

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: : **No. MD-291-2020**
:
DAVID BEAN, : **Petition for Review of**
: **Private Criminal Complaint**
: **Disapproval**

OPINION AND ORDER

The Commonwealth filed a Petition for Review of Private Criminal Complaint Disapproval. A hearing on such was held before the court on September 11, 2020. While the record is not clear, approximately 30 to 60 days after October of 2018, Mr. Bean submitted a complaint to the District Attorney’s office requesting that simple assault charges be approved. This complaint alleged that he was assaulted by specified correctional officers at the Lycoming County Prison on or about May 30, 2017.

Following his Complaint, the District Attorney’s office forwarded to him a Private Criminal Complaint Form. He completed the Private Criminal Complaint Form and submitted it to the District Attorney’s office on around January 25, 2019. It was addressed to Kenneth Osokow, then District Attorney.

There is no evidence as to what steps Mr. Osokow took if any with respect to the Private Criminal Complaint.

On July 5, 2020, Mr. Bean sent a letter to then District Attorney, Ryan Gardner, requesting a decision on the Private Criminal Complaint that he had previously submitted. In the letter, Mr. Bean acknowledged that “maybe” Mr. Gardner was not “even the DA at the time.” He noted that he never received an answer or response and cited Rule 507 [sic] of the Pennsylvania Rules of Criminal Procedure that requires an answer “in a timely manner.” He requested a “response” as soon as possible.

Martin Wade is the First Assistant District Attorney under District Attorney Gardner. He was as well the First Assistant District Attorney under Mr. Osokow. During the time that Mr. Bean submitted his Private Criminal Complaint, Mr. Wade was the person assigned by the office to review Private Criminal Complaints. He never received the Private Criminal Complaint from Mr. Osokow.

He did, however, receive the July 5, 2020 letter addressed to Mr. Gardner. As a result, he reviewed prior correspondence from Mr. Bean's "file", and he ascertained the particulars of the complaint against the corrections officers. He reviewed the police report from the case and he reviewed a report verifying that Mr. Bean made his complaint previously to Detective Sorage of the Lycoming County District Attorney's office. As well, Mr. Wade reviewed four video discs that included surveillance from a one or two-day period. He acknowledged that there was some type of interaction with Lieutenant Entz and other corrections officers at one part of the day and then after court, there were interactions with Lieutenant Entz and other correctional officers on another part of the day. Following his investigation, Mr. Wade forwarded a letter to Mr. Bean dated July 17, 2020. He referenced his understanding of Mr. Bean's Complaint and what steps he took to investigate such. He informed Mr. Bean that he would not approve the filing of criminal charges against Correctional Officer Bowes or Stutzman.

His reasons for denying the Criminal Complaint were varied. Among other things, he noted Mr. Bean was the aggressor and provoked the use of force against him, a statement from the nurse made it clear that the force used by the corrections officers came in direct response to Mr. Bean's assaultive behavior, and when she examined Mr. Bean after the incident, he had no head injury and did not require any medical attention. He concluded that

he did not find Mr. Bean's statement credible after seeing photographs of an injury to Stutzman's arm and watching the surveillance video. He noted that Mr. Bean obviously bit into Stutzman's arm deliberately intending to cause an injury. He considered Mr. Bean's statements to Detective Sorage to be dishonest and to demonstrate consciousness of guilt. He noted that he did not believe that Mr. Bean would make a good witness in a prosecution, even if the charges were filed.

During the hearing in this matter, Mr. Bean requested sanctions against the District Attorney's office for its alleged dilatory response. As a remedy, he requests that the court compel the District Attorney's office to approve the charges. Alternatively, Mr. Bean requests that the court order "an independent review" of the matter. He requests "accountability" arguing that the District Attorney's office "obviously" knew about the incident that occurred because he was charged criminally and that the charges were subsequently dismissed. When further questioned, Mr. Bean suggested that the Attorney General's office investigate the matter. He suggested "individually" sanctioning the District Attorney's office with a fine or a finding of contempt.

He agreed, however, and didn't have any "doubt" that Mr. Gardner's office and his staff handled the matter "real timely."

In connection with Mr. Wade's disapproval of the Complaint and as indicated previously, the reasons for his decision were many and varied. He concluded that there was insufficient evidence to prosecute any of the corrections officers. He concluded that Mr. Bean had not presented evidence of a prima facie case beyond the evidence that already existed. He concluded that even if Mr. Bean's version of the events was true and charges were filed, the likelihood of a conviction would be minimal and that there would be an

extreme likelihood of an acquittal.

