

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-213-2008
:
vs. :
: CRIMINAL
WARREN C. POTTS, :
Defendant : Petition for Writ of Habeas Corpus

ORDER

AND NOW, this 8th day of August 2008, after hearing and argument on Defendant's Petition for Writ of Habeas Corpus, the Court DENIES Defendant's petition. Although section 3124.2 of the Crimes Code (18 Pa.C.S. §3124.2) does not define the terms "inmate, detainee, patient or resident," the last paragraph of the jury charge for this offense states:

An "inmate, detainee, patient, or resident" of one of the above listed institutions or facilities includes a person on house arrest, work release or furlough, whether or not at the time of the sexual or indecent contact they were physically confined to the institution or facility as long as they were under the jurisdiction or authority of the institution or facility."

PaSSJI (Crim) 15.3124.2; see also Commonwealth v. Budd, 821 A.2d 629 (Pa.Super. 2003)(person is an "inmate" even if on work release and not within prison at the time of sexual contact with off-duty correctional officer).

In the case at bar, Ms. Morgret was on in-home detention or house arrest through the use of an ankle bracelet. She was not on the bail program. She was sentenced to serve 63 days for driving under suspension, with the first three days in prison and the remaining 60 days she was eligible for in-home detention/electronic monitoring. Her detention was under the supervision of the Lycoming County Prison. See Commonwealth

Exhibit 1 and testimony of Harry Rogers. Defendant was a correctional officer, specifically an intake officer, at the Lycoming County Prison. The testimony presented at the preliminary hearing showed that Defendant knew Ms. Morgret was on in-home detention. In fact, Ms. Morgret testified that Defendant told her he spoke to Mr. Rogers and got him to give the ankle bracelet to Ms. Morgret instead of someone else. N.T., January 29, 2008, at pp. 18-19. After Ms. Morgret was placed on the in-home detention program, Defendant began calling Ms. Morgret on a daily basis. A few days later, he brought her beer and had sexual intercourse with her. Mr. Rogers testified there are rules, policies and procedures of the Lycoming County Prison which prohibit correctional officers from engaging in this type of conduct. Furthermore, the conditions governing in-home detention prohibited Ms. Morgret from using or possessing alcoholic beverages. Commonwealth's Exhibit 2, para. 21.

Based on the foregoing, the Court finds the Commonwealth has presented a prima facie case for the institutional sexual assault charge, as well as the obstruction charges.

By The Court,

Kenneth D. Brown, P.J.

cc: Peter T. Campana, Esq.
Paul Petcavage, Esq. (ADA)
Gary Weber, Esq. (Lycoming Reporter)
Work File