

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CP-41-CR-0000808-2022
	:	
vs.	:	Decision regarding Nolle Prosequi
	:	and Petition to Intervene
JARED MYCHAL THOMPSON,	:	
Defendant	:	

ORDER

Before the Court is the Commonwealth’s Motion to have the court grant its request to *nolle prosequi* the above captioned case. For the reasons stated below, the court will grant the Commonwealth’s request.

Background

Jared Thompson (Defendant) was charged with Unlawful Contact with a Minor and related offenses on April 25, 2022. After he was charged, he revealed to law enforcement that he also had been the victim of a crime by two separate individuals. Charges were filed against those two individuals about 4 years after the actions were alleged to have occurred¹. After a Motion in Limine was granted in one of those cases where the Defendant was the complaining witness (Pulizzi), the Commonwealth took an appeal. During the pendency of that appeal, the same attorney for the Commonwealth submitted a request to *nolle prosequi* this case. While originally granting that request on November 1, 2023, this Court vacated its ruling on November 28, 2023 so that it could inquire as to the propriety of the request. This decision was based on the Court’s interpretation of both Pennsylvania Rule of Criminal

¹ *Commonwealth v. Pulizzi*, CP-41-CR-1481-2022; *Commonwealth v. Freed*, CP-41-CR-1205-2022.

Procedure 585(A)² and at that time a recent Superior Court case of *Commonwealth v. Harrison*, 307 A.3d 71 (Pa. Super. 2023).

Defense Counsel for one of the defendants for whom this Defendant is a complaining witness filed a Petition to Intervene on December 13, 2023, and the hearing was scheduled for January 29, 2024. The petition sought to intervene in any expungement proceedings.

A hearing on the Commonwealth's request for *nolle prosequi* was scheduled on February 5, 2024 to enable the court to schedule a hearing to explore the reasons for the request. In consideration of the pending cases for which Defendant was the complaining witness, the court also needed to determine if the Commonwealth's decision to *nolle prosequi* the case would interfere with this court's ruling to allow this case to be used to impeach this Defendant in the cases where he was the complaining witness. The court was concerned that this decision would have the effect of undermining its ruling which was awaiting a decision by the Superior Court.³ Defendant neither raised a speedy trial claim nor objected to the *nolle prosequi* being granted.

Argument

At the hearing on January 29, 2024, Intervenor argued that this should be considered a civil rather than a criminal matter. In the event the Court believed that it is criminal, the

² Rule 585(A) states: "Upon motion of the attorney for the Commonwealth, the court may, **in open court**, order a nolle prosequi of one or more charges notwithstanding the objection of any person." Pa. R. Crim. P. 585(A)(emphasis added).

³ "The Commonwealth concedes Pulizzi would still be entitled to cross-examine J.T. about the charges that were pending at the time he reported Pulizzi. See *id.* at 11-12." *Commonwealth v. Pulizzi*, No.770 M.D. 2023, (Pa. Super., April 10, 2024) (unreported). Clearly, the Commonwealth by making that statement appreciated and understood the concern of the court.

Intervenor argues that they should still be permitted to intervene to protect his Constitutional rights. The Intervenor would be deprived of his ability to cross examine Defendant if the companion expungement were granted. Counsel for Defendant argued that the issue of the expungement was not yet before the court. The Commonwealth also affirmed that they would agree to provide the file to Intervenor before it is destroyed after an expungement is ordered.

At the hearing on February 5, 2024 on the Commonwealth's motion, the Commonwealth offered for the record the reasons they wanted the court to grant the request to *nolle prosequi* the charges. The prosecutor stated that the mother of the victim in the Defendant's case, who also happened to be Defendant's mother, told him that the family did not want to prosecute the case. The Commonwealth also provided a statement signed by the victim that they were not willing to testify at the trial against Defendant and requesting that the charges be withdrawn against Defendant. Commonwealth's Exhibit #1.

The Commonwealth also asserted that the victim is not a child. At the time of the hearing, she was 15 years old. Additionally, since the *nolle prosequi* would be done without prejudice, if at some point the victim reconsiders and she finds herself away from any influence that may be discouraging her from testifying, the Commonwealth can still refile the charges.