Mr. Bean agreed that the denial was a “hybrid” denial. He understood based upon this Court’s prior Order of August 24, 2020 that when a District Attorney disapproves a Private Criminal Complaint on wholly policy considerations, or on a hybrid of legal and policy considerations, the trial court’s standard of review of the District Attorney’s decision is abuse of discretion. *In Re: Hamelly*, 200 A.3d 97, 101 (Pa. Super. 2018). He understood as well that in the absence of evidence that the District Attorney’s decision to deny a Private Criminal Complaint was patently discriminatory, arbitrary or pretextual and therefore, not in the public interest, the trial court could not presume to supervise the District Attorney’s exercise of prosecutorial discretion. *In Re: Private Criminal Complaints of Rafferty*, 969 A.2d 579 (Pa. Super. 2009).

Mr. Bean asserted that the decision was arbitrary because Mr. Wade did not “consider all of the facts.” Among other things, he noted that x-rays verified that his wrist and shoulder were badly sprained following the incident, Mr. Wade “chose to ignore” the video surveillance and only “state what was favorable to him.” He noted that the videos depicted Lieutenant Entz shoving Mr. Bean face first into the elevator doors. He noted that the surveillance depicted CO Stutzman “double-hand choking” him, punching him and CO Bowes slamming his head on the nurse’s desk. He noted that he didn’t kick anybody and did not instigate anything. He concluded that “they were hell-bent on doing something to [him] that morning to begin with.”

In supporting his argument that the decision was entirely arbitrary, Mr. Bean noted that the video “speaks for itself.”

It is important for the court to note that the issue before the court is whether

the District Attorney's office abused its discretion in denying the charges against only Officer Bowes and Officer Stutzman. It was made clear to Mr. Bean at the end of the hearing that if he wished to file criminal charges against any other correctional officers or administrators as a result of the incident, he could file a Private Criminal Complaint and forward it to Mr. Wade.

As agreed to by the parties and as this court indicated during the hearing, the decision to disapprove the Private Criminal Complaint was based on a hybrid of legal and policy considerations. Mr. Bean argues that the decision was arbitrary because Mr. Wade reviewed the evidence and made a conclusion through the prism of the Commonwealth and the correctional officers, versus looking at it through a more independent prism.

The court cannot agree with Mr. Bean. The court cannot conclude that the decision of the Commonwealth was arbitrary. Arbitrariness connotes irrationality or the lack of reason. The Commonwealth in this case set forth numerous legal and policy reasons why it would not approve the Complaint. Under the circumstances, the court cannot and will not substitute its judgment for the District Attorney's judgment.

As for Mr. Bean's request for sanctions, Rule 506 of the Pennsylvania Rules of Criminal Procedure requires the Commonwealth to approve or disapprove a Private Criminal Complaint "without unreasonable delay." Rule 506 (A). The sworn Private Criminal Complaint in this case was submitted sometime after January 25, 2019. No response was forthcoming by the Commonwealth until Mr. Bean submitted a follow-up letter dated July 5, 2020. The Commonwealth responded by letter dated July 17, 2020.

While the delay of approximately 17 months appears to be unreasonable, the record is devoid of any evidence to support that the District Attorney ever received the

Complaint or, if received, what Mr. Osokow did with it following its receipt. Mr. Bean did not subpoena Mr. Osokow or call him as a witness. Without such evidence, the court is constrained not to impose any sanctions. Moreover, as indicated during the hearing, the court concludes that it does not have the authority to grant Mr. Bean's other requested remedies. To do so would be to violate the separation of powers.

ORDER

AND NOW, this 25th day of September 2020, pursuant to Rule 506 of the Pennsylvania Rules of Criminal Procedure, the court has reviewed the decision by the District Attorney not to approve the Private Criminal Complaint of David Bean against Corrections Officers Bowes and Stutzman and for the reasons set forth herein will not reverse such decision.¹

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
David Bean, **Legal Mail**
ID No.: DU-5064
SCI – Coal Township
1 Kelley Drive
Coal Township, PA 17866-1021

¹The court notes that after it drafted this Opinion, it received from Mr. Bean a letter wherein he indicated he no longer wished to pursue this matter.