINION AND ORDER

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

In case 1079-2008, the jury found Barto guilty of indecent assault, corruption of a minor, and terroristic threats with respect to victim S.H. In case 896-2009, Barto was found guilty of raping S.H. All the charges involving S. H. arose from an incident that occurred on June 8, 2008.

S.H. testified that she was at her boyfriend's graduation party. Barto and his wife arrived later in the evening in a black Corvette. Barto offered to take S.H. for a ride in his Corvette and S.H. accepted the offer. Barto told S. H. that he was taking her for a ride around the block, but instead he took her to his business and his trailer behind his business.

During the ride, Barto rubbed S.H.'s thighs. When they got to his business, Barto told S. H. he wanted to give her a tour. S.H. told Barto that she didn't want a tour of his business; she wanted to go back to the party. Barto pulled on S.H.'s shoulder to get her out of the vehicle. S.H. got out, because she did not want to make Barto angry. As they walked upstairs, Barto grabbed S.H.'s butt. S.H. told him to stop, but Barto said "no, I won't stop." Barto took S.H. into the office and asked S.H. if she wanted to watch pornography.

S.H. said no. Barto then took S.H. into a room that had a pool table and asked her if she wanted to play pool. Again, S.H. said no. Barto then pushed S.H. onto the pool table, pulled her shorts off and raped her, despite her telling him to stop.

Barto then took S.H. downstairs and opened the door to a room that smelled like tires. Barto told S.H. to go ahead into the room. S.H. said no, so Barto pushed her inside the room. Barto then pushed her against the door and reached under her shirt. S.H. kept pushing Barto's hands away. Then he pushed her shorts down and raped her again. When he was finished, he said okay we can go now and they got into the car, but instead of returning to the party, Barto backed up and went to his trailer.

Barto said he was going to let the dog out and give her a tour of his trailer. Barto pulled S.H. out of the car and she fell on her side onto the gravel and bruised her hip. Once they were inside the residence, Barto asked S.H. if she wanted to get in the hot tub. S.H. said no and told Barto she had to use the bathroom. S.H. intended to go out the back door where the dog was, but when she opened the door, the dog came in and Barto grabbed her from behind and threw her onto the bed.

Barto asked S.H. if she liked to smoke or do any drugs. S.H. said no, but Barto went to the dresser and got cocaine out anyway. He cut it up, made it into lines and told S.H. to try it. When she said no, Barto put the cocaine into a pile, pushed her head onto the drugs and held it there until she breathed in some of the cocaine.

Barto also asked S.H. if she wanted to watch pornography. S.H. said no. Barto told her that he had a bunch of his own pornography. He then pulled out a box, put a tape in and told S.H. she was really going to like it. The tape depicted a girl giving Barto a "blow

job" in the presence of another man. S.H. asked Barto if his pregnant wife was going to wonder where he was; Barto didn't care. He began rubbing her thighs again and putting his hands up her shirt. He told S.H. to lie down. When she didn't, he pushed her down and pulled her shorts off. Barto then said: "I don't know why you don't just want it. Other girls your age like it. Don't you find me attractive? You're going to like it; just calm down." S.H. said no. Barto then asked S.H. if she wanted to make a video and they could go get his wife to videotape them. Barto then raped her again. When he was finished, he got up like nothing was wrong and put his pants on.

S.H. asked if they could go back to the party now. Barto asked her if she was going to tell and she said no. Barto finally drove her back to the party. S.H. ran up to her boyfriend and told him what happened. According to S.H., her boyfriend pushed her and called her a slut then got in the car with Barto and left. S.H. was visibly upset. A neighbor who was at the party took S.H. to her house to try to calm her down and find out what was wrong. When her boyfriend returned, he took her back to his house and he and his mother had her take a shower in an effort to calm her down, even though she said he wanted to go home and needed to go to the hospital.

S.H. went home the next day and her mom took her to the police station. S.H. initially just told the police that Barto touched her and threatened her. She was too scared and embarrassed at that time to tell them about the rapes and the cocaine until almost a year later.

In case 110-2009, the jury found Barto guilty of attempted corruption of a minor. N.W. testified that in the summer of 2007 or 2008 when she was fifteen years old she went to Barto's Tire and Auto Center to try sell ads for the football program to benefit the

varsity cheerleading squad of which she was a member. Barto offered her a job working "under the table" washing cars. A week or two later she reported for work.

When she reported for work, Barto told her she'd be washing cars and sweeping at the business, mowing the grass, and cleaning the house. When he gave her a tour of the residence, he led her to the bedroom and told her he liked to mix work and play. He told N.W. that he liked to watch pornography and she could watch it too. He also told her that he liked to do drugs and he could get her anything she wanted. N.W. left at the end of the day and never went back.

In case 844-2009, Barto was found guilty of sexual exploitation of children and three counts of sexual abuse of children related to his sexual activities with fifteen year old A.W., which were videotaped for future viewing and display for others.

A.W. testified that in July and August of 2000 when she was fifteen years old she worked for Barto's tires. She testified that she washed cars and cleaned. After working there for a few days, Barto asked her if she wanted to smoke some pot and she said okay. She smoked pot and drank with Barto and his wife often. One day she walked into work and there was pornography on the computer. When asked how the sex started, A.W. testified that they were partying and Barto and his wife had sex in front of her and asked her to join in. All of them then engaged in sexual acts. A.W. did not recall the details because she was drunk, but the videos proved that Barto and his wife engaged in sexual acts with her. A.W. further testified that the video camera was on and she was told to "watch ourselves" on a television in the bedroom while the acts were occurring.

On another occasion, Barto told A.W. and his wife to go out back and tan. They went outside and began to rub lotion on one another. One thing led to another and ultimately they went inside the trailer and performed oral sex on each other.

A.W. testified that the sex acts occurred probably once a week and included both vaginal intercourse and oral sex. She also indicated that in addition to routinely smoking pot, she also was given ecstasy on one occasion and cocaine three times.

Eventually, A.W. just quit showing up for work to get out of the situation. She testified that Barto and his wife came looking for her. The whole situation freaked out A.W. She changed her home phone number and cancelled her cellular phone. The videotape was introduced into evidence and played for the jury. Although A.W. was fifteen at the time, she looked like she was only twelve or thirteen.

In case 1606-2009, Barto was found guilty of corruption of a minor and multiple counts of possession of a small amount of marijuana for distribution but not for sale. The victim in this case was T.H. , who was seventeen years old when the crimes occurred in 2003 and 2004.

T.H. testified that around Christmas in 2003 she and a friend stopped at Barto's tires so her friend could look at a car. Barto came out and started talking to them. He asked T.H. if she was working anywhere and offered her a job cleaning up around the shop and maybe the house too. A couple of days later, T.H. started to work at Barto's Tires. On her first day, after she did a little bit of cleaning around the shop, Barto asked her to come to the house and help with the laundry. T.H. went over there and Barto turned on pornography and started asking her personal question, such as "Are you a virgin?" and "Do you like to

have sex with girls?" Barto then asked if he could touch T.H.'s "boobs," but she said no. Barto gave her marijuana almost every day she worked for him. About two weeks later, Barto and his wife had T.H. over to their house after work. Barto's wife performed oral sex on Barto in front of T.H. After that Barto started asking T.H. to give him oral sex.

Two months after T.H. began working at Barto's Tires, they all started having dinner together. Barto and his wife would invite T.H. to dinner about once a week and after dinner they would all have sex together. Many times sex toys were used. Either T.H.or Barto's wife would perform oral sex on Barto and Barto would have anal sex with both of them. T.H. testified oral sex occurred once or twice a day. Anal sex occurred about once a week. When T.H. found a boy she was interested in and wanted to stop, Barto paid her $20 for oral sex and $30 for anal sex. The sexual acts occurred for approximately ten months until T.H. quit working at Barto's Tires.

T.H. testified that pornography was on the television every time she was at the house. She further testified that Barto and his wife were aware of her age, because her date of birth was on work papers that they signed for the School to Work Program. When she quit, she told the teacher in charge of the Program that she quit because inappropriate things were going on.

In case 1632-2009, Barto was found guilty of multiple counts of possession of a small amount of marijuana for distribution but not for sale, possession with intent to deliver cocaine, corruption of a minor and one count of conspiracy to deliver cocaine.

In November or December 2003, when she was seventeen years old, N.B.

began working at Barto's Tire and Auto Center as a detailer, who washed, vacuumed, and shampooed vehicles. A few days after she started work, Barto invited her to his trailer, which was right next to the business. Pornography was on the television. Barto and his wife began to engage in sexual activities in front of N.B., and they invited her to join in, which she did. While N.B. was a minor, Barto engaged in oral sex, vaginal sex, and anal sex with N.B. He also provided her with marijuana and showed her pornographic videotapes. Although the drug use started out with just marijuana Barto also gave N.B. pills and cocaine and they got high. When N.B. needed extra money, Barto offered her $20 for oral sex and $200 to make sexual videotapes. She made at least three videotapes, but these likely occurred after she was 18 years old. Barto had sexual contacts with and provided drugs to N.B. between late 2003 and 2008.

On December 30, 2010, the court imposed an aggregate sentence of 35 to 70 years of incarceration in a state correctional institution. No post sentence motions were filed, but Barto filed an appeal in which he alleged that it was error to consolidate the cases for trial, to permit evidence that Barto had been in jail previously, and to preclude certain questioning of S.H. The Pennsylvania Superior Court rejected Barto's claims and affirmed his judgment of sentence. The Pennsylvania Supreme Court denied Barto's petition for allowance of appeal.

Barto filed a pro se PCRA petition. As this was his first such petition and Barto appeared to be indigent, the court appointed counsel to represent Barto and gave counsel the opportunity to filed an amended petition or a "no merit" letter pursuant to Commonwealth v. Turner, 544 A.2d 927 (Pa. 1988) and Commonwealth v. Finley, 550 A.2d

213 (Pa. Super. 1988). Counsel filed an amended petition, which was subsequently amended. This opinion addresses the second amended petition filed by counsel.

In the second amended petition, Barto asserts claims of ineffective assistance of counsel for failing to timely file a post sentence motion or appeal regarding: (1) the sufficiency of evidence under CR 897-2009 and 1632-2010[1] as the Commonwealth failed to meet the element that Barto possessed a controlled substance or delivered a controlled substance because there was no physical evidence of the possession of any controlled substance; (2) the weight of the evidence in those two cases for the same reason; and (3) the discretionary aspects of sentencing in light of the court's sentence of 35 to 70 years.

After a review of the record in this case, the court finds that Barto cannot prevail on his claims.

To prevail on a claim of ineffective assistance of counsel, a petitioner must plead and prove that the underlying claim is of arguable merit; counsel's actions had no reasonable basis designed to effectuate petitioner's interests; and prejudice, i.e., but for counsel's deficient performance there is a reasonable probability that the results of the proceedings would have been different. Commonwealth v. Baumhammers, 92 A.3d 708, 719 (Pa. 2014). Counsel is presumed effective and the petitioner has the burden of proving otherwise. Commonwealth v. Busanet, 54 A.3d 35, 45 (Pa. 2012). If the petitioner fails to

[1] These case numbers appear to be incorrect. The court believes Barto is attempting to challenge his convictions for possession with intent to deliver a controlled substance and possession of a small amount of marijuana for distribution but not for sale; therefore, the correct case numbers would be 1606-2009 and 1632-2009. Barto was charged with controlled substance violations in 897-2009, but he entered a guilty plea in that case.

satisfy any of the three prongs, the claim will be denied. Id.

The Pennsylvania Superior Court further explained the prongs of an ineffectiveness claim as follows:

> A claim has arguable merit where the factual averments, if accurate, could establish a cause for relief. **See** Commonwealth v. Jones, 583 Pa. 130, 876 A.2d 380, 385 (2005)("if a petitioner raises allegations, which, even if accepted as true, do not establish the underlying claim…, he or she will have failed to establish the arguable merit prong related to the claim"). Whether the "facts rise to the level of arguable merit is a legal determination." Commonwealth v. Saranchak, 581 Pa. 490, 866 A.2d 292, 304 n.14 (2005).
>
> The test for deciding whether counsel had a reasonable basis for his action or inaction is whether no competent counsel would have chosen that action or inaction, or, the alternative, not chosen, offered a significantly greater potential chance of success. Commonwealth v. Colavita, 606 Pa. 1, 993 A.2d 874 (2010). Counsel's decisions will be considered reasonable if they effectuated his client's interests. Commonwealth v. Miller, 605 Pa. 1, 987 A.2d 638 (2009). We do not employ a hindsight analysis in comparing trial counsel's actions with other efforts he may have taken. Id. at 653.
>
> "Prejudice is established if there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Commonwealth v. Steele, 599 Pa. 341, 961 A.2d 786,797 (2008). A reasonable probability 'is a probability sufficient to undermine confidence in the outcome.' Commonwealth v. Rathfon, 2006 PA Super 106, 899 A.2d 365, 370 (Pa. Super. 2006)." Burkett, supra at 1272; Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Commonwealth v. Stewart, 84 A.2d 701, 707 (Pa. Super. 2013).

