

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-33-2019
	:	
vs.	:	
	:	PCRA
RONALD SHOOP,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is a Petition for Post-Conviction Relief pursuant to the Post-Conviction Relief Act 42 Pa.C.S. §9543(a)(2)(ii) filed by the Defendant on February 14, 2023, and Amended Petition filed on March 29, 2023. A hearing on the Petition was held on July 24, 2023, at which time the Defendant appeared via Polycom and was represented by Matthew Diemer, Esquire, and Joseph Ruby, Esquire, appeared on behalf of the Commonwealth.

Factual and Procedural Background

On November 28, 2018, the Defendant was charged with Burglary and other related offenses. On or about March 21, 2019, Trisha Hoover Jasper, Esquire, was appointed as counsel to represent the Defendant. Midway through the trial, the Defendant accused her of ineffective assistance and asked to represent himself so Attorney Jasper's role was changed to that of standby counsel for the remainder of the trial. Following a jury trial on May 14, 2021, the Defendant was found guilty of four (4) counts of Burglary. On August 5, 2021, the Defendant was sentenced to an aggregate period of incarceration of 104-208 months in a State Correctional Institution. The Defendant's post sentence motions were denied and a timely notice of appeal was filed. On November 18, 2022, the Superior Court affirmed the

judgment of sentence. The Defendant's Petition for Post-Conviction Relief was timely filed on February 14, 2023, and amended on March 29, 2023, in which he avers he was denied his constitutionally guaranteed right to effective representation when trial counsel:

- a. Failed to subpoena Cody Bechtel as a witness for Defendant;
- b. Failed to petition the Court to allow the procurement of a facial recognition expert to investigate and prove Defendant's consistent defense that the individual captured on video committing the offenses for which Defendant was convicted was not Defendant;
- c. Failed to procure the services of a facial recognition expert;
- d. Failed to call as a witness for the Defendant Kathleen Frame, the neighbor of one of the burglarized homes, despite the Defendant's request to do so; and
- e. Failed to require the testimony of the DNA expert or call this expert as a witness for the Defendant.

The Defendant argues that trial counsel's failure to act as stated above was not designed to advance his interest and the failure to provide effective assistance of counsel so undermined the truth determining process that no reliable adjudication of guilt could have taken place.

Analysis

To be eligible for relief under the PCRA, the Petitioner must plead and prove that his conviction or sentence resulted from ineffective assistance of counsel which so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. 42 Pa. C. S. §9543(a)(2) and that the allegation of error has not been previously litigated or waived. 42 Pa.C.S. §9543(a)(3). A claim is previously litigated under the PCRA if the highest appellate court in which the petitioner could have had review as a matter of

right has ruled on the merits of the issue. 42 Pa.C.S. § 9544(a)(2). An allegation is deemed waived “if the petitioner could have raised it but failed to do so before trial, at trial, on appeal or in a prior state post conviction proceeding.” 42 Pa.C.S. §9544(b).

The law presumes counsel has rendered effective assistance, and to rebut that presumption, the petitioner must demonstrate that counsel's performance was deficient and that such deficiency prejudiced him. *Commonwealth v. Kohler*, 36 A.3d 121, 132 (Pa. 2012). “[T]he burden of demonstrating ineffectiveness rests on [the petitioner].” *Commonwealth v. Rivera*, 10 A.3d 1276, 1279 (Pa. Super. 2010). To satisfy this burden, a petitioner must plead and prove by a preponderance of the evidence that: “(1) his underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some reasonable basis designed to effectuate his interests; and (3) but for counsel's ineffectiveness, there is a reasonable probability that the outcome of the challenged proceeding would have been different.” *Commonwealth v. Fulton*, 830 A.2d 567, 572 (Pa. 2003). Failure to satisfy any prong of the test will result in rejection of the petitioner's ineffective assistance of counsel claim. *Commonwealth v. Jones*, 811 A.2d 994, 1002 (Pa. 2002).

The crux of Petitioner’s request for relief is that he was denied his constitutionally guaranteed right to effective representation when his trial counsel failed to call several witnesses on his behalf. To demonstrate the arguable merit of his underlying claim that his trial counsel was ineffective in failing to present additional witnesses, [petitioner] must establish “the existence of and the availability of the witnesses, counsel’s actual awareness, or duty to know, of the witnesses, the willingness and ability of the witnesses to cooperate and appear on the defendant’s behalf and the necessity for the proposed testimony in order

to avoid prejudice.” *Commonwealth v. Spatz*, 896 A.2d 1191, 1219 (Pa. 2006) (quoting *Commonwealth v. Whitney*, 708 A.2d 471, 480 (Pa. 1998)). The Court will address each of the Petitioner’s claims individually.

