

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-89-2012  
vs. :  
:   
JESSICA HOWLETT, :  
Defendant :

**OPINION AND ORDER**

Before the Court is the Commonwealth's Motion for Termination of ARD. By Information filed on February 10, 2012, Defendant was charged with one count of Driving Under the Influence of a Controlled Substance. On or about September 2, 2011, Defendant's vehicle was stopped for erratic driving. Defendant performed poorly on her field sobriety tests and was subsequently arrested. Defendant agreed to a blood draw. The results showed the presence of five different controlled substances in her blood.

Defendant applied for, was accepted and was approved for the ARD Program by Order of Court dated March 12, 2012. She was placed on probation for a period of one year and ordered to comply with numerous special conditions of the ARD Program.

By Motion filed on July 13, 2012, the Commonwealth requested the Defendant's ARD be terminated. A hearing on the Motion for Termination was held on October 1, 2012.

At the hearing, Defendant stipulated that she violated the conditions of her ARD. Defendant admitted that among the conditions that she was obligated to perform were the following: reporting to the Adult Probation office as directed; paying court costs and restitution as directed, completing 50 hours of community service and being evaluated by a licensed drug and alcohol facility and following all recommendations.

Defendant further stipulated that on May 23, 2012, she was given a written warning for missing counseling appointments, not showing for community service and not paying on her costs and fines. She was directed to contact her counselor and to attend all appointments. She also met with Corey Persun, Community Service Coordinator, that day and was given specific instructions about her community service. Defendant was told that if she missed counseling or community service again, the Adult Probation office would be requesting that she be revoked from the ARD Program. Defendant was also told that the Adult Probation office would be seeing her in person until she was back on track with everything. Defendant reported again on June 7, 2012 and was scheduled to return on June 21, 2012. On June 21, 2012, however, Defendant did not show for her scheduled appointment.

On July 9, 2012, the Adult Probation office received a call from White Deer Run that Defendant had missed an appointment with them on June 21, 2012 and had not heard from her since. White Deer Run advised the Adult Probation office that if they did not hear from her within two days, Defendant would be discharged from counseling.

Defendant had only reported to community service one day since meeting with Mr. Persun on May 23, 2012.

Defendant was \$120.00 behind on her costs and fines and had not made a single payment since being placed on ARD.

Numerous attempts were also made to contact Defendant to discuss her

violations. She did not answer her phone and her voice mailbox was full.

It was also stipulated that Defendant has a serious drug problem and is on several medications including Suboxone. Defendant had two incidents with Children and Youth within five days. On July 8, 2012, she was found passed out and was unable to care for her children. On July 11, 2012, she allegedly overdosed and was found in her bathtub with one of her children. She was taken to the emergency room but left against medical advice. She then went to her family doctor and was admitted to the hospital.

Subsequent to the termination petition being filed, Defendant entered and successfully completed a 28-day inpatient rehabilitation program. Defendant is now actively engaged in out-patient treatment including counseling and medical management. Moreover, Defendant acknowledges the severity of her addiction and is resolved to appropriately address such for the welfare of her children as well as herself.

While Defendant admits to the violations, she submits that terminating ARD under the circumstances would not be appropriate.

Following a Defendant's placement on ARD, if a Judge finds that the Defendant has committed a violation of a condition of the Program, the Judge may order, when appropriate, that the Program be terminated and that the attorney for the Commonwealth proceed on the charges as provided by law. Pa. R.Cr.P. 318. Termination of a Defendant's participation in the ARD Program is within the sound discretion of the Court. Commonwealth v. Lebo, 713 A.2d 1158, 1161 (Pa. Super. 1998), appeal denied, 737 A.2d 741 (Pa. 1999).

As this Court has referenced in its previous Opinions, it considers the ARD Program to be advisable for those individuals who commit criminal misconduct and should not be burdened with a conviction under circumstances where if they comply with the conditions, they demonstrate rehabilitative success. Clearly, the Defendant violated the conditions of her ARD and a strong argument can be made that she has forfeited the privilege of remaining on the Program and should no longer be entitled to the benefits of the Program.

On the other hand, Defendant has demonstrated a commitment to rehabilitating herself and can now comply with the conditions. Unlike other cases in which the Court has granted the Commonwealth's Motions to Terminate, Defendant's conduct in this case appears to be far less volitional and malicious, and more directly related to her substance addiction.

The Court will exercise its discretion and not terminate the Defendant from the ARD Program. It appears to the Court that Defendant has taken substantial steps to address the factors that led to her criminal conduct in the first place. It is evident to the Court that Defendant has not previously had any criminal contacts. The Defendant has demonstrated, albeit months after she was placed onto the Program, a commitment to rehabilitate herself by taking advantage of not only what ARD has to offer but other services as well. Defendant's conduct is also not viewed by the Court as escalating in severity in the face of increasing consequences. Indeed, it appears more to the Court that the Defendant was not able to comply with the conditions as a result of a drug addiction, versus purposefully not complying. Under all of these circumstances, the Court does not believe that saddling the

Defendant with a criminal record is appropriate. What is more appropriate in the Court's opinion is to permit Defendant the opportunity to rehabilitate herself for her own benefit as well as the benefit of her children, without a criminal record.

**ORDER**

**AND NOW**, this \_\_\_\_ day of October 2012, following a hearing, the Court **DENIES** the Commonwealth's Motion to Terminate Defendant's ARD. Nonetheless, Defendant's ARD will be extended an additional four months as both a sanction for Defendant's noncompliance and to enable her to fully comply with the ARD requirements.

By The Court,

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Marc F. Lovecchio, Judge

cc: CA; CC; APO  
Eric Linhardt, District Attorney  
Jeana Longo, Esquire (PD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work File