IN THE COURT OF COMMON PLEAS

LEHIGH COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, Respondent, v. JAMIE LYNN SILVONEK, Petitioner.	CP-39-CR-0002141-2015

PETITIONER'S POST-PCRA HEARING REPLY BRIEF

Attorney Waldron failed to represent Jamie effectively in numerous key respects, from his investigation of her case through her decertification hearing, guilty plea and sentencing, and appeals. The consequences of his ineffective representation were dire; rather than being prosecuted as a child in juvenile court, 14-year-old Jamie was prosecuted as an adult and is currently serving a sentence of 35 years to life. While the Commonwealth – and Attorney Waldron himself – may characterize his repeated failures as a deliberate "strategy," and cast blame on his experts or his client, no reasonable basis existed for the many lapses in Attorney Waldron's professional obligations to his client, and not one of these lapses can seriously be said to have been undertaken in Jamie's interest.

I. There Was No Reasonable Basis for Attorney Waldron's Decision to Ignore Potential Fact Witnesses.

Attorney Waldron contends that his strategy for Jamie's decertification hearing was to treat it as a "battle of the experts." (PCRA Hr'g Tr. 10/4/21 at 137:15-23.) Even if that were a reasonable strategy at the outset, it could not survive the Commonwealth's presentation of lay witnesses who described Jamie as a bullying, "budding sociopath" (among other things). Once the Commonwealth went beyond expert testimony to present testimony from witnesses who purported to know Jamie's character, Attorney Waldron should have been prepared to rebut it. He was not, because he had never interviewed a single person who knew Jamie. The Commonwealth's damning portrayal of Jamie as a deceptive criminal mastermind was thus left wholly unchallenged.[1]

[1] The fact that Attorney Waldron hired an investigator to interview some potential witnesses does not excuse him from the responsibility of conducting an appropriate investigation. *See, e.g.*, *Commonwealth v. Borelli*, 431 A.2d 1067, 1070 (Pa. Super. Ct. 1981) ("A defense attorney may employ lay investigators to perform investigative functions, but counsel is not thereby relieved of responsibility for the effectiveness of the investigation.") (citing ABA Committee on Professional Ethics, Formal Opinion No. 316).

The Commonwealth wrongly asserts that "[c]ounsel's failure to interview a witness is not *per se* ineffective assistance because such a decision generally involves a matter of trial strategy." *See* Commonwealth's Post-PCRA Hearing Brief ("Cmwlth. Br."), at 18 (citing *Commonwealth v. Days*, 718 A.2d 797, 803 (Pa. Super. 1998)). That is not what the *Days* court held. On the contrary, it is counsel's decision not to ***call*** a witness that may be deemed a matter of trial strategy (presumably following a reasonable investigation). *See Days*, 718 A.2d at 803 (citing *Commonwealth v. Auker*, 681 A.2d 1305, 1319 (Pa. 1996)).

When it comes to the reasonableness of an attorney's decision to forego ***interviewing*** any witnesses at all, on the other hand, the Pennsylvania Supreme Court has held that "[c]ounsel has a duty to undertake reasonable investigations or to make reasonable decisions that render particular investigations unnecessary. Where counsel has made a strategic decision ***after a thorough investigation*** of the law and facts, it is virtually unchallengeable; strategic choices made following a less than complete investigation are reasonable precisely to the extent that reasonable professional judgment supports the limitation of the investigation." *Commonwealth v. Fears*, 836 A.2d 52, 71-72 (Pa. 2003) (emphasis added) (internal citations omitted) (quoting *Commonwealth v. Basemore,* 744 A.2d 717, 735 (Pa. 2000) (citing *Strickland v. Washington,* 466 U.S. 668 (1984)); *see also, e.g.*, *Commonwealth v. Bailey*, 390 A.2d 166, 170 (Pa. 1978) (criminal defense attorneys "must conduct appropriate investigations, both factual and legal, to determine what matters of defense can be developed").