1. Cody Bechtel

Petitioner argues that his counsel was ineffective in failing to subpoena Cody Bechtel as a witness for trial. Petitioner testified at the PCRA hearing that he believed Cody Bechtel was implicated in the burglaries by a Commonwealth witness and that he and Cody Bechtel shared similar physical characteristics. At the time of the PCRA hearing on July 24, 2023, Trisha Hoover Jasper, Esquire, testified that she recalled the name Cody Bechtel being mentioned in the days leading up to the trial, with the Petitioner stating “go and look him up on Facebook and tell me what you think.” Attorney Jasper further testified that she and Petitioner had discussions about someone else committing the crimes but he did not tell her specifically who he believed did it because he said he was not a “snitch” and that Petitioner did not ask her specifically to subpoena Cody Bechtel for trial purposes.

With regard to the requirements to be eligible for relief as outlined in *Spatz, supra*, Cody Bechtel lived in the area and his existence was known prior to trial and he could have been made available to testify. Although the Petitioner made his counsel aware of another individual he believed committed the crimes, he did so only one week prior to trial and was not cooperative in locating Cody Bechtel as he did not want to be a snitch. This inhibited counsel’s ability to properly pursue Cody Bechtel as a witness and determine whether he would have been beneficial to the Petitioner’s case. Any potential prejudice suffered by the Petitioner was caused by himself. Additionally, as Attorney Jasper testified at the PCRA hearing, there was a distinct possibility that Cody Bechtel, if he had been subpoenaed for

trial, would have merely exercised his 5th Amendment right and refused to testify, or that his testimony would have been harmful to the Petitioner's case. For these reasons, the Petitioner cannot satisfy the third and fourth requirements in *Spotz, supra*.

The Court finds that the Petitioner has not satisfied all of the requirements necessary to demonstrate that his counsel's failure to call Cody Bechtel as a witness amounts to ineffective assistance of counsel which so undermined the truth determining process that no reliable adjudication of guilt could have taken place and therefore he is not entitled to PCRA relief on this claim.

2. *Kathleen Frame*

Petitioner asserts trial counsel was ineffective in failing to call Kathleen Frame, the neighbor of one of the burglarized homes, despite his request that she do so. The Petitioner testified at the PCRA hearing that the discovery he received contained a statement from Ms. Frame indicating she remembered seeing two individuals in camouflage clothing in an older model 4 door car, which was a completely different vehicle than what was alleged to have been involved in the burglary. The Petitioner further testified that his counsel said she would subpoena Ms. Frame and he found out on the first day of trial that she did not. Attorney Jasper, on the other hand, testified at the PCRA hearing that the name Kathleen Frame did not ring a bell to her and she did not recall the Petitioner asking her to subpoena her.

When evaluating Petitioner's claim of counsel's ineffectiveness for failure to call Kathleen Frame as a witness under the *Spotz* standard, her identity and location was known prior to the trial, and both the Defendant and counsel were made aware of her existence through the discovery process. With regard to her willingness and availability to cooperate and appear on behalf of the Defendant, there is no reason for this Court to believe that Ms.

Frame would have changed her story had she been called to testify on Defendant's behalf. However, testimony that Ms. Frame would have provided was also introduced through other witnesses and therefore her testimony would have been merely cumulative of what was already presented. Accordingly, the Petitioner suffered no prejudice from his trial counsel's failure to locate and subpoena her as a witness. Accordingly, his claim for ineffectiveness of counsel is without merit as it relates to the failure to call Kathleen Frame and he is not eligible for relief.

3. DNA expert

The Petitioner argues that trial counsel was ineffective for failing to require the testimony of the DNA expert and/or failing to subpoena and call the DNA expert as a witness at trial. At the PCRA hearing the Petitioner testified that his DNA was found on nothing and he did not recall stipulating to the submission of DNA without the expert being subpoenaed to testify. The Petitioner argues he wanted the DNA expert present to testify that if he was the one wearing that particular clothing surely his DNA would have been on it. Attorney Jasper testified at the PCRA hearing that because there was no DNA evidence found the report spoke for itself and it was a strategic decision not to subpoena the expert.

When determining whether Petitioner's claim has arguable merit, the scientist who reviewed the DNA results would have been the most practical person to identify and subpoena. Counsel would have known the identity of the author of the DNA report and could have subpoenaed that person to testify at the trial. However, while the DNA expert could confirm at trial that the Petitioner's DNA was not found on the clothing sample, he could not rule out the Petitioner as the one who committed the crimes. The evidence was sufficiently presented through the stipulation of the report and testimony of state troopers,

and calling the DNA technician as an expert could have been more cumulative than probative. Additionally, there is no reason to believe that hearing the same evidence from the DNA technician that was presented through other witnesses would have changed the outcome of the underlying proceeding. Accordingly, the Court finds that the decision not to subpoena the DNA expert was a strategic decision on the part of trial counsel and the Petitioner failed to prove that he suffered actual prejudice as a result of this. As such, he is not eligible for PCRA relief on his claim of ineffective assistance of counsel for her failure to subpoena and call the DNA expert as a witness.

