

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO,)	CASE NO. CR 12 566692 A
)	
Plaintiff,)	
)	JUDGE BRENDAN J. SHEEHAN
v.)	
)	
MAURICIO CERON,)	
)	FINDINGS OF FACT AND
Defendant.)	CONCLUSIONS OF LAW
)	

I. FINDINGS OF FACT.

1. Defendant Mauricio Ceron requests post-conviction relief of his conviction and sentence and requests a hearing on new evidence not presented at trial due to the alleged ineffective assistance of counsel.

2. Defendant was charged with rape, R.C. 2907.02(A)(1)(b), including a specification that the victim was under 10; gross sexual imposition, R.C. 2907.05(A)(4); and kidnapping, R.C. 2905.01(A)(4), with the specification that the crime was committed with a sexual motivation. The events giving rise to the charges occurred on or about August 25, 2012 when Defendant allegedly digitally penetrated the five year old daughter of his stepson.

3. On December 20, 2012, Defendant was convicted on all counts by a jury. On January 4, 2013, the Court sentence Defendant to life in prison with a possibility of parole in 25 years.

4. Defendant contends that his counsel failed to introduce evidence that the five year old victim was sexually precocious. Defendant proffers the affidavits of his wife and two sisters as evidence of the victim's sexual precocity.

5. Defendant's petition for post-conviction relief is governed by R.C. 2953.21, that provides in relevant part:

Any person who has been convicted of a criminal offense or adjudicated a delinquent child and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States, and any person who has been convicted of a criminal offense that is a felony and who is an offender, for whom DNA testing that was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the person's case as described in division (D) of section 2953.74 of the Revised Code provided results that establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death, may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. The petitioner may file a supporting affidavit and other documentary evidence in support of the claim for relief.

6. To succeed on an ineffective assistance of counsel claim, a petitioner must satisfy the two-prong set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). First, the petitioner must demonstrate that counsel's errors were so egregious that "counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. Counsel's performance was "deficient" pursuant to *Strickland* if a reviewing court finds that the representation fell "below an objective standard of reasonableness." *Id.* at 688. A court considering an ineffective-assistance claim "must apply a 'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance." *Harrington v. Richter*, U.S. , 131 S. Ct. 770, 787, 178 L. Ed. 2d 624 (2011) (quoting *Strickland*, 466 U.S. at 689)

II. CONCLUSIONS OF LAW.

7. The Court finds that a hearing is not required pursuant to R.C. 2953.21 (E).

8. Defendant maintains that evidence of the victim's alleged sexual precocity should have been presented at trial to allow the jury to understand that the victim could have been motivated to lie about sexual matters to cause drama in the family and to minimize the impact of a five year old testifying about sexual terms.

9. All of Defendant's proposed purposes are properly categorized as impeachment of the victim witness: impeachment of her credibility and impeachment of her character as a child. Admission of evidence for this purpose is prohibited by Ohio's Rape Shield Statute, R.C. 2907.02(D), which provides:

Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

10. Thus, the rape shield statute "essentially prohibits the introduction of any extrinsic evidence pertaining to the victim's sexual activity," with the limited exceptions being "evidence of the origin of semen, pregnancy, or disease, or of the victim's past sexual activity with the offender." *State v. Williams*, 21 Ohio St.3d 33, 34, 487 N.E.2d 560 (1986). The law is intended to guard the victims' sexual privacy and prevent them from undue harassment; discourage a tendency in sexual assault cases to try the victims rather than the defendant; and, by excluding

inflammatory, prejudicial and only marginally probative evidence, it aids in the truthfinding process. *State v. Gardner*, 59 Ohio St.2d 14, 17-18, 391 N.E.2d 337 (1979).

11. In applying R.C. 2907.02(D), a court must "balance the state interest which the statute is designed to protect against the probative value of the excluded evidence." *Gardner*, *supra* at 17. To be admissible, the evidence must involve more than a mere attack on the credibility of a witness. *Id.* "Evidence merely impeaching the victim's credibility does not outweigh the state's interest in upholding the rape shield statute." *State v. Holmes*, 8th Dist. No. 91948, 2009-Ohio-3736, P41, citing *State v. Ferguson*, 5 Ohio St.3d 160, 450 N.E.2d 265(1983); *State v. Hightower*, 8th Dist. No. 76847, 2000 Ohio App. LEXIS 4173 (Sept. 14, 2000). On the other hand, evidence that both impeaches the victim's credibility and helps prove or disprove a material issue may be admissible. *State v. Williams*, 21 Ohio St.3d 33, 21 Ohio B. 320, 487 N.E.2d 560 (1986).


12. The proffered testimony does not offer any additional evidence concerning Defendant's conduct upon which the criminal charges were based. It does not concern acts, statements or evidence related to the victim and Defendant's conduct that might otherwise be admissible. The evidence is aimed directly and solely at impugning the credibility and character of the victim which is precisely what the rape shield statute prohibits.

13. Defendant further maintains that the victim's credibility should have been more vigorously challenged during cross-examination. "The decision by trial counsel, as to cross-examination of a witness and the extent of the cross-examination, falls squarely within the realm of trial strategy and tactics and will not ordinarily be disturbed on appeal." *State v. Harris*, 8th Dist. No. 94388, 2011-Ohio-4403, P15, citing *State v. Pasqualone*, 121 Ohio St.3d 186, 2009

Ohio 315, 903 N.E.2d 270 (2009); *State v. Frazier*, 115 Ohio St.3d 139, 2007 Ohio 5048, 873 N.E.2d 1263.

14. The Court finds that decisions concerning the extent of cross-examination of a child witness are particularly sensitive tactical and strategic decisions of trial counsel. Trial counsel must tread a fine line between examining the witness and appearing to beat up on a child. The Court finds that trial counsel's performance with regard to the testimony of the child victim did not fall below an objective standard of reasonableness.

15. For the foregoing reasons, Defendant's motion for post-conviction relief is denied.


JUDGE BRENDAN J. SHEEHAN

Dated: 3/18/14

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following this 18th day of March, 2014:

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