

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-41-CR-0001197-2020
	:
vs.	:
	:
	:
ERNEST LORENZO LEONARD,	:
Appellant	: PCRA opinion

OPINION AND ORDER

Ernest Leonard (Petitioner) filed a *pro se* petition for Post Conviction Relief on February 10, 2025. The Court appointed Donald F. Martino, Esq. to represent Petitioner on March 7, 2025. PCRA counsel was requested to review the case and determine whether to file a *Turner/Finley* no merit letter or an amended PCRA petition. A preliminary conference on the petition was held on April 27, 2025. Prior to the conference, counsel filed an Amended Post Conviction Relief Act (PCRA) Petition on March 27, 2025. After a conference on the Amended Petition, the Court ordered that Petitioner file a brief in support of his position requesting the ability to reinstate his ability to file a post sentence motion and additional appeal due May 21, 2025. The Commonwealth filed their responsive brief in opposition on June 27, 2025. Petitioner did not file a reply brief.

Background

On August 26, 2020, the Commonwealth charged Petitioner with two counts of rape of a mentally disabled person¹, two counts of involuntary deviate sexual intercourse (IDSI) of

¹ 18 Pa. C.S.A. Section 3121(a)(5).

a mentally disabled person², two counts of sexual assault of a mentally disabled person³ and two counts of aggravated indecent assault of a mentally disabled person⁴. Original trial counsel filed a pretrial motion to suppress the statements that Petitioner made to the Williamsport Bureau of Police, which was denied on April 19, 2021.⁵ Petitioner's case was scheduled for jury selection on May 15, 2023 and on May 11, 2023, Leonard filed a motion to dismiss pursuant to Rule 600. The trial court heard the motion on May 15, 2023, after jury selection and denied the motion in an Opinion and Order entered May 16, 2023. A jury trial was held May 17-18, 2023 and the jury convicted Petitioner on all charges. On August 29, 2023, the court sentenced Leonard to an aggregate sentence of eight (8) years to sixteen (16) years' incarceration in a state correctional institution, consisting of two consecutive sentences of four (4) to eight (8) years' incarceration for each count of rape of a mentally disabled person.⁶

On September 7, 2023, Petitioner filed a post sentence motion in which he sought reconsideration of sentence and on September 11, 2023, the court summarily denied Petitioner's post sentence motion. Petitioner filed a timely appeal asserting three issues in his concise statement of errors complained of on appeal:

1. [Petitioner] respectfully avers that the evidence submitted at [his] [t]rial was insufficient to meet the Commonwealth's burden of proving [Petitioner] guilty beyond a reasonable doubt of two (2) counts of Rape of a Mentally Disabled Person; two (2) counts of Involuntary Deviate Sexual Intercourse; two (2) counts of Sexual Assault; and two

² 18 Pa. C.S.A. Section 3123(a)(5).

³ 18 Pa. C.S.A. Section 3124.1.

⁴ 18 Pa. C.S.A. Section 3125(a)(6).

⁵ The motion was decided by the Honorable Marc F. Lovecchio who left the bench and returned to private practice at the close of business on November 2, 2021.

⁶ The court found that the two counts of IDSI merged. The court imposed concurrent sentences of three (3) to six (6) years' incarceration for each count of sexual assault and guilt without further punishment for each count of aggravated indecent assault.

- (2) counts of Aggravated Indecent Assault.
2. [Petitioner] respectfully avers that the sentence entered [by the trial court] of 8-16 years was manifestly excessive and an abuse of discretion given [Petitioner's] age and health.
 3. [Petitioner] respectfully avers that [the trial court] erred by denying [Petitioner's] Motion to Dismiss Pursuant to Rule 600, decided on May 16, 2023, and that [Petitioner's] case should have been dismissed.

Although the court found that issue number one had not been properly preserved because Petitioner did not specify the element or elements upon which the evidence was insufficient and therefore waived, the court still reviewed the evidence and found that the claim had no merit. On the second issue, the court found that the Petitioner's sentence was not manifestly excessive and followed the applicable statutes and guidelines. On the Rule 600 issue, the court found that the adjusted run date was August 10, 2023 and because Petitioner filed his motion on May 11, 2023 and selected a jury on May 15, 2023, Rule 600 had not been violated.

