

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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COMMONWEALTH :
 :
 vs. : No. CR- 1358-2015
 :
 TYSEER GATES, :
 :
 Defendant : 1925 (a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925 (a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this court's order dated January 13, 2016, granting Defendant's Petition for Decertification.

Defendant was charged by Information filed on August 21, 2015 with one count of conspiracy to commit robbery, two counts of robbery and numerous related charges. On June 23, 2015 and June 24, 2015, Defendant is alleged to have participated in two separate robberies, one at the Uni-Mart located at 1037 High Street and the other at the Nittany Minit Mart located at 2300 West Fourth Street.

Defendant filed an Omnibus Pretrial Motion on September 23, 2015, which includes a Petition for Decertification to Juvenile Court pursuant to 42 Pa. C.S. § 6322. The hearing on Defendant's Decertification Petition was held on December 21, 2015. The parties agreed to waive the 20-day period for the Court to enter a detailed Opinion and Order.

Following the hearing, the Court issued an Order indicating that it would be reviewing the exhibits as well as a videotaped interview of Defendant which was to be provided to the Court by the District Attorney's office. The Court also ordered the Lycoming

County Prison to provide to the Court a Security and Treatment Report.

By Order of Court dated January 13, 2016, the Court granted Defendant's Petition for Decertification. The Commonwealth filed a timely Appeal and in its Concise Statement of Matters Complained of on Appeal asserts that the Court erred in granting the Petition "when the evidence presented did not establish that the transfer would serve the public interests utilizing the factors in § 6355 (a) (4) (iii) and when there was a dearth of evidence that the Defendant could be rehabilitated prior to the expiration of juvenile court jurisdiction."

In the Court's Opinion and Order of January 13, 2016, the Court addressed in painstaking detail the relevant facts, the applicable law and the Court's reasoning in support of its granting of the Decertification Petition. The Court in this Opinion adopts the January 13, 2016 Opinion and Order as fully as if said Opinion and Order were restated at length herein.

In its Concise Statement of Matters Complained of on Appeal, the Commonwealth argues that the evidence did not establish that the transfer would serve the public interests utilizing the relevant statutory factors. The Commonwealth argues as well that there was a dearth of evidence that the Defendant could be rehabilitated prior to the expiration of juvenile court jurisdiction.

Without restating the Court's analysis of all of the relevant statutory factors, the record clearly supports the Court's conclusion that decertification was appropriate. Defendant proved not only by a preponderance of the evidence but by significant evidence that a transfer to the juvenile court system best served the public interests.

Of primary significance to the Court was the fact that Defendant was never

given an opportunity to utilize resources available to address his criminal behaviors. In fact, the alternatives utilized by the Juvenile Probation Office in connection with Defendant were entirely inadequate. Furthermore, there are a host of dispositional alternatives available under the Juvenile Act which could address Defendant's needs. Finally, and perhaps determinatively, given the child's history, he is clearly amenable to treatment, supervision or rehabilitation as a juvenile.

On the date the incidents occurred, Defendant was 16 years old. (Transcript, p. 11). The firearms that were utilized in the crimes were both BB guns. (Transcript, p. 11).

For four to six months prior to Defendant committing the offenses, he had been living in the area by himself. He was essentially taking care of himself. His mother was out of state. (Transcript, pp. 12, 17).

The Lycoming County Juvenile Probation Office (JPO) first came in contact with Defendant's case in February of 2013. He was adjudicated delinquent in Virginia and the case was transferred to Pennsylvania. Lycoming County JPO picked up supervision in August of 2013 when Defendant was 14 years old. (Transcript, pp. 22 through 24).

Because the case was transferred through the Interstate Compact and Lycoming County was doing courtesy supervision, Lycoming County "didn't put a whole lot in place." (Transcript, p. 24). While community service and in-home counseling was apparently requested, there was no evidence that the community service was put in place or that in-home counseling was provided. (Transcript, p. 25).

In December of 2013, Defendant was placed in secured detention in Tioga County for an alleged assault. He subsequently made a counseled admission to terroristic threats and simple assault. He was adjudicated delinquent. He was at Tioga County from

December 16, 2013 to December 26, 2013.

As a result of his adjudication, he was placed on house arrest from the date he was released to February 27, 2014.

He was released from house arrest. He was required to perform community service. A mental health evaluation was conducted. They gave Defendant a diagnosis of Conduct Disorder and ADHD. (Transcript, pp. 27, 28).

According to the evaluator, “there wasn’t a need for any [counseling] because [Defendant] essentially had ADHD and a conduct disorder.” (Transcript, p. 45).