The prevailing standards of care for attorneys representing children in decertification proceedings similarly state that counsel is expected to conduct a timely and thorough investigation, and to interview "all witnesses named by the client, all known state witnesses, and any other relevant witnesses," so that they are properly prepared to "[p]resent all facts, mitigating

evidence and testimony that may convince the court to keep the child in juvenile court." NATIONAL JUVENILE DEFENSE STANDARDS, https://njdc.info/wpcontent/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf ("NATIONAL STANDARDS"), at Standards 4.3, 8.3, 8.4.

Attorney Waldron's failure to interview or call ***any*** potential fact witnesses was not the product of reasonable professional judgment. Attorney Waldron claims that his reason for not calling any character witnesses at Jamie's decertification hearing was that Dr. Dattilio had included summaries of his own interviews with some of those witnesses in his report, and that submitting their statements to the Court through Dr. Dattilio's report would spare the witnesses exposure to cross examination. (PCRA Hr'g Tr. 10/4/21 at 46:21-23, 85:17-24.) Having never interviewed any of the witnesses, however, Attorney Waldron had ***no*** basis (much less a reasonable basis) for believing they would not withstand cross-examination. In fact, as demonstrated by the PCRA hearing testimony of several of these witnesses – all of whom, unlike the Commonwealth's lay witnesses, knew Jamie for all or most of her life – they were able to present a vastly different and extremely positive picture of Jamie, as contrasted with the Commonwealth's witnesses at the decertification hearing, and they held up perfectly well during cross-examination. *See generally* (PCRA Hr'g Tr. 10/5/21 at 6:22-39:7, 91:15-105:14; PCRA Hr'g Tr. 10/6/21 at 4:9-18:15, 185:25-223:4.).[2]

[2] If Attorney Waldron truly wanted Judge Dantos to consider Dr. Dattilio's written summaries of the witness interviews he conducted, then he should have brought those summaries to the Court's attention, whether through his examination of Dr. Dattilio, through argument or through briefing. His failure to do so left Judge Dantos with the mistaken impression that Dr. Dattilio's assessment of Jamie was based primarily on Jamie's self-reporting rather than on his numerous interviews of Jamie's friends, family and teachers. (*See* PCRA Ex. 6 at 27-28 ("This Court notes that the primary foundation on which Dr. Dattilio's report is based is the Defendant's own unreliable recounting and version of events….Based on the Defendant's self-reporting, Dr. Dattilio found

Deciding not to call a particular witness after a reasonable investigation may be a defensible trial strategy. Failing even to interview, much less call, ***any*** character witnesses, including those who know the defendant best, is not – particularly in the context of a child's decertification hearing, where evidence bearing on the child's personal history, degree of culpability and amenability to treatment is of paramount importance.

II. There Was No Reasonable Basis for Attorney Waldron's Failure to Disclose Critical Evidence to His Experts and the Court.

Having decided to approach Jamie's decertification hearing as a "battle of the experts," it was incumbent on Attorney Waldron to give his experts all of the information they needed to fully inform their opinions and prepare for their testimony. Attorney Waldron, however, withheld material information and documents in his possession, and gave them instead only the documents they specifically knew to request. Worse, he admits that he ***deliberately*** withheld critical information confirming Jamie's report that Mr. Barnes had forcibly raped her – the CY-104 report in which Dr. Deborah Jenssen concluded, in light of her physical examination and observation of petechiae on Jamie's neck, thighs and buttocks, that Jamie was a victim of sexual assault -- because he decided Jamie's report was unreliable. Attorney Waldron thus materially undermined his experts' ability to evaluate Jamie and help the Court understand her behavior

---

the Defendant to be emotionally immature, unsophisticated, not savvy, and vulnerable. However, this is in direct contrast to the picture that she painted to others.").) It was Attorney Waldron's job to bring relevant evidence to the Court's attention, not the Court's job to sift through the undiscussed documentary record to see what might be there. *See, e.g.*, *Kundratic v. Kundratic,* 248 A.3d 498 (Pa. Super. 2021) ("We will not scour the record to find support for Husband's allegations, nor will we develop his argument for him."); *see also Snyder v. Acord Corp.,* 2020 U.S. App. LEXIS 12889 (10th Cir. May 4, 2020) ("It is not our role to sift through the record to find evidence not cited by the parties to support arguments they have not made.").

before, during and after her mother's death.[3] Rather than ensure that his experts had a level playing field, Attorney Waldron sent them into court with one arm tied behind their backs.[4]

Even the best experts must be given all potentially relevant information in order to form accurate opinions and testify effectively. Attorney Waldron's assertion that his experts could have had any information they wanted if only they had known to ask for it (and the Commonwealth's attempted defense of that excuse) is unavailing. Even apart from the fact that Drs. Dattilio and Berkowitz expressly asked Attorney Waldron to give them ***all*** discovery he received and let them assess its potential relevance (PCRA Hr'g Tr. 10/6/21 at 29:3-21, 31:11-20; PCRA Hr'g Tr. 11/10/21 at 13:11-16.), Pennsylvania law is clear that counsel cannot task his

[3] There is no question that Drs. Dattilio and Berkowitz are highly skilled experts. Attorney Waldron's retention of them is not at issue here. Nor has Jamie ever argued that Attorney Waldron was ineffective because he did not also (or instead) retain Dr. Beyer. The issue is Attorney Waldron's failure to give his experts the information they needed – and expressly requested – in order to do their work properly.

[4] Attorney Waldron's failure to prepare his experts properly more than meets the prejudice prong of *Strickland*. Dr. O'Brien's report (and testimony) was a house of cards that would have collapsed under appropriate scrutiny. First, while both Dr. Berkowitz and Dr. Dattilio both opined to a degree of medical certainty that Jamie was amenable to treatment, Dr. O'Brien offered no opinion at all on the issue one way or the other. (*See* PCRA Hr'g Tr. 11/12/21 at 92:4-14.) Second, his report was replete with rhetoric and hyperbole that has no scientific foundation. Indeed, although he speculated that Jamie would grow up to be a scary adult likely to be diagnosed with any or all of four personality disorders, not one of those personality disorders could ***ever*** be diagnosed in Jamie, according to the DSM V, absent a childhood diagnosis of conduct disorder – which neither Dr. O'Brien nor any other expert ever made. (*See* PCRA Hr'g Tr. 11/12/21 at 69:1-20, 81:23-82:3.) Dr. O'Brien would have been forced to admit that ***none*** of Jamie's behavior could be considered relevant to an adult personality disorder diagnosis, as she was under the age of fifteen at the time he met with her, again consistent with the requirements of the DSM V. And finally, Dr. O'Brien liberally threw around terms like "sociopath" and "manipulative," neither of which has any clinical or diagnostic meaning, and – incredibly – quoted a lay person who barely knew Jamie as the source for the characterization of Jamie as a "sociopath." (PCRA Ex. 2A, N.T. at 165:5-15; *see also* PCRA Hr'g Tr. at 11/12/21 67:20-23.) Had Attorney Waldron properly prepared his experts, sought their input for his cross of Dr. O'Brien, and/or brought either one of them back on rebuttal, they could have exposed all of these flaws in Dr. O'Brien's report and testimony.

experts with ***his*** professional duty to ensure that they receive and consider relevant information. *See Commonwealth v. Housman*, 226 A.3d 1249, 1281-82 (Pa. 2020) ("An attorney cannot abdicate his own responsibility by hiring [an expert]… the expert is not an attorney, and should not be expected to make decisions as to whether to obtain records…that are clearly relevant to a defendant's mitigation case, or to decide what witnesses to interview.") No amount of "history" between Attorney Waldron and Dr. Dattilio can shift that core professional responsibility.[5] (*See* PCRA Hr'g Tr. 10/5/21 at 182:11-13 (the fact that information may have been contained in the affidavit of probable cause "doesn't excuse him [Attorney Waldron] for not giving it [discovery] to me [Dr. Dattilio], especially, when I sent him a drafted report and he could see it was not in there. He's the attorney on this case.").)

