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Commonwealth v Greenawalt

Commonwealth of Pennsylvania
v. Lance Patrick Greenawalt, Defendant
Court of Common Please of Adams County, Pennsylvania
Criminal Action No. 877-2009

HEADNOTES

Criminal Law: Post-Conviction Relief: Effectiveness of Counsel

1.Under the Post Conviction Relief Act (PCRA), petitioners have the burden of proving that counsel provided ineffective representation. 42 Pa. C.S. § 9543(a)(2)(ii).

2.Counsel is ineffective if a PCRA petitioner pleads and proves by a preponderance of the evidence that (1) the underlying legal claim has arguable merit; (2) counsel's action or inaction lacked a reasonable basis to effectuate the client's interest; and (3) prejudice, to the effect that there was a reasonable probability that the outcome would have been different but for counsel's deficient performance. Commonwealth v. Pierce, 527 A.2d 973 (Pa. 1987).

3.A PCRA court may deny relief if a petitioner fails to meet any one of the three prongs for proving ineffective assistance of counsel.

Criminal Law: Post-Conviction Relief: Appellate Review

1.An appellate court reviews a PCRA court's determination for whether its findings are supported by the record and free of legal error.

2.An appellate court reviews a PCRA court's legal determinations de novo, under a plenary standard of review.

3.An appellate court gives great deference to a PCRA court's factual findings and determinations of witness credibility and will not disturb those findings that are supported by the record.

Criminal Law: Post-Conviction Relief: Credibility Determinations

1.Because it views evidence firsthand, a PCRA court may make credibility determinations that are supported by the record.

2.A PCRA court properly discredited all testimony of the PCRA petitioner, where evidence showed that the petitioner had been convicted of numerous crimes of falsehood, lied to the victims in his case, created a materially false alibi, gave the Court false information for use in the presentence investigation report, misled his trial counsel, testified in an evasive and dishonest manner, and gave testimony that was directly contradicted by other witnesses and documentary evidence.

Criminal Law: Post-Conviction Relief: Effectiveness of Counsel: Failure to Prepare for Trial

1.Counsel has a duty to adequately prepare a case for trial, and an unreasonable failure to prepare for trial is an abdication of the duty of effective representation.

2.Counsel's duty to prepare a case for trial includes conducting any necessary investigation, securing the appearance of witnesses, and subpoenaing any necessary documentary evidence.

3.Limited pretrial contact with a defendant is not per se ineffective assistance of counsel.

4.Counsel did not unreasonably fail to prepare for trial where, in a non-complex case, he met with defendant multiple times, had multiple phone conversations with defendant, and investigated potential witnesses and alibis.

Criminal Law: Post-Conviction Relief: Effectiveness of Counsel: Plea Negotiations

1.Counsel has a duty to inform his or her client of any plea offers tendered by the prosecution. Laffler v. Cooper, 132 S.

Ct. 1376 (2012).

2.Counsel is not per se ineffective by advising a client to take a plea offer where counsel reasonably believes that the plea offer is favorable and that there would be a high chance of conviction at a trial followed by a prison sentence much longer than the plea offer.

Criminal Law: Post-Conviction Relief: Effectiveness of Counsel: Failure to Call Witness

1.To establish ineffectiveness for failure to call a witness, a PCRA petitioner must establish (1) that the witness existed; (2) the witness was available to testify for the defense; (3) counsel knew or should have known of the witness's existence; (4) the witness was prepared to cooperate and testify; and (5) the absence of the testimony prejudiced the petitioner.

2.To show prejudice for counsel's failure to call a witness, a petitioner must prove that the omission denied him a fair trial.

3.Counsel was not ineffective for failing to call certain witnesses where defendant failed to establish that one witness existed and failed to show that the other witnesses would have cooperated or given testimony favorable to the defense.

Criminal Law: Post-Conviction Relief: Effectiveness of Counsel: Failure to Subpoena Documents

1.The decision whether to subpoena documents is a matter of trial strategy, because trial counsel is in good position to assess whether evidence will be helpful, harmful, or useless.

2.Counsel was not ineffective for failing to subpoena victim's personal journal where the journal actually corroborated victim's testimony, journal lacked impeachment value, and counsel otherwise adequately cross-examined victim.

HEADNOTER'S NOTE: This matter was appealed to the Superior Court, No. 687 MDA 2013 (Apr. 22, 2013).

Appearances:
Brian R. Sinnett, Esq., First Assistant District Attorney
David R. Erhard, Esq., Counsel for Defendant
Lance Greenawalt, Defendant

OPINION

Before Walker, S.J., of the 39th Judicial District, Specially Presiding

MEMORANDUM OPINION

"Some people believe with great fervor preposterous things that just happen to coincide with their self-interest." Coleman v. Comm'r of Internal Rev., 791 F.2d 68, 69 (7th Cir. 1986). In this case, a jury convicted Defendant Lance Greenawalt of breaking into the home of an acquaintance and stealing $1,000.00 in cash from the acquaintance's kitchen. Greenawalt, convinced that he is actually innocent and was framed, claims that his trial attorney was constitutionally ineffective for failing to secure a not guilty verdict. Greenawalt's claims under the Post Conviction Relief Act depend on his credibility, which the Court finds utterly lacking; and on the law, which bars relief. For the reasons that follow, the Court denies his PCRA petition with prejudice.

STATEMENT OF THE CASE[1]

Mervin "Sonny" Masemer is a retired farmer who lives in York Springs with his wife of over 50 years, Patsy, a retired bank employee. N.T., 2/3/10 (Transcript of Proceedings of Jury Trial), at 27, 102. In 2008, the Masemers became acquainted with Greenawalt, when he showed up at their door asking to borrow Sonny's tractor and hay chopper. Id. at 28-29. Greenawalt and Sonny Masemer helped each other with farm chores, such as cutting hay, chopping firewood, and clearing out brush. Id. at 30-34. From time to time, Greenawalt gave eggs to the Masemers. Id. at 89, 103. In return, Patsy occasionally cooked for him and gave him sandwiches. Id. Greenawalt visited the Masemer homestead about once a week or every ten days. Id. at 34-35. Patsy Masemer said that she "kind of felt sorry for him in a way," because he was a single man living by himself. Id. at 89. Although the Masemers and Greenawalt were friendly toward one another, they did not allow Greenawalt to access their house when they were not home. Id. at 34-35, 89-90.

At one point in November 2008, Greenawalt asked Sonny for a loan of $200.00 to throw a birthday party for his girlfriend. Id. at 35-36, 91. While Greenawalt was in the Masemer's kitchen, Sonny obtained cash for the loan from a large shoebox in the kitchen. Id. at 36-37. Greenawalt later repaid the loan. Id. at 36-37, 92. On a second occasion, Sonny loaned

Greenawalt $50.00 from money located in the same shoebox. Id. at 38, 93.

On January 8, 2009, the Masemers returned from errands and discovered Greenawalt inside their home, in the kitchen. Id. at 39. That day was a Thursday, and on Thursdays, the Masemers went to Hanover to run errands. Id. at 40, 93-94. On that particular Thursday, the Masemers went to Mar-Bar Tire Service to pick up a rake tire for a hay rake, forwent lunch in Hanover, and returned home early. Id. at 41.

When the Masemers returned, Sonny noticed a dark blue pickup truck—Greenawalt's—parked in front of a shed on the property. Id. at 42. Sonny got out and walked toward his house. The storm door was open, the key was in the door, and inside the kitchen was Greenawalt, kneeling on the floor in his stocking feet. Id. at 43, 46-47, 96. Sonny evidently surprised Greenawalt, because he stood up and uttered a profanity. Id. at 47, 69-70. Greenawalt claimed that he needed to use the bathroom, so Sonny showed him where it was upstairs. However, Sonny did not hear the sound of a toilet flushing. Id. at 47. After that, Greenawalt had barbeque with the Masemers in the kitchen, he got two bales of hay from the barn, and left. Id. at 49, 71-72, 97.

Although the sequence of events was peculiar, Sonny Masemer suspected nothing amiss, until the following Sunday, when he was doing his office work. Id. at 50. That day, he realized that money was missing out of an envelope inside the shoebox. Id. at 50-53. Specifically, ten 100-dollar bills were gone. Id. That amount represented the proceeds from the sale of a corn picker and some hay bales. Id. at 52, 100. Notwithstanding the implication that Greenawalt could have stolen the money, Sonny continued to have an amicable relationship with him Id. at 54-55. At trial, Sonny reported that the last time he talked to Greenawalt was on January 13, 2009, though he saw Greenawalt after that. Id. at 55-56.

Interestingly, Sonny did not immediately report to the police that he was missing $1,000.00. Id. at 74-75. He did, however, purchase a deadbolt lock from Lowes and had a handyman, Seth Cashman, install the deadbolt on his door on January 31, 2009. Id. at 58. In July 2009, Sonny finally reported the missing money to the township police. Id. at 76-77.

Police arrested Greenawalt and charged him with burglary, criminal trespass, theft by unlawful taking, and receiving stolen property. [2] Samuel A. Gates, Esq., represented Greenawalt at the preliminary hearing, and the case was held for court. At some point which is unclear in the record, First Assistant Public Defender Warren P. Bladen, Jr., Esq. began representing Greenawalt. The Commonwealth offered Greenawalt plea bargains which would have capped his sentence at five years. Greenawalt rejected the offers, and the case proceeded to trial.

On the morning of trial, February 3, 2010, Attorney Bladen requested a continuance on the record. He wanted several witnesses to testify for the defense, and he had prepared subpoenas only the evening before after speaking to Greenawalt. N.T. (Trial) 3-5. One witness, a Jackie Caver or Caplin (the last name is unclear), was out of state. Id. at 3, 11. Greenawalt needed her to impeach Sonny Masemer's expected testimony regarding his relationship with Greenawalt. Id. Greenawalt also wanted Latimore Township Police Chief Michael Weigand to be available to testify about the investigation of the case. Id. at 5-6. The Honorable Michael A. George denied the continuance request on the record. Id.

Immediately after the denial of the continuance request, Attorney Bladen indicated that Greenawalt wished to fire him. Greenawalt argued that Attorney Bladen had not properly prepared for trial. Id. at 9-10. Greenawalt focused on the following fact: he believed that Sonny Masemer would testify that he broke off contact with Greenawalt shortly after the alleged burglary and theft. Greenawalt claimed that Jackie Caver's/ Caper's testimony and phone records could contradict Masemer's contention. Id. He also claimed that Chief Weigand would testify that Masemer talked to him within a week of January 8, 2009 and said nothing about the missing $1,000.00—testimony to which the Commonwealth stipulated. Id. at 10. Finally, Greenawalt claimed that he was recently made aware of Mervin Masemer's personal journal, which he claimed would be "detrimental" to the Commonwealth's case. Id. at 9, 13. Then-Judge George denied the continuance request for a second time, and denied the request for appointment of new counsel.

In response, Greenawalt requested a bench trial. Id. at 14. Greenawalt said that he wanted the Court to try him because of his prior criminal record might prejudice the jury if he were to testify. Id. After the Court questioned him, Greenawalt changed his mind, the jury was brought in, and trial began. Id. at 17. At the conclusion of the trial, the jury found Greenawalt guilty of burglary, theft, and criminal trespass, the Commonwealth having withdrawn the charge of receiving stolen property.

On April 22, 2010, the date scheduled for sentencing, Greenawalt appeared with a third attorney, Stephen R. Maitland, Esq. Attorney Bladen also appeared and noted that he could no longer represent Greenawalt because their relationship had deteriorated and Greenawalt intended to raise claims of ineffective assistance of counsel. N.T., 4/22/10, (Tr. of Proceedings of Sentencing), 3. Greenawalt again professed on the record that Attorney Bladen was ill-prepared for trial and that PCRA proceedings would show Greenawalt's innocence. Id. at 9. The Court then sentenced Greenawalt to 4 – 10 years in state prison. Id. at 13. The sentence was in the aggravated range of the Guidelines. Id.

Greenawalt, through Attorney Maitland, timely filed a post-sentence motion on May 3, 2010 and a supplemental motion on May 24, 2010. He sought a new trial based on Attorney Bladen's ineffectiveness and after-discovered evidence. He also sought modification of his sentence. In a comprehensive opinion dated August 27, 2010, Judge George denied the post-sentence motion. The Court found that Greenawalt's claims of ineffective assistance of counsel and after-discovered evidence [3] lacked merit. Judge George also refused to reduce Greenawalt's sentence, reiterating that an aggravated sentence was necessary because Greenawalt committed a first-degree felony while under court supervision for a previous felony conviction.[4]

In the meantime, Greenawalt applied for appointment of counsel, and the Court appointed David R. Erhard, Esq., Greenawalt's fourth and most recent lawyer. Greenawalt appealed. On January 23, 2012, the Superior Court affirmed. Commonwealth v. Greenawalt, 43 A.3d 525 (Pa. Super. 2012) (unpublished memorandum). The court, however, refused to address Greenawalt's claims of ineffective assistance of counsel, citing Commonwealth v. Barnett, 25 A.3d 371 (Pa. Super. 2011) (en banc) (holding that ineffectiveness claims cannot be addressed on direct review unless a defendant waives the right to file a first PCRA petition). Greenawalt did not petition the Supreme Court for allowance of appeal. His conviction therefore became final for purposes of the PCRA on February 22, 2013, one year after the expiration of the date on which to petition for allowance of appeal. 42 Pa. C.S. § 9545(b).