Barto first asserts that counsel was ineffective for failing to file a post sentence motion or an appeal regarding the sufficiency of the evidence for his drug convictions because there was no physical evidence that he possessed any controlled substance. The court cannot agree.

There is sufficient evidence to sustain a conviction when the

> evidence admitted at trial, and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as verdict-winner, are sufficient to enable the fact-finder to conclude that the Commonwealth established all the elements of the offense beyond a reasonable doubt. Commonwealth v. Markman, 591 Pa. 249, 916 A.2d 586, 597 (Pa. 2007). The Commonwealth may sustain its burden "by means of wholly circumstantial evidence." Id. at 598. Further, we note that the entire trial record is evaluated and all evidence received against the defendant is considered, being cognizant of the fact is free to believe all, part, or none of the evidence. Id.

Commonwealth v. Martin, 101 A.3d 706 (Pa. 2014).

The identity of illegal controlled substances may be established by circumstantial evidence alone. Commonwealth v. Lawson, 671 A.2d 1161, 1165 (Pa. Super. 1996). Furthermore, the effects of controlled substances, like the effects of alcohol, are widely known and commonly understood. Commonwealth v. DiPanfilo, 993 A.2d 1262, 1267 (Pa. Super. 2010).

When the totality of the evidence is considered, there was sufficient evidence to show that Barto possessed controlled substances and provided them to others. N.B. testified that she smoked marijuana provided to her by Barto three or four nights per week at his trailer. One time he gave her a bag of marijuana as a gift for Christmas. She knew that the substance was marijuana because she had smoked marijuana before. Barto also provided cocaine to N.B. , who was familiar with that substance due to prior experiences. When they used these substances, they got high. N.T., April 27, 2010, at pp. 13-19, 25, 35-37, and 40-41. The charges related to N.B. were filed to case 1632-2009.

T.H. testified that she worked for Barto five days per week during 2003-2004 when she was 17 years old. Barto offered marijuana to her the first day she worked there. She also was familiar with marijuana because she had smoked it before. He offered her

marijuana every day, and she smoked it and got high. N.T., May 5, 2010, at pp. 35, 37, 39, 42, 44, 48, 52-53. The charges related to T.H. were filed to case 1606-2009.

Although Barto was not charged with controlled substance violations with respect to the other victims, they provided similar testimony in support of corruption of minors charges based on both sexual activity and drugs.

A.W. testified that she was 15 years old when she worked for Barto. He gave her ecstasy once, cocaine three times, and marijuana every day that she worked for him. Barto also gave her alcohol. N.T., May 5, 2010, at 88-89, 106-107.

N.W. testified that on her first day of work Barto took her on a tour of his house. He told her he liked to mix work with play. He made a reference about how he liked to watch pornography and that she could watch it too. He also told her that he liked to do drugs and he could get her any type of drugs that she wanted. N.T., May 5, 2010, at 148.

S.H. testified Barto sexually assaulted her and forced her to ingest cocaine on June 8, 2008. She testified that Barto went to the dresser and got cocaine out. He put the cocaine on a tray and mirror and said "go ahead and try it." When S.H. refused, he took her head and pushed it down onto the tray and mirror and held it there until she was forced to take a breath at which point she inhaled some of the cocaine. The cocaine made her feel like she did not have any control and she didn't like it. N.T., May 5, 2010, at 191-193.