Attorney Waldron knew full well what information his experts had – and had not – received well before Jamie's decertification hearing, as each of them clearly listed the material and information they reviewed prior to writing the reports (and draft reports) they gave him. (*See* PCRA Exs. 2B (DDH 2); 2B (DDH 4); PCRA Hr'g Tr. 10/6/21 at 131:2-8 (Dr. Dattilio provided Attorney Waldron with a draft report to ensure that "the factual information is correct and there's nothing missing").) It was Attorney Waldron's responsibility to note any disparities between what his experts reviewed and what Attorney Waldron had in his files, and then provide them the missing information before they testified. It was also Attorney Waldron's responsibility to ensure that his experts were not blindsided at trial by material that the

[5] Even when Dr. Dattilio did expressly ask to see something – namely, the Walmart video – Attorney Waldron failed to provide it. (PCRA Ex. 2A at 78:3-7; PCRA Hr'g Tr. 10/6/21 at 44:2-9; 167:17-168:4.) That failure is especially damning given Judge Dantos' determination that Dr. Dattilio's failure to view the video was a fundamental weakness in his testimony. (PCRA Ex. 6 at 27-28.)

Commonwealth's expert, Dr. O'Brien, had seen (as noted in Dr. O'Brien's report) but they had not.

Instead, Attorney Waldron kept from his experts – and the Court – critical information regarding the abusive and controlling nature of Jamie's relationship with Mr. Barnes, and the violent nature of Mr. Barnes himself, including, *e.g.*, not only the CY-104 report but also Jamie's full text and call history with Mr. Barnes, which showed Mr. Barnes' obsessive control over Jamie, and Mr. Barnes' military police report and disturbing Facebook pictures of his knives (which he had captioned "my killers"), which showed his violent and unstable nature.

Evidence that Jamie was caught in an abusive, controlling relationship with a man who had a documented history of violence and unstable behavior should have been at the heart of Attorney Waldron's defense of her. Attorney Waldron himself understood this was a critical issue in the earliest days of his representation. (*See* PCRA Ex. 20; PCRA Hr'g Tr. 10/4/21 at 53:20-56:19, 58:5-21.) Yet, the record from Jamie's decertification hearing is inexplicably silent on the nature of the man who murdered her mother and Jamie's relationship with him. The evidence of abuse, coercion and intimate partner violence was all there, Attorney Waldron had it – and he ignored it. Had he shared it with his experts, they would have been able to present the informed assessment of Jamie that Dr. Beyer was able to give at Jamie's PCRA hearing, having had the benefit of reviewing the full discovery record. Had he shared it with Judge Dantos, neither she nor the Superior Court would have been left with an unchallenged impression of eighth-grade Jamie as a scheming mastermind, and Army soldier Caleb Barnes as an unknown cypher who meekly did Jamie's bidding.

III. There Was No Reasonable Basis for Attorney Waldron to Negotiate a Plea Deal with the Commonwealth and the Court – But Not His Client – and Then Misrepresent Its Terms to Jamie.

