

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1783-2016
 :
 VANESSA WEAVER, : Omnibus Pretrial Motion
 Defendant :

OPINION AND ORDER

Defendant is charged by Information filed on October 21, 2016 with escape, a misdemeanor 2 offense.

The Criminal Complaint and Affidavit of Probable Cause allege that on August 23, 2016, the Defendant was sentenced on an unrelated matter, to a period of incarceration and placed on electronic monitoring. The sentence was following Defendant's guilty plea on a felony retail theft.

Defendant was serving the electronic monitoring portion of her sentence which prohibited her from leaving her residence without permission. It is alleged that on August 26, 2016 she left her residence and went to Kohl's Department Store without permission.

The sentencing Order with respect to the retail theft felony was under case no.: CR-1206-2016. It specifically stated that the Defendant "serve a period of incarceration in the Lycoming County Prison for an indeterminate period of time, the minimum of which shall be thirty (30) days, the maximum of which shall be two (2) years less one (1) day." It subsequently stated that the Defendant shall serve thirty (30) days via electronic monitoring due to a health situation with her child."

On November 21, 2016, Defendant filed an Omnibus Pretrial Motion which included a Petition for a Writ of Habeas Corpus and a Motion to Dismiss pursuant to 18 Pa. S. C. A. § 110.

The hearing on Defendant's Omnibus Pretrial Motion was held on January 3, 2017.

In connection with Defendant's Petition for Habeas Corpus, Defendant alleges that the Commonwealth failed to present any evidence that the Defendant was serving a sentence of official detention. Defendant argues that her sentence was illegal in that she was sentenced to a min/max sentence and not a county intermediate punishment sentence. Accordingly, Defendant argues that she "could not escape from an illegal sentence." (Omnibus Pretrial Motion, paragraph 24). Alternatively, Defendant argues that she did in fact have permission to be out of her home on August 25, 2016. Defendant argues that her "previous permission to be outside her home on August 25, 2016 had never specifically been revoked by the Reentry Services Specialist. (Omnibus Pretrial Motion, paragraph 25).

In *Commonwealth v. Jack Williams*, 2016 Pa. Super. 301 (December 23, 2016), the Superior Court recently addressed what constitutes official detention to support an escape charge. Defendant argued that he was on parole on the date in question and as a parolee, he was not in official detention.

The Superior Court concluded that there was sufficient evidence of record to support Defendant's conviction for escape because Defendant was not on parole but had been arrested for violating the terms of his parole and thus was considered to be in prerelease

status.

§ 5121 of the Crimes Code relating to escape, notes that a person commits an offense if he unlawfully removes himself from official detention. 18 Pa. C.S.A. § 5121 (a).

“Official detention” under this provision “means arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes.” 18 Pa. C.S.A. § 5121 (e).

Defendant’s argument that one cannot escape from electronically monitored house arrest has been specifically rejected. In *Commonwealth v. Wegley*, 2003 Pa. LEXIS 1399 (August 6, 2003), the Supreme Court specifically held that the escape statute’s enumerated exception pertaining to probation, parole, or constraint incidental to release on bail, does not encompass electronically monitored house arrest pursuant to a sentence of intermediate punishment.

Defendant further argues that she could not escape from an illegal sentence. Defendant, however, fails to support her argument with any legal authority whatsoever. The statute fails to enumerate an exception for such and logically it would make no sense. One’s remedy from an illegal sentence is not to escape but to utilize the Court process to have said sentence vacated.

Finally, even if Defendant were correct, this Court does not agree that her sentence was illegal. Pursuant to 42 Pa. C.S.A. § 9721, the Court has the discretion to choose among several different sentencing alternatives. Among the alternatives are partial

confinement. 42 Pa. C.S.A. § 9721 (a) (3). There is nothing in the partial confinement statute that precludes in-home detention electronic monitoring. 42 Pa. C.S.A. § 9724. However, partial confinement does not include in-home detention electronic monitoring.

Commonwealth v. DiMauro, 434 Pa. Super. 129, 642 A.2d 507 (1994). While the Court agrees that the sentence was illegal, it does not preclude an escape conviction.

Defendant next argues that the charge should be dismissed pursuant to 18 Pa. S.C.A. § 110. The Court disagrees. Defendant's retail theft conviction for the theft that occurred on August 25, 2016 was based on different criminal conduct and not part of the same criminal episode. The escape occurred once Defendant left her residence. She traveled two miles, went into the Kohl's Department Store and committed a retail theft.

In *Commonwealth v. Schmidt*, the Superior Court noted, "this concept of criminal episode has been defined as an occurrence or connected series of occurrences and developments which may be viewed as distinctive and apart although part of a larger or more comprehensive series. With respect to the factors relevant to a determination of same criminal episode, the Supreme Court framed the standard as follows: where a number of charges are logically and/or temporally related and share common issues of law and fact, a single criminal episode exists and separate trials would involve substantial duplication and a waste of scarce judicial resources. In such cases, failure to consolidate will bar success of prosecutions. In ascertaining whether number of statutory offenses are "logically related" to one another, the Court should initially enquire as to whether there is a substantial duplication of factual, and/or legal issues presented by the offenses. The single criminal episode analysis

essentially considers the totality of the circumstances. 919 A.2d 241, 245-46 (Pa. Super. 2007).

Upon considering the totality of the circumstances, the Court concludes that the escape charge and the retail theft conviction are not part of the same criminal episode. Although they occurred on the same day, they are not logically related and they do not involve a substantial duplication of factual or legal issues.

ORDER

AND NOW, this ____ day of January 2017, following a hearing and argument, Defendant's Omnibus Pretrial Motion is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Melissa Kalas, Esquire (ADA)
Greta Davis, Esquire (APD)
Work File
Gary Weber, Esquire (Lycoming Reporter)