

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 98-12,257

VS :

DONALD L. SULLENBERGER :NON JURY TRIAL VERDICT

OPINION AND ORDER

This matter is before the Court for non-jury trial disposition. Trial in this matter was held on May 13, 1999. The parties stipulated to the facts contained in the discovery material, which was marked and entered into evidence. After reviewing the discovery material, the Court makes the following findings of fact.

On or about December 3, 1998 the Defendant was participating in a work release program at the county landfill on the recycling crew. After cleaning out the lunch/breakroom trailer, the Defendant was seen by Thomas G. Smith, the Assistant Resource Recovery Supervisor, taking the trash to the recycling center at approximately 3:00 p.m. At approximately 3:15 p.m., the inmates gathered to change into their prison uniforms and returned to the prison, but the Defendant did not appear. Mr. Smith searched the area for approximately 10 minutes, but was unable to locate the Defendant. From approximately 3:30 p.m. to 5:40 p.m., all available employees at the site looked for the Defendant, and the escape plan was activated. The search concluded, and the employees were released at approximately 5:40 p.m., but the Defendant had not been located.

Agents Jeffrey Whiteman and Edward McCoy of the Lycoming County Adult Probation Office arrived on the scene at approximately 4:30 p.m. They searched for some time, but did not find the Defendant. At approximately 6:00 p.m. the agents

returned to the Lycoming County Prison to obtain additional mugshots to distribute to the area police departments. While at the prison the agents were informed that some members of the work crew suggested that the Defendant could be intoxicated and passed out nearby his work site at the landfill. The agents obtained a piece of the Defendant's clothing from the prison to aid them in a canine search of the landfill property. The agents met Chief Lynn and Sergeant Wilcox of the Montgomery Police Department at the landfill property. Sergeant Wilcox began searching the property at approximately 6:20 p.m. with the aid of his canine. Approximately 10 minutes after the search began, the Defendant was found laying on the ground approximately 50 yards from the recycling tent. The Defendant had the odor of alcohol on his breath, and was in possession of several unopened bottles of beer. The Defendant admitted that he hid on top of the paper bails in the recycling tent until dark, then he moved outside to the area where he was found. The Defendant stated that he intended to drink his beer under the stars that evening then return to his work crew the following morning. The Defendant further admitted that he knew that people were looking for him while he was in the recycling tent. The Defendant was charged with escape.

To find a Defendant guilty of escape under 18 Pa. C.S.A. § 5121, the Commonwealth must prove beyond a reasonable doubt that the Defendant unlawfully removed himself from official detention or failed to return to official detention following temporary leave granted for a specific purpose or limited period. Instantly, it is not contested that the Defendant was under official detention while working with the work crew at the landfill, see Commonwealth v. Edwards, 407 Pa. Super. 178, 595 A.2d 183

(1991) (official detention within the meaning of the statute includes placement in a work release program).

The issue in the instant case is whether the Commonwealth proved that the Defendant unlawfully removed himself or failed to return to his official detention. The Defendant argues that his departure from the work crew cannot be considered a substantial deviation as is required under Edwards, supra. In Edwards, the defendant was a participant in a work release program and was late returning to the prison on two occasions. According to his work release agreement, the defendant agreed to go directly to and from his place of employment according to an agreed upon travel route. On one occasion the defendant was six minutes late, and on another occasion he was seven minutes late. At trial, the defendant admitted that he had deviated from his travel route. The defendant admitted that he had accepted a ride which was in violation of the work release agreement and visited the home of a friend. Additionally, on one of the occasions he admitted to consuming a small amount of beer.

The Court held that although the defendant had violated the terms of the plea agreement, his conduct did not rise to the level of substantial deviation. The Court reasoned that “if conduct which amount to less than a substantial deviation from a prescribed travel route, while a participant in a work release program, is to be characterized as a violation of the escape statute, we hold it is better left to the legislature to express this view through an amendment,” Edwards, 595 A.2d at 185.

The Court finds this case to be distinguishable from the facts in Edwards. Unlike the conduct in Edwards, the Court finds the Defendant’s conduct in the instant case to be a substantial deviation. The Defendant knew that the crew would be returning to the

County prison not the Work Release Program, yet he intentionally hid in a recycling tent so that he would not have to return. The Defendant admitted that he knew that people were looking for him while he sat in the recycling tent, yet he chose to ignore them. The Defendant admitted that it was his intention to stay out the entire evening drinking beer under the stars. The Defendant was not apprehended until approximately three hours after he was to report to be returned to the prison. The Court finds that the Defendant's conduct in this case is a much more substantial deviation from the work release program than the six to seven minute deviation which occurred in Edwards. Accordingly, the Court finds that the Commonwealth proved beyond a reasonable doubt that the Defendant committed the offense of escape under 18 Pa. C.S.A. § 5121.

ORDER

AND NOW, this _____ day of May 1999, after a non jury trial, this Court finds beyond a reasonable doubt the Defendant committed the offense of Escape. Sentencing is scheduled for **July 27, 1999, at 2:30 p.m.** A Supervision Report is requested to be prepared by the Adult Probation Office.

By The Court,

Nancy L. Butts, Judge

cc: Diane Turner, Esquire
Colleen Shedlock, Esquire
Nancy L. Butts, Judge
Judges
Law Clerk
Gary Weber, Esquire
Adult Probation Office