

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :  
 :  
 vs. : No. CP-41-CR-0001150-2020  
 : Commonwealth's Motion to Dismiss  
 FITZGERALD ROBINSON, : Defendant's Petition to Dismiss Defendant's  
 Defendant : Petition for Writ of Habeas Corpus

**OPINION AND ORDER**

Before the Court is the Commonwealth's Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus. The record in this matter reflects that by Criminal Complaint filed on August 17, 2020, the defendant was charged with various drug related offenses.

A preliminary hearing was scheduled on September 1, 2020. Through counsel, Defendant waived the preliminary hearing on that date and bail was modified to "non-monetary conditions."

By Information filed on September 18, 2020, Defendant was charged with delivery of a controlled substance, criminal use of a communication facility, possession with intent to deliver a controlled substance, and persons not to possess firearms.

On October 7, 2020, Defendant filed a Petition for Writ of Habeas Corpus. On October 9, 2020, the Commonwealth filed a Motion to Dismiss. Unfortunately, the argument on the Motion to Dismiss was delayed and was not heard by the Court until March 30, 2021. Previously, by Order of Court dated February 1, 2021, the court noted that following argument on the Commonwealth Motion to Dismiss, the court would determine

whether to schedule a hearing on the Petition for Writ of Habeas Corpus.

In the Commonwealth's Motion to Dismiss it argues that Defendant waived his right to challenge the sufficiency of the Commonwealth's *prima facie* case by waiving the preliminary hearing. In response, Defendant argues that the preliminary hearing was waived pursuant to an agreement that was not satisfied. The Commonwealth counters that any agreement was not in writing or on the record and furthermore that if the agreement was in writing or on the record, it was satisfied. More specifically, the Commonwealth argues that the agreement was to make Defendant eligible for release on intensive supervised bail and that it complied with such.

Rule 541 of the Pennsylvania Rules of Criminal Procedure notes, among other things, that a defendant who is represented by counsel may waive the preliminary hearing. Further, when represented by counsel, the defendant "understands" that by waiving the right to have a preliminary hearing, he is thereafter precluded from raising challenges to the sufficiency of the *prima facie* case. Rule 541(C)(2).

A defendant who is represented by counsel and waives a preliminary hearing is precluded from raising the sufficiency of the Commonwealth's *prima facie* case unless the parties have agreed at the time of the waiver that the defendant may later challenge the sufficiency. Rule 541(A)(1). That was not the case here.

However, if a defendant waives the preliminary hearing by way of an agreement, made in writing or on the record, and the agreement is not accomplished, the defendant may challenge the sufficiency of the Commonwealth's *prima facie* case. Rule

541(A)(2).

Defendant argues that there was an agreement in writing or on the record. With respect to the writing requirement, Defendant argues that the “documents” from the MDJ support such. With respect to the “record” requirement, the defendant argues that the use of Zoom technology satisfies this requirement. The court cannot agree. Zoom technology is not the equivalent of “the record.” Defendant has not presented any authority to support such nor has Defendant produced any “Zoom” recording of any agreement. Moreover, the court does not agree that the “documents” from the MDJ constitute a writing. The documents from the MDJ include the docket transcript and nothing more.

Additionally and determinatively, there is no proof that any agreement was not accomplished. Defendant argues that the agreement was to place Defendant onto the Intensive Supervised Bail program. The Commonwealth argues that the agreement was to make Defendant eligible for intensive supervised bail. While arguing that the language in his Petition for Writ of Habeas Corpus was a “typo” or a “misunderstanding”, Defendant specifically acknowledged that the negotiated waiver was in exchange for “possible release under the Intensive Supervised Bail program.” (Petition for Habeas Corpus, paragraph 2).

The court need not address the nature of the agreement and the rules were intended to not have the court address such by requiring that any agreement be on the record or in writing. The court does acknowledge, however, that in Lycoming County the District Attorney has no authority to place someone onto the Intensive Supervised Bail program. Indeed, the MDJ would have no authority to place someone onto the Intensive Supervised

Bail program. One can only be made eligible for the Intensive Supervised Bail program and only a judge of the Court of Common Pleas can order someone onto the program over the objection of the Intensive Supervised Bail program.

**ORDER**

**AND NOW**, this \_\_\_ day of April 2021 following a hearing, the Commonwealth's Motion to Dismiss is GRANTED. Defendant's Petition for Habeas Corpus is dismissed.

By The Court,

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Marc F. Lovecchio, Judge

cc: Ryan Gardner, Esquire (DA)  
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Judge Marc F. Lovecchio