

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
vs. : **CR-1023-2018**
 : **OTN: X187114-4**
CATHY BURROWS :

OPINION AND ORDER

Before the Court is defendant's motion to dismiss as di minimus the charges against the defendant. The defendant is charged by information filed on July 20, 2018 with retail theft, a felony three offense, criminal conspiracy to commit retail theft, a felony three offense, and corruption of minors, a misdemeanor one offense.

The Legislature has mandated that the Courts dismiss prosecutions if the conditions are met under 18 Pa. C.S.A. Section 315. More specifically the Court shall dismiss a prosecution if having regard to the nature of the conduct charged to constitute an offense, and the nature of the attendant circumstances, if it finds that the conduct of the defendant presents such other extenuations that it cannot reasonably regard it as envisioned by the General Assembly or other authority in forbidding the offense, section 312(a)(3). The Commonwealth notes that "it's not unknown that people suffer" from poverty, mental health disabilities, and physical disabilities. The Court agrees, but such extenuations must be considered in whether prosecutions should proceed.

The nature of the attendant circumstances in this case were such that after an

extensively long history involving Children and Youth and different placements of the children, including with the defendant. the one child went with the defendant to the grocery store. The defendant had intended to go to the grocery store because both children were going to stay with her for dinner and perhaps overnight. The mother of the children frequently had the children stay with the defendant. Because the defendant did not legally have custody of the children any longer, she was no longer able to obtain public assistance on behalf of the children. The defendant walked up and down the aisle trying to find food that she could afford in order to feed the children, who she desperately cared for. Unfortunately the mother did not have any moneys to give to the defendant, and the defendant was "scared to death" that the children might be placed in foster care. The defendant impulsively, and what she described as a "rash decision" took two Tide pods, two packs of beef stew, and a small doll for the younger grandchild. She took these items for the children. The Court finds her testimony credible in her stating that she had to decide whether to use her rent money for food or vice versa have no food and pay rent. She took \$44.02 worth of items. The market did not suffer a loss because all of the items were returned and resalable.

In looking at the nature of the attendant circumstances, the Court incorporates the facts as found above.

The determinative issue is whether there are other extenuations such that they were not regarded as envisaged by the General Assembly or other authority in forbidding the offense. While there is no doubt in the Court's mind that theft offenses, including even the smallest retail theft offenses, should in the vast majority of cases be prosecuted in that, as the Commonwealth noted, there are not only losses that are directly incurred, although there

were no direct losses in this case, there are indirect losses and there are other collateral consequences that might be involved when one is apprehended.

On the other hand, the Court cannot conclude that the General Assembly intended an individual in the defendant's position to be prosecuted.

The purpose of sentencing is three-fold. One is to protect the public. The other is to rehabilitate the defendant, and the third is to reflect the seriousness of the offense to the extent it has impacted on the victim or the community. None of those purposes would be served in continuing to prosecute the defendant in this particular case. The defendant lives in abject poverty. She and her husband live in a hotel room where they have lived for many months. The defendant has significant mental health issues, including but not limited to schizophrenia, PTSD, depressive disorder, and agoraphobia. She takes at least five (5) or six (6) different medications which are prescribed by a treating psychiatrist and a treating doctor, as well as a psychologist. She takes methadone for her pain. She was on supervised bail and she was limited in complying with the conditions and was told to solely treat with her trauma therapist. These mental health issues were a direct result of an exacerbating incident that occurred just four (4) years ago when the defendant was a passenger in a vehicle and the driver intentionally crashed the vehicle hoping to kill himself and her. The defendant had previously been involved in a four (4) year relationship with this individual who had emotionally, physically, and sexually abused her. The impact of such abuse and the incident cannot be overstated in connection with its exacerbation of defendant's mental health issues. As a result of the failed attempt to kill the defendant she suffers significant physical health issues. She suffered numerous fractures throughout her body, and she still is undergoing treatment and potential surgeries. She is practically immobile. She spends her day lying in

bed watching TV. Both her mental health issues and physical health issues have resulted in substantial, if not total disability. If the defendant were forced to proceed to trial, and even if the Commonwealth, which has expressed some sympathy, wished for the defendant to simply be placed on probation, it would be useless. The defendant cannot even afford the cost of supervision, and what conditions of supervision would be imposed. In this particular case, which is an extreme aberration, and in fact is the only case in this Court's ten (10) years on the bench which the Court will dismiss as di minimus, nature has taken care of what the criminal justice system would have done.

Finally, and with respect to the minor child, there was no evidence at all, and the Court reviewed the affidavit of probable cause to support that the minor child knew what was happening, or was encouraged to take part in anything.

ORDER

And now, January 11, 2019, following a hearing, and pursuant to 18 Pa. C.S.A. Section 312(a)(3), the Court dismisses as di minimus the charges against the defendant. The Court finds, having regard to the nature of the conduct charged to constitute the offense, and the nature of the attendant circumstances, that the conduct of the defendant presents such other extenuations that it cannot reasonably regard it as envisioned by the General Assembly or other authority in forbidding the offense.

The defendant shall remain on supervised bail for the next thirty (30) days. If

the Commonwealth files an appeal defense counsel may request a modification of bail and the Court will consider such. If the Commonwealth does not file an appeal bail shall be vacated.

BY THE COURT


Marc F. Lovecchio, Judge

cc: CA: CC: DA
G. Lynch, Esq.
Suzanne Fedele – Prothro
Harry Rogers - LCP
Gary Wayne Lynch, Reporter
(MFL:ajs)