

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**LAKEISHA WHITE,
Defendant**

:
:
:
:
:
:
:
:
:

CR 687-2014
OTN: T 440786-3
CRIMINAL

OPINION AND ORDER

Before the Court is the Commonwealth’s motion to terminate the Defendant’s participation in the Accelerated Rehabilitative Program (ARD). After several continuances, argument on the motion was held on December 2, 2014.

Procedural and Factual Background.

On or about March 2, 2014, Pennsylvania State Police Trooper David Walker observed Defendant’s vehicle veer right and impact a snow bank along the roadside. The Trooper conducted a traffic stop and arrested the Defendant for DUI. Defendant was charged with one count of driving under the influence of alcohol or controlled substance, a misdemeanor, and one count of driving under the influence of alcohol or controlled substance – high rate, a misdemeanor, and one count of careless driving, a summary offense.¹ The lab results indicated Defendant had a Blood Alcohol Count (BAC) of .139%. This was the Defendant’s first DUI offense.

On April 24, 2014, Defendant waived her preliminary hearing and applied for ARD. Both the assistant district attorney and the police officer recommended the Defendant for ARD.

On May 6, 2014, the Defendant completed an application for ARD. That application required Defendant to “[l]ist any and all criminal arrests and/or convictions[.]” In response to that requirement on the application, Defendant referenced her “PSP Record” and “Pen Dot

¹ 75 Pa. C.S. § 3802 §§ A1; 75 Pa. C.S. § 3802 §§ B; 75 Pa. C.S. § 3714 A.

Record” and confirmed that she had no other record. By signing the application, Defendant acknowledged an understanding that “willful and false or misleading statements may result in the denial of ARD Probation or **removal from the ARD Program.**” (emphasis added). The application also contained the following warning.

ALL DEFENDANTS MUST COMPLETE ALL OF THE FOLLOWING INFORMATION TO THE BEST OF THEIR ABILITY. FALSIFICATION OR **WILLFUL OMISSIONS** MAY RESULT IN THE DENIAL OF ARD PROBATION OR REMOVAL FROM THE ARD PROGRAM. (emphasis added)

On May 6, 2014, the Defendant waived her arraignment and the Court scheduled her for a Guilty Plea/ARD. On June 28, 2014, the Defendant crashed her vehicle into the corner of a residence on First Street in Williamsport. Defendant went to the emergency room and submitted to chemical testing. Her BAC result was .257%. On July 22, 2014, Williamsport Police Officer Jordan Stoltzfus filed a criminal complaint charging Defendant with her second DUI offense with one count of driving under the influence of alcohol or controlled substance, highest rate, a misdemeanor, and one count of driving under the influence of alcohol or controlled substance, a misdemeanor, and the summary offence for driving without the required financial responsibility.² On or about July 27, 2014, Williamsport Police Officer Joshua Kyle Bell charged Defendant with retail theft, a misdemeanor, under 18 Pa.C.S. § 3929 §§ (a)(1). The offense allegedly occurred on July 12, 2014.³

On July 28, 2014, the Court held a hearing on Defendant’s ARD for acceptance and placement into the ARD program. At that proceeding, the Court inquired as to whether the Defendant had given full and accurate information to the District Attorney’s Office involving her prior record. The Defendant responded affirmatively. The Court placed the Defendant on ARD.

² 75 Pa. C.S. A. § 3802(c); 75 Pa. C.S.A. § 3802(a)(1); 75 Pa. C.S. §1786(a).

³ On September 25, 2014, the retail theft charges were held over for Court. On November 4, 2014, the Defendant waived her preliminary hearing on the second set of DUI charges, and the matter was held over for Court.

Defendant, Defense Counsel and the Assistant District Attorney executed an ARD form which became part of the Court's Order outlining the conditions of the ARD program.⁴ That form explicitly provided that the Defendant's ARD is approved contingent upon prior record and CRN. The Court Ordered the Defendant to complete the CRN within ninety days. The ARD program conditions required that the Defendant abstain from the use of controlled substances and alcohol and undergo random testing for drugs and alcohol. The ARD program further required Defendant to comply with the conditions of probations, which include complying with "all Municipal, State and Federal Criminal laws, as well as the provisions of the Vehicle Code and Liquor Code." The Defendant was also required to notify her "probation officer of any arrests or investigations by law enforcement agencies within 72 hours."

On August 18, 2014, the Commonwealth filed the instant motion to terminate ARD for Defendant's failure to comply with the terms and conditions of the ARD Program. More specifically, the motion references a memo from Vicki Bolay of the Lycoming County Adult Probation Office which states that the defendant was arrested on a second DUI prior to being placed onto ARD and consequently does not meet the criteria for the program.

Discussion

For non-summary cases, the Pennsylvania Rules of Criminal Procedure set forth the procedures related to ARD at Pa. R.C.P. Rules 310 - 320. Specifically Rule 318 provides as follows.

Procedure on Charge of Violation of Conditions

(A) If the attorney for the Commonwealth files a motion alleging that the defendant during the period of the program has violated a condition thereof, or objects to the defendant's request for an order of discharge, the judge who entered the order for ARD may issue such process as is necessary to bring the defendant before the court.

⁴ That document was filed on July 28, 2014.

(B) A motion alleging such violation filed pursuant to paragraph (A) must be filed during the period of the program or, if filed thereafter, must be filed within a reasonable time after the alleged violation was committed.

(C) When the defendant is brought before the court, the judge shall afford the defendant an opportunity to be heard. If the 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 shall proceed on the charges as provided by law. No appeal shall be allowed from such order. Pa. R. Crim. P. 318

The decision to terminate ARD is within the Court's discretion, subject to appellate review for an abuse of discretion. *See, e.g., Commonwealth v. Jones*, 650 A.2d 60, 64 (Pa.Super. 1994); *Commonwealth v. Lebo*, 713 A.2d 1158, 1161 (Pa. Super. 1998), *appeal denied*, 737 A.2d741 (Pa. 1999). Our Pennsylvania Supreme Court has reinstated a termination from the ARD program where the defendant knew he was ineligible for ARD because of his prior convictions but nevertheless attempted "to benefit from the program by concealing his prior convictions." *Commonwealth v. Boos*, 620 A.2d 485, 486 (Pa. 1993). Despite knowing that the program was only for first time offenders, the defendant sought acceptance into the program and allowed the process to go forward. *Boos*, 620 A.2d at 486 n.6. At his ARD hearing, defendant was informed that admission into the program was conditioned upon his prior record and Court Reporting Network (CRN), but Defendant did not reveal his history of DUI convictions. The Court concluded that the trial court had been correct when it originally terminated the defendant's participation in ARD.

This Court believes the circumstances of the present case falls within the rationale of *Boos, supra*. In the present case, the Defendant signed an application on May 6, 2014 that required her to list all arrests and convictions and informed her that willful omissions may result in denial or removal from the ARD program. Subsequently, on June 28, 2014, the Defendant was involved in a motor vehicle accident in which she submitted to BAC testing. The results

were .257%. Defendant did not come forward with that information. On July 22, 2014, Defendant was charged with her second DUI offense. On July 27, 2014, Defendant was charged with retail theft. The next day, Defendant appeared for an ARD hearing. Defendant signed a form which explicitly stated that ARD is approved contingent upon prior record and CRN. The Court Ordered the CRN to be completed within 90 days. Nonetheless, the Defendant did not come forward with information about her criminal charges that were newly pending. Moreover, when the Court inquired as to whether the Defendant had given full and accurate information to the District Attorney's Office involving her prior record, the Defendant responded affirmatively even though she had never updated her application or advised the Court of the two new charges against her. Like the trial court in Boos, this Court believes that the Defendant had a duty to come forward and make it known that there were new charges pending against her prior to the time she was placed on the ARD program.

The Court finds that Defendant made a misrepresentation to the Court at the time of her ARD hearing and more generally lacked the candor that this Court expects. Moreover, the nature and circumstances of the two new offenses against Defendant suggest that ARD is not going to be effective. The Court finds that ARD is not appropriate. The Court further finds that ARD is not effective for rehabilitating the Defendant under these circumstances. The Defendant has not shown the commitment necessary for benefiting from the program.

ORDER

AND NOW, this 13th day of January, 2015, the Commonwealth's motion to terminate the Defendant's participation in the Accelerated Rehabilitative Program (ARD) is GRANTED. The Commonwealth shall proceed on the charges as provided by law. Defendant is directed to appear for a status conference on February 6, 2015 at 9:00 a.m. in Courtroom No. 1 of the Lycoming County Courthouse.

By the Court,

Richard A. Gray, Judge

xc: CA; CC; APO; DA (MK)
Sheriff; Victim/Witness Coordinator;
West Branch D&A Commission
Peter T. Campana, Esq.