Defendant was released from supervision on July 7, 2014. In sum, up to this point, Defendant was not provided with any services whatsoever to address his behaviors or underlying diagnosis. He was sanctioned via community service, in-home detention and a very brief stay at a detention facility.

Defendant came back on supervision in November of 2014 after being adjudicated on a retail theft charge. He was directed to perform 24 hours of community services, pay court costs and restitution. (Transcript, pp. 29, 30).

From November 12, 2014 until Defendant’s case was closed in February of 2015, Defendant remained on juvenile probation supervision. During this brief period of time, JPO worked with the family trying to address some of their basic needs such as heating and furniture. JPO also tried to get Defendant involved in extracurricular sports activities including martial arts. (Transcript, p. 30).

Defendant’s mother, however, indicated that her illness had gotten worse and that she was moving to Delaware. As a result, JPO “expedited” Defendant’s conditions of probation by giving him some extra community service. (Transcript, pp. 31, 32). Defendant

allegedly moved back to Delaware on January 29, 2015 and the case was officially closed on February 18, 2015. (Transcript, pp. 31, 32).

In sum, by the time Defendant was released from juvenile supervision, the only services provided to him by the JPO were increased community service, intensive contact with his adult probation officer (multiple times a week), and extracurricular activities including track and martial arts. (Transcript, pp. 40, 45).

The JPO admitted, however, that once they were informed that he was returning to Delaware, they “were not going to put in a whole lot of time, energy and resources.” (Transcript, p. 49). Specifically, they were not going to place Defendant in any external community based services. (Transcript, p. 49).

In fact, had the Defendant stayed in the area with his mother, JPO would have started community based treatment including MST, family based counseling and after school services. Furthermore, they would have considered either Northwestern Human Services or the Abraxas Habitual Offender Programs. (Transcript, pp. 49, 51).

In fact, there were numerous services and/or placements that could have been utilized to address Defendant’s behaviors. For example, Defendant could have been placed at Abraxas, Northwestern or even the Youth Development Center. (Transcript, pp. 33, 34). Those placements are in secure facilities, and include work programs, education, aggression replacement therapy and programs aimed at reducing recidivism. (Transcript, pp. 34, 35). Defendant was never given an opportunity to engage in any therapy whatsoever. He was never given the opportunity to attend a day treatment program or even a victim impact panel. (Transcript, pp. 48, 37).

Unfortunately, in this particular case, the circumstances of what was

happening in his life with his family essentially dictated what JPO did or did not do. JPO “just kind of” watched it and there “wasn’t a whole lot in place.” (Transcript, p. 48).

Finally, and perhaps most disturbingly, it appears that both JPO and the Commonwealth are advocating that Defendant remain in the adult criminal system because neither wishes to spend the time, energy or resources in rehabilitating him.

Even though JPO would expect Defendant to have trouble adjusting to a juvenile facility after being housed in the county prison, this is not something entirely unusual and placement and programming could be lengthened or increased. (Transcript, p. 51).

According to the JPO, because Defendant’s mother resides in Delaware, once Defendant was decertified, he would be returned to Delaware and because of the Interstate Compact, Defendant would not be put in a facility. (Transcript, p. 52).

Unfortunately, and as is becoming far too common with the Lycoming County District Attorney’s office and this Court, the Commonwealth cavalierly appeals any and seemingly all decisions that it disagrees with. Any suggestion in this particular case that the Court failed to consider the appropriate factors simply begs logic in light of the exacting analysis that was evidenced in the Court’s original Opinion and Order. Furthermore, even a cursory review of the transcript supports the Court’s conclusion that absolutely no substantive services whatsoever were provided to Defendant while he was under juvenile supervision. As the Court noted, Defendant has never been afforded an opportunity to be treated through available resources designed to address juvenile criminal behaviors. Transferring Defendant to the juvenile justice system will promote public safety both in the short and long term.

In sum, due to Defendant's family circumstances, Defendant has been attempting to survive on his own. Those same circumstances have resulted in him receiving very little services and programs to assist him or rehabilitate him. Although he has been in the juvenile system, up until this point he has not received or even been offered the juvenile programs and services that he needs. Due to his family's moves between Virginia, Pennsylvania and Delaware, Defendant has fallen through the cracks. Apparently, the Commonwealth is willing to throw him away in the adult criminal system where he is more likely to become unemployable and a career criminal. The Court, however, is not willing to do so. Defendant is not a lost cause. He is amenable to treatment and rehabilitation; he simply hasn't been provided the programs and services he needs.

DATE: May 27, 2016

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Joshua Bower, Esquire (APD)
JPO (M. Minnier)
Gary Weber, Esquire, Lycoming Reporter
Work File