NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. JASON KOKINDA Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2687 EDA 2012

Appeal from the PCRA Order September 6, 2012
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s): CP-39-CR-0004541-2007

BEFORE: PANELLA, J., MUNDY, J., and FITZGERALD, J.*

JUDGMENT ORDER BY PANELLA, J. **FILED DECEMBER 13, 2013**

Appellant, Jason Kokinda, appeals *pro se* from the order entered September 6, 2012, by the Honorable Robert L. Steinberg, Court of Common Pleas of Lehigh County, which denied his petition filed pursuant to the Post Conviction Relief Act ("PCRA").[1] We affirm.

On November 12, 2009, Kokinda entered a plea of Guilty but Mentally Ill to four counts of unlawful contact with a minor and one count of criminal use of a communication facility, after he engaged in online sexual communications with an individual whom he believed was a 12-year-old minor, but was actually an undercover agent with the Attorney General's Office. Following a hearing on February 17, 2010, the trial court determined

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* Former Justice specially assigned to the Superior Court.
[1] 42 PA.CONS.STAT.ANN. § 9541, *et seq*.

that Kokinda was severally mentally disabled; specifically, a paranoid schizophrenic. Thereafter, the court sentenced Kokinda to 36 to 84 months' incarceration.

Kokinda filed a *pro se* PCRA petition on February 22, 2011. Following an oral and written colloquy, the PCRA court permitted Kokinda to proceed *pro se* and appointed stand-by counsel to assist in the PCRA proceedings. Following a hearing on September 6, 2012, the PCRA denied Kokinda's petition. This timely appeal followed. Both Kokinda and the PCRA court have complied with Pa.R.A.P. 1925.

Our standard of review of a PCRA court's denial of a petition for post-conviction relief is well-settled: We must examine whether the record supports the PCRA court's determination and whether the PCRA court's determination is free of legal error. ***See Commonwealth v. Hall***, 867 A.2d 619, 628 (Pa. Super. 2005). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. ***See Commonwealth v. Carr***, 768 A.2d 1164, 1166 (Pa. Super. 2001). Our scope of review is limited by the parameters of the PCRA. ***See Commonwealth v. Heilman***, 867 A.2d 542, 544 (Pa. Super. 2005).

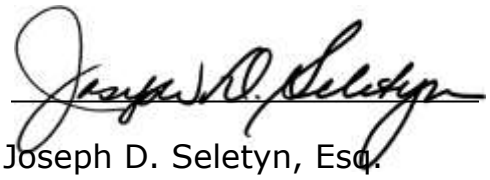
On appeal, Kokinda raises seven issues for our review. ***See*** Appellant's Brief at 2-3. Kokinda's appellate brief consists of an astounding 46 pages of argument, in which he rails against everything from former United States Supreme Court Justice Louis Brandeis's decision in ***Erie R. Co. v. Tompkins***, 304 U.S. 64, 58 S.Ct. 817 (1938), the "apostasy of law" and

the PCRA Court, to JP Morgan, Rockefeller, Rothschild and adhesion contracts. Kokinda's argument is often rambling and disjunctive.

With our standard of review in mind, and after examining Kokinda's appellate brief, the ruling of the PCRA court, as well as the applicable law, we find that Judge Steinberg's ruling is supported by the record and free of legal error. We further find that the PCRA court, to the fullest extent possible, addressed Kokinda's issues raised on appeal. Accordingly, we affirm on the basis of Judge Steinberg's thorough and well-written opinion. ***See*** PCRA Court Opinion, filed 2/20/13.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/13/2013

J-S66009-13

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
:
vs. : NO. CR-4541-2007
: Superior Court No.: 2687 EDA 2012
JASON KOKINDA :

* * * * *

Appearances:

William Stoycos, Esquire, Senior Deputy Attorney General
For the Commonwealth

Jason Kokinda, Pro Se
Kimberly Makoul, Esquire, Stand-by Counsel
For the Appellant

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OPINION

Robert L. Steinberg, Judge:

On November 12, 2009, during a jury trial, the appellant, Jason Kokinda, entered a plea of Guilty but Mentally Ill to Unlawful Contact with a Minor (4 counts) and Criminal Use of a Communication Facility (1 count). The appellant engaged in sexual communications with someone whom he believed was a twelve (12) year old female, but in reality was an undercover agent with the Office of the Attorney General. The appellant also sent an image of his erect penis to this person. Eventually, the appellant arranged a meeting with the child for the purpose of engaging in various sexual acts. When he arrived for his expected rendezvous, he was arrested by agents of the Office of the Attorney General.

