

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH	:	No. CR-1195-2011
	:	
vs.	:	
	:	
DACHAUN TURNER,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is a Motion to Transfer to Juvenile Court/Motion to Decertify that was filed on behalf of the Defendant on September 12, 2011.

The Petitioner was charged with numerous offenses including a Felony 1 Conspiracy to Commit Robbery and a Felony 1 Robbery that allegedly occurred on July 22, 2011. The criminal charges were filed on July 29, 2011 after which the Defendant was promptly arrested and incarcerated.

Because the Defendant, who is almost 17 years old, is charged with Robbery in violation of 18 Pa.C.S.A. §3701(a)(ii) and a deadly weapon was used during the commission of the offense, the Criminal Division of the Court of Common Pleas has jurisdiction. 42 Pa. C.S.A. § 6302; Commonwealth v. Ramos, 920 A.2d 1253, 1258 (Pa. Super. 2007).

In this case, however, the Defendant has requested decertification. “To obtain decertification, it is the juvenile’s burden to prove, by a preponderance of the evidence, that transfer to the juvenile court system best serves the public interests.” Commonwealth v. Brown, 26 A.3d 485, 492 (Pa. Super. 2011), citing Commonwealth v. Smith, 950 A.2d 327,

328 (Pa. Super. 2008); 42 Pa. C.S.A. § 6322 (a).

In determining whether transfer to the juvenile court system best serves the public interests, the Court must consider numerous factors including: (A) the impact of the offense on the victim or victims; (B) the impact of the offense on the community; (C) the threat to the safety of the public or any individual posed by the child; (D) the nature and circumstances of the offense allegedly committed by the child; (E) the degree of the child's culpability; (F) the adequacy and duration of dispositional alternatives available under the Juvenile Act, and in the adult criminal justice system; and (G) whether the child is amenable to treatment, supervision or rehabilitation as a juvenile considering factors such as: (1) age; (2) mental capacity; (3) maturity; (4) the degree of criminal sophistication exhibited by the child; (5) previous records, if any; (6) the nature and extent of any prior delinquent history, including the success or failure of any previous attempts of the juvenile court to rehabilitate the child; (7) whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction; (8) probation or institutional reports, if any; and (9) any other relevant factors. Brown, 26 A.3d at 492; 42 Pa. C.S.A. § 6355 (a) (4) (iii).

While the Juvenile Act is silent as to what weight to accord the different factors, case law makes it abundantly clear that in order for a matter to be transferred to Juvenile Court the Defendant bears the burden of proving that he or she is amenable to treatment, supervision or rehabilitation in the juvenile system. Brown, supra., citing Commonwealth v. Johnson, 669 A.2d 315, 320-321 (Pa. 1995).

During the hearing in this matter, the Court heard testimony from the

Defendant's mother and stepfather, as well as the Chief of the Lycoming County Juvenile Probation Office, Ed Robbins. Subsequent to the proceeding and upon stipulation of the parties, the Defendant underwent a brief psychiatric assessment by Dr. Terri Calvert, a license psychiatrist. Based upon the testimony and assessment and after considering the relevant factors, the Court finds that the Defendant has not proven by a preponderance of the evidence that her transfer to the Juvenile Court System would best serve the public interests. Indeed, the Court finds that any transfer to the Juvenile Court System would, in fact, be contrary to the public interests.

The Court cannot conclude that the Defendant is in need of and amenable to treatment, supervision or rehabilitation in the juvenile system. The Defendant is close to 17 years old. A psychological evaluation conducted when she was 12 years old concluded that she presented with very serious emotional and behavioral disturbances with a primary diagnosis of mood disorder and a secondary diagnosis of Attention Deficit/Hyperactivity Disorder and Oppositional Defiant Disorder. The Defendant was experiencing significant impairments in her social, emotional, behavior and academic functioning and without medically necessitated therapeutic intervention, her overall functioning could deteriorate.

According to the testimony, she began a regimen of medications to address her emotional and behavioral impairments. While taking her medication as prescribed, her conduct generally improved. Frequently, however, Defendant stopped and refused to further take her medication resulting in deteriorating behavior.

