

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	1234 MDA 2015
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Plaintiff,	:	CR.: 1997-2008; 2072-2008
vs.	:	OTN: K 735906-3; K 735914-4
	:	
LEON BODLE,	:	
	:	
Defendant.	:	PCRA APPEAL / 1925 (a)

**OPINION AND ORDER**  
**Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)**

This Court issues the following Opinion and Order pursuant to Pennsylvania Rule of Appellate Procedure 1925(a). This is an appeal from the denial of Mr. Bodle’s PCRA petition following a full evidentiary hearing. The reasons for the court’s decision to dismiss the PCRA petition can be found in the opinion and order entered on June 26, 2015. In his concise statement of matters complained of on appeal, Mr. Bodle provided the following.

Defendant was denied the effective assistance of counsel as guaranteed by Article 1, § 9 of the Pennsylvania constitution and the 6<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution, in that Attorney Protasio failed to present testimony that would offset the weight of the evidenced offered by prosecution when Attorney Protasio knew (1) that witness existed; (2) that witness was available; (3) that counsel was informed of existence of witness or would have known of witness’s existence; (4) that witness was prepared to cooperate and would have testified on defendant’s behalf; and (5) that absence of testimony prejudiced defendant.

The court erred in finding that there was no basis upon which to grant relief after an evidentiary hearing.

In the absence of a specific error,<sup>1</sup> this Court respectfully relies upon it previous opinion dated, June 26, 2015, in support of its request for the affirmance. Since the transcript was not

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<sup>1</sup> This Court believes that the concise statement is too vague for meaningful review as it implicates the entirety of this Court’s ultimate decision on the issues raised in the petition without specifying any specific legal conclusion or factual finding that was in error. "When the trial court has to guess what issues an appellant is appealing, that is not enough for meaningful review." Commonwealth v. Dowling, 2001 PA Super 166, 778 A.2d 683, 686 (Pa. Super. 2001) Issues raised in an overly broad and vague concise statement are waived as being the “functional equivalent” of not being raised at all. *See, e.g., Hess v. Fox Rothschild, LLP*, 2007 PA Super 133, 925 A.2d 798 (Pa. Super. 2007)(citations omitted).

transcribed at the time of the opinion, this Court submits the following transcript references to supplement that opinion

As this Court noted in its opinion, there is no arguable merit that trial counsel should have called the 4 witnesses at issue, counsel had a reasonable basis for not calling them and Bodle suffered no prejudice from the failure to call them. Two of the four proposed witnesses essentially testified that they had no knowledge about the information sought. Notes of Testimony, hearing on March 17, 2015, (N.T.) 47:20; 48:19-21; 64: 17-24; 65:11. The third witness, Bodle's Uncle, Ronald Weigle, essentially admitted that he did not know much at the time of trial and what he did know, was something others had said, but which he could not prove. 61:16-19.

The remaining witness that Bodle claims should have been called is his mother, Karen Bodle. However, Bodle did not establish that his mother could provide any relevant admissible testimony. The proposed testimony from Bodle's mother was that Bodle had allegedly never been in trouble before, N.T. 51:12-13, and that Bodle's character was good because he cared for his grandfather. N.T. 51:4-5. There was no foundation to establish that Bodle's mother had personal knowledge of any reputation in the community as to Bodle's character. N.T. 56:24; 57:2-3, 21-23; 58:1.

Moreover, even if there had been some admissible testimony as to character, the decision about whether to call witnesses, and more specifically as to whether to call Mr. Bodle's mother, was ultimately made by Mr. Bodle after consultation with his trial attorney. Trial Counsel testified that he discussed with Bodle whether to call his mother, and was concerned that she appeared easily confused. N.T. 22:4-7. Trial Counsel did not believe the defense could establish a general reputation of the victim being untruthful, N.T. 30:10-12, or establish what the kids'

reputations in the community were. N.T. 31:18-21. Nonetheless, Trial counsel testified that the decision about whether to call his mother was made by Bodle.

Ultimately, as I usually do in almost every case – in fact I can’t remember one where I wouldn’t have – the ultimate decision is up to the client whether we call a witness. I explained to him the pros and cons and my opinion as to how well she [Bodle’s mother] would do or not do and it was his decision not to have called her. ... Ultimately that would have been his [Bodle’s] decision. N.T. 22-23.

Even if there had been character evidence available, trial counsel had significant concerns that if the defense called character witnesses, the Commonwealth would call witnesses and cross-examine witnesses in rebuttal, and that it might have opened the door to evidence from the other criminal trial that would otherwise be inadmissible. N.T. 25-27; 36-40. An investigation revealed that neighbors, teachers, others at the school had a “very bad opinion” of Mr. Bodle and could potentially testify to bad character on the part of the defendant. N.T. 36-40. Trial counsel nonetheless allowed the client to decide whether to call each witness. N.T. 40.

For the reasons stated in this Court opinion dated June 26, 2015, as supplemented by the above references to the record, this Court respectfully requests that its judgment be affirmed.

BY THE COURT,

**September 17, 2015**

Date

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Richard A. Gray, J.

cc: District Attorney’s Office (KO)  
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