

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

**IN RE: APPEAL OF DISTRICT :
ATTORNEY’S DENIAL OF : MD-401-2015
SARAH SMITH’S PRIVATE :
CRIMINAL COMPLAINT :**

OPINION AND ORDER

I. Background

On May 28, 2015, Sarah Smith (Complainant) submitted a private complaint approval form to the Lycoming County District Attorney’s Office. The Complainant asserted that, between September 9, 2014 and February 17, 2015, her ex-husband “illegally opened paypal accounts in [her] name and used her private checking account to obtain money.” The Complainant alleged that her ex-husband “did this without her knowledge, consent or permission [and] stole her identity by using her personal checks and forging her signature using “E-checks”, something which [Complainant] does not know how to do.”

In August of 2015, the Complainant received a letter from First Assistant District Attorney Kenneth Osokow. In the letter, which is dated June 30, 2015, Mr. Osokow wrote the following:

After reviewing this matter, your complaint is denied. This matter should be handled by filing a civil complaint at the District Judge’s office.

On September 8, 2015, the Complainant filed her appeal from the denial of the private criminal complaint. On November 5, 2015, the parties presented argument to the Court. During argument, the Complainant asserted that a municipal police officer was rude and hostile to her when she told the officer about her allegations. She also asserted that she received a written disapproval only after writing to the Court in August of 2015. According to the Complainant, the District Attorney’s Office “backdated” the letter that informed her that the complaint was

disapproved. First Assistant District Attorney Osokow argued that “the facts [alleged] do not amount to a crime.” He noted that the Complainant’s bank statements show multiple PayPal transactions that occurred before September 9, 2014. Mr. Osokow also asserted that the Complainant had an “adequate civil remedy.”

II. Discussion

When determining whether a district attorney lawfully disapproved a private criminal complaint, “[t]he trial court must first correctly identify the nature of the district attorney’s reason(s) for denying a private criminal complaint.” In re Private Crim. Complaint of Wilson, 879 A.2d 199, 212 (Pa. Super. 2005). “Where the district attorney’s denial [of a private criminal complaint] is based on a legal evaluation of the evidence, the trial court undertakes a *de novo* review of the matter. Where the district attorney’s disapproval is based on policy considerations, the trial court accords deference to the decision and will not interfere with it in the absence of bad faith, fraud or unconstitutionality. In the event the district attorney offers a hybrid of legal and policy reasons for disapproval, deference to the district attorney’s decision, rather than *de novo* review is the appropriate standard.” Id. (quoting In re Private Complaint of Adams, 764 A.2d 577, 579 (Pa. Super. 2000)).

In his letter and during argument, First Assistant District Attorney Osokow asserted that the availability of a civil remedy was a reason for the disapproval of the complaint. This is a policy reason for the disapproval. Therefore, the Court must afford deference to the decision.

“[W]hen the district attorney disapproves a private criminal complaint on wholly policy considerations, or on a hybrid of legal and policy considerations, the trial court’s standard of review of the district attorney’s decision is abuse of discretion.” In re Private Crim. Complaint of Wilson, 879 A.2d at 215. “The private criminal complainant has the burden to prove the

district attorney abused his discretion, and that burden is a heavy one. [T]he private criminal complainant must demonstrate the district attorney's decision amounted to bad faith, fraud or unconstitutionality. The complainant must do more than merely assert the district attorney's decision is flawed in these regards. The complainant must show the facts of the case lead only to the conclusion that the district attorney's decision was patently discriminatory, arbitrary or pretextual, and therefore not in the public interest. In the absence of such evidence, the trial court cannot presume to supervise the district attorney's exercise of prosecutorial discretion, and should leave the district attorney's decision undisturbed." Id.

Here, the Complainant has not shown that the facts of the case lead only to the conclusion that the District Attorney's decision was patently discriminatory, arbitrary, or pretextual. First Assistant District Attorney Osokow did not argue that the Complainant's appeal should be denied on untimeliness ground. He noted that the Complainant's bank statements show PayPal transactions that occurred before the time of the alleged crimes. Mr. Osokow is correct. The Complainant's bank statements indeed show PayPal transactions that occurred before the time of the alleged crime. The Complainant must do more than merely assert that the District Attorney's decision amounted to bad faith, fraud, or unconstitutionality. As the Complainant has not met her burden, the Court will not disturb the District Attorney's decision.

III. Conclusion

The Complainant has not shown that the District Attorney's decision was patently discriminatory, arbitrary, or pretextual. Therefore, the Court will not disturb the District Attorney's decision.

ORDER

AND NOW, this _____ day of December, 2015, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Complainant's appeal is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge