

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-743-2009
:
vs. :
:
:
LEON BODLE, :
Defendant :

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 one count of criminal solicitation of involuntary deviate sexual intercourse, four counts of unlawful contact with a minor, four counts of displaying explicit sexual materials to a minor, twenty-nine counts of sexual abuse of children, four counts of criminal use of a communication facility, and eight counts of corruption of minors. These charges arose out of inappropriate comments and offers he made to his teenaged female students via the telephone and internet, explicit videos he showed or forwarded to these teenaged girls, and child pornography that was found on his computer.

A jury trial was held March 2-4, 2010. The jury found Defendant guilty of criminal solicitation of involuntary deviate sexual intercourse, one count of unlawful contact with a minor, two counts of displaying explicit sexual materials to a minor, twenty-five counts of sexual abuse of children (possession of child pornography), four counts of criminal use of a communication facility, and five counts of corruption of minors. The court imposed an aggregate sentence of 10-20 years of incarceration in a state correctional institution

followed by 10 years of consecutive supervision.

Defendant appealed his conviction to the Pennsylvania Superior Court, which denied Defendant's claims and affirmed his conviction in a memorandum opinion and order filed on July 29, 2011. The Pennsylvania Supreme Court denied his petition for allowance of appeal on May 20, 2013.¹

Defendant filed a PCRA petition in which he asserted claims of ineffective assistance of counsel. The court appointed counsel to represent Defendant and gave counsel an opportunity to file an amended PCRA petition or 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).

Counsel filed an amended PCRA petition which raised three issues: (1) trial counsel was ineffective for failing to call character witnesses or to discuss the importance of calling character witnesses with Defendant; (2) trial counsel was ineffective for failing to subpoena phone records for J.E.'s home and failing to subpoena J.E.'s disciplinary records from the Sugar Valley Charter School; and (3) trial counsel was ineffective for failing to employ and utilize an expert witness that would refute the Commonwealth's evidence regarding the age of the children depicted in the images and that would analyze Defendant's computer to determine if the material present was related to a computer virus or spyware.

The court dismissed Defendant's PCRA petition without holding an evidentiary hearing. Defendant appealed. The Superior Court reversed and remanded for an evidentiary hearing on trial counsel's failure to call Defendant's mother and uncle as

¹ Trial counsel failed to file a petition for allowance of appeal, but Defendant's right to file such a petition was reinstated on May 29, 2012.

character witnesses, and trial counsel's failure to investigate J.E.'s school disciplinary records and phone records.

The court held an evidentiary hearing at which the following witnesses testified: Sugar Valley Charter School CEO, Logan Coney; trial counsel, James Protasio; Defendant's uncle, Ronald Weigle; Defendant's mother, Karen Bodle, and Defendant.

Ms. Coney testified that J.E. was a student at the Sugar Valley Charter School when Defendant taught there. J.E. had some behaviors or behavioral issues, most of which related to aggressive behavior on the bus. Ms. Coney stated that J.E. "wore her feelings on her sleeve." J.E. would "tell you point blank" and be "very in your face" but she was not deceitful. J.E. never made false allegations to Ms. Coney or to anyone else. J.E. may have had issues with the bus driver, but there were videos related to those incidents. Ms. Coney did not recall J.E. ever making false allegations about others. If she had been subpoenaed in 2010, she would have appeared at trial and brought the requested student records.

The defense did not offer or introduce any disciplinary records into evidence.

James Protasio testified that he represented Defendant in 2009-2010. He met with Defendant multiple times before trial. During those meetings, they discussed character witnesses. Attorney Protasio stated that while from a legal perspective the courts say that character witnesses are of value, realistically they are not. He stated that he does not discourage clients if they have character witnesses and want to use them. He testified that Defendant mentioned his mother and neighbors as possible character witnesses. He did not think that he mentioned his uncle. Attorney Protasio had an investigator talk to the neighbors. None of them said anything positive about Defendant to the investigator.

Attorney Protasio spoke to Defendant's mother about being a character witness. He asked Ms. Bodle about Defendant's reputation in the community. She told Attorney Protasio that Defendant was a "homebody" and he did not have a lot of contact with the neighbors. She did not know his reputation in the community. She only had her own personal feelings regarding Defendant's innocence and behavior around children. She also was not aware of the statements and admissions that Defendant had made to the police. Defendant kept her in the dark about a lot of those things. If she testified as a character witness, she would have been cross-examined about his admissions on cross-examination and her lack of knowledge would have negatively affected her credibility.

According to Attorney Protasio, Defendant was primarily interested in his mother being a character witness. He did not think that Defendant mentioned his uncle, Ronald Weigle, as a character witness. Although he did not think that he specifically interviewed Defendant's uncle Ronald Weigle about being a character witness, he had conversations with Mr. Weigle on numerous occasions when he was present at hearings in Defendant's case. Attorney Protasio noted that Mr. Weigle did not reside in the same house or the same neighborhood as Defendant and his mother and he did not think that Mr. Weigle could testify about Defendant's reputation in the community.

Attorney Protasio also testified about J.E. and her school and phone records. He stated that he thought he and the investigator tried to get some records, but they were unsuccessful. He also noted that the records could cut both ways. J.E. made inconsistent statements to the police regarding Defendant making telephone calls to her, and Attorney Protasio was able to cross-examine J.E. with those inconsistencies and note them at trial. If

he had obtained records that would have substantiated J.E.'s claims that Defendant had called her, it would have been harmful to Defendant's case and he would not have been able to challenge J.E. if he knew there were records that supported her testimony. He also noted that if Defendant's home telephone number did not appear on the phone records, the Commonwealth would simply have argued that Defendant could have used a cell phone, a pay phone or someone else's phone to make calls to J.E. or that Defendant made the statements to J.E. through some other media, such as electronic communications. In fact, Defendant made a statement to police, in which he admitted he had communications with J.E., but via the internet instead of by phone. Defendant's admissions undercut his claims that J.E. made up the allegations against him. Attorney Protasio also stated that he did not have a strategic reason to request J.E.'s school records or her phone records.

Defendant's uncle, Ronald Weigle testified that he was present for trial, but he was never called as a witness. He stated that he knew Defendant to be truthful. He also stated that he knew friends of Defendant who also believed Defendant to be truthful. He said he knew two or three of Defendant's friends and he talked to them quite a bit. Among those people, Defendant had a reputation for being truthful. He also stated that he had seen Defendant around children and he was good with them. According to Mr. Weigle, other people thought the same thing. They were around Defendant when he was with children, and they never said anything bad about Defendant or his behavior around children. Mr. Weigle, however, was only able to name one of Defendant's friends, a person named Scott Landers. According to Mr. Weigle, Mr. Landers did not believe any of the allegations against Defendant; instead, Mr. Landers thought Defendant was innocent, truthful and honest. Mr.

Weigle admitted that he did not speak to Mr. Landers about how Defendant acted around children. Mr. Weigle claimed, however, that if Defendant was not nice around children, Mr. Landers would have let him know. Mr. Weigle claimed that Defendant never would talk to kids online and Defendant would never tell children that he was only 18 or 19 years old. Mr. Weigle claimed that he did not hear that Defendant had naked pictures on his computer, but he also said that as far as he knew the pictures got on the computer by accident.

Defendant's mother, Karen Bodle, testified that she knew people in the community who knew Defendant. The people were from both sides of the family, they were in the community in which he worked and they were from the church, including the pastor. Most of these people knew Defendant his entire life. Ms. Bodle spoke to them about Defendant's reputation for honesty. He had a good reputation for being respectable and honest. She also discussed Defendant's conduct around children with them. He was kind, respectable, responsible and appropriate around children.

On cross-examination, Ms. Bodle said she was aware of some of the statements Defendant gave to the police. She had heard that Defendant told people online that he was 18 or 19 years old. She did not hear that Defendant received photos of children or that he masturbated to them. She said, "That's not him." She also had not heard that Defendant dreamed of having sex with one of the girls. She heard part of a statement about going to a park. Defendant told her why he admitted that, though. She was not aware that Defendant told the girl to wear her bikini to the park. She heard that the police had pictures but she didn't know where they got them. She hadn't heard that Defendant sent instant messages or that he talked to girls about their sexual relationships with their boyfriends.

Ms. Bodle remembered talking to Attorney Protasio both before and after trial. She said she gave him “her story” and she told Attorney Protasio “her opinion.” She said Mr. Protasio never asked her to identify anyone that knew Defendant.

Defendant testified that Attorney Protasio only met with him three or four times prior to trial. He said, “It was like pulling teeth to get him there to see me.” Defendant testified that he brought up character witness and Attorney Protasio said he did not think character witnesses were necessary. Defendant stated that he proposed Karen Bodle, Ron Weigle and several other friends and relatives as character witnesses. Karen Bodle and Ron Weigle were willing to testify as character witnesses. Defendant testified that during trial he asked Attorney Protasio to ask Karen Bodle about his character. Attorney Protasio never responded; he just went on with the trial. Defendant also stated that he never agreed not to call character witnesses.

Defendant testified that he did not make phone calls to J.E. He told Attorney Protasio to get her phone and internet records. Attorney Protasio said it could be burn phones or cell phones. Defendant said he told Attorney Protasio that he could eliminate those possibilities, but he dismissed the whole thing. Attorney Protasio said he would not get the phone records because it would be too difficult. Defendant also testified that Attorney Protasio never told him that he could ask for a continuance to try to get the records.

Defendant also testified that other teachers and a school social worker told him that J.E. made false accusations against another adult male and the allegations were false. Defendant said that he told Attorney Protasio to get the behavior records of J.E. and the other students. Attorney Protasio said he would look into it. At trial Defendant asked

Attorney Protasio if he got the records and Attorney Protasio said no.

On cross-examination, Defendant testified that he had no idea what J.E.'s home and cell phone numbers were. He claimed that he never spoke to J.E. about Dorney Park and he only said that to the police under coercion. Defendant also did not think that the term "bikini" was used. He thought it was "swimsuit." He did not recall telling the police that he wanted to party with J.E. He did not recall speaking to J.E. or "hotmama14" on the computer. Defendant claimed that portions of his taped interview with the police were edited and deleted. He asserted that Officer Samar slammed his hand on the table and yelled in Defendant's face that if he did not say what they wanted to hear that they would send him to federal prison with a gift of Vaseline. Defendant claimed that as the interview went on the police got more threatening so he went along with whatever they wanted to hear to get out of there.

Defendant claimed that Attorney Protasio only interviewed two neighbors – Michelle and Greg Fair – who lived next door. Defendant indicated that they had problems with those neighbors and they did not have anything good to say about his reputation. He also admitted that Michelle Fair's mother was a county detective and, if he called character witnesses, the Commonwealth could call the Fairs as counter witnesses. He claimed that he was not aware prior to trial that the Commonwealth could call counter character witnesses. He also testified that Attorney Protasio did not explain why he did not want to call character witnesses. Defendant did research at the prison regarding character witnesses after trial.

No phone records were subpoenaed or introduced at the PCRA hearing.

The burden is on the petitioner to prove his claims. As the Pennsylvania

Supreme Court stated in *Commonwealth v. Spatz*, 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). In order to prevail on an effectiveness claim for failure to call a witness, the petitioner must demonstrate that: (1) the witness existed; (2) the witness was available; (3) trial counsel was informed of the existence of the witness or should have known of the witness's existence; (4) the witness was prepared to cooperate and would have testified on petitioner's behalf; and (5) the absence of the testimony prejudiced petitioner. *Commonwealth v. Hall*, 867 A.2d 619, 629 (Pa. Super. 2005).

Defendant first contends that trial counsel was ineffective for failing to call Defendant's mother and his uncle as character witnesses. The court cannot agree.

The court finds that Defendant has failed to satisfy his burden of proof to show that counsel was aware or should have known that his uncle Ronald Weigle could

testify about Defendant's reputation in the community for truthfulness or appropriate behavior around children. The court also finds that Mr. Weigle testimony was not reputation evidence but rather his personal opinion and the personal opinion of one of Defendant's friends. The court also had concerns about Mr. Weigle's competency due to the difficulty he had answering the questions posed to him. There were long pauses between the questions and Mr. Weigle's answers, and Mr. Weigle did not seem to fully understand the questions or the proceedings. In fact, the court questioned Ms. Bodle about Mr. Weigle. Ms. Bodle indicated that, although she was never formally appointed as such, she was her brother's "guardian." She signed documents for him and took care of him. Mr. Weigle's testimony would not have changed the outcome of the trial in this case.

The court also finds that Defendant failed to satisfy his burden of proof to show that counsel was ineffective for failing to call Defendant's mother as a character witness. Based on all of the evidence presented, the court finds that trial counsel had a reasonable basis not to call Ms. Bodle as a character witness. Her testimony was predominantly her personal opinion regarding her son's innocence. Furthermore, trial counsel's concerns regarding Ms. Bodle's ability to withstand cross-examination were borne out by the Commonwealth's cross-examination of her. Ms. Bodle's testimony was not credible and would not have changed the outcome of this trial. She did not believe Defendant would do many of the things that he admitted in his police interview or were contained in the transcripts of his internet conversations with teenaged girls.

The court also did not find Defendant's testimony credible. Defendant's testimony was contradictory and inconsistent. For example, he claimed to never have

conversed with J.E. regarding taking her to Dorney Park and yet he also testified that he didn't use the term "bikini" but "swimsuit." If Defendant never asked J.E. about going to Dorney Park, there never would have been any discussion about a "bikini" or a "swimsuit." Defendant was also evasive, non-responsive, and manipulative during his testimony. Both the tone and content of his answers resulted in the court rejecting his credibility. The court believes that Defendant was fabricating his testimony for the sole purpose of meeting his burden of proof on his PCRA claim.

Defendant also cannot prevail on his claim that trial counsel was ineffective for failing to obtain J.E.'s phone records and school records. Defendant's claims regarding what the records could show were nothing more than bald allegations. He did not introduce any records at the PCRA hearing. In fact, Ms. Coney testified that J.E. was not deceitful and there were no disciplinary records to show that she had made false allegations about anyone.

ORDER

AND NOW, this ___ day of February 2016, the court DENIES Defendant's PCRA petition.

Defendant is hereby notified that he has the right to appeal from this order to the Pennsylvania Superior Court. 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.App.P. 903. If the Notice of Appeal is not filed in the Clerk of Courts' office within the thirty (30) day time period, Defendant may lose forever his right to raise these issues. If Defendant wishes to appeal, he should notify his counsel as soon as possible so that he can file a Notice of Appeal within thirty (30) days.

The Clerk of Courts shall mail a copy of this order to the defendant by certified mail, return receipt requested.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Donald F. Martino, Esquire
Leon D. Bodle, JV 4956 (certified mail)
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