

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

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|-------------------------------------|---|------------------------|
| COMMONWEALTH OF PENNSYLVANIA | : | |
| | : | CR-1218-2015 |
| v. | : | |
| | : | |
| T.M.T., | : | PRETRIAL MOTION |
| Defendant | : | |

OPINION AND ORDER

On July 29, 2015, the Public Defender filed a Petition to Transfer Minor to Juvenile Court. On August 14, 2015, the Commonwealth served notice pursuant to Pa.R.Crim.P. 582(b)(1), that Z. S. D., CP-41-CR-1223-2015; T. M. T., CP-41-CR-1218-2015; and K. T. G., CP-41-CR-1212-2015, would be tried together. Due to this and other Motions by the Commonwealth related to the criminal acts of which Defendant is one of the accused, such Petition to Transfer Minor to Juvenile Court, was not heard until May 5, 2016. Upon hearing argument and testimony by the Defense and the Commonwealth, the Defense’s Motion is hereby GRANTED.

I. Background

On August 14, 2015, the District Attorney of Lycoming County filed a Criminal Information charging Defendant with one count of criminal conspiracy, felony 1¹; one count of burglary, felony 1²; one count of criminal trespass, felony 2³; two counts of robbery, one as felony 1⁴ and one as a felony 3⁵; one count of firearms not to be carried without license, felony

¹ 18 Pa. C.S. § 903(a)(1)

² 18 Pa. C.S. § 3502(a)(1)

³ 18 Pa. C.S. § 3503(a)(1)(ii)

⁴ 18 Pa. C.S. § 3701(a)(1)(ii)

⁵ 18 Pa. C.S. § 3701(a)(1)(v)

3⁶; as well as ten (10) counts of various misdemeanors⁷, totaling 18 Counts. These were for a crime that allegedly occurred on July 14, 2015.

The victims in this case were James R. Cameron, Krystle J. Richardson and Michael B. Gaudi. Richardson and Cameron live at the residence of 959 Waltz Place, Williamsport, PA together and Gaudi was in town visiting them and staying at their residence.

Richardson stated that she heard a knock at the door downstairs, but neither she nor Cameron were expecting anyone to stop by the residents. Richardson looked out the side window and saw a single black male standing there and began to open the door. As Richardson did this the black male started to push the door open Cameron was coming downstairs at this time and saw what was happening so he stepped in front of the door attempting to shut it with Richardson. Cameron stated that as he was trying to close the door someone reached inside the door pointing a gun towards them. Richardson says there were not several persons outside the door pushing it in open and forced their way inside the residence.

Richardson was knocked over and fell behind the door and one of the black males pointed a gun at her forehead and demanded money. Richardson said that while this was going on she saw a black male wearing a red shirt look inside the door as he began to walk in. Richardson said that she made eye contact with him and immediately recognized him as Z. D. Richardson stated once Z. D. saw her, he immediately turned around and left the house.

Cameron said that he was punched in the head several times by the black male that was pointing the revolver at him yelling at him to empty his pockets. Cameron was forced upstairs to his bedroom where the black male kept demanding money and asking Cameron "where his shit was." They went upstairs where Gaudi was located and the gun was pointed at Gaudi and the black male stated that "I'm not afraid to pop one off inside this place," telling each of them that he was willing to shoot them if didn't do what he said. Cameron took the male into his bedroom and opened a dresser drawer where he had \$200 cash, giving it to the suspect. Affidavit of Probable Cause, 7/15/15, page 1 of 2.

Victim Richardson was taken to police headquarters and picked co-defendant Z. D. out as the individual she saw coming into her residence. Upon interviewing Z. D. the police were able to ascertain that the robbery had been planned at the home of K. G.

⁶ 18 Pa. C.S. § 6106

K. G. was brought to city hall and was also afforded the opportunity to speak with me regarding the incident. K.G. did admit to his participating on the home invasion robbery which took place at the home of Richardson and Cameron. K.G. stated that when Z.D. when to enter the house he “saw the girl on the ground and knew her” so Z.D. turned around and left. K.G. also admitted that there were “two guns used” adding that one was a revolver and that T.M.T. was the person that had it. K.G. was not sure of the second gun but stated that E. C. had possession of that gun during the robbery. Affidavit of Probable Cause, 7/15/15, page 2 of 2.

Defendant was born on March 23, 1999. He was 16 years old on the date of the alleged incident. Though normally a minor charged with a crime would be adjudicated in Juvenile Court as it would be deemed a “delinquent act” by 42 Pa CS § 6302, due to the nature of the crimes charged, Defendant was charged as an adult in criminal proceedings. The charge of Robbery under 18 Pa CS § 3701(a)(1)(ii) is specifically excluded from the definition of “delinquent act” when it is committed by a child who was 15 years old or older at the time of the alleged conduct and a deadly weapon was used.

After preliminary arraignment Defendant was placed on a supervised bail program. Defendant waived his right to formal arraignment. Arraignment Order, 8/26/15. The Commonwealth motioned to revoke supervised bail, a motion that was denied by The Honorable Marc F. Lovecchio on November 17, 2015. Judge Lovecchio did at that time modify the conditions on Defendant’s supervised bail stating

...[D]efendant must attend school as required, and comply with all of the conditions as imposed with the Williamsport High School with respect to his classwork and behaviors. Furthermore, he must be re-established in counseling within two (2) weeks of today’s date. He must comply and attend all of his counseling sessions. Defendant has been advised that should he have one (1) positive marijuana urine, or any other controlled substance urine, or if he has any other failures on supervision, he shall be immediately detained. Bail Order, 11/17/15.

II. Discussion

A Court may, if it feels that it would serve the public interest, decertify a criminal proceeding to a juvenile proceeding. 42 Pa. C.S. § 6322(a)⁸. The court must consider seven factors when making its determination.⁹ The factors are listed in 42 Pa. C.S. § 6355(a)(4)(iii):

(iii) that there are reasonable grounds to believe that the public interest is served by the transfer of the case for criminal prosecution. In determining whether the public interest can be served, the court shall consider the following factors:

(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 this chapter 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) the degree of criminal sophistication exhibited by the child;

⁸ If it appears to the court in a criminal proceeding charging murder or any of the offenses excluded by paragraph (2)(ii) or (iii) of the definition of "delinquent act" in section 6302, that the defendant is a child, the case may similarly be transferred and the provisions of this chapter applied.

⁹ In determining whether to transfer a case charging murder or any of the offenses excluded from the definition of "delinquent act" in section 6302, the child shall be required to establish by a preponderance of the evidence that the transfer will serve the public interest. In determining whether the child has so established that the transfer will serve the public interest, the court shall consider the factors contained in section 6355(a)(4)(iii) (relating to transfer to criminal proceedings). 42 Pa.C.S. § 6322(a). Transfer from criminal proceedings.

(V) previous records, if any;

(VI) the nature and extent of any prior delinquent history, including the success or failure of any previous attempts by the juvenile court to rehabilitate the child;

(VII) whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction;

(VIII) probation or institutional reports, if any;

(IX) any other relevant factors;

At the May 5, 2016, decertification hearing, testimony was taken from Bruce Andersen, M.D.; Larry Smith, Juvenile Probation Officer; and Jeff Karchner, the Lycoming County Prison Supervised Bail Officer. Dr. Anderson stated that the Defendant is of average intelligence, and finds him more cooperative than most adults he sees (Defendant is not angry, not annoyed, and respectful). Dr. Anderson believes that the Defendant presents lower risk to the community if treated as a juvenile.

Larry Smith, Juvenile Probation Officer, supervised the Defendant for one year for a simple assault and also knows Defendant as Mr. Smith is the Probation Officer in residence at the Defendant's high school. Officer Smith stated that Defendant has only received the low end of the spectrum of services available to him as a juvenile offender i.e. Path weekends. The Defendant has never been institutionalized, or had in home workers providing multi systemic therapy. Mr. Smith stated that he feels Defendant is not a risk to the public. Mr. Smith stated that it is not out of the ordinary for Juvenile probation to supervise juvenile offenders charged with similar offenses i.e. burglary, robbery and firearm offenses.

Since Judge Lovecchio's Order of November 15, 2015, Defendant has been cooperative with supervised bail and has been treated for cannabis use disorder at Genesis House for the three weeks preceding the decertification hearing. Other than a few battery violations, he has no

further drug related or missed appointments any further supervised bail violations and he is performing better in school as evidenced by higher grades since he has stopped using marijuana.

III. Conclusion

The Court does not ignore the fear the alleged crime victims must have experienced when being faced with several youths who allegedly had guns coming into their home and stealing their money; but because there was no loss of life and no physical injury and because Defendant is responding well to the treatment he is receiving at Genesis House, and those actors in the criminal justice system that are most familiar with the Defendant and the community at large, feel that the overall risk to the community is lower by treating Defendant as a juvenile and getting him the treatment and education available to him in the juvenile justice system, the Court will decertify the Defendant from criminal proceedings to the juvenile court.

ORDER

AND NOW, this 25th day of May, 2016, based upon the foregoing Opinion, the Petition to Transfer Minor to Juvenile Court, is hereby GRANTED. It is ORDERED and DIRECTED that the proceedings be decertified from criminal court to juvenile court.

BY THE COURT,

Nancy L. Butts, President Judge

cc: PD (JB)
DA (AB)
JPO (LS)