The law is clear: Pennsylvania judges are prohibited from participating in plea discussions prior to the entry of a guilty plea. *Commonwealth v. Evans*, 252 A.2d 689 (Pa. 1969) (reviewing the dangers inherent in judicial involvement in plea discussions, and concluding that, "[f]or these reasons, we feel compelled to forbid any participation by the trial judge in the plea bargaining ***prior*** to the offer of a guilty plea") (emphasis in original). The Commonwealth's attempt to whitewash – indeed, distort -- Attorney Waldron's meeting with counsel for the Commonwealth and Judge Dantos cannot disguise the fact that Attorney Waldron asked Judge Dantos to participate in the plea negotiation under circumstances that the Pennsylvania Supreme Court has expressly forbidden. Moreover, although the Commonwealth argues that the meeting was to discuss a "fully formed" plea agreement (*see, e.g.,* PCRA Hr'g Tr. 10/4/21 at 147:23-148:12), even the Commonwealth concedes that the meeting not only happened before entry of a guilty plea (and was thus already improper), but happened even before Attorney Waldron talked with his client – Jamie – about the terms of ***any*** potential plea. (Cmwlth. Br. at 14.)[6]

[6] There was nothing "fully formed" about the putative plea deal that Attorney Waldron and the Commonwealth discussed with Judge Dantos. While the Commonwealth made clear that it would consider only a plea to first degree murder (PCRA Hr'g Tr. 10/4/21 at 147:11-13), the parties did not agree on the terms of the sentence. The applicable Pennsylvania statute required a minimum sentence of 25 years to life. When Attorney Waldron and counsel for the Commonwealth met with Judge Dantos, they had not agreed on whether the plea would be to 25 years or 35 years to life, and they specifically sought Judge Dantos' participation to tell them which sentence she would accept. (*See* (PCRA Hr'g Tr. 10/4/21 at 30:7-21 (Attorney Waldron requested a meeting with Judge Dantos "just to see what the judge would accept" in order to "frame [his] negotiations" with counsel for the Commonwealth); *see also id.* at 29:21-30:6 ("….I wanted a 25-year sentence. Was Judge Dantos going to give Jamie a 25-year sentence? That was the issue, because I knew that that could be a potential problem, that Judge Dantos could go higher….So I wanted to lock in a potential sentence.").) The Commonwealth's assertion that Jamie entered her guilty plea "[a]fter much deliberation and consideration" (Cmwlth. Br., at 14) is equally insupportable. Attorney Waldron met with Judge Dantos on February 8, 2016. On February 9, Judge Dantos entered an order allowing Jamie to meet with her father and Attorney Waldron for one hour to discuss her plea. (PCRA Ex. 16; *see also* PCRA Hr'g Tr. 10/4/21 at 40:12-23.) On February 10, Jamie made her proffer to the Commonwealth of the testimony she

Attorney Waldron's meeting with Judge Dantos created precisely the scenario that the Pennsylvania Supreme Court warned against: before Jamie had a chance to consider what kind of plea she might be willing to enter voluntarily, she was given the clear message that Judge Dantos ***would not accept*** a guilty plea to anything less than 35 years to life. (PCRA Hr'g Tr. 10/4/21 at 24:24-25:9.) To make matters worse, Attorney Waldron then held out the false hope that, if Jamie were to accept the plea offer and testify for the Commonwealth at Mr. Barnes' trial, her sentence might later be reduced – a legal impossibility and clear legal error, as Attorney Waldron himself now admits. (PCRA Hr'g Tr. 10/4/21 at 44:8-45:10, 64:16-21, 156:15-17.) At that point, Jamie "need[ed] no reminder that if [s]he rejects the proposal, stands upon [her] right to trial and is convicted, [s]he faces a significantly longer sentence." *Evans*, 252 A.2d 259 (quoting *U.S. ex rel. Elksnis v. Gilligan*, 256 F. Supp. 244, 254 (S.D.N.Y. 1966). Under these circumstances, the plea that Jamie subsequently entered was – as a matter of law – involuntary. Attorney Waldron's role in inducing Jamie to enter that plea fell far below the prevailing standards of care for counsel in this Commonwealth.[7]

IV. There Was No Reasonable Basis for Attorney Waldron to Fail to Cite Controlling Authority to the Court.

In his appeal brief to the Superior Court, Attorney Waldron cited no legal authority to support his argument that Jamie's lack of a mental health disorder diagnosis should not have

---

was prepared to give at Mr. Barnes' trial, and on February 11 Jamie entered her plea and was sentenced. (PCRA Ex. 14 at 6:23-8:12, 29:18-24, 40:11-23.) Jamie bargained her life away in a matter of hours, because Attorney Waldron told her that Judge Dantos would accept nothing less.

[7] The Commonwealth contends that Jamie was not prejudiced by Attorney Waldron's botched handling of her plea negotiation, because the only alternative to any plea deal (even an involuntary one) was going to trial. (Cmwlth. Br., at 28) Had Jamie been represented by effective counsel, however, going to trial might well have been preferable to pleading to first degree murder with a proposed sentence of ten years more than the statutory minimum.

weighed against her in assessing her amenability to treatment, including controlling Pennsylvania case law on this precise issue, *Commonwealth v. Kocher*, 602 A.2d 1308 (Pa. 1992). (PCRA Ex. 27 at 28.)[8]

The Commonwealth contends that this was not a problem, both because it deliberately misrepresents the Pennsylvania Supreme Court's holding in *Kocher* and because, in any event, Pennsylvania appellate courts can simply do their own research. (*See* Cmwlth. Br., at 29.) The Commonwealth is wrong.

First, the Commonwealth offers an abridged version of the Supreme Court's key paragraph in *Kocher,* creating the false impression that the absence of a mental health diagnosis is simply an appropriate part of the court's calculus in ruling for or against decertification. It is true, as the Commonwealth states (Cmwlth. Br., at 28-29), that the *Kocher* Court held that "[t]he Court of Common Pleas in its discretion may find that a behavioral disorder is a factor to be considered in determining whether the child is amenable to treatment now; it may also find that a sound mind devoid of any disease or defect at the time of the murder is a factor weighing against transfer of the case to juvenile court." *Kocher*, 602 A.2d at 1315.

However, ***discretion*** to consider the presence of a mental health diagnosis was not the core holding of the *Kocher* Court. Rather, the Court was asked to consider whether the absence of a mental health diagnosis could categorically preclude a finding of amenability to treatment – in other words, whether it could be dispositive of the issue for a decertification court. As the *Kocher* Court actually held, "to find that a lack of mental disorder is dispositive of the entire

[8] Attorney Waldron similarly failed to provide Judge Dantos with any authority to support his petition for Jamie's decertification. *See* Motion to Remand Case to Juvenile Division (filed June 5, 2015).

amenability question is to distort the clear legislative scheme. We therefore hold that the Court of Common Pleas abused its discretion in its denial of petitioner's petition for transfer." *Id.*

The Commonwealth wrongly asserts, based on its abridged reading of *Kocher*, that "there is no prohibition from a judge taking [the lack of a mental disorder] into consideration for amenability purposes and, therefore, Judge Dantos did not err in her decision." (Cmwlth. Br., at 29.) But that is not what Judge Dantos did. Rather, Judge Dantos held that "(a)s the Defendant lacks any recognized diagnosis, ***her amenability to treatment is beyond questionable***." (PCRA Ex. 5 at 33 n.18 (emphasis added).) In other words, Judge Dantos decided that Jamie's lack of a diagnosed mental disorder ***was*** dispositive on the question of amenability, in direct contravention of *Kocher*.

Second, the Commonwealth's assertion that counsel need not cite legal authority because appellate courts can do their own research is squarely at odds with Pennsylvania law. As the Pennsylvania Superior Court held in *Commonwealth v. Hardy*, 918 A.2d 766, 771 (Pa. Super. 2007), "When briefing the various issues that have been preserved, it is an appellant's duty to present arguments that are sufficiently developed for our review. The brief must support the claims with pertinent discussion, with references to the record and with citations to legal authorities….This Court will not act as counsel and will not develop arguments on behalf of an appellant." (citing *Commonwealth v. Gould*, 912 A.2d 869, 873 (Pa. Super. 2006)); *see also In re Estate of Whitley*, 50 A.3d 203, 209 (PA Super 2012) (quoting *Iron Age Corp. v. Dvorak*, 880 A.2d 657, 665 (Pa. Super. 2005) (court "will not consider the merits of an argument which fails to cite relevant case or statutory authority").

In light of *Kocher*'s clear mandate that courts may not rely on the lack of a mental health diagnosis to deny decertification, it is reasonable to assume that proper briefing and argument of

this issue in the face of Judge's Dantos' holding likely would have affected the outcome of Jamie's appeal. Attorney Waldron's failure to cite *Kocher* (or any other authority) on this point amounted to a waiver of the issue on appeal, and yet another example of his ineffectiveness in representing Jamie. *In re Estate of Whitley,* 50 A.3d at 209.

V. Jamie Was Entitled to Effective Representation Even If She Was Not Always Truthful.

Finally, while hardly a legal argument, the Commonwealth's persistent references to Jamie's purported lack of credibility as an excuse for Attorney Waldron's constitutionally deficient performance cannot go unanswered. It is not disputed that Jamie's initial statements to law enforcement – particularly when her grandmother was in the interrogation room with her – were not truthful. But it is also undisputed that children confronted with charges of wrongdoing – from the most trivial to the most serious – often lie and hide their involvement or guilt. (PCRA Hr'g Tr. 10/8/21 at 34:4-9 (Dr. Beyer: "Research indicates that teenagers virtually all lie, and that it is a part of adolescent development, that teenagers are striving for their own independent stance, their own separation from their family, their own identity, and that lying appears to be part of that process of separation.").). It is also well known that victims of intimate partner abuse often try to hide or excuse it. (*See* PCRA Hr'g Tr. 11/10/21 at 35:22-38:8 (Dr. Berkowitz: "it's not uncommon to try to change these kinds of experiences. . . . she doesn't want to be helpless and victimized. It wouldn't surprise me that she minimizes it later on or even beforehand in order to feel like, you know, she's not helpless and that she was in control so to speak.").) There is an even greater risk of deceit where trauma and shame are present, as in the case of Jamie's involvement in her mother's death and her involvement in a controlling and abusive relationship with a man substantially older than her. It is nevertheless the job of competent counsel to figure out how to communicate effectively with his client and to investigate and present defenses and

mitigating evidence on her behalf. *See, e.g.*, *Com. v. Zook*, 887 A.2d 1218, 1234 (2005) ("counsel's duty encompasses more than the mere recognition or collection of relevant documents; rather, counsel is charged with the duty to pursue all mitigating evidence of which he should reasonably be aware").[9]

Although it might have taken some time to establish a rapport with Jamie such that she would be willing to speak freely and honestly about highly traumatic events to a group of older men she did not know, it was incumbent on Attorney Waldron to determine how to do so. Indeed, Attorney Waldron admits that, by the time Dr. Dattilio submitted his final report – well in advance of Jamie's decertification hearing – Jamie was significantly more forthcoming. (*See* PCRA Hr'g Tr. 10/4/21 at 129:18-24, 164:10-14, 164:23-165:1.) Unfortunately, Attorney Waldron was apparently no longer willing to listen.

Attorney Waldron allowed his own views of Jamie's honesty and guilt to drive his representation and decision making to the point that he ignored probative evidence of the abusive relationship between Jamie and Mr. Barnes that held the key to the tragic events in this case. For example, as discussed above, despite a medical finding of sexual assault documented in the CY-104, Attorney Waldron withheld this report as well as hundreds of text messages from his experts because he – Jamie's retained counsel – had decided that Jamie was a liar, and that the text messages on the night of the murder of her mother were more important than the full arc of

[9] Both the Commonwealth and Attorney Waldron have emphasized Attorney Waldron's decades of experience as a criminal defense lawyer. (PCRA Hr'g Tr. 10/4/21 at 26:9-13, 91:9-92:18.) As an experienced defense lawyer, Attorney Waldron should know that it is hardly uncommon for criminal defendants – of any age – to lie or withhold information when first interrogated by law enforcement about their suspected involvement in criminal activity, especially in cases of serious criminal conduct, or to lie to their lawyers. This does not lessen or abrogate counsel's duty of zealous representation.

text messages over a six month period revealing the true nature of Jamie's relationship with Mr. Barnes. (*See* PCRA Hr'g Tr. 10/4/21 at 67:22-25, 162:15-163:7.)