This timely PCRA petition followed on July 2, 2012. I was assigned to preside, and on November 2, 2012, I denied Attorney Erhard's motion to withdraw as counsel, after a hearing at which Attorney Erhard agreed to work with his client (something that deserves commendation). On December 28, 2012, the Court took evidence. After the hearing, I received letter briefs from the Parties. Greenawalt's PCRA petition is now ripe for disposition.

DISCUSSION

The Post Conviction Relief Act provides an action for relief to persons who are convicted of crimes that they did not commit, or who are serving illegal sentences. 42 Pa. C.S. § 9542. To be eligible for relief, a PCRA petitioner must plead and prove by a preponderance of the evidence that he was convicted of a crime and is currently serving a sentence for that crime; that the conviction or sentence resulted from one of the enumerated reasons listed in the Act; and that the claim of error has not been previously litigated or waived. 42 Pa. C.S. § 9543(a).

In all of his claims, Greenawalt contends that Attorney Bladen rendered ineffective assistance of counsel pretrial and at trial. Greenawalt's specific claims are Attorney Bladen failed to adequately prepare for trial; he failed to subpoena and call potential alibi and impeachment witnesses; and he failed to request Mervin Masemer's daily journal, which was allegedly exculpatory.

Courts presume that criminal defense lawyers render constitutionally effective assistance to their clients. Commonwealth v. Natividad, 938 A.2d 310, 321 (Pa. 2007). To overcome this presumption, PCRA petitioners must plead and prove by a preponderance of the evidence that their lawyers were ineffective. Id. at 322; 42 Pa. C.S. § 9543. Petitioners meet their burden when they show that (1) the underlying claim of error has arguable merit; (2) there is no reasonable basis for their lawyer's actions or inactions; and (3) counsel's error resulted in prejudice. Natividad, 938 A.2d at 321 (citing Commonwealth v. Pierce, 527 A.2d 973, 975-76 (Pa. 1987)). It is not enough that a petitioner's lawyer was bad. The lawyer must have been constitutionally bad, meaning that counsel erred, and that but for the errors, there is a reasonable probability that the outcome (Greenawalt's conviction by the jury here) would have been different. Id.

A.Witness Credibility

Before discussing the substantive claims, the Court must comment on Greenawalt's credibility, and why I find that he has none. Because a PCRA court views the evidence firsthand, it is entitled to make credibility determinations that will be upheld on appeal if supported by the record. Commonwealth v. Johnson, 966 A.2d 523, 532 (Pa. 2009).

The record in this case is replete with Greenawalt's lies, falsehoods, and attempts at deception. His past belies honesty. Greenawalt has numerous prior convictions for crimes involving dishonesty or falsehood. His actions in this case reveal his character. Greenawalt provided an alibi defense to Attorney Bladen: that he was bow-hunting deer in Potter County on the date of the offense. No facts supported that alibi. Next, Greenawalt may have lied to the Masemers in order to obtain loans. After he was convicted, Greenawalt most likely lied to Adams County Adult Probation about his personal history. Finally, the Court did not find Greenawalt credible when he testified during his PCRA hearings. His testimony was evasive, and evidence directly contradicted him. For example, Greenawalt adamantly claimed that he saw Mervin Masemer numerous times after January 2009, contrary to Masemer's recollection. Greenawalt further contended that he never saw a deadbolt lock on the Masemer house front door. However, Seth Cashman testified—and provided a receipt—that shows that he installed a deadbolt lock on that door on January 31, 2009.

In contrast, other witnesses, including Attorney Bladen and especially the Masemers, were credible. Their demeanor and testimony seemed far more truthful than Greenawalt's. The heart of Greenawalt's PCRA is that he is actually innocent. However, if the Court is to accept that proposition, we must weigh his word against the Masemers. If Greenawalt is actually innocent, then Mervin and Patsy Masemer are either willing participants in a conspiracy, or unwitting tools. (In his fanciful claims of a frame-up, Greenawalt never stated whether the Masemers were conniving co-conspirators, or clean-handed cat's paws.) The Court finds it far more plausible that Greenawalt has been untruthful. Given the evidence, I would be a fool to take Greenawalt at his word.