The police obtained a search warrant for Barto's business and residence. The police discovered a small baggie of marijuana and a wooden marijuana pipe in Barto's business. N.T., May 4, 2010, at 80. Numerous items were found in the residence, including rolling papers, a plastic container with residue, a plastic container which contained marijuana

seeds, pipes, a multicolored bong with residue, a screen to filter marijuana, a metal grinder, two metal razors, and a metal strainer with a mirror that had white residue on it. N.T., May 4, 2010, at 58, 62, 65-66, 70, 76-77.

Trooper Douglas Sversko field tested the white residue and the suspected marijuana, which tested positive for cocaine and marijuana, respectively. N.T., May 4, 2010 at 110. These items, as well as some pills were submitted to Jennifer Libus, a forensic scientist with the Pennsylvania State Police (PSP). Ms. Libus identified the substances as marijuana, diazepam tablets, a tablet containing methadone, and cocaine residue. N.T., May 4, 2010, at 131.

The testimony of the other victims and the results of the search of Barto's residence tended to corroborate the testimony of N.B. and T.H.

Under the facts and circumstances of this case, Barto's claim that the evidence was insufficient is belied by the record. The totality of the evidence and the reasonable inferences that can be drawn therefrom, when viewed in the light most favorable to the Commonwealth, clearly shows that Barto possessed the controlled substances which gave rise to the charges in cases 1606-2009 and 1632-2009. Counsel is not ineffective for failing to raise a claim that lacks merit. Moreover, even if such a claim had been raised, the court would have denied it. Therefore, Barto cannot prevail on this claim.

Barto also claims counsel was ineffective for failing to file a challenge to the weight of the evidence with respect to the drug offenses. Again, the court cannot agree.

An allegation that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial court. Commonwealth v. Sullivan, 820 A.2d

795, 805-806 (Pa. Super. 2003). A new trial is awarded only when "the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." Id. at 806 (citation omitted). The evidence must be so tenuous, vague and uncertain that the verdict shocks the conscience of the court. Id.

The jury's verdict did not shock the court's conscience. "The weight of the evidence is exclusively for the finder of fact who is free to believe all, part or none of the evidence and to determine the credibility of the witnesses." Commonwealth v. Champney, 574 Pa. 435, 832 A.2d 403, 408 (2003). The Commonwealth's witnesses were believable. Their testimony was consistent. The evidence clearly established that Barto's modus operandi was to offer jobs to teenaged girls, provide drugs to them, show them pornography and/or engage in sexual activity with his wife in front of them and then, when their inhibitions were lowered, persuade them into engaging in sexual activity with him and his wife. All of the victims testified how Barto provided or offered to provide controlled substances to them. The victims that ingested controlled substances also testified about the effects the substances had on them and, for those who had used such substances in the past, how the substances were consistent with their prior experiences. The verdict clearly was not against the weight of the evidence; therefore, counsel was not ineffective for failing to raise such a claim.

Barto's final claim is that counsel was ineffective for failing to file a timely post sentence motion or an appeal regarding the discretionary aspects of sentencing in light of the court's sentence of 35 to 70 years. He avers that the court abused its discretion

because 42 Pa.C.S. §9725 recommends total confinement only when (1) there is undue risk that during a period of probation or partial confinement the defendant will commit another crime; (2) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or (3) a lesser sentence will depreciate the seriousness of the crime of the defendant. Barto submits that since he was a local business owner with only one criminal contact since 1989 prior to these offenses he is unlikely to commit further offenses. His lack of criminal contact also shows that he is not in need of correctional treatment as there are less restrictive alternatives than total incarceration. Finally, he asserts that a lesser sentence than 35 years would not depreciate the seriousness of the crime and would still be designed to punish him within the means prescribed and would highlight the severe impact of his offenses.

Sentencing is a matter vested in the discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. Commonwealth v. Smith, 673 A.2d 893, 895 (Pa. 1996). An abuse of discretion is more than a mere error in judgment. Commonwealth v. Perry, 32 A.3d 232, 236 (Pa. 2011). The sentencing judge will only be found to have abused his or her discretion if the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will. Id., citing Commonwealth v. Walls, 926 A.2d 957, 961 (Pa. 2007).

"A challenge to the discretionary aspects of a sentence must be considered a petition for permission to appeal, as the right to pursue such a claim is not absolute." Commonwealth v. McAfee, 849 A.2d 270, 274 (Pa. Super. 2004). Before the Pennsylvania Superior Court will review such a challenge on the merits, a defendant not only must have

properly preserved the issue by raising it before the sentencing court and filing a timely appeal, but must also demonstrate that there is a substantial question that the sentence imposed is not appropriate under the Sentencing Code. Id.; see also Commonwealth v. Moury, 992 A2.d 162, 170 (Pa. Super. 2010). A substantial question exists only where a colorable argument is advanced that the sentence imposed is either inconsistent with a specific provision of the Sentencing Code or is contrary to the fundamental norms which underlie the sentencing process. McAfee, supra, (citing Commonwealth v. Sierra, 752 A.2d 910, 912 (Pa. Super. 2000)).

Barto appears to claim that a sentence of total confinement was inconsistent with 42 Pa.C.S. §9725. Any suggestion that a sentence other than total confinement was appropriate in these cases is utterly ludicrous. Barto was convicted of: rape by forcible compulsion, indecent assault, corruption of minors and terroristic threats with respect to S.H..; sexual exploitation of children, filming child pornography, dissemination of child pornography, possession of child pornography and possession of drug paraphernalia arising out of incidents involving fifteen year old A.W.; attempted corruption of the moral of N.W. by offering to give her drugs and show her pornography; multiple counts of possession a small amount of marijuana for distribution but not for sale and corruption of the morals of T.H. by giving her marijuana, showing her pornography, and engaging in sexual acts with her; and multiple counts of possession with intent to deliver cocaine, possession of marijuana for distribution but not for sale and corruption of minors with respect to N.B. With the exception of the offenses involving cocaine which occurred when N.B. was over the age of 18, Barto's criminal conduct was directed toward minor females between the ages of 15 and

17, some of whom were seeking approval due to hardships they were enduring in their home life. Barto was not entitled to a "volume discount" for these crimes.

Contrary to being an upstanding business man, Barto was lecherous predator who targeted teenaged girls. He would give them a job, lower their inhibitions by providing them with alcohol or controlled substances, and then convince them (or force them in the case of S.H.) to engage in sexual activity with him. When T.H. and N.B. got a little older and wearied of him or found age-appropriate boyfriends, he gave them money to engage in sexual activity or to allow him to make videotapes of sexual activity. He also called and harassed A.W. so much when she stopped being involved with him that she had to change her phone number.

Barto also had a prior record score of five, which included, but was not limited to, prior convictions for furnishing alcohol to minors and delivery of controlled substances. Instead of changing his ways, Barto not only returned to his drug activities but expanded his criminal activity to also involve his sexual proclivities. He also had no concept of the seriousness of his crimes and he made a mockery of the proceedings by smirking, laughing and making comments during his trial.

Section 9725 requires a sentence of total confinement when there is an undue risk that the defendant will commit another crime, the defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution, or a lesser sentence will depreciate the seriousness of the crime. All three of these factors were present in this case. In fact, one of the many reasons the court imposed a lengthy sentence is that was the only way the court could, with any confidence, protect the teenaged girls of

Lycoming County.[2] See N.T., September 30, 2010, at 53-61.

Given the facts and circumstances of this case, Barto's claim lacks merit, and it was not unreasonable for counsel to forgoing challenging the discretionary aspects of Barto's sentence. Moreover, given the abuse of discretion standard and the Superior Court's limited review of such challenges, Barto was not prejudiced by counsel's failure to preserve any claim regarding the discretionary aspects of his sentence. See Commonwealth v. Zirkle, 2014 PA Super 279 (Dec. 10, 2014); Commonwealth v. Prisk, 13 A.3d 526, 533 (Pa. Super. 2011).

O R D E R

AND NOW, this 2nd day of January 2015, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court finds that there are no genuine issues concerning any material fact and Barto is not entitled to relief. Accordingly, the parties are hereby notified of this Court's intention to dismiss Barto's second amended petition. Barto 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.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Robert Cronin, Esquire (APD)

2 Perhaps by the time Barto is eligible for parole, he will be of a sufficient age that he will no longer have the desire to engage in sexual activities with teenaged girls.

Gregory Barto, KJ 7251
SCI Rockview, Box A, Bellefonte PA 16823
Gary Weber, Esquire (Lycoming Reporter)
Work file
1079-2008
896-2009
110-2009
844-2009
1606-2009