IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	)	
	)	
vs.	)	Case No. 2141/2015
	)	
JAMIE LYNN SILVONEK, Defendant	)	

ORDER

NOW, this 31st day of January, 2022, upon consideration of Defendant's Motion for Post Conviction Collateral Relief, and after hearing on October 4, 2021, through October 6, 2021, October 8, 2021, November 10, 2021, and November 12, 2021, and for the reasons expressed in our accompanying Opinion,

IT IS HEREBY ORDERED that Defendant's Motion for Post Conviction Collateral Relief is DENIED. *Pursuant to Pennsylvania Rule of Criminal Procedure 908(E), Defendant is hereby advised of her right to file a notice of appeal to the appropriate appellate court within thirty (30) days of the entry of this Order.*

IT IS FURTHER ORDERED that the *Defendant is advised that should she intend to raise any claims regarding PCRA counsel's ineffectiveness in connection with this PCRA, such claims must be raised on appeal from this Order. Failure to do so may result in waiver of such claims in any future proceedings.*

IT IS FURTHER ORDERED that the Clerk of Courts-Criminal Division shall send a copy of this Order to Defendant by certified mail, return receipt requested.

BY THE COURT:

Anna-Kristie M. Marks, J.

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CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	)	
	)	
vs.	)	Case No. 2141/2015
	)	
JAMIE LYNN SILVONEK,	)	
Defendant	)	

* * * * * * * *

APPEARANCES:

JEFFREY S. DIMMIG, ESQUIRE,
CHIEF DEPUTY DISTRICT ATTORNEY, and
EDRIANA SYMIA, ESQUIRE,
ASSISTANT DISTRICT ATTORNEY,
On behalf of the Commonwealth

TRACY ZURZOLO QUINN, ESQUIRE, and
MARSHA L. LEVICK, ESQUIRE,
On behalf of Defendant

* * * * * * * *

OPINION

ANNA-KRISTIE M. MARKS, J.

On April 2, 2015, Defendant, Jamie Lynn Silvonek, was charged with Criminal Homicide,[1] Criminal Conspiracy to Commit Homicide,[2] Tampering with Evidence,[3] and Abuse of Corpse.[4] The Defendant filed a Motion to Transfer Proceedings to Juvenile Court pursuant to 42 Pa. C.S.A. § 6322 on June 5, 2015. In addition, the Defendant filed an Omnibus Pretrial Motion on August 17, 2015. A hearing relative to Defendant's Omnibus Pretrial Motion was conducted before our former colleague, the

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1 18 Pa C.S.A. § 2501.
2 18 Pa C.S.A. § 2501; 18 Pa. C.S.A. § 903.
3 18 Pa C.S.A. § 4910(1).
4 18 Pa C.S.A. § 5510.

Honorable Maria L. Dantos, on October 28, 2015. Additionally, a decertification hearing was conducted before Judge Dantos on October 29, 2015 and November 2, 2015. Defendant's Omnibus Pretrial Motion was granted in part and denied in part on November 16, 2015. (C. PCRA Ex. 4). Thereafter, on November 19, 2015, the decertification request was denied. (C. PCRA Ex. 5); (C. PCRA Ex. 6). Subsequently, on December 1, 2015, the Defendant filed a Motion for Recusal and Reconsideration of Change of Venue/Venire, which was denied by Judge Dantos on December 18, 2015.

On February 11, 2016, the Defendant entered pleas of guilty to Criminal Homicide, Criminal Conspiracy to Commit Homicide, Tampering with Evidence, and Abuse of Corpse. In exchange for the plea, the Commonwealth agreed to a fixed minimum sentence of thirty-five (35) years on the charge of first-degree murder. With respects to the other charges, there were no further sentencing agreements. On the same day, the Defendant was sentenced in accordance with the plea agreement to a term of imprisonment in a state correctional facility of thirty-five (35) years to life on the charge of Murder of the first-degree; a term of imprisonment of not less than twenty (20) years nor more than forty (40) years on the charge of Criminal Conspiracy to Commit Homicide; a term of imprisonment of not less than one (1) year nor more than two (2) years on the charge of Tampering with Evidence; and a term of imprisonment of not less than one (1) year nor more than two (2) years on the charge of Abuse of Corpse. All sentences were ordered to run concurrently with each other.

A direct appeal followed on March 11, 2016. Thereafter, the judgment of sentence was affirmed by the Superior Court of Pennsylvania on August 9, 2017. On September 12, 2017, the Defendant filed a petition for allowance of appeal with the Supreme Court of Pennsylvania which was denied on February 8, 2018.

Presently before the Court is Defendant's Motion for Post Conviction Collateral Relief that was filed on May 6, 2019 and amended on January 22, 2021. An evidentiary hearing was conducted before the undersigned on October 4, 2021 through October 6, 2021, October 8, 2021, November 10, 2021, and November 12, 2021.

In her Motion for Post Conviction Collateral Relief, Defendant contends that: (1) her guilty plea was not knowingly and voluntarily tendered, and (2) her trial counsel, John J. Waldron, Esquire,[5] was ineffective. Specifically, Defendant alleges that Attorney Waldron was ineffective for: (a) failing to provide defense experts with all of the relevant documentary evidence prior to preparing their reports and testifying at the decertification hearing, (b) failing to utilize all of the resources available to him to demonstrate, *inter alia*, that the Defendant was amenable to treatment and to develop the Defendant as a young adolescent who suffered from intimate partner violence or trauma at the decertification hearing, and/or (c) committing various legal errors. These arguments lack any merit.

It is well-established that counsel is presumed to have rendered effective assistance of counsel to his client. Commonwealth v. Sepulveda, 55 A.3d 1108, 1117

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[5] Attorney Waldron was retained by the Defendant immediately after the death of Cheryl Silvonek, the Defendant's mother, on March 15, 2015. He represented the Defendant from the time of her preliminary hearing up to and including the denial of her petition for allowance of appeal by the Supreme Court of Pennsylvania.

Attorney Waldron is a criminal defense attorney with approximately forty (40) years of experience. His vast legal experience includes juvenile matters, as he both prosecuted and defended juveniles and was employed as a part-time Master in Juvenile Court in Lehigh County in which, *inter alia*, he heard dependency cases and reviewed placements of juveniles, as well as placed juveniles within the juvenile system. Consequently, Attorney Waldron is intimately familiar with different alternative placements, detention, and community service opportunities. Attorney Waldron has also defended juveniles in adult criminal court and has filed and presented decertification hearings throughout his legal career. Attorney Waldron is knowledgeable about the statutory factors involved in the decertification process.

(Pa. 2012). This Court notes that claims of ineffective assistance of counsel are subject to a three part analysis:

> To establish an ineffective assistance of counsel claim, [defendant] must first demonstrate that the underlying claim is of arguable merit; then, that counsel's action or inaction was not grounded on any reasonable basis designed to effectuate [defendant's] interest; and finally, that but for the act or omission in question, the outcome of the proceedings would have been different.

Commonwealth v. Travaglia, 661 A.2d 352, 356-357 (Pa. 1995), *U.S. cert. denied*, 116 S.Ct. 931 (1996) (citations omitted); Commonwealth v. Pierce, 527 A.2d 973, 975 (Pa. 1987). *See also* Commonwealth v. King, 212 A.3d 507, 509 (Pa. 2019); Commonwealth v. Bomar, 104 A. 3d 1179, 1188 (Pa. 2014). If the petitioner fails to prove any of these prongs, the claims of ineffectiveness must be dismissed. Bomar 104 A.3d at 1188, Commonwealth v. Montalvo, 205 A.3d 274, 286 (Pa 2019); Commonwealth v. Medina, 209 A.3d 992, 1000 (PA. Super. 2019). "With regard to the second, reasonable basis prong, we do not question whether there were other more logical courses of action which counsel could have pursued; rather we must examine whether counsel's decisions had any reasonable basis." Commonwealth v. Paddy, 15 A.3d 431, 442 (Pa. 2011). Counsel's chosen strategy shall only be deemed lacking a reasonable basis if the defendant proves that "an alternative not chosen offered a potential for success substantially greater than the course actually pursued." Commonwealth v. Williams, 899 A.2d 1060, 1064 (Pa. 2006). "To establish the third, prejudice prong, the defendant must show that there is a reasonable probability that the outcome of the proceedings would have been different but for counsel's ineffectiveness." Paddy, 609 Pa. at 292, 15 A.3d at 442-443. Also, the defendant bears the burden of proving all three prongs of this standard. Commonwealth v. Wholaver, 400, 177 A.3d 136, 144 (Pa. 2018). With this

standard in mind, we address the Defendant's issues in *seriatim*.

The Defendant contends that Attorney Waldron's ineffective assistance of counsel induced the Defendant to enter a guilty plea, thereby rendering the plea involuntary and unknowing. Specifically, the Defendant asserts that Attorney Waldron failed to challenge the trial court's involvement in the plea negotiation process, despite the fact that "[i]t is settled that a plea entered on the basis of a sentencing agreement in which the judge participates cannot be considered voluntary." Commonwealth. V. Johnson, 875 A.2d 328, 331 (Pa. Super. 2005) (finding the court's active and repeated encouragement to the defendant to change his mind and plead guilty to be improper). As this allegation is based on a factually incorrect premise, we cannot agree with the Defendant's assertion.

In order to be granted relief based on the involuntary and unknowing nature of a guilty plea, the defendant must prove by a preponderance of the evidence that the defendant was induced, where the circumstances make it likely that the inducement caused the defendant to plead guilty and the defendant is innocent. See 42 Pa. C.S.A. § 9543(a)(2)(iii). In addition, the defendant bears the burden of proving that the plea was involuntary. See Commonwealth v. Lewis, 708 A.2d 497, 502 (Pa. Super. 1998).

In the within matter, after the Court denied the Defendant's Motion to Transfer Proceedings to Juvenile Court pursuant to 42 Pa. C.S.A. § 6322, the evidence established that Attorney Waldron reached out to the Lehigh County District Attorney to begin plea negotiations.[6] In late January 2016, discussions occurred among Attorney

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[6] Attorney Waldron believed, in his professional opinion, that this case strongly hinged on the decertification hearing, as there was mounting evidence of the Defendant's involvement in

Waldron, District Attorney James B. Martin, and members of his staff. (C. PCRA Ex. 10). Ultimately the Commonwealth offered the Defendant a cap of the minimum sentence at thirty-five (35) years in exchange for a guilty plea to Murder of the first-degree.[7] However, as Attorney Waldron was familiar with Judge Dantos' strict sentencing practices, he was concerned that she would not accept this plea offer. Consequently, Attorney Waldron and the prosecutor scheduled a conference with Judge Dantos in order to determine if she would accept this fully-formed plea proposal.[8] During the conference, it became clear that Judge Dantos would not accept a plea that entailed a minimum sentence of less than thirty-five (35) years on the Murder of the first-degree charge, but rather a fixed minimum sentence of thirty-five (35) years. Hence, the thirty-five (35) years mentioned by Judge Dantos had already been a part of the agreement arrived at between the prosecutor and Attorney Waldron. In light of the fact that this Court finds it extremely clear that the trial Court did not participate in plea negotiations, the Defendant's claim that the plea was involuntary in this regard must fail.[9]

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her mother's murder. In fact, as time elapsed, according to Attorney Waldron, the Defendant became more truthful and forthcoming, and her version of the events of March 15, 2015 evolved into a factual scenario in which the Defendant was a more active participant in her mother's murder. Therefore, in the eyes of her counsel, the focus of the case was no longer an innocence defense, but rather a decertification to juvenile court.

7 During these negotiations, District Attorney Martin made it clear, in no uncertain terms, that the Commonwealth would not accept a plea to anything less than Murder of the first-degree.

8 Attorney Waldron did not want to present the Defendant with the plea offer that entailed a cap of the minimum sentence at thirty-five (35) years, only to have it be rejected later by the Court. The purpose of this conference was to avoid such a situation by quantifying the minimum sentence ahead of time.

9 Judge Dantos' footnoted Order of June 6, 2019 expressly and explicitly indicates that the Court did not interject itself into the plea negotiations between the Commonwealth and trial counsel for the Defendant. (C. PCRA Ex. 15). Judge Dantos succinctly stated that "at no point did this Court directly participate in plea negotiations in this matter. Instead, trial counsel and the Commonwealth requested a meeting with the Court to determine if this Court would reject a potential plea." (C. PCRA Ex. 15).

After this conference with Judge Dantos, Attorney Waldron spoke with the Defendant's father, David Silvonek, regarding the plea agreement entailing a fixed minimum sentence of thirty-five (35) years on the charge of Murder of the first-degree. After speaking with Mr. Silvonek, Attorney Waldron petitioned the Court to allow Mr. Silvonek to be present when Attorney Waldron presented and explained the formed plea agreement offered by the Commonwealth.[10] (D. Ex. 6); (C. PCRA Ex. 16). The Court granted said request on February 9, 2016. (D. Ex. 6); (C. PCRA Ex. 16). During this meeting at the Lehigh County Jail, Attorney Waldron communicated to the Defendant and her father the formed plea offer and also conveyed that Judge Dantos would not accept any sentence less than thirty-five (35) years on the minimum with regard to the charge of Murder of the first-degree. He thoroughly explained the pros and cons of entering this plea deal, including the fact that Judge Dantos could impose a much harsher sentence, including a life sentence, if the Defendant were to enter an open plea and the Judge were not bound by a thirty-five (35) year minimum sentence.[11] Attorney Waldron also discussed the likely outcome of a trial in light of the evidence, as well as advised the Defendant that her cooperation in her Co-Defendant's case was a part of the plea bargain.[12] Attorney Waldron answered any and all questions posed to him and did not threaten or coerce the Defendant into accepting the offered plea.

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10 It is the policy of the Lehigh County Jail not to permit contact visits between an inmate and a visitor. However, in light of the Defendant's young age, Attorney Waldron was able to procure an exception to this policy, thereby effectuating contact visits for the Defendant with her father.

11 Prior to this time, Attorney Waldron had not discussed concrete numbers/years of incarceration with regard to a plea deal with the Defendant or her father.

12 Attorney Waldron did believe that the Defendant's cooperation could potentially afford the Defendant consideration at the time of sentencing. However, this belief was incorrect, as the Defendant was sentenced prior to her Co-Defendant's trial. This Court further notes that the Commonwealth did not call the Defendant to testify at her Co-Defendant's trial; instead, she was called by the defense. This incorrect belief was inconsequential as to the acceptance of

Moreover, the Court conducted an extensive verbal colloquy with the Defendant at the time of her guilty plea. In response, the Defendant indicated that she understood the rights that she had and the rights that she was relinquishing by entering into the guilty plea. She further indicated that no threats or promises were made to her to induce her to enter the guilty plea, and that her guilty plea was voluntary. Finally, the Defendant indicated on the record that she understood the terms and effects of the guilty plea.

Indeed, the oral colloquy and the written plea filed of record clearly established the voluntary, knowing, and intelligent nature of the guilty plea. Commonwealth v. Myers, 642 A.2d 1103, 1105 (Pa. Super. 1994). In fact, during the Defendant's oral plea colloquy, the Defendant acknowledged the terms of her plea agreement (D. Ex. 17: N.T. 2/11/16, pp. 3-6); (C. PCRA Ex. 14); denied having any drugs, alcohol or other medication that would affect her ability to know what she was doing (D. Ex. 17: N.T. 2/11/16, p. 5); (C. PCRA Ex. 14); indicated that she read and understood the written plea colloquy (D. Ex. 17: N.T. 2/11/16, pp. 6-7); (C. PCRA Ex. 14); stated that she understood that she did not have to give up her rights but could proceed to trial (D. Ex. 17: N.T. 2/11/16, p. 7); (C. PCRA Ex. 14); affirmed that it was her desire to enter the guilty plea (D. Ex. 17: N.T. 2/11/16, p. 7); (C. PCRA Ex. 14); posed no questions to the judge (D. Ex. 17: N.T. 2/11/16, p. 8); (C. PCRA Ex. 14); articulated that no one was forcing or threatening her to plead guilty (D. Ex. 17: N.T. 2/11/16, p. 7); (C. PCRA Ex. 14); testified that no promises were made to her other than the plea agreement (D. Ex. 17: N.T. 2/11/16, p. 8); (C. PCRA Ex. 14); expressed

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the plea agreement, as it was made known to the Defendant and her father that Judge Dantos would not impose a sentence less than thirty-five (35) years.

great satisfaction with her attorney (D. Ex. 17: N.T. 2/11/16, pp. 7-8); (C. PCRA Ex. 14); and acknowledged the facts as recited by the prosecutor (D. Ex. 17: N.T. 2/11/16, pp. 9-21); (C. PCRA Ex. 14). Consequently, this Court finds that the record clearly indicates that the Defendant understood the consequences of pleading guilty. Also, this Court notes that knowingly entering a guilty plea to avoid a harsher sentence such as life in prison is a matter of strategy and is valid. *See* Commonwealth v. Blackwell, 647 A.2d 915, 924 (Pa. Super. 1994), (finding that the acceptance of a plea bargain provided a clear benefit to the defendant, as it precluded the defendant from the possibility of receiving the death penalty). Based on the foregoing, this Court does not find that Attorney Waldron[13] rendered ineffective assistance of counsel, thereby inducing the Defendant to enter into an involuntary or unknowing guilty plea.

Next, the Defendant argues that Attorney Waldron was ineffective in representing the Defendant at her decertification hearing on October 29, 2015 and November 2, 2015. In particular, the Defendant alleges that Attorney Waldron was ineffective by failing to furnish defense experts with all of the relevant documentary evidence prior to preparing their reports and testifying at the decertification hearing. This assertion lacks merit.

At the outset of this analysis, it is important to emphasize that both experts hired by Attorney Waldron came to the conclusion that the Defendant was amenable to treatment in juvenile court. Both experts rendered thorough opinions which explained their conclusions that the Defendant should be decertified. While these contentions will be discussed *infra*, there is no arguable merit to the Defendant's

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13 This Court finds the testimony provided by Attorney Waldron at the evidentiary hearing to be credible.

ineffectiveness claim because it seems to disregard that the ultimate opinions and conclusions of these experts would not change in any way by reviewing these additional documents. Furthermore, the claim of ineffectiveness is of no consequence in light of the fact that both experts testified and prepared thorough reports to support their contention that the Defendant belonged in juvenile court.

