IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**No. CP-41-CR-743-2009**
	:	
vs.	:	**CRIMINAL DIVISION**
	:	
	:	
LEON DALE BODLE,	:	
Appellant	:	**1925(a) Opinion**

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this court's order denying Appellant's Post Conviction Relief Act (PCRA) petition. The relevant facts follow.

Appellant 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 Appellant 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.

Appellant appealed his conviction to the Pennsylvania Superior Court, which denied Appellant'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]

Appellant filed a PCRA petition in which he asserted claims of ineffective assistance of counsel. The court appointed counsel to represent Appellant 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 Appellant; (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 Appellant's computer to determine if the material present was related to a computer virus or spyware.

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

The court dismissed Appellant's PCRA petition without holding an evidentiary hearing. Appellant appealed. The Superior Court reversed and remanded for an evidentiary hearing on trial counsel's failure to call Appellant's mother and uncle as character witnesses, and trial counsel's failure to investigate J.E.'s school disciplinary records and phone records.

The court held evidentiary hearings on these claims. In an opinion and order entered on February 18, 2016, the court denied Appellant's claims.

Appellant filed a timely appeal in which he asserted the following issues: (1) the trial court erred by denying his request for a new trial due to trial counsel's ineffectiveness in failing to call character witnesses or to discuss the importance of calling character witnesses with him; and (2) the trial court erred by denying his request for a new trial due to trial counsel's ineffective assistance in failing to subpoena phone records from Commonwealth witness J.E.'s home to demonstrate that Appellant did not call her and for failing to subpoena disciplinary records for J.E. from the Sugar Valley Charter School.

Counsel is presumed to have rendered effective assistance, and the burden is on the PCRA petitioner to prove otherwise. ***Commonwealth v. Treiber***, 121 A.3d 435, 445 (Pa. 2015); ***Commonwealth v. Philistin***, 53 A.3d 1, 10 (Pa. 2012). To do so, 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. ***Commonwealth v. Spotz***, 84 A.3d 294, 311 (Pa. 2014). "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.'" ***Id***. at 311-312 (quoting ***Commonwealth v. Colavita***, 993 A.2d 874, 887 (Pa. 2010). Prejudice is established only if "there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different." ***Id.*** at 312 (quoting ***Commonwealth v. King***, 57 A.3d 607, 613 (Pa. 2012)). "[A] reasonable probability is a probability that is sufficient to undermine confidence in the outcome of the proceedings." ***Id***. (citations and internal quotation marks omitted).

Appellant first contends that the trial court erred by denying his request for a new trial due to trial counsel's ineffectiveness in failing to call character witnesses or to discuss the importance of character witnesses with him. The court cannot agree.

The court found that Appellant failed to satisfy his burden of proof with respect to his ineffective assistance of counsel claims related to character witnesses. With respect to Ronald Weigle, the court found that trial counsel was not aware that Mr. Weigle could offer testimony regarding Appellant's character and Mr. Weigle could really only offer his personal opinions about Appellants character.

Trial counsel credibly testified that Appellant mentioned his mother and neighbors as possible character witnesses, but he did not believe he mentioned his uncle. N.T., July 6, 2015, at 20, 25, 47.

Mr. Weigle also could not testify regarding Appellant's reputation in the community, as opposed to his own personal opinions. Trial counsel credibly testified that he did not think Weigle could testify about Appellant's reputation in the community. Mr. Weigle did not reside in the same house or same neighborhood as Appellant. *Id*. at 25.

Furthermore, Appellant's mother told trial counsel that Appellant was a "homebody." *Id.* at 22. Counsel's belief regarding Mr. Weigle's inability to testify as to proper reputation evidence was borne out by Mr. Weigle's testimony at the PCRA hearing. Mr. Weigle's testimony disclosed his personal opinions regarding Appellant's truthfulness and behavior around children, not his reputation in the community. For example, Mr. Weigle testified that he knew Appellant to be truthful and good with children. *Id.* at 63, 65. Appellant's counsel tried to get Mr. Weigle to provide testimony regarding Appellant's reputation among his friends, but this testimony for the most part still did not constitute proper reputation testimony and this testimony simply was not credible.

Mr. Weigle stated that he knew two or three of Appellant's friends and he talked to them quite a bit. *Id.* at 62. Among those people, Appellant had a reputation for being truthful. *Id*. at 65. Mr. Weigle, however, was only able to name one of Appellant's friends, a person named Scott Landers. *Id.* at 70.

With respect to Appellant's reputation regarding his behavior around children, Mr. Weigle did not say that he heard Appellant's friends state or discuss Appellant's reputation for being good with children. Instead, Mr. Weigle testified these mostly unnamed individuals were around Appellant when he was with children and they never said anything bad about Appellant's behavior around children. *Id*. at 66. Such is not the same, however, as actually saying something good about Appellant's behavior with or around children. Furthermore, given Mr. Weigle's relationship to Appellant, it is unlikely that anyone would tell him if Appellant had a bad reputation.

