

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 03-11,012
:
:
vs. : CRIMINAL DIVISION
: Petition for Writ of Habeas Corpus
PRESTON P. HART, :
Defendant :

OPINION AND ORDER

Defendant was charged with escape on May 22, 2003, after he left his home, having been placed under house arrest pursuant to an Order dated September 19, 2002, filed to No. 02-10,486. After a preliminary hearing on July 8, 2003, the charge was held for Court. Defendant contends in the instant Petition for Writ of Habeas Corpus that the Commonwealth failed to present a prima facie case of escape, specifically that all of the elements were not met by the facts of this matter. A hearing on the petition was held September 3, 2003.

Escape is defined by the Crimes Code as follows:

Section 5121. Escape

- (a) Escape. – A person commits an offense if he unlawfully removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period.

18 Pa. C.S. Section 5121. Defendant had been placed on house arrest by Order dated September 19, 2002, issued by the Honorable Nancy L. Butts, which Order accepted Defendant’s guilty plea to robbery, a felony of the third degree, and sentenced him to incarceration in the Lycoming County Prison for a period of 11 to 23 months, but also indicated his eligibility to serve his entire sentence under the Intensive Supervised Bail Confinement Program, due to medical issues. At the hearing on Defendant’s Petition for Writ of Habeas Corpus, the Director of the Intensive Supervised Bail Confinement Program, Harry Rogers, testified that Defendant had been placed on “house arrest” and was permitted to leave

his home only to seek medical treatment.

Defendant does not contend that the terms of his house arrest did not constitute “official detention” but, rather, argues that such terms fall within the exclusion of the Statute, contained in subsection (e). That subsection provides:

- (e) Definition. – As used in this section the phrase “official detention” means arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes; but the phrase does not include supervision of probation or parole, or constraint incidental to release on bail.

18 Pa. C.S. Section 5121 (e)(emphasis added). Defendant argues that the terms of his house arrest are equivalent to “constraint incidental to release on bail.” The Court does not agree.

In Commonwealth v Wegley, 2003 Pa. LEXIS 1399 (issued August 6, 2003), the Supreme Court specifically held that the Escape Statute’s enumerated exception pertaining to probation, parole, or constraint incidental to release on bail, does not encompass electronically monitored house arrest pursuant to a sentence of intermediate punishment. While in the instant case Defendant was not on electronic monitoring, the Court believes the reasoning of Wegley applies nevertheless as the Court went on in a footnote to say that “the explicit exclusions within [subsection (3)] do not encompass intermediate punishment as a general matter.” Wegley, supra. @ footnote 13. As the terms of Defendant’s house arrest are not excluded by the Statute, the Commonwealth did meet its burden of proving the elements of escape, and the charge was properly held for Court.

ORDER

AND NOW, this 5th day of September, 2003, for the foregoing reasons, Defendant’s Petition for Writ of Habeas Corpus is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley N. Anderson