

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 00-10,125

VS :

ANTHONY J. MARCHESE :

OPINION AND ORDER

Before the Court is Defendant's Omnibus Pretrial Motion. Defendant has been charged with criminal attempt burglary and criminal mischief as a result of an incident that occurred on March 20, 1999. Because the Defendant was a juvenile at the time of the incident, a Delinquency Petition was filed in the juvenile division. The Commonwealth then filed a petition to certify the matter to adult court. On January 25, 2000 the Defendant appeared before The Honorable William S. Kieser for a certification hearing. According to the January 25, 2000 Order, the Defendant waived his right to the certification hearing, and the charges were transferred to adult court. Defendant now asserts that his waiver of the certification hearing was not knowing and voluntary.

A review of the testimony from the certification hearing indicates the Defendant was extensively colloquied by Judge Kieser with regard to the transfer of his case, the difference between the juvenile system and the adult, and the maximums he would face in adult court. Additionally, after informing the Defendant of his rights, Judge Kieser specifically asked the Defendant:

Q: Do you want to have a hearing where it's contested and you have a chance here today to say no, I want to stay in Juvenile Court and put the burden on the Commonwealth to prove that it's in the best interest of the public and the best interest of yourself for me to transfer

the case or do you want to voluntarily agree to go into Adult Court?

A: Voluntarily agree to go into Adult Court, sir.

It was further stated that in exchange for waiving the certification hearing, the District Attorney's Office had offered a plea agreement for attempt criminal trespass, a felony of the third degree. (N.T. 1/25/00, p. 2).

After a review of the transcript of the hearing, the Court would find that the Defendant knowingly and voluntarily waived his right to the certification hearing and transferred into adult court. The Court is satisfied that the Court's colloquy adequately informed the Defendant of his right to have a certification hearing and the effect of the voluntary transfer into adult court, and that the Defendant made his decision knowingly. Additionally, there is no evidence that the decision was not voluntarily made on the part of the Defendant, that he was under duress or that he was pressured into making the decision in any way. The Defendant additionally received something—a plea agreement to a lesser charge—in exchange for his waiver.

Defense counsel has argued that Defendant's waiver was not voluntary because his counsel should not have advised him to waive his rights in view of the fact that there is not sufficient evidence to establish a prima facie case of the attempt burglary charge. The Court views this defense, in effect, as a claim of ineffective assistance of counsel. The Court would find that Defendant's counsel had a rational, strategic or tactical explanation for advising the Defendant to accept the plea agreement in exchange for waiving his rights to the certification hearing. The Court therefore rejects this argument.

ORDER

AND NOW, this _____ day of August 2000, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Habeas Motion is DENIED.

By The Court,

Nancy L. Butts, Judge

cc: CA

Peter Campana, Esquire
Diane Turner, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire