

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
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 vs. : No. CR- 1358-2015
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 Defendant : Decertification

OPINION AND ORDER

Defendant is 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 to enter this decision.

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.

Because Defendant was 16 years old at the time of the offenses and he was charged with committing a robbery in violation of 18 Pa. C.S.A. § 3701 (a) (ii) while using a

deadly weapon, the Criminal Division of the Court of Common Pleas has jurisdiction. 42 Pa. C.S.A. § 6302; *Commonwealth v. Ramos*, 920 A.2d 1253, 1258 (Pa. Super. 2007).

In this case, however, and as referenced above, the Defendant has requested decertification. “To obtain decertification, it is the juvenile’s burden to prove, by a preponderance of the evidence, that the transfer to the Juvenile Court System best serves the public interests.” *Commonwealth v. Brown*, 26 A.3d 485, 492 (Pa. Super. 2011), citing *Commonwealth v. Smith*, 950 A.2d 327, 328 (Pa. Super. 2008); 42 Pa. C.S.A. § 6322 (a).

In determining whether transfer to the juvenile system best serves the public interests, the Court must consider numerous factors including:

- (A) the impact of the offense on the victim or victims;
- (B) the impact of the offense on the community;
- (C) the threat to the safety of the public or any individual posed by the child;
- (D) the nature and circumstances of the offense allegedly committed by the child;
- (E) the degree of the child’s culpability;
- (F) the adequacy and duration of dispositional alternatives available under the Juvenile Act, and in the adult criminal justice system; and
- (G) whether the child is amenable to treatment, supervision or rehabilitation as a juvenile by considering the following factors:
 - (I) age;
 - (II) mental capacity;
 - (III) maturity;
 - (IV) degree of criminal sophistication exhibited by the child;
 - (V) previous records, if any;
 - (VI) the nature and extent of any prior delinquent history, including the success or failure of any previous attempts of the Juvenile Court to rehabilitate the child;
 - (VII) whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction;
 - (VII) probation or institution reports, if any; and
 - (VIII) any other relevant factors.

42 Pa. C.S.A. § 6355 (a) (4) (iii); **Brown**, 26 A.3d at 492.

While the Juvenile Act is silent as to what weight to accord the different factors, case law make it abundantly clear that in order for a matter to be transferred to Juvenile Court, the Defendant bears the burden of proving that he is amenable to treatment, supervision or rehabilitation in the juvenile system. **Brown**, supra.

At the hearing in this matter, the Court heard testimony from Agent Raymond Kontz, III of the Williamsport Bureau of Police and Matt Minnier, Deputy Chief of the Lycoming County Juvenile Probation Office (JPO). The Court also reviewed a March 31, 2014 psychological report of the Defendant by Bruce Anderson, Defendant's videotaped interview with Agent Kontz and an institutional report from the Lycoming County Prison.

The Court will address each of the relevant decertification factors seriatim. In addressing the relevant factors, the Court may assume that Defendant is guilty. **Brown**, 26 A.3d at 508.

The first incident occurred on June 23, 2015 at approximately 2:30 a.m. Defendant entered the Uni-Mart, wearing a white t-shirt wrapped around his head to conceal his facial features and carrying a long barreled rifle, which was later identified as a BB gun. He pointed the BB gun at the store clerk and demanded money. His Co-Defendant was keeping watch outside while the robbery occurred.

Defendant and his Co-Defendant had been watching the store for about an hour previously.

The next incident occurred the next morning on June 24, 2015 at

approximately 2:50 a.m. at the Nittany Minit Mart on West Fourth Street in Williamsport. Defendant, who was utilizing a BB gun handgun, and a thirteen year old juvenile accomplice entered the Mini Mart, demanded money and then left.

Defendant and his Co-Defendant in the first incident had also planned on the Co-Defendant robbing the Dunkin Donuts at the same time. The robberies were to happen at the same time to distract and overwhelm police resources to make it easier to get away with both of the robberies. The Co-Defendant solicited the services of a twelve year old accomplice, who went to the Dunkin Donuts shop with a black revolver style BB gun concealed on his person. They decided, however, to back out and not rob the store because “there were too many people.”

The first factor the Court must consider is the impact of the offense on the victims. Agent Kontz testified that the clerk at the Uni-Mart was extremely distraught. The clerk at the Minit Mart, however, was described as a “feisty old man” and not at all “scared.” In fact, Agent Kontz testified that he “resisted a bit.”

Clearly, the impact on the victims was significant. One cannot be the victim of an armed robbery without being emotionally and mentally scarred.

The next factor that the Court must consider is the impact of the offenses on the community. While there was no testimony presented on this factor, the Court can obviously arrive at its own conclusions. Armed robberies threaten the very fabric of a community. The establishments robbed were local neighborhood establishments that are frequently patronized. The safety of the community and all of the patrons is jeopardized.

Citizens are extorted by their own fears. They lock their doors and do not engage in the community. This causes reduced revenue and failing services.

The Court must next consider the threat to safety posed by Defendant. Defendant put himself and others in a situation which could have been clearly fatal to some if not all of the participants. While the use of the BB gun versus another lethal weapon cannot be ignored, the BB guns were not recognized as BB guns and any response to the threat could have posed a significant safety hazard.

The Court is also somewhat concerned about the threat to the safety of the public posed by the child in more general terms. Agent Kontz testified that Defendant's demeanor was rather matter of fact. In his interview, Defendant stated that he was surprised at how easy it was to rob both establishments after relatively simple planning and surveillance.

The report from Mr. Anderson verified concerns with Defendant's anger management and behavior problems. Defendant was diagnosed with Adolescent Onset Conduct Disorder. He had a long history of behavior problems at school and negative peer influences.

Furthermore, and as testified to by Agent Kontz and Mr. Minnier, Defendant's behaviors and criminal thinking have gotten worse. When he was first adjudicated in February of 2013, it was on four separate petitions including possession of a knife on school property, two counts of assault and battery and an assault and battery on a law enforcement officer.

Only ten months later after his family moved to Williamsport, Defendant was placed in secure detention for assaulting a principal at the Williamsport High School. He was adjudicated on terroristic threats and simple assault charges.

Defendant completed his probation and was released from supervision. Within a matter of months, however, he picked up new charges and eventually made a counseled admission to retail theft.

In June of 2015, he was placed in the Lycoming County Prison on the present charges. He adjusted poorly. He received several write-ups and sanctions. He refused to attend school on one occasion, he possessed contraband, he destroyed county property, he lied to staff, he failed to follow sanitation regulations and made excessive noise. He was also charged with aggravated harassment by a prisoner. Those charges were dropped, however, after the alleged victim refused to testify. Significantly, the prison administration noted that Defendant's "age and maturity...were contributing factors in many of his disciplinary write-ups."

Mr. Minnier testified that based on Defendant's behaviors and assessments, he is at a high risk of reoffending.

The next factor that the Court must consider is the degree of the child's culpability. Although Defendant's Co-Defendant was eighteen years old, Defendant was the purported "ring leader." Defendant planned the robberies and solicited the thirteen year old and twelve year old accomplices. Furthermore, it was Defendant who actually entered both establishments and committed the offenses.

The Court must next consider the nature and circumstances of the offenses allegedly committed by the child. Clearly, they don't get much more serious. Defendant engaged in two armed robberies.

Next, the Court must consider the adequacy and duration of dispositional alternatives available under the Juvenile Act and in the adult criminal justice system. In summary, the services provided to Defendant, while extensive, were all community based. In large part, the community based services were a result of Defendant's mother moving from Delaware to Williamsport and then back to Delaware. Defendant was never placed in a juvenile institution for appropriate programming or services. He continued to essentially be on his own in the community with little control or intervention by his mother. He continued, as well, to be in the same peer-influenced environment.

Defendant's relationship with his mother was described as "rocky." As well, the mother had quite a few other children, health concerns and problems with living arrangements. The strategies utilized by the JPO to address Defendant's issues included regular meetings with JPO, cognitive behavioral sessions with JPO, curfews, extra community service and suggested extracurricular involvement. The JPO also tried to assist the family with the living arrangements by providing furniture and paying for utilities.

What is particularly significant to this Court, however, is that short of being placed at the Tioga County Detention Facility and then at the Lycoming County Prison, Defendant was never placed at a juvenile facility. As well, no external based community services such as MST Therapy, family decision making or family counseling were provided.

He was never given an opportunity for private mental health or emotional health counseling. He did have a mental health evaluation but no services were provided because of the conduct disorder and ADHD diagnoses. He was never provided any services such as an aggression replacement therapy, anger management or specified mental health services.