Discussion

A nolle prosequi is a voluntary withdrawal by a prosecuting attorney of proceedings on a particular criminal bill or information, which at any time in the future can be lifted upon appropriate motion in order to permit a revival of the original criminal bill or information.” *Commonwealth v. Ahearn*, 670 A.2d 133, 135 (Pa. 1996). As our Supreme Court has

explained, a “district attorney has a general and widely recognized power to conduct criminal litigation and prosecutions on behalf of the Commonwealth, and to decide whether and when to prosecute, and whether and when to continue or discontinue a case.” *Commonwealth v. DiPasquale*, 246 A.2d 430, 432 (Pa. 1968) (some capitalization omitted). Nevertheless, after the filing of the criminal information, the district attorney is not permitted to enter a *nolle prosequi* “without having obtained the approval of the court.” 42 Pa.C.S.A. §8932.

Pennsylvania Rule of Criminal Procedure 585 further provides: “[u]pon motion of the attorney for the Commonwealth, the court may, in open court, order a *nolle prosequi* of one or more charges notwithstanding the objection of any person.” Pa.R.Crim.P. 585(A).

The “grant or refusal of a petition for *nolle pros* ... lies within the sound discretion of the lower court, and its action will not be reversed in the absence of an abuse of discretion.” *DiPasquale*, 246 A.2d at 432 (some capitalization omitted).

In evaluating a request for *nolle prosequi*, a court may consider two factors: (1) whether the Commonwealth's reason for the request is valid and reasonable; and (2) whether the defendant has a valid speedy trial claim. *Commonwealth v. Reinhart*, 353 A.2d 848, 853 (Pa. 1976) (footnotes omitted). The trial court is obligated to determine whether “the reason given by the Commonwealth for requesting the *nolle prosequi* [was] valid and reasonable.” *Commonwealth v. Rega*, 856 A.2d 1242, 1245 (Pa. Super. 2004).

The broad general power of a District Attorney is “subject to the right the power of a Court (a) to provide generally for the orderly administration of criminal Justice, including the right and power to supervise all trials and all Court proceedings, and (b) to protect all of a defendant's rights to a fair trial and due process under the Constitution of the United States

and the Constitution of Pennsylvania. *DiPasquale*, 246 A.2d at 432.

The plain language of the rule involved Pa.R.Crim.P. 313⁴, 42 Pa.C.S., affords prosecutorial discretion to the Commonwealth's attorney, but that discretion is not unfettered and is subject to review by the trial court. As stated previously, the rule establishes that the trial court *may* order a *nolle prosequi* upon motion of the Commonwealth's attorney. *Commonwealth v. Stivala*, 435 Pa. Super. 176, 187–88, 645 A.2d 257, 262 (1994). In considering this factor, the trial court was “require[d] ... to consider the reason **given by the Commonwealth**, not to intuit or infer [a reason] to justify the court's action.” *Commonwealth v. Rega*, 856 A.2d 1242, 1245 (Pa. Super. 2004) (emphasis in original).

In *Diamond*, an unpublished opinion by the Superior Court offered similar facts as the case before the court. *Commonwealth v. Diamond*, No. 532 WDA 2021, 2022 WL 1073825 (Pa. Super. April 11, 2022) (unreported). Diamond was charged with offenses including rape of an intellectually disabled person. The complaining witness, who was twenty-three and previously diagnosed with Down Syndrome, was interviewed, and gave facts supporting the charges and an information was filed. Approximately one year later, the Commonwealth filed a motion for the *nolle prosequi* of the case. The reason given was

“Prosecutorial discretion / respect for the [Complainant] and the [Complainant's] mother's desire to not proceed on the charges. They believe withdrawing charges is in the best interest of the [Complainant] given the [Complainant's] unique circumstances and the circumstances of this particular criminal case.”

At the hearing, the Commonwealth’s attorney explained that the Complainant’s mother told them they had moved out of state, she felt that it would retraumatize Complainant and it was

⁴The predecessor rule number to Pa.R.Crim.P. 585. The renumbering became effective April 1, 2000.

in her best interest not to appear for the *habeas* hearing. The Commonwealth also alleged that it had no other testimony to present at a *habeas* hearing. The trial court denied the Commonwealth's request to *nolle prosequi* the case finding that even without the witness it would have been able to establish *prima facie* on the charges. The Superior Court found that the trial court abused its discretion by failing to use the "valid and reasonable" test. *Reinhart*, 353 A.2d at 853. Nevertheless, *Reinhart, supra* requires the court to consider the reason given by the Commonwealth, not to intuit or infer one to justify the court's action; therefore, the Commonwealth must give the court a reasonable basis for a *nolle prosequi* motion. *Commonwealth v. Rega*, 856 A.2d at 1245.

Here, although no testimony was presented, the Commonwealth has provided the court with a document memorializing the wishes of the complaining party requesting that the Commonwealth terminate the prosecution. The document is signed by the mother of the victim who is also the mother of the Defendant. In this document entitled "Victim's Withdrawal of Charges Request" it includes the following:

I, IL, have met with the Attorney for the Commonwealth on October 25, 2023 and I request the Commonwealth to withdraw the pending charge(s) in the above referenced matter. After a discussion with the Attorney for the Commonwealth, my rights and the consequences of withdrawing the charges were explained to me. I hereby certify and affirm by my written initials, the following:

I.L. I am Not under duress.

I.L. I am Not being coerced into signing this statement.

I.L. No one has made any promises (express or implied) in exchange for withdrawing the charges.

I.L. I AM doing this on my own free will. (capitalization in original)⁵.

Commonwealth's Exhibit #1. The witnesses were present the day of the hearing to testify if the Commonwealth chose to call them to affirm the request to withdraw the charges.

In addition, the Commonwealth indicated that without the victim to testify, it had no other witnesses to establish the case and if the case were called for trial it would have no evidence. Since the Commonwealth would not be able to prove its case to a jury, it chose to *nolle prosequi* the charges. This is a proper reason for requesting the *nolle prosequi*. *Reinhart*, 353 A.2d at 853.

Rule 585(a) provides that a court may grant a *nolle prosequi* **not withstanding the objection of any person** (emphasis added). The cases which address this clause are under circumstances when the defendants, those charged with the crime(s) that are being dismissed by the Commonwealth, are claiming a denial of due process.

A motion for a *nolle prosequi* is treated like any other motion: one side presents the motion to the court; both sides argue the merits of the requested motion; the court considers the merits of their arguments; and the trial court issues a ruling. The rule in no way bars the presentation of objections by the defendant nor does it direct the trial court to ignore those objections. It merely states that the defendant's objection is not dispositive of the issue. *Reinhart*, 353 A.2d at 851–52. As previously discussed the standard requires the court to identify if the Commonwealth has a valid and reasonable basis for the request and whether

5. The document was signed by both the complaining witness and her mother along with the Commonwealth's attorney and a witness, one of the county detectives.

the defendant has a valid speedy trial claim. *Id.* at 853; *see also Commonwealth v. Rega*, 856 A.2d at 1245.

Even though Intervenor is not directly related to the motion for *nolle prosequi*, he does have rights that are implicated by the decision, so the Court granted him the opportunity to argue his position. The foundation of his argument is that when the Commonwealth is granted the *nolle prosequi*, and Defendant receives the subsequent expungement of his record, there would be no evidence available to use for impeachment purposes. While a valid argument for his position, it is not relevant to the determination this court must make in whether to grant the *nolle prosequi*. Therefore, although the Intervenor's position is not required to be considered with respect to the *nolle prosequi*, the Court will permit Intervenor to participate in the expungement proceedings to make certain that the information is preserved so that it can be used at trial in his case.

Conclusion

The unwillingness of the Complaining party in this case to testify against Defendant met the valid and reasonable standard for the Commonwealth's request that the court grant the *nolle prosequi* in this case. The court was not required to analyze a speedy trial claim as Defendant was not asserting one. While Intervenor's concerns are valid, they are not relevant to this Court's decision on the *nolle prosequi*. However, the Court will grant the petition to intervene with respect to expungement.

ORDER

AND NOW, this 11th day of July, 2024, after hearing, the Commonwealth's Motion to *Nolle Prosequi* is hereby **GRANTED**. Further, the Commonwealth is **ORDERED AND DIRECTED** to preserve its file and any accompanying materials related to this case. The Court is preserving the status quo with respect to the preservation of all materials related to this case at least until the expungement hearing.

The Petition to Intervene in the expungement proceedings is hereby **GRANTED**.

A hearing and argument on Defendant's petition for expungement is scheduled for **November 18, 2024 at 1:30 p.m. in Courtroom #1 of the Lycoming County Courthouse.**

By the Court,

Nancy L. Butts, President Judge

cc: Matthew Welickovitch, Esquire (ADA)
Edward J. Rymysza, Esquire
David V. Lampman, Esquire
Clerk of Courts
Court Scheduling (JG)
Gary Weber, Esquire
Jerri Rook