

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA

: No. CR-1057-2023

vs.

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: CRIMINAL DIVISION

**JAYDEN WITHERSPOON,
Defendant**

OPINION AND ORDER

AND NOW, this 17th day of **July, 2024**, before the Court is a Motion to Decertify to Juvenile Court which was filed on October 24, 2023. A hearing was held on June 27, 2024, at which time the Defendant was present and represented by D’yal McAllister, Esquire, and Eric Birth, Esquire, was present on behalf of the Commonwealth. Following the hearing, the Court took a recess to carefully consider the argument of both counsel as well as the testimony of the expert witness called by the Defendant. Following the recess, the Court, on the record, granted the Defendant’s Motion to Decertify. The following is this Court’s written Opinion and Order in support of its decision rendered on June 27, 2024.

The Defendant is currently 16 years old. He was arrested on August 6, 2023, and charged with two counts of Robbery, Aggravated Assault, Receiving Stolen Property, Possessing Instruments of Crime, and two counts of Simple Assault. These charges resulted from an incident which occurred just after he turned 15 years old wherein he allegedly made arrangements to purchase a pair of headphones and proceeded to pull out a handgun and told the victim to give him all his money and pointed the gun at him. As the victim attempted to get away, the Defendant allegedly punched, kicked, and struck him in the head with the gun in an attempt to take his money. 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 robbery¹ 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. §3701(a)(a)(ii) and (iv).

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

Jennifer Cole-Pucci, Psy.D. performed an evaluation of the Defendant on February 8, 2024, at the request of the Defendant's counsel. She authored a report, dated March 6, 2024, which was admitted into evidence as Defendant's Exhibit #1. Dr. Cole-Pucci testified at the decertification hearing on June 27, 2024, and was recognized as an expert in the field of clinical psychology.

Dr. Cole-Pucci testified that from her interview with the Defendant and his parents she learned the Defendant experienced trauma due to conflicts between his parents during his early years, including domestic violence, and his mother's struggles with her own emotional regulation. This caused the Defendant to be emotionally dysregulated as a child, and he would engage in fighting behaviors at school and home, although he has since outgrown many of those behaviors and now presents as very guarded and withdrawn. Dr. Cole-Pucci testified that after the Defendant's parents separated they are now able to co-parent very well and the Defendant is compliant with them in most cases even when there are disagreements. The Defendant indicated to Dr. Cole-Pucci that he feels very different from most peers his age so he has only a few close friends. However, Dr. Cole-Pucci testified that, despite his introverted personality it appeared the Defendant may want more friends and social interactions and may succumb to peer pressure, and when he is not in his parent's highly structured and controlled environment there may be some rebellious behaviors. The Court notes that this incident happened not while the Defendant was in the care of either of his parents in the Philadelphia area but rather at approximately 1:30 a.m. in Williamsport while visiting a relative for part of the summer.

Dr. Cole-Pucci testified that she administered several assessments on the Defendant, including the Wechsler Intelligence Scale for Children – Fifth Edition, a widely used measure of intellectual functioning for children ages 6 through 16. The Defendant obtained a full-scale IQ score of 76, which placed him in the Very Low range of intellectual functioning. This score helps explain the Defendant’s challenges in academics and problem solving. The Defendant reported having poor grades and attendance and indicated that he gets “bored” easily and leaves class, although Dr. Cole-Pucci testified that she believes the Defendant may have a lack of insight and he may be challenged too much at school which causes his absenteeism. The Defendant does have an IEP, although it was based on his original diagnoses, many of which Dr. Cole-Pucci believes may no longer be accurate.

The Defendant was also administered the Behavior Assessment System for Children, Third Edition, Self Report of Personality – Adolescent, wherein he scored in the Clinically Significant range in School Problems, signifying he dislikes school intensely and often wishes he were elsewhere. Although there were no elevations on the Depression or Anxiety scales, his withdrawn interpersonal style suggests he may struggle with functional communication when compared to peers his age. His responses also suggested a strained relationship with his parents and it is likely he has little trust in them and feels incidental to their decision making. In turn, the Defendant’s parents were administered a similar assessment and reported problems with the Defendant’s social skills and communication. Per their report, the Defendant is seemingly alone, has difficulty making friends, and is sometimes unwilling to join group activities. (See Defendant Ex. 1, pg. 7-8).