Petitioner took a timely appeal to the Superior Court on October 5, 2023 and the Superior Court affirmed the Petitioner's conviction on November 4, 2024. First, the Court found that even though trial counsel did not adequately develop the claim of a Rule 600 violation, they concluded that it lacked merit. *Commonwealth v. Leonard*, 331 A.3d 604 (Table), 1399 MDA 2023, 2024 WL 4664480, *3-*4 (Pa. Super. Nov. 4, 2024)(nonprecedential). On the sufficiency of evidence claim, the court found that it had been waived because Petitioner failed to "articulate with specificity the elements which he believed that the Commonwealth failed to prove, and failed to identify the elements in his 1925(b) concise statement. *Id.* at *5. Finally the court found that since the Petitioner failed to include a separate Rule 2119(f) statement in

his brief and the Commonwealth objected to that failure, they could not reach the merits of the claim. *Id.* Petitioner did not seek allowance of appeal from the Supreme Court so his judgment became final on December 4, 2024.

On or about February 10, 2025, Petitioner filed a pro se PCRA petition. The court appointed counsel on March 7, 2025 to represent Petitioner and gave PCRA counsel an opportunity to file an Amended PCRA petition. An Amended PCRA petition was filed on March 27, 2025. After conference on April 21, 2025 the parties were requested to brief the issues.

In the Amended PCRA petition, Petitioner asserts the claim of ineffective assistance of counsel in that trial counsel failed to properly preserve the sufficiency of the evidence claim raised on appeal such that it deprived Petitioner of a meaningful review of the evidence presented at trial.

The Commonwealth alleges that Petitioner should not have his appeal rights automatically restored. Their argument highlights the fact that Petitioner was not entirely deprived of his appeal rights as one of the issues was addressed by the appellate court on the merits.

Discussion

The first question for the court to decide is whether Petitioner was entirely deprived of his right to appeal.

It is well-settled that “an accused who is deprived entirely of his right of direct appeal by counsel's failure to perfect an appeal is per se without the effective assistance of counsel, and is entitled to reinstatement of his direct appellate rights.” *Commonwealth v. Johnson*, 2005 PA Super 417, 889

A.2d 620, 622 (Pa.Super.2005) (emphasis added) (citing *Commonwealth v. Halley*, 582 Pa. 164, 870 A.2d 795 (2005) (failing to file a Pa.R.A.P.1925(b) statement on behalf of an accused seeking to appeal his sentence, resulting in the waiver of all claims, constitutes an actual or constructive denial of counsel and entitles the accused to a direct appeal *nunc pro tunc* regardless of his ability to establish the merits of the issues that were waived); *Commonwealth v. Lantzy*, 558 Pa. 214, 736 A.2d 564 (1999) (failing to file a requested direct appeal denies the accused the assistance of counsel and the right to a direct appeal, and the accused is entitled to reinstatement of his direct appeal rights)). See *Commonwealth v. Franklin*, 2003 PA Super 165, 823 A.2d 906 (Pa.Super.2003) (holding that reinstatement of direct appeal rights was proper where the appellant's brief on direct appeal was so defective this Court found all issues to be waived). "In those extreme circumstances, where counsel has effectively abandoned his or her client and cannot possibly be acting in the client's best interests, our Supreme Court has held that the risk should fall on counsel, and not his client." *Commonwealth v. West*, 2005 PA Super 309, 883 A.2d 654, 658 (Pa.Super.2005).

[I]t is also well-settled that the reinstatement of direct appeal rights is not the proper remedy when appellate counsel perfected a direct appeal but simply failed to raise certain claims. See *Commonwealth v. Johnson*, 889 A.2d 620, 622 (Pa.Super.2005). Where a petitioner was not **entirely** denied his right to a direct appeal and only some of the issues the petitioner wished to pursue were waived, the reinstatement of the petitioner's direct appeal rights is not a proper remedy. *Commonwealth v. Halley*, 582 Pa. at 172, 870 A.2d at 801 (noting the significant difference between "failures that completely foreclose appellate review, and those which may result in narrowing its ambit"); *Johnson*; *supra* (noting this Court has expressly distinguished between those cases where a PCRA petitioner is entitled to a direct appeal *nunc pro tunc* where prior counsel's actions, in effect, entirely denied his right to a direct appeal, as opposed to a PCRA petitioner whose prior counsel's ineffectiveness may have waived one or more, but not all, issues on direct appeal). In such circumstances, the appellant must proceed under the auspices of the PCRA, and the PCRA court should apply the traditional three-prong test for determining whether appellate counsel was ineffective.