According to Mr. Minnier, there are some options available to Defendant in the juvenile system, which include the Abraxas habitual offender's placement program, the Northwestern Human Services Secure Program, and the Youth Development Center. Defendant would receive education and treatment for his specific issues, as well as his "troubled background." All of the programs are geared toward reducing recidivism, addressing behavioral problems, providing skill training and general rehabilitation.

The final factor that the Court must consider is whether the child is amenable to treatment, supervision or rehabilitation as a juvenile considering a variety of factors.

Curiously, when Defendant was evaluated by Mr. Anderson, Defendant was not recommended for counseling even though he was diagnosed with, among other things, conduct disorder and parent-child relationship problems. Further, it was recommended that he have a targeted case manager but Mr. Anderson noted that there would not be a need for such given that Defendant would not "be involved in any counseling." Apparently, Mr. Anderson did not recommend counseling or a targeted case manager because Defendant's mother did not feel the need for such.

Defendant was barely sixteen when the incidents occurred. He was described by Agent Kontz as being "familiar with the system," "not afraid of going to jail," "not

scared,” and “mature for his age.” He was apparently living on the streets “up here” after his mother moved to Delaware.

The JPO and, in particular, Mr. Minnier testified that Defendant would not be amenable to juvenile supervision. There were concerns regarding Defendant’s aggressiveness, the level of sophistication Defendant utilized in the robberies, the increase in Defendant’s criminal behaviors and the failures of the JPO contacts and interventions.

Admittedly, however, Mr. Minnier agreed that because the mother returned to Delaware, the conditions of supervision were essentially accelerated. He admitted as well that Defendant was not “offered a lot of services.”

Considering all of the factors, the Court concludes that Defendant has met his burden of proving that he is amendable to treatment, supervision or rehabilitation in the juvenile system. Defendant grew up in a very troubled household. He had a long history of behavior problems at school. He was frequently enrolled in emotional support classes. He is of average intelligence. His supervision history has included probation, community services, GPS house arrest, community based volunteers working with the family but nothing else.

He was only fourteen when his probation was transferred to Williamsport. After 10 months, he “was physically aggressive” with the principal and was placed in secure detention for 10 days. He eventually was released and placed on GPS house arrest for two months with continued supervision. He apparently did well and was released.

He was adjudicated delinquent for retail theft within a few months of his release and was given community service and restitution, however, his mother decided to

move to Delaware because of health and related problems, and Defendant's supervision was terminated after his conditions were "accelerated."

Defendant apparently returned to the Williamsport area on his own, living with friends or on the street, and then picked up his most recent charges. The charges are extremely serious as are the impacts on the victims and the community. Defendant displayed a degree of sophistication and arguably developed an attitude of indifference toward his actions and the potential consequences.

There are, however, dispositional alternatives available in the juvenile system, which can address the Defendant's problems. Otherwise, Defendant will remain in the adult criminal justice system for the primary, if not full, purpose of punishment.

In the end, the Court must weight all of the relevant factors in the context of the underlying purposes between the juvenile justice system and the adult criminal system. The juvenile justice system recognizes that juveniles are developmentally different than adults and that their misbehaviors can be best addressed through rehabilitation and treatment even in secure settings to also ensure community safety. The adult criminal justice system primarily seeks punishment, retribution and deterrence. In fashioning any adult criminal sentence, said sentence must be consistent with the protection of the public, the gravity of the offense to the extent it impacts the victim and the community, and the rehabilitation needs of the Defendant. 42 Pa. C.S.A. § 9721 (b).

The Commonwealth urges the Court to consider Defendant's interview with Agent Kontz as strong evidence that Defendant should not be returned to juvenile court. The

Commonwealth argues that Defendant is cold and calculated, that he exhibited no fear of adult consequences and that he demonstrated an adult-like criminal sophistication in the planning of the robberies. The Commonwealth notes that Defendant even remarked “how easy” it all was.

The Court extensively reviewed the interview with Defendant and Agent Kontz and disagrees with the Commonwealth’s interpretation of such. Throughout the interview, Defendant was extremely soft-spoken. His body language included keeping his distance, his head being down, eyes leaning downward, slouched in his chair and some fidgeting. He clearly was uncomfortable, nervous and frightened.