Attorney Waldron contacted Dr. Dattilio, whom he had a long-standing professional relationship spanning decades, within two (2) weeks of the murder of Cheryl Silvonek with regard to retaining him as an expert for the decertification hearing. (D. Ex. 18); (PCRA Ex. 28); (C. PCRA Ex. 2A; D. DH Ex. 1). Dr. Dattilio is an internationally renowned clinical and forensic psychologist who is considered a preeminent expert in his field. Dr. Dattilio had been retained by Attorney Waldron numerous times in the past. Consequently, they had an implicit understanding on the method of providing discovery to Dr. Dattilio/receiving discovery from Attorney Waldron. Normally, Dr. Dattilio would provide Attorney Waldron with a form that enumerated an initial list of documents that he wanted to review. Attorney Waldron would then furnish Dr. Dattilio with the requested documents and later supplement those documents with any further information/documentation that Dr. Dattilio would request as a result of his forensic interviews, review of documents, psychological testing, and assessments. As part of their working relationship, Dr. Dattilio was able to go to the law offices of Attorney Waldron to view any videos that he would need in furtherance of authoring an expert report. This procedure that was developed over the years was the same process utilized in the within matter. Here, according to Dr. Dattilio's expert report, the only records requested but not received in the within matter were records from the Defendant's primary care physician/pediatrician. (D. Ex. 14); (C. PCRA Ex. 2A; D. DH Ex. 2).

In this particular case, Dr. Dattilio clinically evaluated the Defendant on five (5) separate occasions, which was more than his typical amount of interviews, through the Spring and Summer of 2015, specifically, April 13, 2015, May 20, 2015, June 9, 2015, July 1, 2015, and August 12, 2015. (D. Ex. 14); (C. PCRA Ex. 2A; D. DH Ex. 2). Throughout this process, there was ongoing communication between Dr. Dattilio and Attorney Waldron in which Dr. Dattilio was able to pose any questions that he had or request any further documentation.[14] Nevertheless, the Defendant alleges that Attorney Waldron was ineffective in not providing Dr. Dattilio with several necessary documents, including the Walmart video of March 15, 2015. (C. PCRA Ex. 1; C. PH. Ex. 24). However, this Court notes that Dr. Dattilio knew of the existence of the Walmart video, as it was referenced in detail in the Affidavit of Probable Cause attached to the Criminal Complaint dated April 2, 2015. (C. PCRA Ex. 12). Therefore, had Dr. Dattilio desired to view the video, he could have contacted Attorney Waldron to schedule a time to come to his office to view it.[15] Moreover, the Walmart video was shown at the decertification hearing. As a result of viewing the video, Dr. Dattilio explained that it strengthened his belief that the Defendant was in shock after the crime. Dr. Dattilio

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[14] Dr. Dattilio agreed that he and Attorney Waldron possessed a very good working relationship and that he felt comfortable reaching out to Attorney Waldron in order to request any needed documentation. In fact, Dr. Dattilio had Attorney Waldron's cell phone number in order to aid him in seamlessly getting further necessary information.

[15] During his cross-examination, Dr. Dattilio appeared skeptical that he had even been aware of the video's existence, as he was not certain that he had been provided with the final page of the Affidavit of Probable Cause in which the video was referenced. However, during redirect examination, Dr. Dattilio testified that he knew that the Walmart video existed, had requested it from Attorney Waldron, but never received it. This Court is confident that Dr. Dattilio reviewed the Affidavit of Probable Cause in its entirety, and was aware that a Walmart video existed. Further, this Court believes that Dr. Dattilio is mistaken when he indicated that he requested the Walmart video and did not receive it from Attorney Waldron, as Dr. Dattilio is very meticulous, yet he did not note the absence of the video in his expert report under the category "Records Requested But Not Received."

testified that had he viewed the Walmart video prior to the decertification hearing, it merely would have provided him with a more detailed understanding of what occurred immediately after the murder and he would have spoken with the Defendant about it. Moreover, Dr. Dattilio indicated that a review of the Walmart video would not have changed his opinion or added anything substantive to his report.

The Defendant also alleges that Attorney Waldron was ineffective for failing to provide *all* of the text messages between the Defendant and the Co-Defendant from the beginning of their relationship in October 2014, as well as any text messages between the Defendant's parents. (D. Ex. 10); (PCRA Ex. 25); (C. PCRA Ex. 2A; C. DH Ex. 8); (C. PCRA Ex. 2A; C. DH Ex. 9). As Dr. Dattilio reviewed the Police Criminal Complaint and Affidavit of Probable Cause dated April 2, 2015, he was familiar with the text exchange between the Defendant and her Co-Defendant from March 14, 2015 through March 15, 2015, as they are specifically set forth therein. (C. PCRA Ex. 12); (C. PCRA Ex. 1; C. PH Ex. 16). Dr. Dattilio did not request to review any text messages between the Defendant and the Co-Defendant prior to the Spring of 2015, nor did he request to review any text messages between the Defendant's parents for "context." Dr. Dattilio is known for conducting thorough and comprehensive investigations to aid in rendering his expert report and opinion, and, therefore, Dr. Dattilio already possessed ample context surrounding the Defendant and the crime. As Dr. Dattilio testified, the text messages simply would have strengthened his impression that the Co-Defendant had power over the Defendant and that there was marital tension in the family residence. Had Dr. Dattilio felt it necessary to review earlier texts of the involved parties, this Court is confident that he would have requested them from Attorney Waldron.

Additionally, the Defendant argues that Attorney Waldron was ineffective

for not providing Dr. Dattilio with the March 16, 2015 Report of Suspected Child Abuse to Law Enforcement Official ("CY104 report"). (D. Ex. 9); (PCRA Ex. 24); (C. PCRA Ex. 2A; C. DH Ex. 10). While it is true that Dr. Dattilio was not provided with this report, it was not due to any oversight on Attorney Waldron's part. Instead, Attorney Waldron reviewed the report in which the Defendant alleged that the Co-Defendant forcibly had sex with her both before and after the murder of Cheryl Silvonek. Attorney Waldron further noted that physical marks were observed on the Defendant's body, including "petechiae to right side of neck," "left buttock petechiae" and "[r]ight posterior thigh multiple petechial bruising." (D. Ex. 9); (PCRA Ex. 24); (C. PCRA Ex. 2A; C. DH Ex. 10). However, Attorney Waldron concluded that the CY104 report was unreliable and based on lies in light of *all* of the circumstances/evidence. (D. Ex. 9); (PCRA Ex. 24); (C. PCRA Ex. 2A; C. DH Ex. 10). Indeed, Attorney Waldron believed that the bruises/petechiae were the result of the Defendant's participation in the violent events of that evening, which included the beating, stabbing, strangling, and burying of Cheryl Silvonek. (C. PCRA Ex. 1; C. PH Ex. 1); (C. PCRA Ex. 1; C. PH Ex. 2); (C. PCRA Ex. 1; C. PH Ex. 3); (C. PCRA Ex. 1; C. PH Ex. 5); (C. PCRA Ex. 1; C. PH Ex. 13); (C. PCRA Ex. 1; C. PH Ex. 14); (C. PCRA Ex. 2A; C. DH Ex. 11); (C. PCRA Ex. 2A; C. DH Ex. 13); (C. PCRA Ex. 2A; C. DH Ex. 14); (C. PCRA Ex. 2A; C. DH Ex. 15); (C. PCRA Ex. 2A; C. DH Ex. 16); (C. PCRA Ex. 2A; C. DH Ex. 17); (C. PCRA Ex. 2A; C. DH Ex. 18); (C. PCRA Ex. 2A; C. DH Ex. 19); (C. PCRA Ex. 2A; C. DH Ex. 20); (C. PCRA Ex. 2A; C. DH Ex. 21). Consequently, Attorney Waldron did not provide the CY104 report to Dr. Dattilio for his consideration, as it would not have strengthened his expert report. To the contrary, the CY104 report would have provided a faulty basis for his findings and conclusions, thereby undermining the validity of his expert report. Moreover, this Court notes that reviewing the CY104 report

is not necessary for a trained clinical/forensic psychologist to recognize that the sexual relationship by definition between the fourteen (14) year old female Defendant and a twenty (20) year old man was nonconsensual and assaultive in nature. Consequently, the CY104 report would not have provided Dr. Dattilio with any substantive knowledge that he did not already possess. In fact, reviewing the CY104 report had no impact on Dr. Dattilio's conclusions, as he indicated that he would have rendered the same opinion. (D. Ex. 9); (PCRA Ex. 24); (C. PCRA Ex. 2A; C. DH Ex. 10).

Similarly, the Defendant contends that Attorney Waldron was ineffective for failing to provide Dr. Dattilio with the video police interviews of Witness C.E. dated March 16, 2015 and Witness O.H. dated March 17, 2015. However, Dr. Dattilio indicated that he did not believe that C.E. was credible in the interview when she related to authorities that she overheard the Defendant and the Co-Defendant discussing plans to kill the Defendant's parents and the life insurance money that the Defendant would receive in the event of her parents' deaths. (C. PCRA Ex. 1). Dr. Dattilio's impression after viewing this video was that witness C.E. was seeking sensationalism and not being truthful. Reviewing this video would not have aided Dr. Dattilio in his evaluation of the Defendant or his testimony at the decertification hearing because he accorded it and conferred upon it little to no weight. With regard to the police interview with O.H., Dr. Dattilio indicated that viewing this videotaped interview would have provided him with a different perspective of the situation, in that O.H., the Defendant's friend, did not approve of the relationship between the Defendant and the Co-Defendant. Dr. Dattilio testified that it would have been "enlightening" to him and that it would have verified that the Defendant had gotten along better with her father than with her mother. This Court finds that viewing these videos in advance of the decertification hearing and authoring his expert

report would not have provided Dr. Dattilio with any information or knowledge that he did not already possess.

Finally, the Defendant avers that Attorney Waldron's failure to provide Dr. Dattilio with the letter that the Defendant wrote to the Co-Defendant while she was incarcerated at the Lehigh County Jail, the Military Police Report of the Co-Defendant, and the transcript of the Co-Defendant's interrogation on March 15, 2015, caused him to render ineffective assistance of counsel. (C. PCRA Ex. 2A; C. DH Ex. 22); (D. Ex 2). Dr. Dattilio testified that had he known of the letter that the Defendant wrote to the Co-Defendant while she was incarcerated in which she asked the Co-Defendant to help her in her plight to get her case transferred to Juvenile Court, he would have spoken to the Defendant about it. (C. PCRA Ex. 2A; C. DH Ex. 22). Similarly, Dr. Dattilio stated that had he reviewed the Military Police Report of the Co-Defendant, it merely would have bolstered his opinion that there was coercion in the relationship and that he would have discussed the contents of the report with the Defendant. While a review of the Military Police Report would have strengthened Dr. Dattilio's belief that the Defendant was vulnerable, nothing new or novel would have been gleaned from it. Regardless of the value Dr. Dattilio ascribed to the Military Police Report, this Court notes that Judge Dantos ruled on November 16, 2015, (after a status conference conducted on August 25, 2015 in which it was agreed that the Commonwealth would provide the Court with the Co-Defendant's Military Personnel and Medical File in order to conduct an *in camera* review of same), that there was no discoverable or material information contained therein that would require the Military Police Report to be disclosed to the Defendant. (C. PCRA Ex. 4). Consequently, Attorney Waldron did not have access to these military records. Also, Dr. Dattilio indicated that had he reviewed the transcript from the Co-Defendant's

police interrogation, he would have known that the Co-Defendant believed that the Defendant was in shock after the incident. This information concerning the Defendant's state of mind following the murder of Cheryl Silvonek was consistent with what the Defendant herself had conveyed to Dr. Dattilio during his clinical interviews with her. As such, Dr. Dattilio's expert opinion would not have been impacted by this collateral information.

Overall, had Dr. Dattilio been furnished with the aforementioned documentation and information prior to authoring his expert report and testifying at the decertification hearing, he may have instituted further conversations with the Defendant, assuming that the time constraints permitted them. Dr. Dattilio's opinion would not have changed. Dr. Dattilio spent a vast amount of time and effort to gain a global view of the Defendant from different perspectives. He ultimately performed five (5) clinical interviews of the Defendant, which was atypical and extraordinary. As a result of Dr. Dattilio's extensive professional skill, knowledge, and experience, he was able to balance the impossibility of being able to review the "whole universe" of discovery with the Court's decertification deadlines in order to unearth the core issues.[16] While all of the information that the Defendant alleges should have been provided to Dr. Dattilio for review may have been enlightening and enriching to Dr. Dattilio in his role as a clinical and forensic psychologist, there is no reasonable probability that the outcome of the decertification hearing would have changed.

In the same vein, the Defendant argues that Attorney Waldron was ineffective for not providing Steven J. Berkowitz, M.D., defense's expert in adolescent

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[16] At the evidentiary hearing, Dr. Dattilio agreed that he had access to a wealth of information in this case.

psychiatry and mental health, with all of the relevant documentary evidence prior to preparing his report and testifying at the decertification hearing. (D. Ex. 29); (PCRA Ex. 29); (D. Ex. 30); (C. PCRA Ex. 2A; D. DH Ex. 3); (C. PCRA Ex. 2A; D. DH Ex. 4). This contention is without merit.

This Court notes that Dr. Berkowitz was retained in or about the end of August 2015 by Attorney Waldron at the suggestion of Dr. Dattilio for the limited purpose of providing a child psychiatrist's view and opinion with regard to psychiatric and biological-medical issues given that the Commonwealth had retained a psychiatrist as its expert.[17] In light of the time constraints, Dr. Berkowitz indicated that he relied on Dr. Dattilio to assist him in determining the most important aspects to focus on, as his role was to concentrate on a psychiatric perspective and the concerns and issues not addressed by Dr. Dattilio. In furtherance of authoring an expert report, Dr. Berkowitz interviewed the Defendant on September 15, 2015, as well as reviewed voluminous documents and records. (D. Ex. 30); (C. PCRA Ex. 2A; D. DH Ex. 4). In this particular case, Dr. Dattilio assumed the role of liaison or "go between" between Dr. Berkowitz and Attorney Waldron as a result of Dr. Dattilio's pre-existing relationship with Attorney Waldron and Dr. Berkowitz's limited role of "supplementing" Dr. Dattilio's report and conclusions from a psychiatric angle. (D. Ex. 30); (C. PCRA Ex. 2A; D. DH Ex. 4). That being said, Dr. Berkowitz had full access to Attorney Waldron and Attorney Waldron spent several hours with Dr. Berkowitz, including reviewing his testimony prior to testifying.

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[17] Dr. Berkowitz indicated that Dr. Dattilio was the lead expert for the Defendant and that his role was specific to psychiatric issues which included the Defendant's emotional maturity in light of adolescent brain development generally, Defendant's non-verbal learning disorder, Defendant's facial disfigurement, and trauma.

Nevertheless, the Defendant claims that Attorney Waldron was ineffective for failing to provide Dr. Berkowitz with the Defendant's school records for his review. This argument is factually inaccurate, as Dr. Berkowitz was provided with the Defendant's school records prior to testifying. However, due to time constraints, Dr. Berkowitz was unable to review the Defendant's lengthy school records. Dr. Berkowitz acknowledged that he did not view the school records as a priority when balanced against the time constraints that he faced. Furthermore, Dr. Berkowitz indicated that the school documents merely would have borne out and corroborated that the Defendant suffered from a non-verbal learning disorder, which he identified and expressed in both his expert report and his testimony at the decertification hearing. (D. Ex. 30); (C. PCRA Ex. 2A; D. DH Ex. 4); (C. PCRA Ex. 2A). As such, a review of the Defendant's school records would have supported Dr. Berkowitz's ultimate opinion, but it would not have changed it.

In addition, the Defendant argues that Attorney Waldron was ineffective for failing to provide Dr. Berkowitz with the treatment records from John F. Campion, M.D. who was providing services to the Defendant and Ms. Lisa Bandolino of the Individual and Family Counseling Services of the Lehigh Valley. (C. PCRA Ex. 2A; C. DH Ex. 24); (C. PCRA Ex. 2A; C. DH Ex. 25). This Court notes that at the evidentiary hearing conducted on November 10, 2021, Dr. Berkowitz testified that he knew that these records existed. However, despite having the knowledge of their existence, Dr. Berkowitz failed to request same from Attorney Waldron. Moreover, Dr. Berkowitz indicated that these records would have been consistent with his impression and opinion, as they would have corroborated his assessment of the Defendant. In particular, Dr. Berkowitz clarified that these treatment records simply would have helped to verify the Defendant's emotional

immaturity. Dr. Berkowitz explained that these providers were treating the Defendant for anxiety and depression; mood disorders that can be linked to the Defendant's non-verbal learning disorder and facial disfigurement. This Court recognizes that Dr. Berkowitz was able to identify that the Defendant suffered from a non-verbal learning disorder and emotional issues surrounding her facial disfigurement despite not having independently reviewed these treatment records. Consequently, these records would not have added any substantive value to Dr. Berkowitz's opinion and conclusions.

Furthermore, the Defendant contends that Attorney Waldron provided ineffective assistance of counsel by failing to furnish Dr. Berkowitz with the treatment records of therapist Nicholas Jupina, LCSW. Just as with the treatment records of Dr. Campion and Ms. Bandolino, Dr. Berkowitz knew of their existence. Indeed, Dr. Berkowitz was aware of the fact that Mr. Jupina was treating the Defendant, as the Defendant herself revealed such information to him. In fact, Dr. Berkowitz memorialized this information in the "Interview" section of his expert report. (D. Ex. 30); (C. PCRA Ex. 2A; D. DH Ex. 4). Nevertheless, Dr. Berkowitz did not request that Attorney Waldron provide him with such documents. As Dr. Berkowitz testified, speaking with Mr. Jupina or reviewing his treatment records would have endowed him with more information that was consistent with his conclusion that the Defendant was emotionally immature despite her advanced intellectual development. No new conclusions or opinions would have been reached.

The Defendant also avers that Attorney Waldron rendered ineffective assistance of counsel when he failed to provide Dr. Berkowitz with the Walmart video of March 15, 2015. (C. PCRA Ex. 1; C. PH Ex. 24). This Court notes that Dr. Berkowitz admitted that he was aware of the existence of the Walmart video. Therefore, had Dr.