Commonwealth v. Mikell, 968 A.2d 779, 781–82 (Pa.Super. 2009) quoting *Commonwealth v. Grosella*, 902 A.2d 1290, 1293–94 (Pa.Super.2006) (footnotes omitted) (emphasis in original).

Petitioner cannot show that reinstatement of appellate rights is appropriate. Appellate rights may be restored only when counsel's conduct resulted in the complete loss of the right to appeal. That is not the case here.

Petitioner received appellate review. The Superior Court addressed his Rule 600 claim on the merits and affirmed the trial court. Only the sufficiency challenge and sentencing issue were waived. Under *Commonwealth v. Halley*, *Commonwealth v. Johnson*, and *Commonwealth v. Grosella*, reinstatement of appellate rights is not available when counsel's conduct results in the loss of only some issues. In such circumstances, the PCRA court must instead apply the traditional ineffective assistance analysis.

Was trial counsel ineffective for failing to properly preserve the sufficiency of the evidence claim?

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).

“Generally, where matters of strategy and tactics are concerned, counsel's assistance is deemed constitutionally effective if he chose a particular course that had some reasonable basis designed to effectuate his client's interests.” *Commonwealth v. Miller*, 819 A.2d 504, 517 (Pa. 2000) (citation omitted). A claim of ineffectiveness generally cannot succeed through comparing, in hindsight, the trial strategy employed with alternatives not pursued. *Id.* In addition, we note that counsel cannot be deemed ineffective for failing to pursue a meritless claim. *Commonwealth v. Nolan*, 855 A.2d 834, 841 (2004) (superseded by statute on other grounds).

Is there arguable merit to the claim?

After review, the court finds the sufficiency claim does not have arguable merit. Although the Superior Court deemed the claim waived because Petitioner failed to identify the challenged elements in his Rule 1925(b) concise statement, this Court reviewed the evidence in its 1925(a) opinion and explained why the record fully supported each conviction. *See* 1925(a) opinion, 01/10/2024.

The trial testimony was specific and credible. The complainant described four separate incidents in which Petitioner penetrated her anus with his penis, and she explained that she did not want the sexual contact and attempted to resist. *See* N.T., 05/17/23, at 42-52. Expert testimony established that the complainant, who has Down Syndrome, possessed the intellectual functioning of an eleven-year-old and adaptive living skills comparable to a five-year-old. The expert also testified that she was incapable of consent. *See* N.T., 05/18/23, at 55-70. A Sexual Assault Nurse Examiner (SANE) also testified that the complainant's guardian consented to the examination of the complainant and was present throughout it because the complainant lacked the ability to consent. *See* N.T., 05/17/23, at 100-101. Furthermore, it was readily apparent to the court, counsel and the jury that the complainant lacked the capacity to consent.

Significantly, **the Superior Court noted in its opinion that Appellant did not dispute the complainant's inability to consent.** *See Leonard* at *4 (“Appellant does not dispute the Complainant's inability to consent to sexual intercourse.”).

This is a meaningful concession. The inability to consent is a core element of rape of a mentally disabled person, IDSI involving a mentally disabled person, sexual assault of a mentally disabled person, and aggravated indecent assault of a mentally disabled person

under the charged subsections. By accepting that element, Petitioner effectively concedes a substantial and important element of the Commonwealth's burden.

When this concession is combined with the complainant's detailed testimony and the expert evidence the Commonwealth presented at trial, the sufficiency claim cannot be deemed arguably meritorious.

PCRA counsel contends that trial counsel was ineffective for making such a concession, particularly where the expert did not specifically testify that the victim lacked the capacity to consent. The court cannot agree.

With all due respect to PCRA counsel, he was not present at trial and did not observe the complainant. Everyone in the courtroom could tell that the victim had the intellectual and functional capacities of a child. In addition, the expert testified that the victim possessed the intellectual functioning of an eleven-year-old and adaptive living skills comparable to a five-year-old. He also testified that she had a mental disease or defect, Down's Syndrome, which rendered her incapable of consent. *See* N.T. 05/18/23, at 55-70. Children and individuals with mental diseases or defects such that they have the mental functioning of a child are incapable of consent. *See* 18 Pa. C.S. §311(c)(2) ("Unless otherwise provided by this title or by the law defining the offense, assent does not constitute consent if: (2) it is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense."). Jurors are also permitted to use their common sense. The jury reasonably concluded based on the testimony and their own observations of the complainant that the complainant was incapable of consent.

Moreover, Petitioner was aware of the complainant's limitations as he had lived with her and her mother prior to her mother's death and the complainant moving to a group home. *See* N.T., 05/17/23, at 42-43, 128-129.

PCRA counsel's arguments also are not made in the context of the standard for evaluating a sufficiency of the evidence claim. PCRA counsel is viewing the record in the light most favorable to Petitioner. When evaluating a sufficiency of the evidence claim, the court must view the evidence and all reasonable inferences that can be drawn from the evidence in the light most favorable to the Commonwealth as the verdict winner.

Commonwealth v. Watley, 81 A.3d 108 113 (Pa.Super. 2013). It is well- settled that credibility is within the exclusive province of the finder of fact, in this case the jury, which is free to believe all, part, or none of the evidence. *Commonwealth v. Perrin*, 291 A.3d 337, 347 (Pa. 2023)("the credibility of witnesses is within the exclusive province of the trial court, either acting on its own or through a jury");*Commonwealth v. Thomas*, 215 A.3d 36, 40 (Pa. 2019)("the jury is free to believe all, part, or none of the evidence"). Furthermore, the testimony of the complainant in a sexual assault prosecution need not be corroborated; the complainant's testimony, if believed by the jury, is sufficient. 18 Pa. C.S.A. § 3106 ("The testimony of the complainant need not be corroborated in prosecutions under this chapter"); *Commonwealth v. Juray*, 275 A.3d 1037, 1046 (Pa.Super. 2022)(victim's trial testimony alone was sufficient to support each of the guilty verdicts); *Commonwealth v. Diaz*, 152 A.3d 1040, 1047 (Pa. Super. 2016)(uncorroborated testimony of sexual assault victim, if believed by the trier of fact, is sufficient to convict a defendant, despite contrary evidence from

defense witnesses). Therefore, even if trial counsel would have properly preserved this challenge on appeal, it would not have succeeded.

Did counsel have a reasonable strategic basis for his actions?

It is apparent from the record that trial counsel had a strategic reason for not challenging the complainant's ability to consent. The defense in this case was not consent. Rather, the defense was that the events never happened and that was the reason that there was no physical evidence and the complainant could not give any details. *See* N.T., 05/18/23 at 93-96. Making such an argument in light of the expert's testimony and the obvious limitations of the complainant would have hurt trial counsel's credibility with the jury.

Has prejudice been established?

Here, Petitioner cannot establish prejudice. To demonstrate prejudice, Petitioner must show that the outcome of his direct appeal would have been different had counsel preserved the sufficiency issue. He cannot do so.

First, as noted above, the sufficiency claim lacks merit. Second, and critically, Petitioner **affirmatively did not challenge** the complainant's inability to consent on his direct appeal. This is a foundational element of the charged offenses. His failure to contest this fact confirms that the evidence on that element was overwhelming. It also underscores the court's finding that there is no reasonable likelihood the Superior Court would have reversed the convictions even if the sufficiency claim had been preserved.

The complainant's testimony, the corroborating expert evidence, and the relationship between Petitioner and the victim collectively established each element of the offenses beyond a reasonable doubt. The court believes that the Superior Court would have affirmed Petitioner's conviction had it reached the merits. Therefore, Petitioner cannot show any change in the outcome resulting in prejudice.

Conclusion

Petitioner has not proven arguable merit, lack of reasonable basis, or prejudice. Petitioner was not deprived of his direct appeal rights, and his underlying sufficiency claim on the elements of the charges would not have succeeded even if preserved, especially in light of his own concession regarding the complainant's inability to consent. For these reasons, Petitioner has not met his burden, and the PCRA petition must be dismissed.

ORDER

AND NOW, this 2nd day of December, 2025, it is hereby **ORDERED** and

DIRECTED as follows:

1. Petitioner is hereby notified pursuant to Pennsylvania Rule of Criminal Procedure 907(1), that it is the intention of this Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty (20) days of today's date.
2. **Petitioner will be notified at the address below through means of certified mail.**

By The Court,

Nancy L. Butts, President Judge

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