Finally, the Defendant was assessed the Risk-Sophistication-Treatment Inventory (RSTI) which assesses the functioning of juvenile offenders in the areas of: risk for

dangerousness, sophistication and maturity, and treatment amenability. The Defendant scored in the low range (12th percentile) on the Risk for Dangerousness scale, suggesting that his risk for future dangerousness is low when compared to other juvenile offenders. Although the Defendant does have a history of some violent tendencies, he does not have any criminal history and exhibits few psychopathic features. His score on the Sophistication-Maturity scale was in the high range (91st percentile) suggesting that he has a higher level of independence and emotional maturity when compared to other juvenile offenders. However, this is tempered by the fact that the Defendant's interpersonal and conflict resolution skills are quite limited. With regard to the Treatment Amenability scale, the Defendant scored in the middle range (74th percentile), in large part due to his lack of extensive criminal history and his low degree of psychopathy. The Defendant appeared open to change, including through treatment, and has a strong family support system and several hobbies, all of which positively impact his amenability to treatment. (See Defendant Ex. 1, pg. 9).

Dr. Cole-Pucci testified to a reasonable degree of psychological certainty that it is in the best interest of both the Defendant and the public that the Defendant receive his treatment and services in the juvenile system as opposed to the adult criminal system. She reasoned that Juveniles who are exposed to the adult criminal system tend to gravitate toward criminal lifestyle and more likely to recidivate. Additionally, juveniles are more likely to become victimized in those situation where they are subject to adult offenders, and will have to protect themselves and ultimately become more aggressive. Although Dr. Cole-Pucci spoke more in generic terms than about the best interest of the Defendant specifically, she did indicate that the Defendant needs both individual counseling to assist with his interpersonal skills and conflict resolution as well as family therapy to address the family

dynamic and encourage better communication between the Defendant and his parents.

Additionally, Dr. Cole-Pucci testified that the Defendant needs to be productive with his time, through something formal such as a job, sport, or extracurricular activity.

The Court notes that at the time of his arrest and incarceration on August 6, 2023, the Defendant's bail was set at \$150,000 and he was made Intensive Supervised Bail eligible. A Motion to Modify Bail was filed on September 7, 2023, requesting that bail be modified to unsecured, and arguing that as a 15 year old the Defendant lacked the financial resources to flee and therefore was not a flight risk. A hearing was held on September 28, 2023, and the Court, taking into consideration that the Defendant had no prior criminal history or even any contacts with law enforcement, granted the Defendant's request and modified his bail to \$150,000, and placed him onto the Supervised Bail Program. The Defendant was required to reside in the home of one of his parents in Philadelphia and permitted to return to Lycoming County only for required court appearances, be subject to a minimum of weekly telephone check-ins with his Bail Release Officer, abide by a 9:00 p.m. curfew with the exception of school and extracurricular activities in which he was a participant, and have no firearms or other individuals on probation in his home. Electronic monitoring was also ordered if the Bail Release Program was willing and able to do so.

The Commonwealth did not call any witnesses to testify at the hearing on the Motion to Decertify, although the Defendant's Bail Release Officer was present and seated at counsel table. There have been no motions to revoke bail filed by the Commonwealth since the Defendant was released from incarceration on September 28, 2023, and placed onto the Supervised Bail Program. The Defendant has had no other involvement with either the juvenile justice system or the adult criminal system. Given the Defendant has no pattern of

ingrained criminal history and a low degree of psychopathy, and the fact that there have been no reported violations of the conditions of Supervised Bail, along with what Dr. Cole-Pucci testified was an openness to change in his current direction including behavioral health services, the Court finds that the Defendant is amenable to treatment, supervision, and rehabilitation.