In answering the multitude of questions posed to him, he was overly polite, respectful and courteous. He used the phrase “yes sir” numerous times. He volunteered much information and allowed himself to be led by Agent Kontz. He was not confrontational or aggressive. He easily incriminated himself and his accomplices although he appeared more willing to admit his own wrongdoing than that of the others. His explanations were full of detail to the extent he could recall the specific events. He clearly did not understand the precariousness of his own position. What the Court found particularly noteworthy was Defendant’s immaturity. He spoke in very basic adolescent terms. He used teenage colloquialisms. He did not know his social security number. He could not remember an accurate address. His general responses were far from what one would expect of a “sophisticated” criminal.

As well, it was clear despite Agent Kontz’ efforts to clarify, that Defendant

had no clue what the potential consequences were for his actions or what rights he was waiving by speaking to Agent Kontz in the first place. He didn't even read the waiver forms; he just signed where he was told to sign. It's not at all clear that he even knew what "Miranda" was when Agent Kontz referred to it almost as an afterthought. Significantly, while knowing what he did was clearly wrong, Defendant justified it as a child might. He needed money because he had basically been living on his own, his mother never took care of him, his father was not around, and had no job but intended to become a "rapper." He just wanted to accept his consequences by doing "lots of community service" or being placed in a "juvenile facility or one year in prison" so he could finish school. He "knew" BB guns could "kill" but he never would have hurt anyone; he just needed the money to begin his rapping career and to survive on the streets. If he was told "no" by the clerks, he would have just left. Furthermore, while he personally could have escaped apprehension, he decided not to run from the police because he wasn't going to let his "young bull go down" himself.

This Court has viewed hundreds of interviews of suspects in 25 years of practice and six-plus years on the bench. This interview was an interview of a child. He did not demonstrate cognitive maturity, emotional maturity, or appropriate decision-making skills.

How is Defendant different from an adult? He was more prone to risky behavior. He was less capable of impulse control. He wasn't able at all to engage in moral or value based reasoning. He was completely unable to consider the long term consequences of his actions. He was more prone to the effects of family stress and even peer influences. He

was clearly unable to apply reasoned thought to emotionally stimulated decisions made in the moment.

As the Supreme Court of the United States cogently pointed out in *Miller v. Alabama*, “juveniles have diminished capacity and greater prospects for reform.” 132 S. Ct. 2455, 2464 (2012). As well, children have a lack of maturity and an underdeveloped sense of responsibility leading to recklessness, impulsivity and heedless risk-taking. *Id.* (citing *Roper v. Simmons*, 546 U.S. 551, 569 (2005)). Children also “are more vulnerable...to negative influences and outside pressures including from their family and peers; they have limited ‘control over their own environment’ and lack the ability to extricate themselves from horrific, crime-producing settings.” *Id.* Lastly, “a child’s character is not as ‘well formed’ as an adult’s; his traits are ‘less fixed’ and his actions less likely to be ‘evidence of irretrievabl[e] deprav[ity].” *Id.*

In *Roper*, studies were cited showing that “only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of social behavior.” 543 U.S. at 570. As our Supreme Court recently noted, these cases “highlight the substantial policy considerations involved in determining culpability and the boundaries of attendant legal consequences for the actions of minors.” *Commonwealth v. Hale*, 2015 Pa. LEXIS 2993, *11 (December 21, 2015).

This child, Defendant, deserves a chance. Yes, he has demonstrated a criminal culpability and sophistication beyond his years, but he has never been afforded an opportunity to be treated through available resources designed to address juvenile criminal

behaviors.

This Court is convinced that transferring Defendant to the juvenile justice system will promote public safety both in the short and long term. This Court is convinced that transferring Defendant to the juvenile justice system will reduce the risk of him recidivating. This Court is even more convinced that keeping Defendant in the adult criminal justice system and incarcerating him in a state prison will substantially increase the long term risks to public safety. Defendant will be unfixable. This Court cannot allow that to happen.

ORDER

AND NOW, this 13th day of January 2016, following a hearing, Defendant's Petition for Decertification is **GRANTED**. The Court recently conducted a conference with counsel for both Defendant and the Commonwealth. Defendant, through his counsel, has stipulated that this Court shall retain jurisdiction over this matter and that this Court will adjudicate and dispose of these matters. Jurisdiction shall remain with Lycoming County.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Joshua Bower, Esquire (APD)
JPO (attn.: Matthew Minnier)
Gary Weber, Esquire
Work file