

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

ALEXANDRA DINCHER,
Defendant

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CR: 486-2013
CRIMINAL DIVISION

OPINION AND ORDER

The Defendant filed a Motion to Compel on July 31, 2013. A hearing on the Motion was held September 18, 2013.

Background

Alexandra Dincher (Defendant) has been charged with Driving Under Influence of Alcohol or Controlled Substance,¹ Driving Under the Influence With Highest Rate of Alcohol,² Accident Involving Damage to Attended Vehicle/Property,³ Careless Driving,⁴ Reckless Driving,⁵ Duty to Give Information and Render Aid,⁶ and Immediate Notice of Accident to Police Department.⁷ On March 28, 2013, the Defendant filed an Application for Accelerated Rehabilitative Disposition (ARD) or Other Non-Criminal Settlement with the Commonwealth. In addition to the Application, the Defendant submitted four (4) letters regarding the Defendant's character, which were written by the Defendant's sister, current employer, past employer, and the former academic advisee to the Defendant at the Pennsylvania College of Technology. On April 30, 2013, the District Attorney of Lycoming County, Eric Linhardt, denied the Defendant's

¹ 75 Pa.C.S. § 3802(a)(1).

² 75 Pa.C.S. § 3802(c).

³ 75 Pa.C.S. § 3743(a).

⁴ 75 Pa.C.S. § 3714(a).

⁵ 75 Pa.C.S. § 3736.

⁶ 75 Pa.C.S. § 3744(a).

⁷ 75 Pa.C.S. § 3746(a)(2).

ARD application because it was an “accident involving injuries” and because the “victims [were] opposed to ARD.”

On June 17, 2013, the Defendant requested that the District Attorney re-consider the ARD application. The Defendant supported her position by citing to the Defendant’s continued employment, attending college, and undergoing several counseling sessions. On June 21, 2013, the District Attorney again denied the Defendant’s admission into ARD for the original reasons listed in the denial.

On September 18, 2013, the Defendant added additional reasons at the hearing to justify her placement into ARD such as her young age, academic achievements, and the fact that the District Attorney has recommended similar cases to ARD. The Defendant, who was born in 1991, had received her Licensed Practical Nurse (LPN) degree from the Pennsylvania College of Pennsylvania and is pursuing additional schooling to achieve her Registered Nursing (RN) degree. The Defendant further argues that the District Attorney has recommended ARD in many cases involving property damage and non-serious bodily injury. Specifically, the Defendant cited to an expunged case where the ARD application had been accepted by the District Attorney. In that case, the defendant, who was over forty years of age, had pulled in front of another vehicle causing the other vehicle to swerve off the side of the road. The defendant continued to drive away and was stopped by an officer. Here, the Affidavit of Probable Cause alleges that the Defendant was in a two vehicle crash, her vehicle had sustained front end damage, and that she attempted to flee the scene before her vehicle became disabled.

Whether the District Attorney abused his discretion by denying the Defendant's ARD Application

The Defendant argues that the District Attorney abused his discretion when he denied her ARD application. The decision on whether a defendant receives ARD is in the discretion of the district attorney.⁸ “[A]bsent an abuse of that discretion involving some criteria for admission to ARD wholly, patently and without doubt *unrelated* to the protection of society and/or the likelihood of a person’s success in rehabilitation, such as race, religion or other such obviously prohibited considerations, the attorney for the Commonwealth must be free to submit a case or not submit it for ARD consideration based on his view of what is most beneficial for society and the offender.”⁹ Commonwealth v. Lutz, 495 A.2d 928, 935 (Pa. 1985) (emphasis in original). “Once it is determined that the general policy bears some rational relationship to the protection of the public, it is improper to consider the manner in which or the degree to which that acceptable policy affects a specific driver.” Commonwealth v. Stranges, 579 A.2d 930 (Pa. Super. 1990).

This Court believes it is not in a position to order the District Attorney to recommend the Defendant for ARD just because it would believe ARD is appropriate in this case. The Defendant makes very persuasive arguments why ARD should be granted. The Defendant has been employed for over three (3) years, has attended the Pennsylvania College of Technology and obtained her LPN. The Defendant is continuing her education to become an RN and supplied glowing recommendation regarding her character. Further, the Defendant supplied a

⁸ “The impetus behind the creation of ARD was and remains a belief that some ‘cases which are relatively minor or which involve social or behavioral problems can best be solved by programs and treatment rather than by punishment.’” Commonwealth v. Gano, 781 A.2d 1276, 1278 (Pa. Super. 2001).

⁹ In addition, the district attorney may not rely on considerations for ARD if they are prohibited by a specific statute. See Commonwealth v. Benn, 675 A.2d 261 (Pa. 1996) (finding that the Controlled Substance, Drug, Device and Cosmetic Act requires that certain facts be excluded from consideration of ARD); Commonwealth v. Fleming, 955 A.2d 450 (Pa. Super. 2008) (determining that the issue of whether an expungement can be considered in an ARD application is whether the statute of the offense prohibited such consideration).

case similar to the one at issue where the very same District Attorney accepted ARD. The Court believes this is the type of case which would be appropriate for ARD. The law, however, is clear that ARD rests in the sound discretion of the District Attorney. Unless the Court finds an abuse of discretion by the District Attorney, this Court cannot compel the Commonwealth into placing the Defendant into ARD.

In Sohnleitner, a District Attorney denied a defendant's admission to ARD, which the trial court later compelled. Commonwealth v. Sohnleitner, 884 A.2d 307 (Pa. Super. 2005). The defendant had argued a separate case where a county detective had received ARD after he was arrested for a DUI and caused an accident that injured two passengers in another vehicle. The Superior Court of Pennsylvania found that the trial court improperly focused on the past admissions of others into the ARD program. "The trial court's authority would have been limited to a determination of whether the district attorney's decision was 'wholly, patently and without doubt unrelated to the protection of society or the likelihood of a person's success in rehabilitation.'" Id. at 315.

Here, the Court cannot find that the Defendant has established her burden that the District Attorney abused his discretion in denying the ARD application based on prohibited reasons. The Defendant was driving intoxicated at the highest level, caused an accident, and tried to flee the scene. The District Attorney also stated that the reasons for denying ARD were because the accident involved injuries and the victims were opposed to ARD. Even if the Court could compare this case with the expunged case presented to this Court, there are still distinguishing facts between the cases that could still relate to the protection of society and the rehabilitation of the defendant. Based on the Defendant's case, the District Attorney's decision was not wholly, patently and without doubt unrelated to the protection of society or the likelihood of the

Defendant's success in rehabilitation. Therefore, the Court finds no abuse of discretion and denies the Defendant's Motion to Compel.

ORDER

AND NOW, this _____ day of October, 2013, based upon the foregoing Opinion, the Court finds that the District Attorney did not abuse his discretion in denying the Defendant's ARD application. Therefore, the Commonwealth's Motion to Compel is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Peter Campana, Esq.