The offenses with which the Defendant is charged are indeed serious in nature, as the Defendant attempted to rob the victim and in the course of doing so pointed a firearm towards the victim, and struck the victim with his fists, feet, and the weapon. 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 would be traumatizing and have a lasting impact on his sense of security. This impact may have been somewhat alleviated by the fact that the Defendant was precluded, as a condition of his bail, from returning to Lycoming County unless his attendance was required at court hearings, and further by the fact that the Defendant had not violated this condition of bail.

With respect to the impact of this specific offense on the community, there is little doubt that a 15 year old in possession of a gun attempting to rob citizens in the middle of the night under the guise of “commerce” is a threat to public safety. 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. The Defendant put himself in a situation which could have ended very differently and may have been fatal to himself, the victim, or members of the community. Although the Court must consider the Defendant’s degree of culpability, there is still a degree of uncertainty whether the Defendant acted alone or whether there were other individuals involved. However, it is

evident to the Court that this was not a very sophisticated crime. The Defendant likely anticipated he would threaten the victim with the firearm and the victim would simply hand over his money and the Defendant would run. Instead, the victim fought back and, in fact, the Defendant and the victim were still fighting when the police arrived. Whether this was an impulsive decision or planned, the level of sophistication is rather low as it does not appear that Defendant had a “Plan B” for when the victim did not comply with his demands.

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 argues 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. 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).

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. 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 provided in those institutions 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 individual and family therapy, an education that takes into account his IEP and specific needs and diagnoses, and exposure to prosocial opportunities. He will participate in evidence based programming designed to promote accountability, change his thinking, and prevent recidivism. These services may begin as soon as he is placed under the jurisdiction of the Juvenile Court, without the need to wait for resolution of the underlying charges. He has already, while supervised by the Bail Release Program, shown that he is able to follow conditions, improve his behaviors, and not reoffend. 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 of Lycoming County because he will continue to reside in Philadelphia, will be under the pre-adjudicatory supervision of the Juvenile Probation Office and treatment and services specifically geared for his needs will be implemented without delay.

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 of Dr. Cole-Pucci at the hearing, the argument of counsel, 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 17th day of July, 2024, for the reasons set forth above, the Motion to Decertify filed on October 24, 2023, is **GRANTED**. This matter is transferred from the Criminal Division of the Court of Common Pleas to the Juvenile Division of the Court of Common Pleas pursuant to 42 Pa.C.S. §6322 and Rule 337 of the Rules of Juvenile Court Procedure. Pursuant to 42 Pa.C.S. §6322, the Clerk of Courts shall transfer a copy of the accusatory pleadings and all other papers and documents relating to the case to the Chief of Juvenile Probation. Pursuant to Pa.R.J.C.P. 337(c), the District Attorney's Office, upon receiving notification from Juvenile Probation that the case has been transferred, will convert the criminal complaint into a juvenile petition as outlined in Pa.R.J.C.P. 337. The case will then proceed as a juvenile matter and any further criminal proceedings shall be halted. Upon receipt of confirmation from the District Attorney's Office that the criminal complaint has been converted as described above, the Clerk of Courts may administratively close Defendant's criminal case in AOPC.

Upon entry of this Order, the Defendant shall no longer be under the supervision of the Supervised Bail Release Program. The Defendant shall be placed under pre-adjudicatory supervision with the Lycoming County Juvenile Probation Office. It is understood that the Defendant currently resides in Philadelphia, Pennsylvania, and has done well while on supervised bail. The Defendant shall continue to be permitted to reside in Philadelphia while awaiting his preliminary hearing in juvenile court but may be subject to electronic monitoring and other conditions as the Juvenile Probation Office deems appropriate,

including returning to Lycoming County only for required court hearings, to ensure his safety and that of the community.

BY THE COURT,

Ryan M. Tira, Judge

RMT/jel

cc: DA – Eric Birth, Esquire
D’Yal McAllister, Esquire – 1333 Christian Street, Philadelphia, PA 19147
JPO
Clerk of Courts
Supervised Bail
Gary Weber, Esquire