The court also found that Mr. Weigle's testimony was not credible because,

although it may not be readily apparent from the cold record, Mr. Weigle had difficulty 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. Furthermore, Karen Bodle (Appellant's mother and Mr. Weigle's sister) indicated that although she was never formally appointed as such, she was Mr. Weigle's "guardian." She signed documents for him and took care of him.

There were similar problems with calling Appellant's mother, Karen Bodle, as a character witness. Trial counsel credibly testified that when he spoke to Ms. Bodle she could only give him her personal opinions regarding Appellant's character; she could not state Appellant's reputation in the community. *Id.* at 22, 44-45. Moreover, Ms. Bodle was unaware of many of the statements and admissions that Appellant made to the police. Appellant kept her in the dark about a lot of those things. *Id*. at 45. If she testified as a character witness, she would have been questioned about Appellant's admission on cross-examination and her lack of knowledge would have negatively affected her credibility. *Id*. at 45-46.

Trial counsel's concerns were borne out by Ms. Bodle's testimony. The Commonwealth cross-examined her regarding her knowledge of Appellant's statements. She had not heard that Appellant received photos of children, that he dreamed of having sex with one of the girls, that he told one girl to wear her bikini to the park, or that he sent instant messages or talked to girls about their sexual relationships with their boyfriends. *Id*. at 90-92.

Trial counsel also had a strategic reason for not calling character witnesses.

He stated that while from a legal perspective the courts say character witnesses are of value, realistically they are not. *Id*. at 16. Trial counsel also credibly testified that he had an investigator talk to Appellant's neighbors and none of them had anything good to say about Appellant. *Id*. at 20-21.

This was corroborated to some extent by Appellant's testimony at the PCRA hearing. Appellant admitted that trial counsel spoke to two neighbors – Michelle and Greg Fair – who lived next door to him. N.T., July 7, 2015, at 24-25. Appellant indicated that he had problems with those neighbors and they did not have anything good to say about his reputation.

Moreover, if trial counsel had called character witnesses, it would open the door to the Commonwealth calling witnesses, such as the neighbors, to testify about Appellant's bad reputation. See Pa.R.E. 404(a)(2)(A)("a defendant may offer evidence of the defendant's pertinent character trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it"). This concern was also reflected in Appellant's own testimony when he 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. N.T., July 7, 2015, at 25.

Finally, Appellant was not prejudiced by counsel's failure to call Mr. Weigle or Ms. Bodle as character witnesses. Neither Ms. Bodle nor Mr. Weigle's character testimony, alone or in combination, would have changed the outcome of these proceedings. Due to their familial relationships, both witnesses were biased in favor of Appellant, and neither witness was fully aware of Appellant's statements and admissions to the police. The

Commonwealth obtained and introduced transcripts or printouts of Appellant's instant message conversations with one or more of the girls. These statements were similar and tended to corroborate the other girls' testimony about conversations Appellant had with them. The police also found child pornography on Appellant's computer, which were introduced into evidence and formed the basis for the sexual abuse of children offenses. Testimony from Appellant's mother and uncle that he was truthful and/or good with children simply was not going to alter the outcome of this case.

Finally, the court does not believe that evidence regarding Appellant's reputation for truthfulness would have even been admissible in this case. The admission of character evidence is governed by the Pennsylvania Rules of Evidence and the case law interpreting those rules. Only evidence of a "pertinent" character trait is admissible. Pa.R.Cr.P. 404(a)(2)(A); ***Commonwealth v. Minich***, 4 A.3d 1063, 1069-70 (Pa. Super. 2010). "Character evidence of the defendant's truthfulness is admissible only if: (1) the character trait of truthfulness is implicated by the elements of the charged offenses; or (2) the defendant's character for truthfulness was attacked by evidence of bad reputation." ***Minich***, 4 A.3d at 1070 (quoting ***Commonwealth v. Constant***, 925 A.2d 810, 822-23 (Pa. Super. 2007)).

> One's character for truthfulness refers not to suggestions of particular instances of honesty or dishonesty, but rather to one's general reputation in the community for telling the truth. Thus, where the prosecution has merely introduced evidence denying or contradicting the facts to which the defendant testified, but has not assailed the defendant's community reputation for truthfulness generally, evidence of the defendant's alleged reputation for truthfulness is not admissible. Similarly, cross-examination of the defendant that challenges the veracity of his testimony in the particular case, but does not touch upon his general reputation in the community for being truthful, does not open the door to

> the introduction of good character evidence concerning reputation for truthfulness.

