

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1173-2010  
vs. :  
 : CRIMINAL DIVISION  
 :  
 :  
 :  
 :  
 : 1925(a) Opinion  
GREGORY BARTO,  
Appellant

**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 dated January 13, 2017 and docketed on January 17, 2017, which dismissed Gregory Barto's Post Conviction Relief Act (PCRA) petition.

Gregory Barto (hereinafter "Barto") was charged with numerous counts of sexually related crimes including but not limited to rape, sexual assault, indecent assault, unlawful contact with a minor, corruption of minors and endangering the welfare of children, as well as several counts of conspiracy to commit various additional sexual offenses.

Barto filed pretrial motions asserting that these offenses were barred by double jeopardy principles because they were part of the same criminal episode as offenses involving separate victims in six other cases.<sup>1</sup> The court denied the motions, and Barto appealed. The Superior Court affirmed this court's decision in a memorandum opinion dated January 31, 2013, and the Pennsylvania Supreme Court denied Barto's petition for allowance of appeal

---

<sup>1</sup> Those cases were CR-1079-2008, CR-110-2009, CR-844-2009, CR-1606-2009 and CR-1632-2009.

on July 16, 2013.

On July 17, 2015, Barto entered a no contest plea to endangering the welfare of children, corruption of the morals of minors, conspiracy to commit indecent assault of a minor and indecent assault. Barto's sentencing hearing was continued several times. On June 23, 2016, the court sentenced Barto to two to four years of state incarceration to run entirely concurrent to the sentences that Barto was already serving. The sentence was in accordance with the plea agreement of the parties. Barto did not appeal.

On June 23, 2016, Barto filed a pro se PCRA petition. The sole issue asserted in this PCRA petition was a claim that Barto's second attorney was ineffective in the manner in which he pursued Barto's double jeopardy claims. The court appointed counsel to represent Barto and gave counsel the opportunity to file an amended PCRA petition or a no merit letter in accordance with *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550- A.2d 213 (Pa. Super. 1988).

After obtaining the relevant transcripts, reviewing the issue thoroughly with Barto and researching the relevant law, defense counsel filed on August 31, 2016 a motion to withdraw which included a *Turner/Finley* no merit letter. Apparently, in correspondence with counsel, Barto discussed an additional issue regarding the discipline of a law enforcement officer involved in his prosecution. Since counsel believed Barto waived that issue by entering his plea and his double jeopardy issue lacked merit, counsel did not file an amended PCRA petition.

In a letter dated September 15, 2016 to this court, Barto disputed PCRA counsel's analysis of his issue related to the law enforcement officer, Trooper Douglas Sversko.

After an independent review of the record, in an Opinion and Order dated December 21, 2016, the court granted PCRA counsel leave to withdraw and gave Barto notice of its intent to dismiss his PCRA petition without holding an evidentiary hearing. The notice gave Barto twenty days to respond. The court did not receive anything from Barto within the twenty day response time. Therefore, the court issued an order dismissing Barto's PCRA petition.<sup>2</sup>

Barto filed a notice of appeal. The sole issue Barto asserted in his appeal is that his due process rights were violated in violation of *Brady v. Maryland* when the Commonwealth failed to disclose Trooper Sversko's arrest and conviction for sex offenses, which allegedly included evidence related to Barto's case being found in Trooper Sversko's residence.

Barto did not properly raise and preserve this issue for appeal. Barto never asserted this issue in his PCRA petition. In the Opinion and Order giving Barto notice of intent to dismiss his PCRA, the court noted that Barto did not assert this claim in his PCRA petition and he did not provide any documents or witness certifications to show that any evidence related to **this case** was found in Trooper Sversko's residence or possession as required by Rule 902 of the Pennsylvania Rules of Criminal Procedure. Opinion and Order, December 21, 2016, at 9-10. Despite these comments in the notice of intent to dismiss, Barto never requested an opportunity to amend his PCRA petition to assert any claims related to

---

<sup>2</sup> Thereafter, Barto sent a letter dated January 17, 2017, which was titled as "RESPONSE TO NOTICE OF INTENT TO DISMISS." Barto asserted that the Commonwealth's failure to disclose Trooper Sversko's arrest and conviction constituted a *Brady* violation. He also noted that Trooper Sversko interviewed the alleged victim and gathered the Commonwealth's evidence. Barto contended that "the fact that [Trooper Sversko] had evidence that was tampered with in his possession that he should not have had in his residence, provided powerful impeachment material for trial. Had I known about this information, which the Commonwealth still has not provided the specifics of the matter, I would not have plead (sic) no contest."

Trooper Sversko.

The Pennsylvania Supreme Court has held that “claims raised outside of a court-authorized PCRA petition are subject to waiver regardless of whether the Commonwealth raises a timely and specific objection to them at the time they are raised.” *Commonwealth v. Mason*, 130 A.3d 601, 627 (Pa. 2015); *see also Commonwealth v. Reid*, 99 A.3d 427, 437 (Pa. 2014); *Commonwealth v. Roney*, 79 A.3d 595, 615-16 (Pa. 2013); *Commonwealth v. Porter*, 35 A.3d 4, 12 (Pa. 2012).