B. Failure to Adequately Prepare for Trial

First, Greenawalt claims that Attorney Bladen did little to nothing to prepare for trial, and that his omissions constituted ineffective assistance of counsel. Greenawalt testified at the PCRA hearing that Attorney Bladen first met with him on February 1, 2010, two days before trial. They had three meetings total, the longest being an hour. Greenawalt claims that he sent a list of documents and witnesses to subpoena to Attorney Bladen. He claims that he also mentioned the witness names to Attorney Bladen in November 2009: Jennifer Beegle, Chief Wiegand, Officer Schriner, Brian Knouse, and Jackie Caver/Caper. Greenawalt also claimed that he mentioned the importance of Mervin Masemer's journal repeatedly, as well as records that supported an alibi.

In response, Attorney Bladen credibly testified that he duly requested the case file from Attorney Gates when he assumed representation. He said that he met with Greenawalt regarding his four pending cases and spoke with him on the telephone. He issued one subpoena to Ms. Caver/Caper, but she was not in Pennsylvania, and thus beyond the Court's subpoena power. Attorney Bladen did not recall receiving a witness list, and he did not remember whether Greenawalt asked him to subpoena cellphone records. He and Greenawalt discussed Jennifer Beegle's testimony, but it was unclear what she was going to say. Greenawalt apparently had a habit of giving Attorney Bladen potential witnesses' names without the specifics of their proposed testimony. Attorney Bladen mentioned some discussion about an alibi—that Greenawalt was bow-hunting deer in Potter County—but provided no corroboration. Greenawalt became upset and abandoned that alibi defense.[5] Now, he claims that he was on the other side of Adams County at the time of the alleged theft. Attorney Bladen said that he advised Greenawalt regarding the admissibility of prior convictions if Greenawalt were to testify. Finally, Attorney Bladen recounted the dustup the morning of trial in which Greenawalt wanted to fire his attorney and continue the case for a bench trial, and later changed his mind.

Trial counsel has a general duty to adequately prepare for trial, including conducting necessary investigation, securing the appearance of witnesses, and subpoenaing any documents essential to the defense. Johnson, 966 A.2d at 535. "Counsel's unreasonable failure to prepare for trial is an abdication of the minimum performance required of defense counsel." Id. (internal quotation omitted).

Usually, failure-to-prepare claims arise in capital cases, where the stakes are somewhat higher. See, e.g., Commonwealth v. Brooks, 839 A.2d 245 (Pa. 2003). In Brooks, for example, defense counsel failed to meet with his client in person before trial and instead relied on a single 30-minute phone call. Id. at 248-49. On appeal, the Supreme Court reversed Brooks' conviction and death sentence, finding that counsel's failure to meet with his client in person constituted ineffective assistance. Id. at 250. Limited pretrial contact with a defendant, however, is not per se ineffective assistance. Commonwealth v. Johnson, 51 A.3d 237 (Pa. Super. 2012) (en banc). In Johnson, counsel met with his client, who was facing the death penalty, only three times before trial. Id. at 243-44. A majority of the en banc court upheld the conviction and subsequent life sentence, finding that counsel's performance at trial was not deficient. Id. The court also noted that there was overwhelming evidence of the defendant's guilt. Id.

The Court holds that Greenawalt's lack-of-preparation claim lacks arguable merit. Greenawalt's contentions misstate facts and twist the truth to fit his version of events. Attorney Bladen testified that he met with Greenawalt in person multiple times, and called him on the phone multiple times. He investigated potential witnesses. Greenawalt sent Attorney Bladen on wild goose chases after fabricated alibis and useless witnesses, and it is not Attorney Bladen's fault that the searches proved unfruitful. Finally, Attorney Bladen testified that, in his professional opinion, he was adequately prepared for trial. Greenawalt did nothing to impeach this testimony at the PCRA hearing.[6]

In this case, Attorney Bladen actually performed more pretrial work than counsel did in Johnson, in which the defendant was charged with a capital crime. The charges here were serious, but this case is not nearly as complex as a death penalty case, in which counsel must prepare for a guilty phase and a penalty phase. In contrast, the issues in this case were simple. The Commonwealth alleged that the Masemers caught Greenawalt red-handed in their home without permission to be there, after which they noticed money missing. Greenawalt claimed that he did not take the money, or that no money was ever taken. In other words, this case was not a complicated case that required weeks of research and preparation.

Additionally, the Court rejects Greenawalt's claim that that Attorney Bladen was ineffective for failing to subpoena and introduce records from Verizon that purportedly support an alibi. First, the records in question were never authenticated. Second, they are hearsay. Third, they prove nothing. Even if the records were admissible, the phone records could not prove that Masemer made the phone call in question. Greenawalt could have testified that he received the phone call on his cellphone and that Masemer was on the other end, but Greenawalt chose not to testify at trial. And given Greenawalt's credibility, it is just as likely that he made the phone call from the Masemer's home phone while he was burglarizing their home, to cover his tracks.

Greenawalt's claim of inadequate trial preparation lacks arguable merit. The record reveals that Attorney Bladen's preparation for trial was adequate. Because Greenawalt's claim lacks arguable merit, he cannot prove that Attorney Bladen was ineffective. Natividad, 938 A.2d at 321 ("The PCRA court may deny an ineffectiveness claim if the petitioner's evidence fails to meet a single one of [the three] prongs.") (internal quotation omitted). In short, I agree with the Commonwealth that the claim is meritless as a whole. See Commonwealth v. Bozic, 997 A.2d 1211 (Pa. Super. 2010) (finding a contention of inadequate preparation to be "patently frivolous" because the underlying claim lacked arguable merit).

C. Failure to Call or Subpoena Witnesses

Next, Greenawalt contends that Attorney Bladen was ineffective for failing to subpoena and call witnesses at trial. This claim revolves around two contentions: the witnesses would have cast doubt on Sonny Masemer's memory regarding the date of the alleged offense, and they would have contradicted the Masemers' testimony regarding whether Greenawalt had any contact with them post-theft.

To establish ineffectiveness for failure to call a witness, a PCRA petitioner must establish (1) that the witness existed, (2) the witness was available to testify for the defense, (3) counsel knew or should have known of the witness's existence, (4) the witness was prepared to cooperate and testify, and (5) the absence of the testimony prejudiced the petitioner. Commonwealth v. Miner, 44 A.3d 684, 687 (Pa. Super. 2012). To show prejudice for counsel's failure to call a witness, a petitioner must prove that the omission denied him a fair trial. Commonwealth v. Small, 980 A.2d 549, 560 (Pa. 2009).

The Court finds that this second claim fails with respect to all witnesses. Moreover, as to some of the suggested witnesses, this claim is patently frivolous. Counsel can never be found ineffective for failing to pursue frivolous issues. E.g., Commonwealth v. Calhoun, 52 A.3d 281, 287 (Pa. Super. 2012).

With respect to Jackie Caver/Caper, the claim fails to meet any of the requirements of the above test. The proper spelling of this proposed witness's last name remains unknown. The Court cannot even be sure that she exists, as she has never testified in any proceeding in this case. Furthermore, the proposed substance of her testimony was never made clear, and the Court rejects any speculation by Greenawalt as to what she might have testified as unreliable.

Greenawalt's second proposed witness, Brian Knouse suffers the same fate, legally speaking. Knouse never testified at any of the hearings. The Court does not know what Knouse would have said had he testified, and we will not take Greenawalt's representations as to what Knouse would have said. Those representations are self-serving and unreliable.

Third, the two police officers, who testified at the PCRA hearing, were of no evidentiary value. Greenawalt wanted Chief Weigand to testify that he saw Mervin Masemer several times between the date of the theft (January 8, 2009) and the date that Masemer finally reported it (sometime in July). Chief Weigand agreed that Masemer failed to report the theft for months. But Masemer himself admitted as much at trial. As for Officer Schreiner, Greenawalt similarly failed to show that he would have offered any helpful testimony.

The fourth witness, Seth Cashman, was detrimental to Greenawalt's claims. At trial, Mervin Masemer testified that he had a deadbolt lock installed shortly after Greenawalt mysteriously appeared in the kitchen. N.T. (Trial) 58-59, 75-76. At the PCRA hearing, Greenawalt contended that Masemer was lying or mistaken. Greenawalt said that he was at Masemer's house "dozens" of times after January 2009, and that there were no deadbolt locks on any doors. Seth Cashman is a handyman from York Springs. He remembered installing the deadbolts, but had forgotten the date. He was able to remember after the Commonwealth showed him a personal check from Mervin Masemer to him for $70.00. The check was dated January 31, 2009 and was cashed on February 2, 2009. The Commonwealth also showed Cashman his own invoice for installing the locks. It was dated January 31, 2009. Cashman's testimony is extremely detrimental to

Greenawalt, because it means that Greenawalt either lied or was mistaken when he claimed that he visited the Masemers' home dozens of times after January 2009 and saw no deadbolt locks. Therefore, Attorney Bladen cannot be ineffective for failing to call Cashman as a witness.