Berkowitz desired to view the video, he could have contacted Attorney Waldron to schedule a time to visit Attorney Waldron's office to view it. However, Dr. Berkowitz did not reach out to Attorney Waldron. In addition, Dr. Berkowitz testified that had he viewed the Walmart video prior to authoring his report and testifying, it would have demonstrated to him the Defendant's state of mind immediately after the murder, in that she appeared, to him, to be in a daze. This observation is consistent with Dr. Dattilio's conclusion that the Defendant was in shock after the murder, as well as Dr. Berkowitz's own later diagnosis that the Defendant suffered from Post-Traumatic Stress Disorder weeks or months following her mother's murder. Consequently, this Court finds that Dr. Berkowitz's viewing of the Walmart video would not have impacted his professional opinion in any substantive or material manner.

The Defendant next contends that Attorney Waldron failed to provide Dr. Berkowitz with *all* of the text messages between the Defendant and the Co-Defendant from the beginning of their relationship in October 2014, thereby rendering him ineffective. (D. Ex. 10); (PCRA Ex. 25); (C. PCRA Ex. 2A; C. DH Ex. 8); (C. PCRA Ex. 2A; C. DH Ex. 9). However, this argument is factually flawed, as Dr. Berkowitz acknowledged that he was in receipt of these texts prior to his testifying at the decertification hearing on November 2, 2015. Despite having them in his possession, Dr. Berkowitz did not review them in their entirety as a result of the time constraints that he faced. As Dr. Berkowitz testified, these texts would have provided him with *further* evidence that the Co-Defendant was controlling and that he had violent tendencies. Indeed, this Court notes that Dr. Dattilio's expert report of September 17, 2015 and John O'Brien, M.D., J.D.'s expert report of October 22, 2015 included context of and information about the controlling nature of the relationship between the Defendant and

the Co-Defendant; both of which were furnished to Dr. Berkowitz.[18] (D. Ex. 14); (C. PCRA Ex. 2A; D. DH Ex. 2); (C. PCRA Ex. 2A; C. DH Ex. 23). Moreover, by virtue of the age difference, in and of itself, in the relationship, Dr. Berkowitz was acutely aware of the controlling nature of the Co-Defendant. Therefore, a review of *all* of the text messages between the Defendant and the Co-Defendant merely would have strengthened Dr. Berkowitz's opinion, and not changed or altered it.

Additionally, the Defendant argues that Attorney Waldron was ineffective for failing to provide Dr. Berkowitz with the CY104 report. (D. Ex. 9); (PCRA Ex. 24); (C. PCRA Ex. 2A; C. DH Ex. 10). As explained earlier, *supra*, Attorney Waldron had contradictory statements and evidence which caused him to wholeheartedly believe that the CY104 report was unreliable and deceptive. Consequently, he affirmatively made the decision not to provide Dr. Berkowitz with inaccurate information. Interestingly, Dr. Berkowitz testified that the CY104 report was an important document to him because had he possessed *any* indication that there was abuse in the relationship, he would have gone to great lengths to pursue it.[19] However, this Court notes that Dr. Berkowitz was in possession of Dr. Dattilio's report of September 17, 2015, in which he delineates the Defendant's version of events when the Defendant and the Co-Defendant returned to her residence after the murder of Cheryl Silvonek which includes a violent non-consensual sexual encounter between the Defendant and the Co-Defendant. (D. Ex. 14); (C. PCRA Ex. 2A; D. DH Ex. 2). Also, Dr. O'Brien's report of October 22, 2015 discusses this

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[18] At the hearing on November 10, 2021, Dr. Berkowitz initially indicated that he had not seen Dr. O'Brien's expert report prior to testifying, but later amended his testimony and confirmed that he did receive the report prior thereto. In addition, Dr. Berkowitz stated that he and Dr. Dattilio discussed Dr. O'Brien's report prior to the decertification hearing.

[19] This Court finds that Dr. Berkowitz, a renowned psychiatrist with expertise in childhood traumas, would not need to observe or be advised of physical marks of abuse in order to detect that a relationship involved coercion and violence.

sexual assault and makes explicit reference to the CY104 report. (C. PCRA Ex. 2A; C. DH Ex. 23). As such, Dr. Berkowitz was aware of the existence of this document and the information that was contained therein. Thus, Dr. Berkowitz could have requested this report from Attorney Waldron. However, no such request was made at the time. In addition, this Court reiterates that the very nature of the relationship between a fourteen (14) year old girl and a twenty (20) year old man is clearly nonconsensual and assaultive.[20] Given this information, Dr. Berkowitz had ample foundation to pursue and delve into the abusive character of the relationship between the Defendant and the Co-Defendant. Consequently, this Court concludes that Attorney Waldron was not ineffective for not furnishing the CY104 Report to Dr. Berkowitz.

Next, the Defendant claims that Attorney Waldron was ineffective for failing to provide Dr. Berkowitz with the letter that the Defendant wrote to the Co-Defendant while she was incarcerated in the Lehigh County Jail in which she requested the Co-Defendant's assistance in having the Court grant the desired decertification. (C. PCRA Ex. 2A; C. DH Ex. 22). Dr. Berkowitz was made aware of this letter on September 15, 2015, the date that he interviewed the Defendant. Furthermore, Dr. Berkowitz did receive a copy of the actual letter that the Defendant authored prior to submitting his report, albeit close in time to the submission thereof. Dr. Berkowitz explained that a review of this letter provided him with further indication of the Defendant's immaturity and that she could be manipulated by others. Such information merely supported Dr. Berkowitz's already-formed opinion that he expressed in his expert report and to the

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[20] At the hearing on November 10, 2021, Dr. Berkowitz highlighted the fact that the Defendant was only fourteen (14) years old and the Co-Defendant was twenty (20) years old. He further explained that it was very clear that there was a coercive power dynamic at play in this relationship and that the Defendant was under the Co-Defendant's sway and control.

Court at the decertification hearing. Consequently, as the contents of this letter did not cause Dr. Berkowitz to change his opinion and conclusions, but merely reinforced them, we cannot find that Attorney Waldron was ineffective.

The Defendant also argues that Attorney Waldron was ineffective for not furnishing Dr. Berkowitz with the Co-Defendant's Military Police Report, the Co-Defendant's social media accounts such as Twitter and Facebook, and the Defendant's social media posts. The Defendant argues that Dr. Berkowitz potentially could have gleaned that the Co-Defendant was violent and "scary" as a result of the Military Police Report in which the Co-Defendant's attempt to stab himself in the eye on February 1, 2014 is outlined. However, as discussed above, Judge Dantos ruled on November 16, 2015, after conducting an *in camera* review of the Co-Defendant's Military Police Report, that there was no discoverable or material information contained therein that would require the Military Police Report to be disclosed to the Defendant. (C. PCRA Ex. 4). As such, Attorney Waldron did not have access to this document to furnish to Dr. Berkowitz. Similarly, the Defendant contends that the Co-Defendant's Facebook post of a photograph of knives in which he refers to them as "My killers" would have demonstrated to Dr. Berkowitz the Co-Defendant's propensity towards violence, while the Defendant's social media posts would have revealed that the Defendant struggled with social insecurities. (D. Ex. 33); (PCRA Ex. 30). However, this Court finds that these materials would have been cumulative, as Dr. Berkowitz already had in his possession documents that contained ample information and material to demonstrate (and he already possessed the knowledge) that the Co-Defendant was violent and assaultive and that the Defendant suffered from a non-verbal learning disability. Additionally, Dr. Berkowitz did not have access to the Co-Defendant to interview him with regard to the

context in which he labeled the knives "My killers," and therefore any conclusions based on same would have been based on pure conjecture. (D. Ex. 33); (PCRA Ex. 30).

Overall, at the conclusion of his review of the vast material and his assessment of the Defendant, Dr. Berkowitz opined that the Defendant should be decertified to juvenile court because the Defendant was emotionally immature in light of her adolescent brain development and that she should not be held to the same standards as an adult. (C. Ex. 2A; D. DH Ex. 4); (C. PCRA Ex. 2B). He further opined that the Defendant met the criteria for a non-verbal learning disability.[21] (C. Ex. 2A; D. DH Ex. 4); (C. PCRA Ex. 2B). Dr. Berkowitz also identified that the Defendant's facial disfigurement was a stressor in her life and that she suffered from Post-Traumatic Stress Disorder as a result of the murder of Cheryl Silvonek. (C. Ex. 2A; D. DH Ex. 4); (C. PCRA Ex. 2B). While Dr. Berkowitz indicated that all of the aforementioned collateral information could have been useful to him in performing his evaluation and report, such information and material would not have changed the ultimate opinion that he rendered.

