

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

<b>COMMONWEALTH</b>	:	<b>CP-41-CR-0000736-2016</b>
	:	<b>400 MDA 2017</b>
<b>v.</b>	:	<b>274 CD 2017</b>
	:	
<b>AMANDA CONFER</b>	:	<b>1925a Opinion</b>

**OPINION AND ORDER**

This Opinion is written in support of the Court's Order filed on January 26, 2017, granting the Adult Probation Office's request that its officer be reimbursed for the cost of work pants destroyed while employed in his supervisory duties of the above named Defendant.

The Court treats this appeal as a Post Sentence Motion. The PA Rules of Criminal Procedure provide that a written post-sentence motion shall be filed no later than 10 days after imposition of sentence. PA.R.CRIM.P. 720 (POST-SENTENCE PROEDURES; APPEAL, TIMING). As such, a timely "Motion for Reconsideration" i.e. Post sentence motion would have been filed on or before February 6, 2017. The "Motion for Reconsideration" filed February 8, 2017, was an untimely Post Sentence Motion and the Court denied a re-hearing. As such the Court believes that the appeal to the Superior Court and the Commonwealth Court are untimely. However, should the Appellate Courts disagree with this Court's procedural assessment of the case, the Court it will also address the merits as well.

Initially, the Adult Probation Office requested reimbursement from the County General Fund for the loss of its officer's work pants. The request for reimbursement was denied. The President Judge authorized the payment out of the County Offender Supervision Fund pursuant to her authority to do so via the Crime Victims Act, 18 P.S. § 11.1102 (1998) "the Crime Victims Act confers the authority on the President Judge ... to disburse funds from the Supervisory Fund at [her] discretion." BD. OF COMM'RS V. LING, 92 A.3D 112, 118 (PA. CMWLTH. 2014). The Act of Aug. 14, 1991, P.L. 331, No. 35 i.e Act 35 provides in Section 477.20(e):

the county treasurer of each county shall establish and administer a County Offender Supervision Fund consisting of the fees collected pursuant to this section. The county treasurer shall disperse moneys from this fund only at the discretion of the president judge of the court of common pleas. The moneys in this fund shall be used to pay the salaries and employee benefits of all probation and parole personnel employed by the county probation and parole department and the operational expenses of said department...The board shall establish temporary rules, regulations and guidelines for the immediate implementation of the County Offender Supervision Fee Program and shall, within one year of the effective date of this act, promulgate regulations under the act ...known as the "Regulatory Review Act," to provide for the permanent administration of this program.

ACT 35, SECTION 477.20(E) (1991).

The regulations promulgated provide:

(b) The county treasurer/chief financial officer shall disperse moneys from this fund only at the discretion of the president judge of the court of common pleas. The moneys in this fund shall be used to pay the salaries and employee benefits of adult probation and parole personnel employed by the county adult probation and parole departments and the operational expenses of the department...

37 PA. CODE § 68.52 (COUNTY TREASURER/CHIEF FINANCIAL OFFICER).

Each county shall develop and implement a system by which funds are distributed. Moneys in this fund shall be used to pay the salaries and employee benefits of adult probation and parole personnel employed by the county adult probation and parole department and operational expenses. Moneys shall be used to

supplement Federal, State or county appropriations for the county adult probation department to maintain and improve county adult probation services.

37 PA. CODE § 68.72 (USE OF COUNTY OFFENDER SUPERVISION FUNDS).

The regulations do not define “operating expense”, however, an operating expense is a cost of doing business. While the County does not pay for uniforms for the Adult Probation Officers in the normal course of business<sup>1</sup>, the payment for employment related clothing in this circumstance was lawful. The Adult Probation Officers must wear heavy duty trousers while working. They are required to carry various pieces of equipment on their persons, including a gun, so they can detain supervisees if and when appropriate. Officers typically wear “511 brand pants”, which they purchase at stores such as Gander Mountain, Rogers Uniform, etc. These pants are tactical-type pants that are durable and have several pockets for supplies.

Though the pants typically worn by an Adult Probation Officer are adaptable to general usage as ordinary clothing the converse is not true. Ordinary clothing is not always adaptable to general usage by an Adult Probation Officer. In this instance, the Court found that the Probation Officers work pants were specifically damaged by Defendant while a Probation Officer was detaining Defendant pursuant to his job. As such, it was entirely appropriate for the Court to determine that it was indeed an operating expense and appropriate for the expense to be paid out of the County Supervision Fund designated for such expenses pursuant to Act 35.

---

<sup>1</sup> Lycoming County Human Resources Policy Number 511 authorizes such payment.

As the current appeal is untimely and the President Judge acted within her authority, the Court respectfully suggests that the Order of January 26, 2017, be affirmed.

DATE: \_\_\_\_\_

BY THE COURT,

\_\_\_\_\_  
Nancy L. Butts, P.J.

cc: Mary Kilgus, Esq. Appellant's Counsel  
Gary Weber, Esq. Lycoming Law Reporter  
Amanda Confer OZ1899  
SCI Muncy  
PO Box 180  
Muncy, PA 17756  
Adrienne Stahl, Esq. Court Administrator