

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : NO. CR-537-2015
:
vs. :
:
JEFFREY W. CARTWRIGHT, :
Defendant : Immunity from IP Violation

OPINION AND ORDER

On March 15, 2016, Defendant was sentenced on a misdemeanor one driving under the influence of alcohol conviction.

He received a min-max sentence followed by an intermediate punishment sentence.

By Order of Court dated April 28, 2016, following a hearing, the Court found probable cause to believe that Defendant violated the conditions of his intermediate punishment by allegedly overdosing on prescription Librium, by not complying with his adult probation officer's directives, and creating a disturbance at the Williamsport Hospital.

Defendant, however, claimed immunity from an intermediate punishment violation pursuant to the drug overdose response immunity statute, 35 Pa. C.S. § 780 -113.7. A hearing on Defendant's asserted immunity was held on May 13, 2016.

The facts were not disputed. On April 20, 2016, Defendant's father contacted Jynara Kibler, a Lycoming County Adult Probation officer and told Ms. Kibler that his son, Defendant, had passed out and apparently had taken an old prescription of Librium. Ms. Kibler told Defendant's father to immediately call 911. Defendant's father called 911 and reported the overdose incident. He gave his name and contact information and waited until

emergency personnel arrived.

Shortly after emergency personnel arrived, two other Lycoming County Adult Probation Officers responded to the residence. Defendant was witnessed being noncompliant with EMT's. He was eventually transported to the Williamsport Hospital by ambulance but refused treatment and was then released.

Defendant contends that he is entitled to immunity from the intermediate punishment violation pursuant to Pennsylvania's Drug Overdose Response Immunity Act. The Commonwealth argues that Defendant is not immune for two reasons: (1) Defendant's father was not in a position to be arrested for any crime; and (2) Defendant was serving an intermediate punishment sentence on in-home detention and not probation or parole.

Defendant clearly was experiencing a drug overdose event. The statute provides that a person experiencing a drug overdose event is immune from a probation or parole violation if the person who reported and remained with them may not be charged and is entitled to immunity under the section. 35 Pa. C.S.A. § 780-113.7 (c).

The Commonwealth contends that the intent of this section is to provide immunity to a person who reported an event who could be charged because he or she somehow participated in the drug usage. The Commonwealth's proposed interpretation of the statute, however, asks the Court to not only rewrite the statute but to ignore the clear language of the statute.

The question to be determined is whether the person in this case who reported and remained with Defendant, Defendant's father, may not be charged and is entitled to

immunity under the section of the Act. Clearly, Defendant's father may not be charged and is entitled to immunity. First, pursuant to (a) (2) (i), he reported, in good faith, a drug overdose event to the 911 system and a law enforcement officer. The report was made on the reasonable belief that Defendant was in need of immediate medical attention and said medical attention was necessary to prevent death or serious bodily injury due to a drug overdose. Second, pursuant to (a) (2) (ii), Defendant's father provided his own name and location and cooperated with the law enforcement officer and 911 system. Lastly, and pursuant to (a) (2) (iii), he remained with Defendant who needed medical attention until a law enforcement officer and emergency personnel arrived.

Defendant experienced a drug overdose event. He cannot be charged and is immune from prosecution or for a probation or parole violation because his father who reported and remained with Defendant, may also not be charged and is entitled to immunity.

In the alternative, however, the Commonwealth argues that Defendant was not on probation or parole but instead serving an in-home detention portion of an intermediate punishment sentence. The immunity statute bars prosecution and provides immunity for "a violation of probation or parole." See (a) as well as (b).

Again, the Court will not rewrite the statute. Parole and probation are different than intermediate punishment. Intermediate punishment is a creature of statute. 42 Pa. C.S.A. § 9801et. seq.; 42 Pa. C.S.A. § 9762 (d); 42 Pa. C.S.A. § 9763. The Court can only assume that if the legislature intended for there to be immunity from an intermediate punishment violation, it would have stated such.

ORDER

AND NOW, this 27th day of May 2016, for the reasons set forth above, the Court concludes that Defendant is not immune from an intermediate punishment violation. Defendant's revocation hearing shall be held on the **23rd day of August, 2016 at 10:00 a.m. in Courtroom No. 4** of the Lycoming County Courthouse.

By The Court,

Marc F. Lovecchio, Judge

cc: DA
William Miele, Esquire, Public Defender
APO (JK)
Gary Weber, Lycoming Reporter
Work File