

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

IN THE INTEREST OF:

BNK,

A Minor

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No. JV 176-2017

OPINION AND ORDER

And now this 2nd day of **November, 2017**, after argument held on October 31, 2017, in regard to the Motion to Vacate Nolle Prosequi filed by the Commonwealth on October 27, 2017, at which time Julian Allatt, Esquire, counsel for the Juvenile was present and Eric Linhardt, Esquire, was present on behalf of the Commonwealth, the Court hereby **DENIES** the Motion for the reasons that follow.

A full hearing on the Juvenile's Motion to Suppress, which included (1) testimony from Pennsylvania State Trooper Vincent Morgan, who filed the charges, (2) a stipulation by the Commonwealth and counsel for the Juvenile regarding what Pennsylvania State Trooper Adam Kirk, who was also present at the traffic stop, would testify to, and (3) audio and visual evidence from the traffic stop, was held on September 21, 2017, after which this Court granted the Juvenile's Motion in an Opinion and Order filed on October 6, 2017. On October 11, 2017, W. Jeffrey Yates, Esquire, the Assistant District Attorney assigned to handle juvenile matters, requested that the charges filed against the Juvenile be *nolle prossed*. On October 13, 2017, this Court entered an Order granting the Motion to Withdraw the Juvenile Petition. Attached to this Order as "Exhibit A" was a list of the five charges and an indication that each was

withdrawn. On October 27, 2017, the Commonwealth filed a Motion to Vacate Nolle Prosequi so the Commonwealth may Appeal, and requested expedited consideration as the deadline to appeal the Court's decision on the Juvenile's Motion to Suppress falls on November 4, 2017. The Court heard arguments from both the Commonwealth and counsel for the Juvenile on October 31, 2017.

The Court initially notes that, procedurally, the Commonwealth failed to follow the Pennsylvania Rules of Juvenile Court Procedure. After the Juvenile's Motion to Suppress was granted, the attorney for the Commonwealth withdrew the charges in the Petition Alleging Delinquency, as he had the authority to do pursuant to Pa.R.J.C.P. 335, which states "[t]he attorney for the Commonwealth may withdraw the petition. The withdrawal shall be filed with the clerk of courts." Two weeks after the attorney for the Commonwealth who is specifically assigned to handle juvenile matters withdrew the charges, which was confirmed by Order of this Court, that attorney's supervisor in the District Attorney's office filed the Motion to Vacate the Nolle Prosequi. The motion was filed so that the Commonwealth could appeal the Court's decision on the Motion to Suppress. While this may be a common practice in criminal court, unless otherwise specifically provided, the rules of criminal procedure shall not apply to juvenile proceedings. **Pa.R.Crim.P. 100.**¹ The Rules of Juvenile Court Procedure provide that "the attorney for the Commonwealth may re-file a petition after the petition has been withdrawn pursuant to Rule 335 or dismissed by the court." **Pa.R.J.C.P. 336.** This Court believes that, after the charges were properly withdrawn, the proper recourse for the

¹ Additionally, the comment to Pa.R.J.C.P. 100 indicates that, "unless specifically provided in these Rules, the Pennsylvania Rules of Civil Procedure and the Pennsylvania Rules of Criminal Procedure do not apply to delinquency proceedings commenced pursuant to Rule 200 and 42 Pa.C.S. §6301 et seq.

Commonwealth would have been to re-file the delinquency petition in accordance with the Rules of Juvenile Court Procedure, not file a Motion to Vacate the Nolle Prosequi.

Notwithstanding the above, the Court will address the merits of the Commonwealth's Motion to Vacate Nolle Prosequi. As discussed above, the attorney for the Commonwealth *specifically assigned to handle juvenile matters* requested that the charges be dismissed five (5) days after this Court's issued an Order granting the Juvenile's Motion to Suppress following a full suppression hearing. The Motion to Vacate was filed by a supervising attorney in the District Attorney's office two weeks after the Order withdrawing the Petition. At argument on the Motion, the Commonwealth indicated that the Assistant District Attorney, "in violation of department policy," did not discuss the case with the supervising attorney or the District Attorney prior to the *nolle prosequi*. As a result, the Commonwealth argued it was precluded from raising genuine issues of law for an appellate court to consider.

"A *nolle prosequi* is a voluntary withdrawal by the prosecuting attorney of present proceedings on a particular bill of indictment." Com. V. Goldman, 70 A.3d 874, 878 (Pa. Super. 2013). In evaluating a request for *nolle prosequi*, a court must consider two factors: (1) whether the Commonwealth's reason for the request is reasonable; and (2) whether the defendant has a valid speedy trial claim. Id., citing Commonwealth v. Reinhart, 353 A.2d 848, 853 (Pa. 1976). "A *nolle prosequi* may be lifted 'at any time in the future,' on appropriate motion, to revive the original charges." Id., citing Commonwealth v. Ahearn, 670 A.2d 133, 135 (Pa. 1996).

In its argument, the Commonwealth relied on the Goldman case. In this case, the Commonwealth was not prepared to proceed on the designated trial date due to a

“communication breakdown” which resulted in police officers failing to receive subpoenas. The trial court judge denied a continuance request and presented the Commonwealth with a choice: request *nolle prosequis* or have the cases dismissed. Commonwealth v. Goldman, 70 A.3d at 877. The Commonwealth filed *nolle prosequis* and the defendants, who had been incarcerated for 196 days, were released. Nine days later, the Commonwealth filed motions to vacate the *nolle prosequis*, assuring the court that they had secured the subpoenas for the officers, and requested the matter be set for the earliest possible trial date. The trial court denied the motions to vacate based on the opinion that the Commonwealth did not act with due diligence because it did not present evidence of a duly diligent prosecution or that circumstances beyond its control caused the delay. Id. at 880. The Superior Court held that “[d]ismissal of charges is an “extreme sanction” that should be imposed sparingly and only in cases of blatant prosecutorial misconduct.” Id. at 881. A dismissal “punishes not only the prosecutor, but also the public at large because ‘the public has a reasonable expectation that those who have been charged with crimes *will be fairly prosecuted to the full extent of the law.*’” Id. (emphasis added). The Superior Court further held that a trial court abused its discretion in denying the Commonwealth’s motions to vacate *nolle prosequis* when there was no blatant prosecutorial misconduct or that the delay prejudiced the ability of the defendants to defend their cases.