Moreover, and perhaps more disturbing, Defendant started self-medicating

with street drugs and alcohol. Her poor behavior escalated. She was not abiding by the rules of her house. She was going out whenever she pleased, seeking and using illegal drugs and alcohol, acting erratically, and committing anti-social conduct.

A hospitalization in the fall of 2009 at the Meadows Inpatient Treatment facility resulted in a diagnosis of conduct disorder (adolescent onset) and mood disorder (not otherwise specified).

Since being placed under juvenile supervision in 2008 on a simple assault charge, the Defendant has essentially exhausted any and all resources that would be available to her through the juvenile system. From May 8, 2008 until July 29, 2011 when Defendant was committed to the County jail on these charges, she has been in three shelter care placements and five detention placements. She has been in a day treatment program, a foster care program and a residential program. She has had two approximate two-week hospitalizations at the Meadows in 2008 and 2009 and she has had more intensive supervision with the resources available through the Juvenile Probation office than any other individual under supervision during that same time period. Indeed, Mr. Robbins testified that during these three years, there have been approximately 398 "contacts" with the Defendant.

The Defendant's mother and stepfather suggest that the Defendant would benefit from a multi-facet program such as that which is available through Family United Network, Inc. or what is known as Ashler Manor. This residential program would provide a balance of structure, skill development, counseling, community outreach and behavioral management to address and/or assess treatment issues.

The Defendant, however, has had three years of a multi-faceted approach yet has refused to utilize the skills which she has been taught. Indeed, the Defendant has openly defied her physicians, her mother and stepfather, her residential supervisors and her supervising juvenile probation officer. As well, she has defied the law by committing new criminal offenses including a retail theft in July of 2011 for which she was adjudicated delinquent.

The assessment by Dr. Calvert conducted on December 19, 2011 confirms that Defendant continues to demonstrate anti-social behaviors even while incarcerated in the Lycoming County Prison. Defendant does not like to be told what to do and recently received disciplinary write-ups. Dr. Calvert diagnosed Defendant with a personality disorder with narcissistic and anti-social traits. Dr. Calvert concluded that it is unlikely that the juvenile system would affect any change in the Defendant's behavior.

It is evident to the Court that the Defendant has graduated from the rehabilitative goals of the juvenile system to the punitive goals of the adult criminal system. Her prior delinquent history is significant and continual; the attempts to rehabilitate her have failed; the probation and institutional reports are poor; and as diagnosed, the Defendant continues to be oppositionally defiant. The simple task of taking her medication is refused in the face of deteriorating behaviors and increasing consequences.

In considering the other factors as set forth in the Juvenile Act, the Court cannot conclude that a transfer to juvenile court will serve the public interests. In addressing the relevant factors, the Court may assume that the Defendant is guilty. Brown, 26 A.3d at

508.

The Defendant was an active participant in the strong-arm robbery of another individual. The Defendant stopped this individual in a public place noting that she needed to talk to her. Immediately after the victim stopped as requested by the Defendant, five individuals converged on her, huddled around her and robbed her at gunpoint by pointing a gun at her head and demanding her money. The Defendant then laughed at the victim after the robbery, took her purse and ran away.

Obviously, this type of offense would have a substantial impact on the victim as well as the community. If the Defendant is willing to participate in a strong-arm robbery involving a firearm placed to another individual's head, she poses a significant threat to the safety of the public. The nature and circumstances of the offense allegedly committed by the Defendant are among the most heinous type of crime. The Defendant's culpability is substantial. While she did not hold the gun, the victim never would have stopped and got in harm's way, but for Defendant's role in the incident.

Finally, there really appears to be no alternatives left in the juvenile system. The Defendant could be placed in a long-term secure facility with treatment components but treatment and attempts at rehabilitation, as set forth above, have failed miserably.

There is little doubt that the only alternative left with respect to the Defendant is a punitive disposition through adult criminal court. While the Defendant is still a child, her behaviors are unfortunately adult and she must now face adult consequences.

ORDER

AND NOW, this ____ day of December 2011, following a hearing, the Court
DENIES Defendant's Motion to Transfer to Juvenile Court and/or Decertify.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Lori Rexroth, Esquire
JPO, Chief Ed Robbins
Gary Weber, Esquire (Lycoming Reporter)
Work File