Fifth, Jennifer Beegle, Greenawalt's former paramour, also was of no evidentiary value. A simple syllogism explains why Greenawalt wanted her to testify. Mervin Masemer said that he last spoke to Greenawalt in January 2009. Masemer, however also stated that he knew that Beegle was pregnant with Greenawalt's son, a fact that no one knew until Valentine's Day 2009. Therefore, Masemer was lying. The problems with this syllogism are myriad. As the Commonwealth notes, at best, Beegle's testimony would have shown that Masemer's memory of dates was slightly off. Her testimony on a somewhat minor detail does not meet the standard for proving ineffectiveness. Had the jury heard her testimony, it may have concluded that Mervin Masemer was merely mistaken about dates, something that could easily be explained by his age. Furthermore, as the Commonwealth argues, Beegle's testimony might have shown that Greenawalt was mistaken about his ability to father a child, or that he played on the Masemers' heartstrings to secure loans. Finally, Attorney Bladen had multiple reasonable bases for failing to call Beegle as a witness. He talked with her and determined that she would not help Greenawalt, and that she did not want to cooperate in furtherance of his defense.

In sum, none of the witnesses that Attorney Bladen did not call were material. None provided exculpatory evidence. Furthermore, only one witness, Beegle, offered impeachment evidence, which is on a collateral matter. At any rate, the claims that Attorney Bladen failed to call the witnesses lack merit. Indeed, the claims are without any evidentiary support and are frivolous. Nothing in the record supports Greenawalt's bald assertion that the above witnesses would have destroyed the foundation of the Commonwealth's case.

D. The Journal

Mervin Masemer's personal daily journal has been a source of much contention throughout this matter. Greenawalt claims that the journal, not subpoenaed by Attorney Bladen, would have been extremely damaging to the Commonwealth's case. He argues that the journal does not reflect any notations about an alleged burglary or missing money from the dates January 8-11, 2009, and that it would have undermined Masemer's honesty and memory. Furthermore, Greenawalt argues that the photocopies of the journal, which were made part of the record and sealed during the pendency of post-sentence motions, were altered, and are different than the photocopies of two journal pages given to Attorney Bladen at trial. The differences are to the January 8 entry, in which the term "LANCE-here" is written, and the note "11:50-12:00 a.m. [sic]" was added sometime after the Commonwealth produced its exhibits for trial. Greenawalt contends that the alterations significantly affect the credibility of Mervin Masemer.

In response, the Commonwealth argues that this claim is a red herring, designed to throw the Court off the trail of the overwhelming evidence of guilt. It argues that had Attorney Bladen introduced the two photocopied pages at trial, he would have bolstered Mervin Masemer's testimony. The Commonwealth also points to a prior finding in this case that had Attorney Bladen introduced the journal, Greenawalt probably would have claimed ineffectiveness for doing so. As for the alterations, the Commonwealth argues that they are inculpatory and would have prejudiced Greenawalt.

The decision to subpoena certain documents is a matter of trial strategy, because a defendant's lawyer, trained in the law, is in good position to assess whether certain evidence may be helpful, harmful, or useless. See Commonwealth v. McLaurin, 45 A.3d 1131, 1140 (Pa. Super. 2012) (counsel not ineffective for failing to subpoena evidence that would have been inadmissible). The Pierce test requires a PCRA petitioner alleging ineffectiveness for failure to subpoena evidence to show that the unused evidence would have helped the petitioner, that the failure to subpoena the evidence was not a reasonable trial strategy, and that its absence resulted in prejudice. Commonwealth v. McMaster, 666 A.2d 724, 732 (Pa. Super. 1995) (finding no ineffectiveness for failure to have sexual assault victim examined by psychiatrist). The failure to do a futile act is not ineffective assistance of counsel. Commonwealth v. Yarbough, 375 A.2d 135, 139 (Pa. Super. 1977).

Greenawalt's claim regarding the journal is convoluted nonsense. It does not meet any of the prongs of the Pierce test. He has pinned his case to a journal, but there is no logical way that the journal's absence at trial, original or altered, constituted ineffective assistance of counsel. As altered, the journal corroborates Masemer's general testimony, because it lists the time during which Mervin and Patsy Masemer found an uninvited Greenawalt inside their kitchen. As unaltered, the journal still corroborates Mervin Masemer's testimony, because it shows that he stopped seeing Greenawalt after January. Moreover, the journal is not exculpatory, and its usefulness as impeachment material is dubious. Therefore, there is no arguable merit to this claim.

Furthermore, Attorney Bladen had a reasonable basis for not subpoenaing or using the journal at trial. It was not good impeachment material. And he believed that the jury would have looked unfavorably on a strenuous cross-examination of the Masemers, who were credible, likeable, and described as "everybody's grandparents." A cross-examination on the minutiae of Mervin Masemer's life from January 2009 to July 2009 might "turn off the jury," he opined. In Attorney Bladen's professional opinion—and unfortunately for Greenawalt,—the Masemers were good witnesses. And the record shows that Attorney Bladen performed adequate cross examinations by pointing out inconsistencies and memory lapses in the Masemers' direct testimony.

Finally, Greenawalt failed to show that the journal's presence and use at trial would have resulted in a different outcome. As discussed above, the journal had little evidentiary value, and Greenawalt's claims about altering and witness credibility do not make sense.

This final claim, like the first two, does not entitle Greenawalt to relief under the PCRA. The claim that the journal should have been subpoenaed lacks arguable merit, because the journal was simply unimportant. Greenawalt's attorney had a reasonable basis for not requesting the journal in discovery. Lastly, Greenawalt cannot show that the absence of the entire journal at trial resulted in prejudice.

CONCLUSION

This PCRA petition lacks merit. The evidence before the Court and the law do not support Greenawalt's claims of ineffective assistance of counsel. He has pinned his hopes to phone calls and a journal, and testimony from witnesses whose proposed testimony was either unhelpful or entirely useless. The fixation on Mervin Masemer's journal borders on delusional, and does not support any viable claim.

The claims advanced in this litigation are without arguable merit. In addition, Greenawalt's trial counsel had a reasonable basis for his chosen strategy and course of action. Finally, Greenawalt cannot show any resulting prejudice resulting from what his counsel did or did not do. The law does not allow relief under the PCRA. The Court therefore enters an order that denies the petition.[7]

ORDER OF COURT

AND NOW THIS 14 DAY OF March, 2013, for the reasons in the foregoing Opinion, IT IS HEREBY ORDERED THAT Defendant's request for relief under the Post Conviction Relief Act be, and hereby is, DENIED.

Pursuant to Pennsylvania Rule of Criminal Procedure 908(E), the Defendant is hereby advised that:

1. You have a right to appeal this Court's decision;

2. Any notice of appeal must be filed within 30 days of the date on which this Order is entered on the docket;

3. If you cannot afford the cost of filing an appeal, you have the right to proceed without prepayment of costs; and

4. If you cannot afford a lawyer, you have the right to court-appointed counsel.

Pursuant Pa. R. Crim. P. 908(E), the Clerk of Courts shall immediately serve a copy of this Opinion and Order of Court upon the Defendant via certified mail, return receipt requested, and record in the docket the certified mail receipt number, and the date on which the return receipt is returned. The Clerk shall otherwise comply with the requirements of Pa. R. Crim. P. 114.

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[1]I am specially presiding because the entire 51st Judicial District recused itself by an order dated August 8, 2012.

[2]18 Pa. C.S. §§ 3502(a); 3503(a)(1)(i); 3921(a); 3925.

[3]Greenawalt claimed that he had phone records and bank records proving that he was bow-hunting deer in Potter County on January 8, 2009. The Court ruled that an alibi cannot be after-discovered evidence, because a person presumably knows his own location.

[4]Judge George noted that substantial evidence existed that Greenawalt lied about his personal history when interviewed for

preparation of the presentence investigation report. The Court, however, discounted that as a reason for the aggravated-range sentence. This Judge has never seen the Presentence Investigation Report, which is not a matter of public record.

[5]Greenawalt later claimed in post-sentence motions that Attorney Bladen was ineffective for failing to pursue the archery alibi. He has abandoned that claim here. The proposed alibi, uncorroborated and abandoned, casts doubt on Greenawalt's credibility. The Court has never heard of anyone hunting for deer with a bow in January. Evidently, no one had heard of Greenawalt bow-hunting that January, either.

[6]At the hearing, Greenawalt expressed frustration that Attorney Bladen suggested that he take the Commonwealth's plea offer. The Court does not fault Attorney Bladen for giving what was—in hindsight—was good advice. Had Attorney Bladen insisted that Greenawalt reject any plea offers and take the case to trial, Greenawalt still could have claimed ineffective assistance of counsel. See Lafler v. Cooper, 132 S. Ct. 1376 (2012).

[7]The Court's order directs the Clerk to inform Greenawalt, via certified mail return-receipt requested, of his appellate rights. See Pa. R. Crim. P. 908(E).