Additionally, this Court recognizes that the Defendant's constant inconsistent statements made the experts' tasks extremely difficult and complicated their role as expert witnesses. Indeed, it is the Defendant's well-documented falsehoods, unreliability, and duplicity that compelled the Commonwealth's expert, Dr. O'Brien, to

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[21] Dr. Berkowitz cited in support of his findings that the Defendant's intelligence testing revealed that she had an extremely high verbal IQ but, while still high, her non-verbal or perception IQ was over 29 points lower than her verbal IQ. (D. Ex. 30); (C. PCRA Ex. 2A; D. DH Ex. 4); (C. PCRA Ex. 2B). Dr. Berkowitz opined that her non-verbal learning disability made the Defendant vulnerable to misreading of complex social interactions and to highly emotional interpersonal relationships. (D. Ex. 30); (C. PCRA Ex. 2A; D. DH Ex. 4); (C. PCRA Ex. 2B). After identifying the Defendant with a non-verbal learning disability, Dr. Berkowitz suggested that the Defendant undergo more neuropsychological testing in order to garner more information about this learning disability in an effort to open up avenues of treatment for her. Dr. Berkowitz related that no further testing was performed. This Court notes that as the purpose of further testing was for treatment purposes, Attorney Waldron had no duty to pursue this testing.

conclude in his October 22, 2015 report that *no* expert could opine within a reasonable degree of professional certainty that the Defendant was amenable to treatment or rehabilitation within the juvenile justice system. (C. PCRA Ex. 2A; C. DH Ex. 23). Just as the inconsistencies confounded the experts and made their job more challenging and arduous, Attorney Waldron was faced with the same hindrance in fulfilling his representation of the Defendant. Based on the foregoing, this Court cannot conclude that Attorney Waldron was ineffective for failing to furnish Dr. Berkowitz with the aforementioned collateral documents and material, as Dr. Berkowitz's opinions and conclusions would have remained unchanged and there is no reasonable probability that the outcome of the decertification hearing would have been different.

Next, the Defendant contends that Attorney Waldron was ineffective for failing to adequately investigate and/or call Margaret Lynn, Tonya Lynn, Jimmy Lee Werley, Heather Lesko, Erich Joella, and Nicholas Jupina, LCSW to testify as witnesses. In addressing Defendant's specific allegation, we recognize that counsel cannot be deemed ineffective for failing to present witnesses at trial unless the defendant demonstrates all of the following: (1) the witness existed; (2) the witness was available to testify for the defense; (3) counsel knew of, or should have known of, the existence of the witness; (4) the witness was willing to testify for the defense; and (5) the absence of the testimony of the witness was so prejudicial as to have denied the defendant a fair trial. Medina, 209 A.3d at 998; Commonwealth v. Carbone, 707 A.2d 1145, 1153 (Pa. Super. 1998); Commonwealth v. Speight, 677 A.2d 317, 323 (Pa. 1996).

While it is without question that the witnesses enumerated above existed and were available and willing to testify, and that Attorney Waldron knew of their existence, the absence of their testimony was not prejudicial on any level, let alone to

such as degree as to deny the Defendant a fair decertification hearing. In fact, Attorney Waldron considered and weighed the options with regard to the issue of presenting character witnesses at the decertification hearing. After careful consideration, Attorney Waldron pursued the strategy of including witness information and testimony within Dr Dattilio's expert report that would be admitted at the decertification hearing, but at the same time would not be subject to cross-examination. (C. PCRA Ex. 2A). This strategy was discussed with Dr. Dattilio and it was deemed to be the best approach in light of family members' emotional state and their questionable ability to testify effectively. Dr. Dattilio, acting as a conduit through which the witnesses would testify, interviewed a myriad of people including family such as Ms. Margaret Lynn,[22] Mr. David Silvonek, and Mr. Alex Silvonek[23] to gain insight into the Defendant, corroborate the Defendant's story, and to obtain their thoughts; teachers such as Mr. Erich Joella[24] to obtain an objective impression of the Defendant; and family and work friends such as Mr. and Mrs. Ray Mueller,[25] Mr. Julian Lesko,[26] Ms. Sue Hein, and Ms. Jane Laudenslager[27] in order to understand the family dynamics. (C. PCRA Ex. 2A). Additionally, even though Ms. Margaret Lynn and Mr. Erich Joella did not testify in person at the decertification hearing, they were both interviewed by Dr. Dattilio and therefore their relevant statements were included within Dr. Dattilio's expert report. (C. PCRA Ex. 2A); (D. Ex. 14); (C. PCRA Ex. 2A; D. DH Ex. 2). Indeed, the core of what they would have testified to in person at the decertification hearing was presented in Dr. Dattilio's expert report. (D.

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22 Ms. Margaret Lynn is the Defendant's maternal grandmother.

23 Mr. Alex Silvonek is the Defendant's older brother.

24 Mr. Erich Joella was the Defendant's music teacher throughout elementary and middle school.

25 Mr. and Mrs. Ray Mueller are family friends to the Silvoneks for over twenty (20) years.

26 Mr. Julian Lesko was the Defendant's adolescent friend.

27 Ms. Sue Hein and Ms. Jane Laudenslager were Cheryl's workmates.

Ex. 14); (C. PCRA Ex. 2A; D. DH Ex. 2).

Moreover, Attorney Waldron had retained and utilized the services of a private investigator to assist him in the within matter. Specifically, he contracted with Private Investigator Joe Brown, a retired FBI agent who he had utilized for years. Private Investigator Brown interviewed witnesses in the case, issued written reports, and spoke with Attorney Waldron with regard to his findings and conclusions. Attorney Waldron felt comfortable with Private Investigator Brown and the manner in which he performed his investigations. Attorney Waldron possessed all of the information that he required in order to make decisions as to which witnesses he needed or would call to testify in person. In fact, Attorney Waldron was aware of Mr. Jimmy Lee Werley's involvement as the Defendant's spiritual advisor while the Defendant was incarcerated at the Lehigh County Jail, as well as the fact that he was the former Pastor of the Jordan Lutheran Church in Orefield.[28] Mr. Werley and Attorney Waldron discussed the idea that Mr. Werley would be willing to help out in any way that he could, but Attorney Waldron concluded, based on his training and experience, that his testimony at the decertification hearing would not be beneficial to the Defendant. Similarly, Attorney Waldron was aware of the fact that Ms. Heather Lesko, a family friend and the mother of Julian Lesko, was willing and able to testify on the Defendant's behalf at the decertification hearing. In fact, Private Investigator Brown interviewed Ms. Lesko at her home on July 21, 2015. During that interview, Ms. Lesko had related to Private Investigator Brown that the Defendant had begun posting promiscuous photographs of herself online. As Attorney

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[28] Mr. Werley testified that his interactions with the Defendant while in his capacity as the Pastor of the Jordan Lutheran Church were limited even though the Defendant was a member of his church. Mr. Werley assumed the role of Defendant's spiritual advisor commencing in mid-May 2015.

Waldron was aware of the substance of this interview, it is reasonable for him to have made the affirmative decision that Ms. Lesko's testimony would not have been in the Defendant's best interest.

Finally, Attorney Waldron possessed the knowledge that the Defendant was being seen by licensed social worker Nicholas Jupina, LCSW, while in the Lehigh County Jail. Indeed, it was Attorney Waldron who reached out to Dr. Dattilio for a recommendation of a therapist and effectuated Defendant's receipt of supportive counseling services. As Mr. Jupina's role was therapeutic in nature and not forensic, his counseling sessions with the Defendant were confidential and privileged information. Having the Defendant waive the privilege to allow Mr. Jupina to testify at the decertification hearing could have undermined the trust being built between them and could have compromised the Defendant's therapy. Thus, Attorney Waldron's decision not to have him testify at the decertification hearing had a reasonable basis.

Overall, Attorney Waldron made the strategic decision not to call any in person character witnesses at the time of the decertification hearing. Instead, Attorney Waldron presented the testimony of various character witnesses enmeshed within Dr. Dattilio's report, thereby allowing the testimony to be admitted without being subject to cross-examination. Attorney Waldron's decision not to have the aforementioned individuals testify in person was founded on a reasonable basis.[29] Furthermore, the Defendant failed to demonstrate the necessity of the proposed testimony to avoid prejudice. Thus, this Court cannot deem counsel ineffective for tactically deciding not to

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[29] This Court notes that the reasonable basis prong of the ineffective assistance of counsel claim does not question whether there were other courses of action which counsel could have pursued, but rather examines whether counsel had a reasonable basis for making a decision. Commonwealth v. Mason, 130 A.3d 601, 618 (Pa. 2015). This Court finds that Attorney Waldron's decision was reasonably based.

call Margaret Lynn, Tonya Lynn, Jimmy Lee Werley, Heather Lesko, Erich Joella, and Nicholas Jupina, LCSW to testify at the decertification hearing.