On February 17, 2010, the appellant was sentenced to not less than thirty-six (36) months nor more than eighty-four (84) months in a state correctional institution and this sentence

was ordered to run concurrently with his sentence for Endangering the Welfare of Children in New Jersey. Following a hearing, the appellant was also found to be "severely mentally disabled" (paranoid schizophrenic).

On February 22, 2011, the appellant filed a pro se "Motion For Post Conviction Relief" (hereinafter PCRA). Thereafter, on May 31, 2011, after an oral and written colloquy, the appellant was permitted to proceed pro se. Attorney Kimberly Makoul was appointed as stand-by counsel, and she attempted to assist the appellant through arduous PCRA hearings.

Due to continuances requested by the appellant, the initial PCRA hearing was not held until December 19, 2011.[1] Other hearings were scheduled, but were continued until June 12, 2012. In the interim, the appellant filed a pro se "Motion to Impeach Dennis Charles, Esq." and a "Motion To Compel the Attendance of Chad Malloy" on January 18, 2012. Both petitions were denied on January 19, 2012. The appellant then filed a pro se "Motion for Recusal" on February 6, 2012, which was denied on February 7, 2012. Thereafter, the appellant filed two (2) appeals to the Superior Court from those Orders. Both appeals were withdrawn and discontinued by the appellant on March 27, 2012,[2] and May 2, 2012.[3]

While appeals were pending, the appellant filed a variety of other documents and motions.[4] Following the discontinuance of his appeals, additional motions were filed,[5] including

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[1] The appellant was initially granted until August 26, 2011 to file his Amended PCRA petition. The appellant filed an "Application To Extend Time To File Brief" and was granted an additional forty (40) days to do so. He filed an Amended PCRA petition with a corresponding brief on September 1, 2011. He then filed an "Amended Petition For Relief Under The Post Conviction Relief Act" on September 23, 2011 and a "Motion For Extension Of Time To Prepare For PCRA Hearing" on October 16, 2011. This latter request was granted until December 19, 2011.

[2] See Commonwealth v. Jason Kokinda, No. 725 EDA 2012 (Pa.Super. March 27, 2012).

[3] See Commonwealth v. Jason Kokinda, No. 727 EDA 2012 (Pa.Super. May 2, 2012).

[4] (a) "Supplemental Brief of Petitioner" – filed March 12, 2011.
(b) "Petition for Certificate Directing Appearance of Out-of-State Witness To Appear" – filed March 12, 2012; denied March 19, 2012.
(c) "Petition For PCRA Evidentiary Hearing To Be Held By Video Conference" – filed March 29, 2012; denied August 24, 2012.
(d) "Petition To Amend PCRA Petition" – filed March 29, 2012.
(e) "Motion To Impeach Dennis Charles, Esq." – filed April 5, 2012.
(f) "Amended Petition For Relief Under The Post Conviction Relief Act" – filed April 9, 2012.

a second "Motion for Recusal" which was denied on July 13, 2012. On August 24, 2012, after accepting the appellant's "Third Supplemental Brief of Petitioner", which was actually his fifth brief, the appellant was precluded from filing any additional PCRA petitions.[6]

On September 6, 2012, a final PCRA hearing was held, and at the conclusion of the hearing, the appellant's request for PCRA relief was denied. A Notice of Appeal was filed on September 25, 2012. Pursuant to the court's directive, the appellant filed a sixteen (16) page "Statement of Matters Complained Of On Appeal" on October 24, 2012.[7] The thirteen (13) paragraphs that comprise the appellant's Pa.R.A.P. 1925(b) missive make the following claims: (1) the "PCRA Court was deprived of subject matter jurisdiction, from thereby creating a special tribunal," and this Court "was not exercising the limited powers conferred by the Constitution for [P]ennsylvania and therefore rendered the proceedings coram non judice"; (2) the failure of the trial court to provide the appellant the trial transcripts which ended in a guilty plea; (3) the "Motion for Recusal" should have been granted; (4) the appellant's pro se "Application for Relief" which was filed on August 30, 2011 should have been granted; (5) trial counsel was ineffective in that: (a) he failed to pursue various defenses the appellant believes were available; (b) pursued a "pulp fiction insanity defense"; (c) abandoned appellant in the middle of trial; (d) failed to request that appellant be permitted to withdraw his guilty plea; (e) failed to file a requested appeal; (f) participated in a "conspiracy to commit official oppression against appellant and obstruct justice in attempts to undo the crime" et al; (6) various Brady violations "amounted

(g) "Second Supplemental Brief of Petitioner" – filed May 3, 2012.
(h) "Third Supplement Brief Of Petitioner" – filed July 6, 2012.

[5] (a) "Motion To Schedule Hearing and Rule On Pending Motions" – filed July 24, 2012; denied August 24, 2012.
(b) "Motion To Compel Discovery" – filed August 13, 2012; denied August 24, 2012.

[6] See Pa.R.Crim.P. 905(A)(Amendment shall be freely allowed to achieve substantial justice). This Court did not interpret "freely" to mean indefinite or never-ending.

[7] See Pa.R.A.P. 1925(b)(4)(iv)(The Statement should not be redundant or provide lengthy explanations as to any error. Where non-redundant, non-frivolous issues are set forth in an appropriately concise manner, the number of errors raised will not alone be grounds for finding waiver). See Jiricko v. Geico Ins. Co., 947 A.2d 206, 213 (Pa.Super. 2008).

to a Double Jeopardy violation"; (7) the PCRA Court "should have considered allocution statement presented at September 6, 2012 PCRA hearing, and nullified the guilty plea"; (8) stand-by counsel, Kimberly Makoul Esquire rendered ineffective assistance of counsel; (9) the PCRA Court . . . "[attempted] to limit scope of PCRA relief to withdrawal of guilty plea, which is equivalent to an order granting a new trial", and apparently believes some other form of relief is warranted; (10) the trial court lacked subject matter jurisdiction; (11) the PCRA Court should have held the Guilty but Mentally Ill provisions of the Crimes Code (18 Pa.C.S. § 314) unconstitutional; (12) the PCRA Court should have held the charge of Unlawful Contact With Minor (18 Pa.C.S. § 6318) unconstitutional; (13) the appellant also requests permission to supplement his Pa.R.A.P. 1925(b) Statement.

Discussion

Many of the appellant's claims that are contained in his Pa.R.A.P. 1925(b) manifesto are vague and subject to a waiver analysis. Commonwealth v. Hansley, 24 A.3d 410, 415 (Pa.Super. 2011)("[A] [c]oncise [s]tatement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no [c]oncise [s]tatement at all."). Other issues were not raised during the PCRA hearings and are waived. Commonwealth v. Watson, 835 A.2d 786, 791 (Pa.Super. 2003)(Issues not raised in the lower court are waived and cannot be raised for the first time on appeal and thus waiver cannot be rectified by "proffering it in response to a Rule 1925(b) order."); see also Commonwealth v. Melendez-Rodriguez, 856 A.2d 1278, 1287 (Pa.Super. 2004).[8]

The appellant's constitutional challenges regarding the Guilty But Mentally Ill verdict and Unlawful Contact With Minor charge are waived. They were only raised during the

[8] The appellant has also included in his 1925(b) document a request to file an untimely supplemental statement. This request does not extend the time frame for filing his 1925(b) statement. See Commonwealth v. Gravely, 970 A.2d 1137 (Pa. 2009); Commonwealth v. Woods, 909 A.2d 372, 377, n. 10 (Pa.Super. 2006); see also Pa.R.A.P. 1925(b)(2).

PCRA hearings in the context of questions the appellant asked trial counsel. Even so, both statutes have withstood constitutional attack. Commonwealth v. Trill, 543 A.2d 1106, 1115-1130 (Pa.Super. 1998)(Guilty But Mentally Ill statute constitutional); see also Commonwealth v. Rabold, 951 A.2d 329 (Pa. 2008); Commonwealth v. Morgan, 913 A.2d 906, 911 (Pa.Super. 2006)(Unlawful Contact With Minor statute is constitutional and is neither overbroad or vague); Commonwealth v. Rose, 960 A.2d 149, 153-154 (Pa.Super. 2008).

The appellant contends that this Court should have granted his recusal motion. The first time the appellant made a recusal request was during the pendency of the PCRA proceedings. He filed a "Motion For Recusal" on February 6, 2012, outlining his dissatisfaction with the manner in which the initial PCRA hearing was held on December 19, 2011. The appellant believes that "preferential treatment" was given to trial counsel, Dennis Charles, Esquire. The record, however, is devoid of any impropriety by this Court. Instead, the transcript of the PCRA hearing demonstrates the appellant's inability to correctly conduct cross-examination, and this Court's need to constantly focus him on relevant issues. Appellant's confusion also included his inability to understand the difference between cross-examination and his own testimony.

"It is universally accepted that the trial judge has the responsibility and authority to maintain in the courtroom the appropriate atmosphere for the fair and orderly disposition of the issues presented." Commonwealth v. Patterson, 308 A.2d 90, 94 (Pa. 1973). In that regard, a [PCRA] court has discretion to determine both the scope and the permissible limits of cross-examination." Commonwealth v. Briggs, 12 A.3d 291, 335 (Pa. 2011); Commonwealth v. Handfield, 34 A.3d 187, 210 (Pa.Super. 2011). In Commonwealth v. Bozyk, 987 A.2d 753, 756 (Pa.Super. 2009), it was reiterated that the Confrontation Clause of the Sixth Amendment does not prevent a trial judge from imposing limits on cross-examination. "[T]rial judges retain wide

latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on . . . cross-examination based on concerns about, among other things, harassment, and prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant . . . . [T]he Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." Id. (emphasis added). The appellant has failed to substantiate his claims. Commonwealth v. Abu-Jamal, 720 A.2d 79, 89 (Pa. 1998)("It is the burden of the party requesting recusal to produce evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to the jurist's ability to preside impartially.").

The appellant's claim regarding subject matter jurisdiction requires limited discussion. It is alleged that "[a]ll PCRA proceedings are . . . null and void."[9] The appellant refers to Erie R. Co. v. Tompkins, 304 U.S. 64 (1938) and suggests it has some impact on the within case. It has none. Erie was a landmark decision which held that in diversity cases, substantive state law, not federal common law, controls. See generally American Elec. Power Co. Inc., v. Connecticut, ___ U.S. ___, 131 S.Ct. 2527, 2535 (2011)(federal courts follow state decisions on matters of substantive law appropriately cognizable by the states.); Gasperini v. Center for Humanities, Inc., 518 U.S. 415, 416 (1996)(federal courts sitting in diversity apply state substantive law and federal procedural law); Laudenberger v. Port Authority of Allegheny County, 436 A.2d 147, 152 (Pa. 1981)(federal courts must apply the forum state's substantive laws).

In Commonwealth v. Stout, 978 A.2d 984, 988 (Pa.Super. 2009), claims similar to those raised herein were dispatched with the recognition that "the Pennsylvania constitution itself provides for the promulgation of rules governing the practice, procedure, and conduct of courts

[9] Statement of Matters Complained Of On Appeal, ¶ 1.

so long as these rules do not abridge, enlarge, or modify the substantive rights of litigants." The appellant's argument, as in Stout, is "patently without merit". Id.

The appellant has also raised multiple allegations regarding the effectiveness of trial counsel. During the course of the jury trial, testimony was elicited which contained explicit on-line chats between the appellant and the undercover agent with the Office of the Attorney General, Child Predator Unit, who identified herself as a child named Caitlin. The appellant also forwarded a photograph of his erect penis. The investigation culminated with the appellant's apprehension at a local Blockbuster, where he intended to meet the child and engage in sexual acts. Not surprisingly, after two (2) days of testimony, the appellant, upon advice of counsel, entered a knowing, intelligent, and voluntary guilty plea.

The appellant presented trial counsel's testimony at the PCRA hearing held on December 19, 2011.[10] It was the opinion of trial counsel, Dennis Charles, Esquire, that in light of the appellant's psychiatric history, the only "viable defense" was insanity.[11] Experts were prepared to testify, but as the trial progressed, counsel recommended that the appellant enter a Guilty but Mentally Ill plea. Throughout discussions with counsel, the appellant believed that the "chat room was a fantasy room where your free to espouse any fantasy you wanted without any type of legal repercussions."[12] However, trial counsel explained that such a claim was dubious:

> [W]hen you make an overt step to accomplish what is the subject of the chat room chats. You went to meet what you thought was a twelve year old child, to have sexual intercourse with her, at least that's what that chat's indicate, and you were arrested by the police. And I believe it also stops when you send a photograph of your erect penis to what you think is a twelve year old child, and it goes to an Agent of the Attorney General's Office. I did not think you had any

[10] Notes of Testimony, PCRA hearing (hereinafter N.T.P.C.R.A.), December 19, 2011, pp. 19-77.
[11] Id. at pp. 21-22.
[12] Id. at p. 29.

> defense to the over acts, other than a mental infirmity defense, which is what I pursued vigorously on your behalf. And I obtained two of the very best and most respected forensic experts, I think, in the country.[13]

Counsel, in his testimony, also referenced chats in which appellant mused that "sex with a twelve year old being more thrilling because its illegal."[14] Based upon all the facts and circumstances, including the availability of a psychiatrist hired by the Commonwealth to refute the insanity defense, counsel believed that even the insanity defense was tenuous.[15] As a result, as the trial progressed and the Attorney General agreed to a mitigated range sentence, counsel recommended that the appellant enter a guilty plea.[16] The appellant then made the decision to plead guilty.[17]

The Guilty but Mentally Ill plea was entered after a colloquy in which counsel acknowledged that he had talked extensively with the appellant, and was satisfied that the appellant was competent to enter his plea.[18] The forensic experts also concurred in that assessment, as did the appellant.[19] In fact, the appellant explained that the medication he was taking for his mental illness improved his understanding of the proceedings.[20]

During the guilty plea colloquy, the appellant admitted his guilt, and acknowledged that he wanted to plead guilty and not complete the trial.[21] He was also satisfied with counsel's representation, and believed that counsel had adequately reviewed this matter with him.[22] Finally, the appellant, in his written colloquy and in response to this Court's inquiry,

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[13] N.T.P.C.R.A. at pp. 29-30, 33-34, 50.
[14] Id. at pp. 31, 61-64.
[15] Id. at pp. 65-66.
[16] Id. at pp. 36-37, 58, 62, 66.
[17] Id. at pp. 24, 67-68.
[18] Notes of Testimony, Guilty Plea (hereinafter N.T.G.P.), p. 5.
[19] Id. at pp. 7, 16.
[20] Id. at p. 14.
[21] Id. at pp. 8, 19.
[22] N.T.G.P. at p. 8.

indicated that he was entering the guilty plea voluntarily.[23] The first time the appellant and his mother expressed dissatisfaction with trial counsel was during the PCRA proceedings.

It has been frequently explained that the "law does not require that an appellant be pleased with the results of the decision to enter a guilty plea; rather '[a]ll that is required is that [appellant's] decision to plead guilty be knowingly, voluntarily, and intelligently made.'" Commonwealth v. Brown, 48 A.3d 1275, 1277 (Pa.Super. 2012). Likewise, a "defendant is bound by the statements made during the plea colloquy, and a defendant may not later offer reasons for withdrawing the plea that contradict statements made when he pled. Claims of counsel's ineffectiveness in connection with a guilty plea will provide a basis for relief only if the ineffectiveness actually caused an involuntary or unknowing plea." Id. at 1277-1278. (internal citations omitted).

Throughout the guilty plea, as well as the entire proceedings, the appellant did not raise any objections to trial counsel's strategy. He agreed with the tactical decision not to pursue the role-playing defense, and instead, pursue the insanity defense. It is only in the PCRA proceedings that the appellant expressed his unhappiness with the tactical decisions of counsel. It was the opinion of counsel that the insanity defense was viable, especially in light of appellant's psychiatric history. To that end, trial counsel secured expert testimony to support that defense. However, as the trial unfolded, counsel believed the outcome would be unfavorable and advised the appellant to enter a guilty plea. The appellant readily agreed, especially when trial counsel was able to negotiate a more favorable plea agreement.

"Where the defendant enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." Commonwealth v. Fowler, 893 A.2d 758, 765 (Pa.Super. 2006)

[23] N.T.G.P. at p. 20.

quoting Commonwealth v. Allen, 833 A.2d 800, 802 (Pa.Super. 2003)(internal quotations omitted). See also Commonwealth v. Hickman, 799 A.2d 136, 141 (Pa.Super. 2002); Commonwealth v. Moser, 921 A.2d 526, 531 (Pa.Super. 2007); Commonwealth v. Flood, 627 A.2d 1193, 1202 (Pa.Super. 1993)(Counsel cannot be ineffective for advising a defendant to accept a plea bargain as a tactical decision to avoid a more severe sentence). The appellant faced the real prospect of the jury rejecting his insanity defense, and the imposition of a more severe sentence. Additionally, the decision not to pursue the role-playing defense was sound, especially in light of appellant's actions that led to his arrest at the Blockbuster. The role-playing defense was a canard that would have been quickly exposed. It is apparent that counsel's advice to enter the guilty plea was within the range of competence demanded of attorneys in criminal cases. See Commonwealth v. Bedell, 954 A.2d 1209, 1212 (Pa.Super. 2008).

The appellant's remaining ineffectiveness claims lack merit and will be addressed in seriatim fashion. The appellant alleges that he asked counsel to file an appeal. Counsel denied an appeal was requested.[24] This Court's review of the testimony from the PCRA proceedings does not reflect that the appellant asked Attorney Charles to file an appeal. "To establish *per se* ineffectiveness, a defendant must still prove that he asked counsel to file a direct appeal." Commonwealth v. Markowitz, 32 A.3d 706, 715 (Pa.Super. 2011); Commonwealth v. Maynard, 900 A.2d 395, 398 (Pa.Super. 2006)("The [appellant] has the burden of proving that he requested a direct appeal and that his counsel heard but ignored or rejected the request."). See also Commonwealth v. Spencer, 892 A.2d 840, 842 (Pa.Super. 2006).

In this case, a review of the testimony presented at the PCRA hearing leads to the conclusion that Attorney Charles was never asked to file an appeal. Attorney Charles' testimony that the appellant did not express a desire to appeal was credible. Commonwealth v. Johnson,

[24] N.T.P.C.R.A., December 19, 2011, at p. 42.

966 A.2d 523, 539 (Pa. 2009)(PCRA court's credibility determinations should be provided great deference by reviewing courts). See also Commonwealth v. Widgins, 29 A.3d 816, 820 (Pa.Super. 2011). The appellant entered a guilty plea, which resulted in a mitigated range sentence, and his dissatisfaction with his plight is first raised in these PCRA proceedings.

Furthermore, absent any indication that the appellant wanted to file an appeal, Attorney Charles did not have an obligation to consult with the appellant about an appeal. Counsel only has a constitutionally imposed duty to consult with an appellant about an appeal if he has "reason to think either (1) that a rational defendant would want to appeal . . ., or (2) that this particular defendant reasonably demonstrated to counsel that he was interest in appealing." Commonwealth v. Carter, 21 A.3d 680, 683 (Pa.Super. 2011) quoting Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000); see also Commonwealth v. Bath, 907 A.2d 619, 623 (Pa.Super. 2006) quoting Commonwealth v. Touw, 781 A.2d 1250, 1254 (Pa.Super. 2001). Here, it is clear that Attorney Charles had no reason to consult with the appellant. A negotiated plea giving the appellant substantial benefits had been entered, and this Court complied with its terms and conditions. At sentencing, the appellant received a sentence of not less than thirty-six (36) months, a mitigated range sentence, and not more than eighty-four (84) months. He potentially faced a sentence of ten (10) to twenty (20) years.[25] A rational defendant would not have filed an appeal, and counsel had no reason to expect otherwise.

Likewise, the appellant, after entering his guilty plea, did not request that counsel file a motion to withdraw that plea, nor did he do so himself. He entered his guilty plea on November 12, 2009, but was not sentenced until February 17, 2010. Throughout the PCRA proceedings, he expressed dissatisfaction with trial counsel, but he did not do so either at the guilty plea or sentencing. Counsel cannot be deemed ineffective for failing to file a motion to

[25] N.T.G.P. at pp. 9-10.

withdraw a guilty plea unless the appellant either requested counsel to do so or made counsel aware of grounds to support such a motion. Commonwealth v. Gonzalez, 840 A.2d 326, 331 (Pa.Super. 2003).

The appellant maintains that counsel's strategy was flawed, and the role-playing, or fantasy, defense rather than insanity, was the defense with the greater likelihood of success. "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. 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. A claim of ineffectiveness generally cannot succeed through comparing, in hindsight, the trial strategy employed with alternatives not pursued." Commonwealth v. Sneed, 45 A.3d 1096, 1107 (Pa. 2012)(internal quotations omitted). Trial counsel, as the record discloses, pursued a viable insanity defense. He secured well-recognized experts to support the defense, and intended to utilize the appellant's psychiatric history to corroborate that defense. The role-playing defense did not offer the potential for success, which was "substantially greater than the course actually pursued." Id. The appellant did not merely engage in chats, but sent pictures and arranged to meet his intended victim. See Commonwealth v. Crabill, 926 A.2d 488, 492 (Pa.Super. 2007)(collecting cases)(Appellant's communication with agent as opposed to a twelve year old girl, with whom he had taken substantial steps to meet, was irrelevant for purposes of sustaining conviction.). The appellant also believes that his lawyer should have secured the testimony of an "age play expert" as opposed to the "hack" he hired.[26] It is doubtful that such expert testimony is admissible. See United States v. Levinson, 2011 WL 1467225 (S.D Fla. March 17,

[26] N.T.P.C.R.A, September 6, 2012, p. 151.