Jamie also ultimately shared with Dr. Dattilio details of how Mr. Barnes sought to control her, tried to keep her from her friends, and pressured her into uncomfortable, sometimes painful, sexual encounters that she repeatedly resisted. Dr. Dattilio included that information in his report. (*See* PCRA Ex. 2B (DDH 2) at 7-10.) And yet, even when presented with a truthful, detailed history (as documented by Dr. Dattilio) that included troubling indications of controlling and abusive behavior – corroborated by Dr. Jenssen's finding that Jamie had been sexually assaulted – Attorney Waldron ***still*** dismissed it all as a lie. (PCRA Hr'g Tr. 10/4/21 at 67:22-68:3.)

Whatever Attorney Waldron might have thought of the traumatized child whom he had been retained to represent, it was not his job to judge her. His job was to investigate all possible defenses and mitigating evidence thoroughly, to share with his experts all potentially relevant information in his possession, and to present the Court with "all facts, mitigating evidence and testimony that may convince the court to keep the child in juvenile court." NATIONAL STANDARDS, *supra*, at Standards 4.3, 8.3, 8.4; ABA CRIMINAL JUSTICE STANDARDS FOR THE DEFENSE FUNCTION (4th ed., 2017), https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/, at Standard 4-4.1 (duty to investigate "is not terminated by factors such as the apparent force of the prosecution's evidence, a client's alleged admissions to others . . ., a client's expressed desire to plead guilty . . . , or statements to defense counsel supporting guilt").

VI. Conclusion.

For the foregoing reasons, as well as those set forth in Petitioner's Proposed Findings of Fact and Conclusions of Law and her Amended Petition for Habeas Corpus and Post-Conviction Relief, Petitioner respectfully requests that this Court vacate the November 19, 2015 Order denying Jamie's motion for decertification, as well as Jamie's February 11, 2016 guilty plea and sentencing.

Respectfully submitted,

Tracy Zurzolo Quinn (No. 71072)
Victoria LeCates (No. 329003)
HOLLAND & KNIGHT LLP
Cira Centre, Ste. 800
2929 Arch Street
Philadelphia, PA 19104
(215) 252-9522
Tracy.quinn@hklaw.com

Marsha L. Levick (No. 22535)
Katrina L. Goodjoint (Admitted *pro hac vice*)
JUVENILE LAW CENTER
1800 JFK Blvd., Ste 1900B
Philadelphia, PA 19103
(215) 625-0551
mlevick@jlc.org

Dated: December 29, 2021

Counsel for Petitioner Jamie Silvonek

IN THE COURT OF COMMON PLEAS
LEHIGH COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, Respondent v. JAMIE LYNN SILVONEK, Petitioner.	CP-39-CR-0002141-2015

CERTIFICATE OF SERVICE

I certify that on December 29, 2021, a true and correct copy of the foregoing Petitioner's Post-PCRA Hearing Reply Brief was served via first class mail upon each of the following persons:

Jeffrey Scott Dimmig
Lehigh County District Attorney's Office
455 Hamilton St.
Allentown, PA 18101
jeffreydimmig@lehighcounty.org

Judge Anna-Kristie M. Marks
c/o Court Administration
Room 614
455 W. Hamilton Street
Allentown, PA 18101

Court Administration
Lehigh County Courthouse
455 West Hamilton St., Rm 614
Allentown, PA 18101

Tracy Zurzolo Quinn