

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

IN RE: J.M.F., :
Defendant : No. MD-199-2015
:
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COMMONWEALTH OF PENNSYLVANIA :
:
Vs. : No. CR-698-2015
:
:

J.M.F., :
Defendant :

Seth Miller, Esquire Counsel for Commonwealth
Assistant District Attorney
Brian J. Collins, Esquire Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - October 23, 2015

Before the Court is a "Motion to Transfer Proceedings to Juvenile Court" filed by Brian J. Collins, Esquire, on behalf of Jacob M. Fischer (hereinafter "J.M.F."). After an evidentiary hearing and consideration of legal memorandums lodged by the parties and in accordance with 42 Pa. C.S.A. §6322, the Court grants this motion and transfers this case to the Juvenile Court for purposes of an appropriate adjudicatory proceeding and disposition.

FACTUAL AND PROCEDURAL BACKGROUND

On June 19, 2015, J.M.F., then age 17 (D.O.B. 6/26/1997) allegedly participated in conduct with an adult female codefendant at a residence in Lansford, Carbon County, Pennsylvania, in which the victim, Robert Clifford, was attacked with a lead pipe and

machete.¹ Shortly thereafter, J.M.F. was arrested as an adult, based upon the fact that he was charged with two (2) counts of aggravated assault (18 Pa. C.S.A.

§2702(c)(1) and (4)), and one count of robbery (18 Pa. C.S.A.

§3701 (a)(1)(ii)), along with burglary (18 Pa. C.S.A. §3502(a)(1)), simple assault (18 Pa. C.S.A. §2701(a)(1)), criminal trespass (18 Pa. C.S.A. §3503(a)(1)(ii)), and theft (18 Pa. C.S.A. §3921(a)).

On June 25, 2015, the instant motion was filed pursuant to 42 Pa. C.S.A. §6322 and an evidentiary hearing was held on October 5, 2015. After opportunity to lodge legal memorandums and provide proposing findings, this motion is now ripe for disposition.

LEGAL DISCUSSION

Pursuant to the Juvenile Act, 42 Pa. C.S.A. §6301 et seq., a delinquent act is defined to exclude the aggravated assault and robbery charges where the child was fifteen (15) years of age or older and a deadly weapon, was utilized, in this case, a machete, in the commission of the offenses. Accordingly, J.M.F. was charged as an adult.

The filing of these charges in the adult system occurs since "[t]he emphasis has been shifted from the rehabilitation of the child and his amenability to the treatment under the juvenile

¹ The affidavit of probable cause alleged that the female wielded the pipe and struck the victim in and about the head and facial area while J.M.F. swung the machete at the victim. During this attack, the victim suffered severe injuries including numerous deep lacerations to his hands from being hit by the machete.

system to the protection of the public and assurance that the period of incarceration and/or supervision is sufficient to deter further violence." *Commonwealth v. Burley*, 715 A.2d 430, 433 (Pa. Super. Ct. 1998). Therefore, "[s]uch a shift has placed the onus on the juvenile to establish his amenability to the juvenile system, rather than on the Commonwealth to prove a lack of amenability." *In re J.B.*, 909 A.2d 393, 396 (Pa. Super. Ct. 2006). Thus, a petition to transfer from the Adult Criminal System to the Juvenile System is required.

42 Pa.C.S.A. §6322(a) reads as follows:

" . . . If it appears to the court in a criminal proceeding charging [] any of the offenses excluded by paragraph (2)(ii) or (iii) of the definition of "delinquent act" in section 6302, that the defendant is a child, the case may [] be transferred and the provisions of this chapter applied. In determining whether to transfer a case charging [] any of the offenses excluded from the definition of "delinquent act" in section 6302, the child shall be required to establish by a preponderance of the evidence that the transfer will serve the public interest. 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 6355(a)(4)(iii) (relating to transfer to criminal proceedings)."

These factors set forth in 6355(a)(4)(iii) are as follows:

- (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 any individual posed by the child;
- (D) the nature and circumstances of the offense allegedly committed by the child;
- (E) the degree of the child's culpability;

- (F) the adequacy and duration of dispositional alternatives available under this chapter and in the adult criminal justice system; and
 - (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) the degree of criminal sophistication exhibited by the child;
 - (V) previous records, if any;
 - (VI) the nature and extent of any prior delinquent history, including the success or failure of any previous attempts by the juvenile court to rehabilitate the child;
 - (VII) whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction;
 - (VIII) probation or institution reports, if any; [and]
 - (IX) any other relevant factors.
- 42 Pa. C.S.A. §6355(a)(4)(iii)(A-G).