2011)(collecting cases)(Expert testimony regarding sexual role-playing or fantasy-based erotic relationship is not based upon reliable scientific or technical methodology and is inadmissible under the Daubert standard); U.S. v. Friedlander, 395 F. App'x. 577, 581 (11th Cir. 2010)(No error in precluding expert testimony about the prevalence of "internet fantasy".).

The appellant maintains that counsel was not prepared for trial, but was preoccupied with an earlier trial. He also alleges that counsel did not consult with him to his satisfaction. Trial counsel denied the appellant's accusations, and explained his preparation:

> I prepared very thoroughly for your case, as I do with all my cases. And I believe that, with regard to the witnesses that were called by the Commonwealth, I cross examined them effectively and to the best of my ability.[27]

Trial counsel also reviewed the appellant's case with him at the prison on a "number of occasions". Trial counsel's testimony was believable and credible, and the appellant's recollection was clouded and uncorroborated. The crux of the appellant's complaints regarding counsel is counsel's decision not to spend more time with the appellant discussing the age-play defense.

Additionally, it is "well settled that the amount of time an attorney spends consulting with his client before trial is not, by itself, a legitimate basis for inferring the total extent of counsel's pre-trial preparation, much less the adequacy of counsel's preparation." Commonwealth v. Harvey, 812 A.2d 1190, 1196 (Pa. 2002); Commonwealth v. Bundy, 421 A.2d 1050, 1051 (Pa. 1980). Here, the defendant has failed to allege any issues that his counsel should have raised, or any beneficial information that his counsel would have discovered, had further pre-trial consultations been held. Id.; see also Commonwealth v. Porter, 728 A.2d 890, 896 (Pa. 1999).

[27] N.T.P.C.R.A., December 19, 2011, p. 42.

The appellant also cannot maintain relief by raising the ineffectiveness of standby counsel. Commonwealth v. Spotz, 47 A.3d 65, 95 (Pa. 2012). It has been consistently held that ineffectiveness claims that arise from the period of self-representation will not be considered. Commonwealth v. Bryant, 855 A.2d 726, 373 (Pa. 2004); Commonwealth v. Appel, 689 A.2d 891, 904-905 (Pa. 1997)(collecting cases).

For all the foregoing reasons, the denial of the appellant's request for relief under the PCRA should be affirmed.[28]

[28] The appellant's other claims are without merit, but addressed herein: (a) the trial transcripts have been completed and have been transmitted to the Superior Court; (b) this Court has endeavored to provide the appellant with all relevant and requested documents, including transcripts, reports and affidavits. However, the appellant has failed to demonstrate "exceptional circumstances" for any other requested item. Pa.R.Crim.P. 902(E)(1); (c) the appellant did not allocute at sentencing, but was not precluded from doing so. He then received a mitigated range sentence. This issue is waived. Commonwealth v. Jacobs, 900 A.2d 368, 375-377 (Pa.Super. 2006)(Denial of the right of allocution does not create a non-waivable challenge to the legality of the sentence.). A review of the appellant's testimony at the PCRA hearing demonstrates that if he did allocute, his testimony would have had a deleterious effect on his sentencing; (d) the appellant's sufficiency of the evidence claims are waived by the entry of a guilty plea and are not subject to attack in a post-conviction proceeding. Commonwealth v. Rounsley, 717 A.2d 537, 539 (Pa.Super. 1998); Commonwealth v. Williams, 660 A.2d 614, 619 (Pa.Super. 1995). In any event, the evidence was sufficient. See Craybill, supra; Commonwealth v. Bohonyi, 900 A.2d 877 (Pa.Super. 2006); Commonwealth v. Jacob, 867 A.2d 614 (Pa.Super. 2005); Commonwealth v. Zingarelli, 839 A.2d 1064, 1071 (Pa.Super. 2003).