

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA

: No. CR-1160-2022

vs.

:

:

: CRIMINAL DIVISION

SHAMIER JAMES GADSON,

:

Defendant

:

OPINION AND ORDER

AND NOW, this 8th day of **March, 2023**, before the Court is a Petition to Transfer to Juvenile Court which was filed on December 28, 2022, as part of an Omnibus Pretrial Motion. A hearing was held on February 14, 2023, at which time the Defendant was present and represented by Jeana Longo, Esquire, and Martin Wade, Esquire, was present on behalf of the Commonwealth. Following the hearing, the Court held the record open until the close of business on February 17, 2023, to permit counsel to submit any additional argument in writing. Counsel for the Defendant submitted a memo on February 17, 2023, and the Commonwealth's reply memo was also submitted on February 17, 2023.

The Defendant is 16 years old and has been detained in the Lycoming County Prison since August 26, 2022, as a result of an incident in which he was shot multiple times and which lead to him being charged with attempted homicide, aggravated assault, simple assault, recklessly endangering another person, and possession of a weapon. In determining whether to transfer a case involving any of the offenses excluded from the definition of "delinquent act" in section 42 Pa.C.S. §6302, the Defendant shall be required to establish by a preponderance of the evidence that the transfer will serve the public interest. 42 Pa.C.S. §6322(a). As the Defendant was at least 15 years of age at the time of the alleged conduct, and a deadly weapon was used during the commission of the offenses, the charges of

attempted murder¹ and aggravated assault² are excluded from the definition of “delinquent act.”

In determining whether the child has so established that the transfer will serve the public interest, the court shall consider the factors contained in section 42 Pa.C.S.

§6355(a)(4)(iii) (relating to transfer to criminal proceedings):

- a. The impact of the offense on the victim or victims
- b. The impact of the offense on the community
- c. The threat to the safety of the public or to any individual posed by the child
- d. The nature and circumstances of the offense(s)
- e. The child’s degree of culpability
- f. The “adequacy and duration” of available juvenile dispositional alternatives in comparison with adult criminal sentencing options
- g. Whether the child is amenable to treatment, supervision or rehabilitation as a juvenile by considering the following factors:
 - i. Age
 - ii. Mental capacity
 - iii. Maturity
 - iv. Degree of criminal sophistication exhibited by the child
 - v. Previous records as a delinquent
 - vi. Nature and extent of any prior delinquent history, including successes or failures of previous attempts of the juvenile court to rehabilitate the child
 - vii. Whether the child can be rehabilitated prior to the expiration of juvenile court jurisdiction
 - viii. Probation or institutional reports, if any
 - ix. Any other relevant factors

42 Pa.C.S. § 6322(a). While the Juvenile Act requires that a decertification court consider all of the amenability factors, it is silent as to the weight assessed to each by the Court.

Commonwealth v. Jackson, 722 A.2d 1030, 1033 (Pa. 1999). The ultimate decision of

¹ 18 Pa.C.S. §901(a)

² 18 Pa.C.S. §2702(a)(1)

whether to certify a minor to stand trial as an adult is within the sole discretion of a decertification court. *Id.* at 1034.

Denise E. Feger, PhD, CAADC, CCDP, CCTS-1 and Chief Operating Officer of Crossroads Counseling, Inc. performed an evaluation of the Defendant on November 2, 2022, and December 6, 2022, at the request of the Lycoming County Public Defender's Office. Dr. Feger testified at the decertification hearing on February 14, 2023, and indicated that the Defendant experienced rather significant difficulties throughout his childhood, including unstable housing, the incarceration of his father, and substance abuse by his mother. This exposure to a high level of trauma has caused the Defendant to have challenges in his relationships and his ability to trust and rely on others, and has influenced his ability to understand and develop skills for healthy relationships as a teenager, including forming negative peer groups. Dr. Feger indicated that the Defendant was reluctant to share insecurities and vulnerabilities with regard to his mental health but testified that the Defendant verbalized a desire to have change in his current direction, including pursuing residency with a relative out of state in order to separate himself from the negative environment that he has become involved with in Williamsport. While Dr. Feger did not provide an opinion regarding sentencing or the placement of the Defendant, she opined that age appropriate rehabilitation resources to help the Defendant become a productive member of society are not likely to be available in a county or state prison. These resources include pro social interaction, academic education, and trauma focused therapeutic intervention. Without those rehabilitative resources, the Defendant is unlikely to develop the skills necessary to successfully enter adulthood. On cross-examination, Dr. Feger testified that she

recognized the severity of the charges and took them into account when making her recommendations.