In the case *sub judice*, with the burden properly placed on the Defendant, Defense called Dr. Frank M. Dattilio, Ph.D., an expert in clinical and forensic psychology. Dr. Dattilio testified and opined that, taking into consideration the factors enumerated above, and based upon his evaluation of the Defendant, J.M.F., Defendant is amenable to treatment in the Juvenile Court System and accordingly, Defendant should be decertified.

In response, the Commonwealth called the victim, Robert Clifford, who testified that he had suffered serious injuries as a result of this attack with residual issues still occurring to his hands as a result of the lacerations from the machete.

"The ultimate decision of whether to certify a minor to stand trial as an adult is within the sole discretion of a decertification court." *Commonwealth v. Sanders*, 814 A.2d 1248, 1250 (Pa. Super. Ct. 2003). To obtain decertification, it is the juvenile's burden to prove, by a preponderance of the evidence, that transfer to the juvenile court system best serves the public interest. See *Commonwealth v. Smith*, 950 A.2d 327, 328 (Pa. Super. Ct. 2008).

"While the Juvenile Act requires that a decertification court consider all of [the] factors, it is silent as to the weight assessed to each by the court. However, 'when a juvenile seeks to have his case transferred from the criminal division to the juvenile division, he must show that he is in need of and amenable to treatment, supervision, or rehabilitation in the juvenile system. If the evidence presented fails to establish that the youth would benefit from the special features and programs of the juvenile system and there is no special reason for sparing the youth from adult prosecution, the petition must be denied and jurisdiction remains with the criminal division.'" *Commonwealth v. Brown*, 26 A.3d 485, 492-93 (Pa. Super. Ct. 2011), quoting *Commonwealth v. Johnson*, 669 A.2d 315, 320-21 (Pa. 1995).

With these principles of law in mind, the Court makes the following Findings:

- 1) There has been a severe and serious impact on the victim, Robert Clifford as a result of J.M.F.'s involvement in the incident;
- 2) The home invasion perpetrated in part by J.M.F. created a significant impact on the community;

- 3) With appropriate treatment, and based upon Dr. Dattilio's opinion that J.M.F. is "low risk" to reoffend, he does not pose a future threat to the community;
- 4) J.M.F.'s degree of culpability can be considered "moderate" insofar as he was cognizant of what he was doing, however, his cognition was clouded by the use of alcohol, the prospect of being able to obtain controlled substances, and the fact that he followed his co-defendant into this act after being enamored with this "older woman";
- 5) Based on the history taken and the testing and evaluation performed by Dr. Dattilio, the dispositional alternatives available in the Juvenile Court System would be more effective in addressing the needs of J.M.F. and rehabilitating him into a productive member of society versus those available in the adult system;
- 6) At the time of the commission of the offenses,
J.M.F. was seventeen (17) years of age;
- 7) J.M.F. has a good, strong mental capacity of an IQ of 98;
- 8) Despite the immaturity displayed before and during the commission of the offense, J.M.F. has shown a great deal of maturity since in that he had acknowledged a substance abuse problem and entered in-patient rehabilitation to address it. Also, immediately after the occurrence, he cooperated fully with the police.

- 9) There was minimal criminal sophistication exhibited by J.M.F. during the commission of this offense. The lack of planning and the fact that the Defendant did nothing to cover up these actions speaks of this lack of criminal sophistication; 10) J.M.F. has no prior criminal history;
- 11) J.M.F.'s actions on this date were clearly out of character for him and the result of alcohol and his Co-Defendant's influences;
- 12) Defendant, J.M.F., has met his burden, by a preponderance of the evidence, that the transfer of the instant case to the Juvenile Court will serve the public interest; and
- 13) Defendant, J.M.F., is amenable to treatment in the Juvenile System.

CONCLUSION

Based upon the applicable case law and after review of the evidence presented in light of the factors outlined in 42 Pa. C.S.A. §6355(a)(4)(iii), this Court issues the following order:

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JACOB M. FISCHER,
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Seth Miller, Esquire

Counsel for Commonwealth
Assistant District Attorney

Brian J. Collins, Esquire

Counsel for Defendant

ORDER OF COURT

AND NOW, this day of October, 2015, upon consideration of the "Motion to Transfer Proceedings to Juvenile Court" filed by the Defendant, J.M.F., and after hearing held thereon, it is hereby **ORDERED and DECREED** that the motion is **GRANTED** and this criminal proceeding is **TRANSFERRED** in its entirety to the Juvenile Court pursuant to 42 Pa. C.S.A. §6322(a).

BY THE COURT:

Joseph J. Matika, J.