4. Facial Recognition Expert

Petitioner alleges that trial counsel was ineffective in failing to petition the court for funds to procure the services of a facial recognition expert and for failing to call such an expert at trial. At the PCRA hearing, he testified that he requested his counsel obtain a facial recognition expert from the beginning of his case, and that Attorney Jasper said she would look into it. However, Attorney Jasper testified that she did not motion the court for funds to retain a facial recognition expert despite being aware of her ability to do so because she did not believe the courts would pay for one. She further testified that she did not attempt to secure a facial recognition expert because she felt that it was for the jury to decide if Cody Bechtel looked like the Petitioner. She wrote a letter to Petitioner informing him that if he wanted a facial recognition expert he would have to secure one himself even though he was in a state correctional institution at the time with limited access to such resources.

On cross examination at the PCRA hearing, Attorney Jasper testified that she did not know if a facial recognition expert had ever been admitted in Lycoming County, and the only way one would have been helpful to the Petitioner is if the expert testified to a

reasonable degree of professional certainty that it was his/her opinion that the person on the video was *not* the Petitioner. As various witnesses at trial testified that they could not specifically identify the person on the video(s) as the Petitioner but gave descriptions that were consistent with his build, if a facial recognition expert's report was inconclusive the evidence would have been cumulative. Additionally, Attorney Jasper testified that the hiring of the expert could have backfired on the Petitioner if the expert positively identified the person in the video(s) as the Petitioner. In light of the multiple potential outcomes, the Commonwealth argued that the decision to forego hiring a facial recognition expert contrary to the Petitioner's wishes was a strategic decision and the Petitioner suffered no prejudice as a result therefrom.

When evaluating whether Petitioner's claim meets the requirements for eligibility for PCRA relief, the Court notes that facial recognition experts do exist, but a specific expert was not identified in advance of Petitioner's trial despite Petitioner requesting counsel do so. It is not certain that counsel would have been able to find a facial recognition expert who was able and willing to offer an opinion based on the available evidence, or whether any opinion rendered would have been beneficial to the Petitioner at the time of trial. However, the Court finds that the Petitioner requested his counsel pursue such an expert well in advance of trial and counsel failed to explore identifying a specific expert and, if/when one was found, petitioning the court for the funds necessary to secure said expert's services. The Court finds, had a facial recognition expert been identified who was willing and able to render an opinion based upon the available evidence, that testimony *may* have been critical to prevent prejudice to the Defendant during trial. The Court finds that Attorney Jasper's failure to pursue a facial recognition expert given the timely request by the Petitioner was

not a strategic trial decision and she therefore provided ineffective assistance of counsel in this regard.

Trial counsel's ineffectiveness in failing to pursue the facial recognition expert does not, alone, entitle the Petitioner to a new trial. As previously discussed, in order to fully satisfy the prejudice prong of the statute and be granted a new trial, the Petitioner would need to procure an expert who could view the video and do something beyond a jury's lay viewing/opinion forming, such as definitively opining that it was not the Petitioner. However, the Petitioner has proven that trial counsel's ineffective assistance in pursuing the facial recognition expert prevented him from exploring that possibility.

Accordingly, the Court will enter the following Order.

ORDER

AND NOW, this 16th day of **January, 2024**, the Petitioner's Petition for Post Conviction Relief is **GRANTED** with respect to the claim of ineffective assistance of counsel regarding trial counsel's failure to pursue a facial recognition expert. Matthew Diemer, Esquire, PCRA counsel, shall have sixty (60) days from the date of this Order to identify an individual who would qualify as a facial recognition expert and establish that he or she would have been available and willing to testify at the Petitioner's trial. If counsel is able to procure such a witness, he shall file a praecipe to have this matter listed for an additional hearing, at which time he would be required to establish on the record, subject to questioning by the Commonwealth, the individual's qualifications, that he/she was available to testify at the time of the original trial, and provide an offer of proof as to what he/she would have testified to at the trial. Only if this Court finds that the proposed expert would have been qualified as such and provided testimony so favorable to the Petitioner that there

is a reasonable probability that the outcome of the trial would have been different will this Court order a new trial for Petitioner.

All remaining claims in the Petition for Post Conviction Relief are **DENIED** for the reasons stated above.

By the Court,

Ryan M. Tira, Judge

RMT/jel

CC: DA
Matthew Diemer, Esq.
Trisha Hoover Jasper, Esq.
Gary Weber, Esq. – Lycoming Reporter