The offenses with which the Defendant is charged are indeed serious in nature, as the Defendant, with another individual, attempted to rob the victim and discharged a firearm towards the victim. This act resulted in the victim firing several rounds, some of which struck the Defendant. Although the victim was not called to testify as a witness at the decertification hearing, the Court can surmise that being a target of an armed robbery and subsequently shooting the alleged perpetrator would be traumatizing and have a lasting impact on his sense of security.

With respect to the impact of this specific offense on the community, the rounds that did not strike the victim or the Defendant damaged property but could have caused injury or death to innocent bystanders. The Defendant put himself in a situation which could have been fatal to himself, the victim, or members of the community. Although the Court must consider the Defendant's degree of culpability, it is unknown at this stage of the proceeding whether the Defendant or his co-defendant was the "ringleader" in planning the act;. However, it is known that the Defendant approached the victim on the street, attempted to rob him, and brandished a firearm first. Lycoming County, and in particular the City of Williamsport, has experienced a large number of youth obtaining firearms through illegal means, and using them to perpetrate crimes of violence. Crimes such as this have a negative impact on the safety and security of not only the individual victim but also the community as a whole, and it is in the best interest of the community to rehabilitate these young offenders so they take accountability for their actions, learn to make better choices, and be productive members of society.

Juvenile Probation Officer Kaitlin Lunger testified that the Defendant was placed on a Consent Decree in June of 2022 following an admission to simple assault which resulted from the Defendant engaging in a fight at the Williamsport Area High School. She further testified that the Defendant had a low YLS score and at the time she believed him to be a low-level offender, although the score is not always accurate as all information is self-reported. The Defendant has had no other involvement with the juvenile justice system. Ms. Lunger met with the Defendant on a weekly basis and they began working on peer relations and skill building. Unfortunately, the Defendant was under the supervision of the Juvenile Probation Office for only about a month and a half before this incident took place. Given the Defendant's lack of significant involvement with the legal system, and the very short window with which the Juvenile Probation Office was able to work with the Defendant prior to his incarceration, along with what Dr. Feger testified was a verbalization of a desire to have change in his current direction, the Court finds that the Defendant is amenable to treatment, supervision, and rehabilitation.

Matthew Yonkin, Chief Juvenile Probation Officer and former placement coordinator, testified that the juvenile system is equipped to deal with whatever situation it is presented but bed availability in a juvenile facility would pose a challenge in this case. Due to the nature of the crimes, it is not anticipated that the Defendant would be accepted by a private residential treatment facility. A state secure residential facility would provide age-appropriate, evidence based programs to address the Defendant's rehabilitative needs. Unfortunately, there is currently a 6-9 month wait for a bed in a state secure residential facility. If the Defendant is returned to the juvenile system, he would be housed in a juvenile

detention center pending bed availability in a state secure facility. Mr. Yonkin testified that it is uncomfortable and undesirable to have a juvenile in detention for that length of time.

As the Commonwealth pointed out in its memorandum, the lead charge in this case, attempted homicide under 18 Pa.C.S. 1102(c), carries a maximum sentence of 40 years. Should the Defendant's request for decertification be granted, the juvenile court would only have jurisdiction over the Defendant until he reached the age of 21 pursuant to 42 Pa.C.S. §6301. The Commonwealth's position is that nearly five years in the juvenile system is insufficient to address all the rehabilitative needs of the Defendant and to supervise someone who engaged in such behaviors. The Commonwealth cites *Commonwealth v. Ramos*, 920 A.2d 1253 (Pa. Super. 2007) in support of its position. In *Ramos*, the Superior Court affirmed the trial court's decision to deny decertification to a Defendant who committed a robbery with a deadly weapon at 17 years of age, though his trial did not occur until he was over the age of 18. One of the reasons the trial court denied decertification was lack of time to address the Defendant's needs. *Id.* at 1261. In its memo, the Commonwealth argues that the Defendant in this case is 16, "the case is not close to resolution, and could easily stretch until he is 17, and even 18. The risk is simply too great to allow such a reduced period to incarcerate/supervise."