Barto never raised any issue regarding Trooper Sversko in his PCRA petition. Barto never requested or obtained leave of court to amend his PCRA petition to assert any claim related to Trooper Sversko. Barto’s letter dated September 15, 2016 is neither an amended PCRA petition nor a substitute for an amended PCRA petition. Moreover, the claim as presented in the letter was a claim of ineffective assistance of trial counsel. Therefore, this issue is waived.

Even if this issue was not waived, the court found that Barto was not entitled to relief. Any alleged failure of the assistant district attorney who prosecuted Barto to provide Barto’s counsel with information regarding Trooper Sversko’s criminal case does not constitute a *Brady* violation under the facts and circumstances of this case.

Barto was prosecuted by members of the Lycoming County District Attorney’s Office. Trooper Sversko, on the other hand, was prosecuted by members of the Attorney General’s Office. *See* CP-22-0001042-2011. The prosecutor in Barto’s case was not required to obtain the police reports, search warrant inventory or other information regarding Trooper Sversko’s charges, because the governmental agency that possessed that information (the Attorney General’s office) was not involved in the prosecution of Barto.

*Commonwealth v. Miller*, 987 A.2d 638, 656 (Pa. 2009).

In *Miller*, the defendant was convicted of first-degree murder and sentenced to death in Chester County. He filed a PCRA petition in which he asserted that the prosecutor violated *Brady v. Maryland* by withholding information about its witness, Michael Torres. Specifically, the defendant asserted that the prosecutor violated *Brady* when he failed to disclose Torres' pre-sentence report from Northampton County. The Pennsylvania Supreme Court found that this *Brady* claim lacked merit. The Court stated:

In addition, the Commonwealth was not required to obtain the pre-sentence report and provide it to the defense because the governmental agency that possessed it was not involved in the prosecution of Appellant. In *Commonwealth v. Burke*, [781 A.2d 1136 (Pa. 2001)] this Court first applied the rule laid down by the United States Supreme Court in *Kyles v. Whitley*, [514 U.S. 419 (1995)], wherein the Supreme Court held that the prosecution has a duty to provide the defense with exculpatory evidence contained in the files of police agencies of the same government bringing the prosecution, even though the prosecution was unaware of the existence of the evidence. The United States Supreme Court, however, limited its holding to those agencies that were involved in the prosecution of the accused. *Whitley*, 514 U.S. at 437("[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police."). Here, Appellant has failed to establish that the government agency or agencies having possession of the pre-sentence report were involved in the prosecution of Appellant. Consequently, the prosecution herein had no obligation to acquire or provide the report to the defense. Accordingly, we hold Appellant's claim of ineffectiveness and his allegation that the Brady rule was violated are meritless and entitle him to no relief.

*Miller*, 987 A.2d at 656.

Here, as in *Miller*, Barto's allegation that the *Brady* rule was violated entitled him to no relief. The Commonwealth was not required to obtain the police reports, search warrant inventory or other information about Trooper Sversko's case and provide it to Barto or his trial counsel, because the Attorney General's Office is the agency that

possessed the information related to Trooper Sversko, and the Attorney General's Office was not involved in the prosecution of Barto.

When Barto entered his no contest plea, he voluntarily relinquished his rights to a trial and to cross-examine the witnesses against him, including Trooper Sversko.

Even if Barto had gone to trial, Trooper Sversko's convictions would not have been admissible as impeachment. The only convictions that are admissible for impeachment are convictions involving dishonesty or false statement. Pa. R. E. 609(a). Trooper Sversko was convicted of unlawful contact with a minor and criminal use of a communication facility. These are not crimes of dishonesty or false statement. *See Commonwealth v. Vitale*, 664 A.2d 999, 1003 (Pa. Super. 1994) ("Crimes such as rape, resisting arrest, prostitution and assault with intent to kill are not crimes involving dishonesty or false statement"); *Allen v. Kaplan*, 563 A.2d 1249, 1253 (Pa. Super. 1995) ("Conversely, statutory rape, aggravated assault, disorderly conduct, driving while under suspension, resisting arrest, fornication, pandering, prostitution, corrupting the morals of a minor, deviate sexual intercourse, and assault with intent to kill and murder do not constitute crimes of dishonesty or false statement").

Furthermore, the key witnesses in this case were K.P. and K.W., the victims of Barto's crimes, and Trooper Jennifer Jackson was the affiant in this case, not Trooper Sversko. While the court acknowledges that Trooper Sversko was involved in the initial investigation of this case, as the affidavit of probable cause indicates that he interviewed K.W. in 2008, the court questions whether the Commonwealth would have called Trooper Sversko as a witness in this case if Barto had not entered his no contest plea. K.W. was also interviewed by Lycoming County Detective William Weber and assistant district

attorney Mary Kilgus in May 2010. Furthermore, there is no indication in the affidavit of probable cause that Trooper Sversko interviewed K.P. Instead, the affidavit of probable cause indicated that K.P. provided information to Detective Weber and ADA Kilgus on April 12, 2010 and was then interviewed by Detective Weber and Trooper Jackson on June 7, 2010. Given Trooper Sversko's criminal charges, the Commonwealth likely would have called Trooper Jackson and Detective Weber, in lieu of utilizing Trooper Sversko as a witness in this case.

For the foregoing reasons, the court dismissed Barto's PCRA petition without holding an evidentiary hearing.

DATE: 6-2-2017

By The Court,

---

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Gregory Barto, KJ-7251  
Box A, Bellefonte PA 16823  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)