The Commonwealth also provided the case of Commonwealth v. Gardiner, 2013 Pa. Super. Unpub. LEXIS 4429, a non-precedential decision, in support of its Motion. In this case, the trial court proposed that the Commonwealth move for *nolle prosequi* after the complaintant failed to timely appear on the designated trial date. The

trial court advised the Commonwealth that it could seek to lift the *nolle prosequi* and reinstate the charges after it located the witnesses. Five days later, the Commonwealth filed its motion and indicated that the complaintant did appear on the date of the trial, albeit tardy, but the defendant had already left. The trial court granted the Commonwealth's motion and, upon review, the Superior Court found no abuse of discretion as "the record showed that the Commonwealth was not attempting an end run around Rule 600 by filing the *nolle prosequi* and because there was nothing in the record to refute the Commonwealth's assurances that it would be ready to proceed at the next trial date." Id.

We note that the Commonwealth asserted that a speedy trial claim was not at issue in this matter and counsel for the Juvenile agreed. The Court believes that the present case is distinguishable from the two cases cited by the Commonwealth in support of the Motion to Vacate Nolle Prosequi. The Commonwealth in the case of Goldman was given a choice of filing a *nolle prosequi* or having charges dismissed by the Court. The Commonwealth in the case of Gardiner filed the *nolle prosequi* at the behest of the Court, which invited the Commonwealth to file a motion to lift it in order to reinstate the original charges once the complaintant was located. In one case, the Commonwealth was essentially forced by the trial court to file the *nolle prosequi* to avoid the charges being dismissed by the court, and in the other case the trial court requested that the Commonwealth file the *nolle prosequi* but invited the Commonwealth to motion to have it lifted if circumstances regarding the availability of the complaintant changed. In both of these cases, the *nolle prosequi* was filed before the matter reached trial. In the Gardiner matter, the Court reinstated the charges after the *nolle prosequi*

was vacated. In the Goldman matter, the case was remanded and the trial court was directed to lift the *nolle prosequis* and reinstate the complaints.

In the present case, the Court's decision was entered after a full hearing on the Juvenile's Motion to Suppress, at which time the Commonwealth had an opportunity to present evidence and question witnesses. Five days after the Order granting the Juvenile's motion was entered, the Assistant District Attorney assigned to handle juvenile matters, without any request or influence from this Court, voluntarily withdrew the charges against the Juvenile. The Commonwealth's Motion to Vacate Nolle Prosequi seeks not to "revive the original charges," but rather to appeal the Court's decision granting the Motion to Suppress.

The Commonwealth is requesting that this Court undo an action taken by an Assistant District Attorney, who is a duly authorized agent of the District Attorney. There are no allegations of newly discovered evidence or that previously unavailable witnesses have been located which would enable the Commonwealth to better prosecute its case. Here, the Commonwealth argues that the Assistant District Attorney assigned to juvenile matters made a decision about a case without first consulting with his supervisor or the District Attorney himself, in direct violation of their department policy. The Commonwealth argues that there would be no prejudice to the Juvenile if its motion were granted in order for the Commonwealth to appeal and allow an appellate court to determine if this court wrongly decided the suppression issue, as "the goal of the juvenile system is to rehabilitate, not punish."

This Court cannot agree with the Commonwealth's logic. The Juvenile was successful in his Motion to Suppress after a full and fair hearing, at which time the

Commonwealth had the opportunity to satisfy its burden of establishing that the challenged evidence was not obtained in violation of the Juvenile's rights. The Court reiterates that, following the Order granting the Juvenile's Motion to Suppress and on his own motion, the Assistant District Attorney requested that the charges be dropped and the Petition Alleging Delinquency be withdrawn. The fact that Assistant District Attorney may or may not have violated a department policy by not consulting with his supervisor or the District Attorney prior to requesting that the Petition be withdrawn does not belie the fact that the Assistant District Attorney is an authorized agent of the Commonwealth and, as such, has the authority to bind the Commonwealth with his decisions. The Juvenile in this case was notified by his counsel of the Court's decision to grant his Motion to Suppress as well the Court's entry of an Order withdrawing the Petition for Delinquency. The Juvenile is 18 years old, and with the notification that his charges were withdrawn, should be able to feel secure that the matter will not impact applications for higher education, military enlistment, or job prospects. To permit the Commonwealth to vacate the Withdrawal of the Petition for Delinquency because of a lack of communication and internal policy violation within the District Attorney's office would disrupt the finality that the Juvenile was afforded following a successfully litigated Motion to Suppress and voluntary withdraw of the charges by the Commonwealth. The Court declines to reward the District Attorney's Office for not having its house in order at the expense of the Juvenile when there are no allegations that the charges were improperly withdrawn following a decision by this Court granting the Juvenile's Motion to Suppress after a full and fair hearing.

ORDER

AND NOW, this 2nd day of **November, 2017**, following argument and after careful consideration, the Commonwealth's Motion to Vacate Nolle Prosequi so the Commonwealth may Appeal is **DENIED**.

By The Court,

Joy Reynolds McCoy, Judge