The Court finds the Commonwealth's logic is too limited in its focus. While the Court appreciates the Commonwealth's concern that time may run out before the Defendant can be fully rehabilitated, the determination to be made is whether or not the Defendant is amenable to treatment in the juvenile system. The Juvenile Act, 42 Pa.C.S.A. §6301 *et seq.*, is designed to effectuate the protection of the public while providing children who commit delinquent acts with supervision, rehabilitation, and care while promoting

responsibility and the ability to become a productive member of the community. 42

Pa.C.S.A. § 6301(b)(2). If this 16 year old Defendant remains in the adult criminal system, he will not receive any services and treatment unless and until he is sentenced to incarceration in a state correctional institution, and it is unlikely that any services would be age-appropriate for his needs. He will be more likely to pursue relationships with other antisocial personality types and will have a higher chance of ending up a career criminal. However, if he is remanded to the jurisdiction of the juvenile court, he will receive age-appropriate services geared toward enabling him to become a productive member of society, such as trauma based therapy, a psychiatric evaluation and medication management if necessary, and exposure to prosocial opportunities. He will continue his education and will participate in evidence based programming designed to promote accountability, change his thinking, and prevent recidivism. These services will begin as soon as he is placed in a residential facility, without the need to wait for resolution of the underlying charges. Based upon Dr. Feger's testimony and report and the Defendant's low YLS score, these types of services increase the Defendant's likelihood to not recidivate. This is the very essence of being amenable to treatment in the juvenile system. If decertification is granted, he will pose little threat to the public because he will be under the close supervision of the Juvenile Probation Office in a juvenile detention center or residential treatment facility until it is determined that he has been rehabilitated enough to be safely supervised in the community.

This Court finds the case of *Commonwealth v. L.P.*, 137 A.3d 629 (Pa. Super. 2016) to be analogous to the instant case. In *L.P.*, the Superior Court affirmed a trial court's decision to grant decertification to a juvenile who was charged with, among other things, seven counts of criminal attempt-criminal homicide, aggravated assault, and possession of

firearm. The trial court relied on the testimony of a Ph.D. who performed a psychological evaluation, the arresting officer, and the Defendant's juvenile probation officer when considering the factors enumerated in 42 Pa.C.S. §6355(a)(4)(iii) and determining that the public interest would be served by decertifying the Defendant for supervision under the juvenile system. Like the Defendant in the instant case, the Defendant in *L.P.* had minimal prior contacts with law enforcement and the juvenile system had not had the opportunity work with the Defendant long enough to make progress on his treatment and rehabilitative needs.

The Court is faced with balancing the protection of the public against the need for treatment, supervision, and rehabilitation required to enable the Defendant to become a productive member of society. This is not a case of the Defendant having previously been through the juvenile system and failing. It is a case of the Defendant not having an opportunity to avail himself of all that the juvenile system could offer him to potentially prevent such conduct. After considering the testimony presented at the hearing, the memoranda submitted by counsel for the Defendant and the Commonwealth, and applying it to the factors contained in 42 Pa.C.S. §6355(a)(4)(iii), the Court finds that the Defendant has proven by a preponderance of the evidence that the transfer will serve the public interest both in the short term and the long term. Although the allegations show actions that have impacted both the victim and the community, he deserves a chance to be rehabilitated so that he may become a productive citizen. Without the interventions of the juvenile justice system, the Defendant's incarceration in a state prison will substantially increase the long-term risk to public safety. Accordingly, the Court will enter the following Order:

ORDER

AND NOW, this 8th day of March, 2023, for the reasons set forth above, the Petition to Transfer to Juvenile Court, filed on December 28, 2022, as part of an Omnibus Pretrial Motion, is **GRANTED**. The Juvenile Probation Office shall promptly file a Petition Alleging Delinquency. The Defendant shall be detained as soon as an appropriate juvenile detention facility is determined by the Juvenile Probation Office. This Order shall become effective as of the date the Juvenile Probation Office is able to arrange transportation to a juvenile detention facility. The Defendant shall not be released from Lycoming County Prison prior to that time.

BY THE COURT,

Ryan M. Tira, Judge

RMT/jel

cc: DA – Matthew Welickovitch, Esquire
PD – Jeana Longo, Esquire
JPO
Warden
Gary Weber, Esquire