

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. 03-10,530
	:	
vs.	:	CRIMINAL DIVISION
	:	
ROBERTA KOHLER,	:	
Defendant	:	Petition for Writ of Habeas Corpus

OPINION AND ORDER

Defendant has been charged with two counts of Endangering the Welfare of Children in connection with the discovery by a Children and Youth caseworker on November 23, 2003, that Defendant's paramour, who has been charged criminally with sexual abuse against one of her children, was hiding in her residence in violation of a Court Order, on that date. In the instant Petition for Writ of Habeas Corpus, filed April 17, 2003, Defendant contends the evidence presented at the preliminary hearing was insufficient to establish a prima facie case with respect to either charge. At the time of the hearing on the petition on May 21, 2003, counsel agreed the Court should rely on only the preliminary hearing transcript to decide the issue.

Defendant specifically contends there was insufficient evidence that Defendant placed the children in danger as there was no evidence to show the children were in the residence at the time or that they had contact with her paramour. After reviewing the transcript, the Court agrees with Defendant. While the Commonwealth presented evidence that Defendant's paramour was in Defendant's residence in violation of a Court Order, and that had Defendant allowed contact or potential contact with her children, they could have been placed in danger, they failed to present evidence to show there was contact or potential contact. Without such evidence, the Court cannot find a basis for the charge of Endangering the Welfare of Children.

ORDER

AND NOW, this 23rd day of May, 2003, for the foregoing reasons, Defendant's
Petition for Writ of Habeas Corpus is hereby GRANTED and the charges are hereby
DISMISSED.

BY THE COURT,

Dudley N. Anderson, Judge

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