

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

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| <b>COMMONWEALTH</b>     | <b>: No. CR- 1106-2016</b>                      |
|                         | <b>:</b>  |
| <b>vs.</b>              | <b>: CRIMINAL DIVISION</b>                      |
|                         | <b>:</b>  |
|                         | <b>:</b>  |
| <b>LEANNE APPLGATE,</b> | <b>: Notice of Intent to Dismiss PCRA</b>       |
| <b>Defendant</b>        | <b>: Without Holding An Evidentiary Hearing</b> |

**OPINION AND ORDER**

Before the court is the Post Conviction Relief Act (PCRA) petition filed by Petitioner, Leanne Applegate.

By way of background, during the night on March 24, 2016, Petitioner was at her residence and her six children were asleep inside. Petitioner’s husband had been out drinking with his friend, Justin Hill, and Hill’s fiancé, Amanda McEwen. Mr. Hill drove Petitioner’s husband home from the bar in the husband’s truck, while Ms. McEwen drove a van to the residence so that Mr. Hill and Ms. McEwen could drive home. Mr. Hill parked the truck in the driveway away from the residence, and Ms. McEwen parked the van in the driveway near the residence behind Applegate’s vehicle. Mr. Hill and Petitioner’s husband sat in the truck talking. Ms. McEwen beeped the horn of the van, but they continued to sit in the truck and talk. Ms. McEwen began to cross Petitioner’s yard toward the truck.

Petitioner heard the horn beeping and exited her residence. Due to a previous altercation between them, Petitioner told Ms. McEwen to get off the property and an argument ensued. Petitioner returned inside the residence. Ms. McEwen proceeded to the truck, spoke to the men, and then walked back across the yard to the passenger seat of the van. The men walked to the van and continued their conversation with Mr. Hill in the

driver's seat and Petitioner's husband standing at or near the driver's door.

Petitioner exited the residence with a handgun in her hand. She yelled at Ms. McEwen and waved the handgun at her. Ms. McEwen exited the van and yelled back. When Petitioner turned around to return to her house, Ms. McEwen followed her and pushed her in the back. At that point, Petitioner's husband escorted Petitioner back to the house and Ms. McEwen and Mr. Hill left in the van. The next morning Ms. McEwen called the police.

On May 5, 2016, the Pennsylvania State Police filed a criminal complaint against Petitioner, charging her with persons not to possess a firearm and recklessly endangering another person.

Trial was scheduled for June 14-15, 2018. On May 30, 2018, the Commonwealth filed a motion in limine to preclude Petitioner from making any reference to self-defense or justification, as the facts that would be presented at trial would not be sufficient to establish that defense or to warrant a jury instruction regarding that defense. The court held an argument on June 5, 2018 on the Commonwealth's motion. In a decision dated June 7, 2018 and filed on June 8, 2018, the court granted the Commonwealth's motion and precluded Petitioner from presenting any claim of self-defense or justification. On June 11, 2018, Petitioner filed a motion for reconsideration. Due to the impending trial, the court held an argument later that same day and denied Petitioner's motion.

On June 12, 2018, Petitioner waived her right to a jury trial, and the parties agreed to proceed immediately to a non-jury, case-stated trial. The court found Petitioner guilty of persons not to possess a firearm, but not guilty of recklessly endangering another person. In the verdict, the court indicated that it would permit Petitioner to present the

evidence she proffered in support of her self-defense or justification claim as potential mitigating evidence at sentencing.

On September 24, 2018, the court sentenced Petitioner to incarceration in the Lycoming County Prison for a minimum of 11 months and a maximum of 23 months to be followed by three years of probation under the supervision of the Lycoming County Probation Office. The court acknowledged that the sentence was below the mitigated range and stated its reasons for such a sentence on the record and within the sentencing order.

On October 1, 2018, the Commonwealth filed a motion for reconsideration of sentence. Following a hearing on November 2, 2018, the court denied the Commonwealth's motion.

The Commonwealth filed an appeal challenging the sentence. Shortly thereafter, Petitioner filed an appeal challenging the court's grant of the Commonwealth's motion in limine to preclude Petitioner from presenting evidence of self-defense/justification. Petitioner was granted bail pending appeal.

Ultimately, the Commonwealth withdrew its appeal. In a decision entered on July 8, 2020, the Pennsylvania Superior Court held that Petitioner's issue was without merit and affirmed Petitioner's judgment of sentence.

Petitioner filed a timely PCRA petition in which she alleged that trial counsel was ineffective because he deprived Petitioner of a fair trial by pursuing a case stated trial in a criminal case, which resulted in counsel stipulating to preclude all of the relevant facts that were contained in her motion to reconsider. Petitioner contends a non-jury case stated trial or trial on stipulated facts is inappropriate in a criminal case, which has a different burden of

proof than a civil case. Petitioner also asserts that trial counsel permitted the exclusion of relevant facts that may have affected the verdict.<sup>1</sup>

After an independent review of the record, the court finds that Petitioner's claims lack merit and she is not entitled to relief as a matter of law.

Petitioner waived her right to a jury trial and agreed to the trial procedure utilized in this case. Transcript, June 12, 2018, at 2-10. Petitioner has not cited any authority that precludes the nonjury criminal trial procedure utilized in this case. To the contrary, there are criminal cases where similar procedures were utilized. See *Commonwealth v. Tate*, 410 A.2d 751, 754-755 (Pa. 1980)(defendant explicitly waived his right to confront witnesses and indicated a willingness to proceed by stipulated facts); *Commonwealth v. Cook*, 547 A.2d 406, 409 (Pa. Super. 1988)(guilty plea colloquy unnecessary where court explained that counsel intended to proceed on stipulated testimony and defendant indicated he understood); *Commonwealth v. Jackson*, No. 347 EDA 2019, 2020 WL 4436293 (Pa. Super. 08/03/2020)(unpublished)(nonjury trial with stipulated facts colloquy was sufficient and was not a de facto guilty plea as argued by defendant).

More importantly, it was the ruling of the court on the Commonwealth's motion in limine that precluded Petitioner from presenting the evidence in question, not the trial procedure utilized in this case. The Pennsylvania Superior Court upheld that ruling on appeal. Therefore, regardless of whether this case proceeded as a jury trial or a nonjury trial,

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<sup>1</sup> Shortly after Petitioner filed her PCRA petition, new charges were filed against her. The parties requested an opportunity to reach a global agreement that would resolve both the PCRA in this case and the new charges. When such an agreement could not be reached, Petitioner's relationship with her attorney deteriorated. Original PCRA counsel was permitted to withdraw and new counsel was appointed. The court gave new counsel the opportunity to amend or supplement the PCRA petition, if counsel wished. The time for amendment expired on

the proffered evidence was not admissible.

**ORDER**

AND NOW, this \_\_\_ day of October 2021, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the court notifies the parties of its intent to dismiss Petitioner's PCRA petition without holding an evidentiary hearing. Petitioner may respond to this proposed dismissal within 20 days. If no response is received within that time, the court will enter an order dismissing the petition.

By The Court,

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Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)  
Nicole Spring, Esquire (PD)  
Leanne Applegate,  
1573 Northway Rd Ext, Williamsport PA 17701  
Judge Marc F. Lovecchio  
Gary Weber, Esquire

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September 1, 2021.