Commonwealth v. Fulton, 830 A.2d 567, 572 (Pa. 2003)(plurality)(citations omitted).

Appellant did not testify at trial; therefore, the Commonwealth did not, and could not, have attacked his character for truthfulness.

While truthfulness and honesty are pertinent character traits with respect to crimes involving dishonesty such as theft, these are not pertinent traits for crimes such as possession of child pornography or corruption of minors.

Since neither situation that would allow the presentation of character evidence regarding truthfulness was present in this case, the court finds that such evidence would not have been admissible even if Ms. Bodle and Mr. Weigle had offered proper reputation evidence in their testimony at the PCRA hearing.

Appellant also asserts that the trial court erred by denying his request for a new trial due to trial counsel's ineffective assistance in failing to subpoena phone records from Commonwealth witness J.E.'s home to demonstrate that Appellant did not call her and for failing to subpoena disciplinary records for J.E. from the Sugar Valley Charter School.

Appellant failed to prove these claims. Appellant's claims regarding what the phone records would show were nothing more than bald assertions. He did not introduce any phone records at the PCRA hearing to support his claims. Furthermore, Appellant's testimony at the PCRA hearing was not credible. He claimed that he never spoke to J.E. about Dorney Park and he only said that to the police under coercion. N.T., July 7, 2015, at 22. At the same time, however, he claimed that the term "swimsuit" was used, not "bikini." *Id*. at 29.

Trial counsel also noted that there was a risk to trying to obtain J.E.'s phone records. J.E. made inconsistent statements to the police regarding Appellant making telephone calls to her. Trial counsel cross-examined J.E. with those inconsistencies and argued them at trial. If trial counsel had obtained records that would have substantiated J.E.'s claims that Appellant called her, it would have been harmful to Appellant's case. Although counsel would not have to disclose those records to the Commonwealth, he would not have been able to challenge J.E. if he knew there were records that supported her testimony. N.T., July 6, 2015, at 32. Therefore, counsel had a reasonable basis for his actions.

Even if Appellant's home phone number did not appear in J.E.'s phone records, Appellant did not suffer any prejudice. As trial counsel noted, the Commonwealth would have simply argued that Appellant could have used a cell phone, a pay phone or some else's phone to make calls to J.E. or that Appellant made the statements to J.E. through some other media, such as communications over the computer or some other electronic device. *Id*. at 32-33. If fact, Appellant made a statement to the police in which he admitted he had communications with J.E. *Id*. at 37-38; N.T., July 7, 2015, at 22-23, 37-38. Moreover, J.E. and several other teenage girls also testified that Appellant communicated with them via the computer by using instant messaging on MySpace and AOL. N.T., March 2-3, 2010, at 107 and 115 (J.E.), 150 (E.E.), 161-164 (A.M.), 165-173 (E.G.), 176-186 (C.P.), 188-190 (P.A.) and 197-203 (H.M.). Based on this evidence, even if the phone records would show that Appellant did not make telephone calls from his home phone number to J.E.'s home phone number, there is not a reasonable probability that the outcome of the trial would have been

different.

Appellant's claims with respect to J.E.'s disciplinary records are frivolous. PCRA counsel sent a subpoena to Ms. Logan Coney, the CEO of the Sugar Valley Regional Charter School, for her to testify at the PCRA hearing and to bring the records. Ms. Coney brought the records to the PCRA hearing, but PCRA counsel did not introduce any records as evidence, because the records did not support Appellant's claims. See N.T., July 6, 2015, at 14. Ms. Coney testified that J.E. had some behavioral issue that related to aggressive behavior on the bus. *Id*. at 9-10. She also testified that J.E. was not deceitful, and she never made false allegations to Ms. Coney or to anyone else. *Id*. at 12. Appellant also was cross-examined with respect to the disciplinary records and he admitted that the disciplinary records did not reflect what he testified to. N.T., July 7, 2015, at 23. Therefore, there was no merit to Appellant's allegations regarding the disciplinary records.

Appellant's trial counsel testified about other problems with Appellant's assertions regarding J.E.'s discipline. The infractions for which Appellant allegedly reported J.E. and got her in trouble were not major infractions. It was not as if J.E. got expelled from school for six months, a year or permanently, so it would be difficult to convince a jury that she was looking to get revenge. N.T., July 6, 2015, at 40. J.E.'s statements also were corroborated to some extent by Appellant's own statements and the computer printouts that were admitted into evidence at trial which showed that Appellant had contact with several girls through instant messaging over the computer. *Id*.

Based on the foregoing, Appellant did not suffer any prejudice as a result of trial counsel failing to subpoena J.E.'s disciplinary records.

DATE: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire
Donald Martino, Esquire
Law Clerk
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)