Next, the Defendant argues that Attorney Waldron was ineffective for failing to investigate and utilize the resources available to him to demonstrate that the Defendant suffered from emotional trauma and intimate partner abuse/control. This Court finds this assertion to be baseless. From the time that Attorney Waldron was retained, he understood that the relationship between the Defendant and the Co-Defendant was relevant in light of the vast age difference and that the relationship would play a significant role in the defense of the case. As early as March 17, 2015, Attorney Waldron indicated to the press that he "got the impression that [the Co-Defendant] was manipulative" and that the Co-Defendant "threatened to hurt [the Defendant] and her father, and put his hands around her neck as he threatened her." (D. Ex. 1); (PCRA Ex. 20). Attorney Waldron expressed to the press in early April 2015 that he intended to delve into the relationship to determine what role, if any, coercion or duress played in the murder of Cheryl Silvonek.[30] In order to explore this relationship further, Attorney Waldron retained Dr. Dattilio, a clinical and forensic psychologist who possesses the training and experience to identify and recognize trauma in youths and intimate partner abuse. After Dr. Dattilio performed the lengthy and comprehensive process of five (5)

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30 At the time that Attorney Waldron made his initial comments to the press, discovery had yet to be provided to him and the Criminal Complaint had yet to be filed. Additionally, Attorney Waldron's initial impression of the Defendant was that she was scared and upset. However, once discovery was reviewed, including text messages between the Defendant and the Co-Defendant on March 14, 2015 through March 15, 2015 which appeared to demonstrate that the Defendant was encouraging the Co-Defendant to kill her mother, it became evident that there was more to the story. (C. PCRA Ex. 2A; C. DH Ex. 8); (C. PCRA Ex. 2A; C. DH 9); (C. PCRA Ex. 1; C. PH Ex. 16). Indeed, over time, the Defendant's story evolved and it was apparent to Attorney Waldron that the earlier versions of events that the Defendant had related were not truthful. Even Dr. Dattilio noted that over time the Defendant slowly began to admit greater involvement in the murder of her mother.

separate clinical interviews with the Defendant,[31] collateral interviews, and testing/assessments, he found neither to be present in the Defendant.[32] Indeed, Dr. Dattilio administered to the Defendant a plethora of psychological tests, including, but not limited to, the Minnesota Multiphasic Personality Inventory-Adolescent (MMPI-A), the Beck Youth Inventory – 2nd Edition, and the Milon Adolescent Clinical Inventory (MACI) tests. (D. Ex. 14); (C. PCRA Ex. 2A; D. DH Ex. 2). These tests are personality assessments and they did not indicate any trauma or abuse. (D. Ex. 14); (C. PCRA Ex. 2A; D. DH Ex. 2). Furthermore, these aforementioned personality assessments cross-check each other, thereby providing safeguards so that the examinee cannot manipulate the results. As a result of the clinical interviews, the testing, and the evaluations not demonstrating any indication of physical or sexual abuse or intimate partner violence, Dr. Dattilio did not report any such abuse to Attorney Waldron.

Similarly, Dr. Berkowitz, an internationally renowned psychiatrist with special expertise in adolescent trauma and violence in youths,[33] in his expert report,

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31 Dr. Dattilio recognized that he had to build trust and a rapport with the Defendant, as juveniles are in transition and are growing emotionally. As such Dr. Dattilio conducted five (5) separate interviews with the Defendant, each one (individually and in combination therewith) trying to be thorough and to reveal the essential crux of the homicide. Again, Dr. Dattilio testified that five (5) interviews are far more than what he would normally conduct in a decertification case.

Moreover, Dr. Dattilio understood the complexity of the case and strove to understand the relationship between the Defendant and the Co-Defendant. He found it troubling that the Defendant's behavior on March 15, 2015 did not comport with her history and he was concerned if the Co-Defendant had an emotional or psychological effect on her and unduly influenced her. In order to address these concerns, Dr. Dattilio spent a vast amount of time in fully exploring their relationship in his expert capacity.

32 The testing did not reveal any signs of trauma or Post Traumatic Stress Disorder. The Defendant never expressed or disclosed to either Dr. Dattilio or Dr. Berkowitz that the Co-Defendant abused her.

33 Indeed, Dr, Berkowitz is one of the distinguished experts in this field. As such, Dr. Berkowitz has trained and lectured mental health professionals and people in the community on how to identify and recognize issues of trauma so that the patient/individual can receive proper treatment.

specifically considered and deliberated over whether the Defendant suffered from trauma as a result of her relationship with the Co-Defendant. Having been brought into the case for the limited purpose of expounding upon Dr. Dattilio's findings and conclusions in light of his psychiatric specialties, Dr. Berkowitz relied upon Dr. Dattilio's testing and assessments which revealed no complex trauma. Nonetheless, Dr. Berkowitz explored the issue of trauma further. As a result of finding the relationship between the Defendant and the Co-Defendant to be confusing and perplexing to him, Dr. Berkowitz devoted time to mulling over and reflecting upon it. As a prominent and distinguished psychiatrist on adolescent trauma, Dr. Berkowitz was qualified and capable of identifying if the Defendant suffered from complex trauma as a result of an abusive relationship. However, Dr. Berkowitz made no such findings. Rather, utilizing his well-recognized expertise, Dr. Berkowitz only opined that the Defendant suffered from Post-Traumatic Stress Disorder.[34] As neither defense expert identified complex trauma to be an issue in the within matter, at no time was Attorney Waldron made aware based on credible evidence of a physically or emotionally abusive relationship between the Defendant and the Co-Defendant.[35] Consequently, this Court cannot find that Attorney Waldron was ineffective in this regard.

Additionally, the Defendant contends that Attorney Waldron should have utilized the resources and recommendations presented by Ms. Jill Spector, a senior legal consultant with the National Clearinghouse for the Defense of Battered Women. Ms.

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[34] As Dr. Berkowitz explained, the Defendant's Post-Traumatic Stress Disorder emerged after the traumatic event/murder of Cheryl Silvonek.

[35] Dr. Dattilio testified that neither John F. Campion, M.D., a psychiatrist employed by the Guidance Program at Lehigh Valley Physicians Group and who was providing services to the Defendant, nor Ms. Lisa Bandolino of the Individual and Family Counseling Services of the Lehigh Valley, P.C., a therapist providing the Defendant with individual psychotherapy, noted or identified any trauma in the Defendant.

Spector had read an article about the within matter online in April or May 2015. Based on the facts of that article, Ms. Spector believed that the Defendant was possibly a victim of abuse in light of the age difference between her and the Co-Defendant and the Defendant's lack of a prior record or history of violence. Consequently, she contacted Attorney Waldron via telephone during the end of June 2015, to gather information on the dynamics of the relationship between the Defendant and the Co-Defendant. Additionally, she advised Attorney Waldron to explore their relationship and that the National Clearinghouse for the Defense of Battered Women was available to help provide further resources if desired. Ms. Spector sent a follow up email to Attorney Waldron on July 10, 2015, in which she attached, *inter alia*, the Affidavit of Dr. Marty Beyer.[36] (D. Ex. 7); (PCRA Ex. 22). Attorney Waldron did not reply to her email.

After the decertification was denied and Ms. Spector read an article about it online in late December 2015, she once again telephoned Attorney Waldron on January 5, 2016. At this time, Ms. Spector provided unsolicited advice to Attorney Waldron with regard to preparing for a trial. Afterwards, Ms. Spector sent Attorney Waldron a follow-up email on January 14, 2016, in which she asserted that the Defendant was potentially a victim of sexual abuse. (D. Ex. 8); (PCRA Ex. 23). However, during the evidentiary hearing, Ms. Spector acknowledged that all of her information came from news articles that she read online, the judicial decision in the decertification, and her brief calls with Attorney Waldron. She admittedly was unaware of all of the evidence in the case, as well as the fact that the Juvenile Law Center may be advising Attorney Waldron on this matter. Additionally, she was not aware of the fact that Dr. Dattilio concluded in his expert professional opinion that there was no trauma or intimate partner abuse in the

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[36] Ms. Spector had found Dr. Beyer's Affidavit online.

within matter. Consequently, this Court finds that it is reasonable that Attorney Waldron did not fully embrace the assistance offered by Ms. Spector because, according to the experts, the Defendant did not suffer from trauma or intimate partner violence.

Furthermore, the Defendant argues that Attorney Waldron was ineffective for failing to investigate and recognize that prior trauma and intimate partner violence might have been issues in the case. Specifically, through the testimony of Marty Beyer, Ph.D.,[37] a clinical psychologist with expertise in child and adolescent development, the Defendant asserts that five (5) factors influenced the Defendant's behavior: 1) childish judgment/immature thinking, 2) problems reading social cues/non-verbal learning disorder, 3) desperate desire to be loved, 4) delayed emotional development, and 5) the intimate partner abuse in the Defendant's relationship with the Co-Defendant. While the Defendant does acknowledge that Dr. Dattilio and Dr. Berkowitz recognized the first four (4) factors, the Defendant alleges that they failed to identify intimate partner violence in the relationship. The Defendant attributes this failure to the fact that Attorney Waldron neglected to furnish the defense experts with *all* of the text messages between the Defendant and the Co-Defendant from the beginning of their relationship in October 2014, the CY104 report, the video police interview of Witness C.E. dated March 16, 2015, and the Military Police Report of the Co-Defendant. (D. Ex. 9); (PCRA Ex. 24); (C. PCRA Ex. 2A; C. DH Ex. 10); (D. Ex. 10); (PCRA Ex. 25). The Defendant claims that by not having reviewed all of the documentation and evidence, the experts were unable to

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[37] The Defendant avers that Attorney Waldron was also ineffective for failing to retain the services of Dr. Beyer, as well as a mitigation expert. However, this Court recognizes that Attorney Waldron already enlisted the assistance of two (2) well-respected experts: a clinical and forensic psychologist and a psychiatrist with a special expertise in childhood trauma. As such, this Court finds it to be completely reasonable not to have hired a third expert in light of the time constraints and other practical limitations.

present an accurate assessment of the Defendant to the Court during the decertification hearing, thereby not appropriately depicting her as a juvenile highly amenable to treatment. We cannot agree.

At the evidentiary hearing, Dr. Beyer testified that had Dr. Dattilio or Dr. Berkowitz been provided with these aforementioned documents, they would have been able to identify the fifth factor (intimate partner violence or trauma).[38] Dr. Beyer explained that once intimate partner violence or trauma was identified, logically the experts would have delved deeper into the relationship between the Defendant and the Co-Defendant. However, this Court notes that during her testimony, Dr. Beyer did admit that the underlying information on which she based her finding of intimate partner violence was identified and delivered in the expert reports. Dr. Beyer then correctly observed that it merely was not labeled as such by the experts. This Court recognizes that this fifth factor need not be labeled to be recognized. The labeling was not a necessary aspect in order to understand and present a full picture of the Defendant to the Court. Indeed, this Court finds that while neither Dr. Dattilio nor Dr. Berkowitz found intimate partner violence or trauma to be present, they did not neglect or fail to delve deep into the Defendant's relationship with the Co-Defendant. The expert reports demonstrate that this relationship was exhaustively explored. Furthermore, it is important to understand that simply because the words "intimate partner violence" are not in the expert reports, does not mean that the defense experts did not consider it.

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[38] While Dr. Beyer interviewed the Defendant in March 2019, Dr. Beyer relied on the previous experts' reports, as she did not perform any independent testing and she did not review the raw data from the tests. Additionally, Dr. Beyer acknowledged that the personality assessment tests administered by Dr. Dattilio have built in measures to identify when a participant is lying and that it is difficult, if not impossible, to outsmart. The results of these tests demonstrated no trauma, no Post Traumatic Stress Disorder, and no psychopathology.

Indeed, Dr. Dattilio testified that he did consider trauma and intimate partner violence during his assessment.[39] However, as no such findings were made, there was nothing to be included in the expert report regarding same. Based on the foregoing, this Court finds that the Defendant's argument is without basis.

Also, the Defendant contends that Attorney Waldron was ineffective for failing to investigate or present evidence on dispositional alternatives available to the Defendant in the criminal justice system. This argument is not based on the record evidence. Indeed, Attorney Waldron presented the testimony of Lisa Costello, a Probation Officer with the Juvenile Probation Department of Lehigh County for over twenty-five (25) years. (C. PCRA Ex. 2A). Officer Costello discussed and explained to the decertification court what placements in Pennsylvania would be available to the fourteen (14) year old Defendant if she were adjudicated delinquent in juvenile court. (C. PCRA Ex. 2A). In particular, during her testimony, she described two (2) secure facilities: the North Central Secure Treatment Unit in Danville, Pennsylvania and the Adelphoi Village in Latrobe, Pennsylvania. (C. PCRA Ex. 2A). She outlined each facility, the programs that they could offer to such a young offender, and the benefits that would be conferred through the placement. (C. PCRA Ex. 2A). It should be noted that Attorney Waldron made the strategic decision not to have Officer Costello conduct an intake interview/assessment of the Defendant, because Attorney Waldron was concerned that should the Defendant relate yet another version of events to the Probation Officer,

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[39] Dr. Dattilio is a well-respected, world renowned forensic and clinical psychologist. Therefore, this Court finds it inconceivable to believe that he did not recognize, on its face, that the relationship between a fourteen (14) year old girl and a twenty (20) year old man calls for concern. Both Dr. Dattilio and Dr. Berkowitz thoroughly explored whether trauma and/or intimate partner violence was present in the within matter. Indeed, Dr. Dattilio and Dr. Berkowitz discussed with each other the Defendant's relationship with the Co-Defendant on multiple occasions.

additional problems and issues could be created. This Court finds that this decision, as well as the decision on introducing the testimony of Officer Costello to present dispositional alternatives, was rationally and tactically driven.

Furthermore, the Defendant argues that Attorney Waldron failed to investigate or argue the legal significance of adolescent development research, as well as inadequately cross-examined the Commonwealth's expert, Dr. John O'Brien. These arguments have no foundation.

The Defendant asserts that Attorney Waldron failed to investigate or argue the legal significance of adolescent development research, and therefore he was ineffective in his representation of the Defendant. However, this argument fails to recognize the thrust of Dr. Berkowitz's testimony. Dr. Berkowitz, a psychiatrist and the Director of the Penn Center for Youth and Family Trauma Response and Recovery, explained the implications of adolescent brain development in that the developing brain causes adolescents to act differently from adults and, consequently, that they should not be held to the same standards as adults. This biological phenomenon was made known to the decertification Court both via his expert report and his testimony at the hearing. Consequently, this Court cannot find that Attorney Waldron failed to present and explain the significance of adolescent brain changes and development to the decertification Court, as the purpose of retaining Dr. Berkowitz as an expert was to have him testify about brain development in light of the Defendant's age.

Furthermore, the Defendant claims that Attorney Waldron, a seasoned defense attorney, was ineffective at cross-examining the Commonwealth's expert witness, Dr. O'Brien. (C. PCRA Ex. 2A); (C. PCRA Ex. 2A; C. DH Ex. 23); (C. PCRA Ex. 2A; C. DH Ex. 26). To the contrary, Attorney Waldron was armed with all of the

information that he required to conduct an effective cross-examination, and further investigation would not have changed his tactics. As an attorney who has filed numerous Motions to Transfer, Attorney Waldron relied on his experts to refute Dr. O'Brien's conclusions and to demonstrate any inconsistencies with psychological research.[40] Nevertheless, Attorney Waldron utilized the cross-examination to attempt to undermine Dr. O'Brien's credibility and to point out the flaws in his conclusions and opinions. (C. PCRA Ex. 2A). Attorney Waldron highlighted that Dr. O'Brien conducted no independent testing, assessments, or collateral interviews and he, in essence, handpicked different facts on which to base his opinion. (C. PCRA Ex. 2A). The facts on which Dr. O'Brien's conclusions were based were made known to the Court, and were in contrast to the picture being painted by the defense experts. (C. PCRA Ex. 2A). Through the cross-examination, Attorney Waldron attempted to elicit testimony that would be favorable to the Defendant and would demonstrate the flaws in Dr. O'Brien's testimony. (C. PCRA Ex. 2A). Based on the foregoing, this Court finds that Attorney Waldron's cross-examination was sufficient and did not prejudice the Defendant's case or impact the outcome of the decertification hearing.

Finally, during the appeal process, Attorney Waldron filed a 1925(b) statement which included numerous allegations of error committed by this Court,

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[40] At the hearing on November 10, 2021, Dr. Berkowitz testified that Attorney Waldron failed to call him as a rebuttal witness and that in rebuttal testimony, Dr. Berkowitz would have highlighted Dr. O'Brien's error in diagnosing the Defendant, a juvenile, with Cluster B personality disorder (with traits of borderline, narcissistic, histrionic, and antisocial personality disorder). However, a review of Dr. O'Brien's report reflects that Dr. O'Brien did *not* diagnose the Defendant with a Cluster B personality disorder, but rather indicated that the Defendant manifested symptoms of an evolving Cluster B personality disorder. (C. PCRA Ex. 2A; C. DH Ex. 23). Dr. O'Brien specifically stated that, as a result of her age, the Defendant could not be diagnosed with a Cluster B personality disorder. (C. PCRA Ex. 2A; C. DH Ex. 23). Dr. Berkowitz explained that conduct disorder in juveniles is parallel to antisocial personality disorder in adults.

including the Court's error in "denying decertification when it concluded that [the Defendant's] amenability to treatment is beyond questionable because she lacks any recognized diagnosis of a mental infirmity or disorder." (D. Ex. 15); (PCRA Ex. 26). However, instead of pursuing all of the nine (9) arguments enumerated in the concise statement of matters complained of on appeal, Attorney Waldron decided to pursue three (3) issues with the Superior Court of Pennsylvania and briefed same. (D. Ex. 16); (PCRA Ex. 27). This Court cannot fault Attorney Waldron, a highly-experienced defense attorney, for deciding to utilize the strategy of being concise in the filing and briefing of the appeal and focusing on the potentially primary meritorious arguments, as opposed to diluting them by including other flawed or less meritorious issues. Consequently, this Court finds it reasonable that only three (3) subsections were included in the 1925(b) statement with regard to the Court's alleged abuse of discretion or error of law. In regards to ineffectiveness of counsel's acts or omissions, defense counsel is afforded broad discretion to determine tactics and strategies. Commonwealth v. Fowler, 670 A.2d 153 (Pa. Super. 1996), *allocatur granted*, 682 A.2d 1266 (Pa. 1996), *affirmed*, 703 A.2d 1027 (Pa. 1997). Consequently, we find that Attorney Waldron's actions were reasonably based to effectuate the Defendant's interests.

Overall, this Court concludes that Attorney Waldron drew from his vast legal experience and fiercely presented a thorough case in support of decertification. He attempted to demonstrate through expert witnesses and record evidence that the Defendant did not have a prior record and that the Defendant possessed great potential for rehabilitation. Attorney Waldron attempted to establish that the Defendant could benefit from the structure, education, and counseling provided in a juvenile facility. Despite ably setting forth such evidence, the Defendant was found not to belong in the

juvenile system because she was not amenable to the treatment, supervision, and rehabilitation that the juvenile system offers. See Commonwealth v. Austin, 664 A.2d 597 (Pa. Super. 1995). This determination was not made as a result of any ineffectiveness by Attorney Waldron.

Accordingly, based on the foregoing, the Defendant's Motion for Post Conviction Collateral Relief is denied.

1/31/2022
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