

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

COMMONWEALTH OF :
PENNSYLVANIA :
 : NO: CR-216-2010
 :
 vs. :
 :
 RONALD A. RICHARDSON :
 Defendant :

OPINION and ORDER

On July 29, 2010 Nicole J. Spring, filed a Motion to Quash Subpoena. The subpoena, which was served on Ms. Spring of the Public Defender's Office, by the Commonwealth of Pennsylvania, requires Ms. Spring's attendance and testimony at a criminal trial involving Ronald Richardson. Based upon Ms. Spring's prior legal representation of Mr. Richardson, Ms. Spring filed a Motion to Quash asserting that any testimony elicited at trial would be protected under the attorney/client privilege. At a court conference held on August 24, 2010, the Defendant appeared with counsel and clearly asserted the attorney/client privilege.

The Commonwealth asserts that they are only seeking to compel Ms. Spring's testimony as to whether she relayed a message to Mr. Richardson that he had 72 hours in which to turn himself back into prison. The Commonwealth does not dispute the applicability of the privilege, but argues that the administration of justice would be advanced by requiring Attorney Spring to testify to this fact. Ms. Spring asserts that to provide this testimony, without explanation as to the remainder of the

conversation between Mr. Richardson and Attorney Spring, would distort the facts. As clarification would require further disclosure, this would jeopardize Mr. Richardson's right against self-incrimination and require further disclosures protected by the attorney/client privilege.

The purpose of the attorney/client privilege is to safeguard and promote full, uninhibited discourse between a client and his attorney. Slater v. Rimar, Inc., 338 A.2d 584 (Pa. 1975). The Supreme Court has described the importance of the attorney/client privilege by stating:

The attorney-client privilege is deeply rooted in our common law and can be traced to the reign of Elizabeth I, where it was already unquestioned. It is the most revered of our common law privileges and, as it relates to criminal proceedings, has been codified in this Commonwealth at 42 Pa.C.S.A. § 5916. Commonwealth v. Maguigan, 511 A.2d 1327, 1333 (Pa. 1986).

42 Pa.C.S.A. § 5916 provides:

In a criminal proceeding counsel shall not be competent or permitted to testify to confidential communications made to him by his client, nor shall the client be compelled to disclose the same, unless in either case this privilege is waived upon the trial by the client.

Although the Superior Court in Cohen v. Jenkintown Cab Co., 357 A.2d 689 (Pa.Super. 1976) established an exception to the attorney-client privilege when it is shown that the interests of the administration of justice can only be frustrated by the exercise of the privilege, the Superior Court clearly held that the trial court should resolve all doubt in favor of nondisclosure. Id. at 693. Moreover, the Supreme Court in Commonwealth v. Scott, 470 A.2d 91 (Pa. 1983), held that the privilege could only be waived by counsel in criminal proceedings when the client's rights or interest would not be adversely affected.

In Commonwealth v. Scott, *supra*, at a post-trial hearing, an attorney was called to testify for the purpose of repeating to the court his client's prior inconsistent out-of-court statement, which had been made in the confines of their attorney/client relationship. Declining to endanger his client's rights, the attorney advised the trial judge that if called to testify he would be jeopardizing his client's right against self-incrimination by opening himself up to a charge of perjury based upon his sworn trial testimony.

In upholding the lower court's ruling that invoking the privilege was proper, the Supreme Court held:

Under 42 Pa.C.S.A. § 5916, the right to waive the attorney-client privilege belongs to the client. **Only in the limited situation when the client's rights or interest can not be possibly affected adversely can his attorney waive it.** Kramer v. Kister, 40 A. 1008 (Pa. 1898)...Mr. Green's own testimony revealed that if he repeated his client's statement he would be acting against his client's interest and would subject him to a charge of perjury. Since the only interest that would be served would be that of appellant's and not Mr. Green's client, Mr. Green was not in a position to waive his client's privilege.

Id. at 94.

In the present action, the testimony sought to be elicited from Attorney Spring is intended to be used against Mr. Richardson for an escape charge filed against Mr. Richardson by the Commonwealth. Certainly evidence regarding a telephone conversation in which the Defendant is informed to present himself to prison would adversely affect the Defendant's interests in a trial in which he has been charged with escape.

ORDER

AND NOW, this 26th day of August, 2010, Ms. Spring's Motion to Quash
Subpoena is hereby GRANTED.

BY THE COURT,

Richard A. Gray, J.

cc: William J. Miele, Esquire
Melissa Kalas, Esquire
James Protasio, Esquire
Gary Weber, Esquire