

1 FRI., SEPT. 10, 1999 - 11:09 AM - CRM. #1 - #230, 249 CR 1999

2 JUDGE JOHN M. CASCIO

3 * * *

KERR

4 MS. YOUNG: Lynda Fernichio.

5 Your Honor, the defendant here pled guilty to
6 two counts of obtaining a controlled substance and two counts
7 of forgery and one count of criminal attempt on August the
8 2nd, 1999.

11:09A

9 Mr. Rullo is here on behalf of the hospital
10 with input with respect to the restitution owed to Somerset
11 Hospital.

12 Does the Court wish any further recitation of
13 the facts.

14 THE COURT: I don't think so. Thank you.

15 MS. YOUNG: Could we have Mr. Rullo speak?

16 MR. CARROLL: Well, I can make his piece be a
17 little easier. Attorney Rullo on behalf of Somerset Community
18 Hospital is here in support of the hospital's claim for
19 restitution.

20 And, quite frankly, I didn't even know there
21 was such a claim until a few moments ago; and the Pre-Sentence
22 Investigation has no factual detail in the sense of invoices
23 or what have you as to support that. But it boils down to the
24 fact that the case indicates that the defendant presented
25 herself to Somerset Community Hospital four separate times,

Burns was a friend to

Lynda Kerr in those days.

She benefited from

their "friendship" and

often acted as co-

conspirator in the

criminal activities

perpetrated by Ms.

Kerr.

identified herself as this other person, this Diedra

O'Brien-Burns by using whatever identification she had and was

seen by, I think, Dr. Grof-Tisza and prescribed Demerol on

those first three cases.

The hospital is apparently claiming--and that's--their standard charge for an emergency room visit, basically \$200 a piece.

As Defense Counsel, I have to object to any of that without proof; but I think the stronger argument, those three may be valid; I suggest the fourth time isn't because the fourth time she was not processed further than recognizing here she is back again. She got no drugs. They called the police.

So I'm not conceding that, but if anything is entitled to the Somerset Community Hospital, they did perform services the first three times. The fourth time, it was basically detaining her so that the police could come. That's April 12th.

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The same argument applies to a similar claim by the Meyersdale Hospital, which by comparison their emergency room charges are \$120.

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21

In any event, defendant challenges any of the hospital room charges on April 12 because neither of them supplied any medications or other services on the 12th. They simply called the police and detained her until the police

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24

25

1 came.

11:11A

2 Making a comparison between the two charges, I
3 think for the record I must challenge the reasonableness of
4 those charges, but I think Your Honor understands the chain
5 and logic I'm trying to present as to restitution.

6 THE COURT: I do. I am just looking for any
7 kind of verification of that amount.

8 MR. CARROLL: There's no verification of those
9 amounts in the record that we have now.

10 THE COURT: There is a breakdown of the
11 charges for Somerset Hospital: March 20, March 21, March 22,
12 there's a separate charge for each--

13 MR. CARROLL: Yes, they have a per-day charge,
14 yes, for each--maybe we should say each visit is separated
15 into the charge for that particular visit. I think the
16 strength of my argument is that the charges on April 12 are
17 challenged because nothing was done except calling the police.

11:12A

18 THE COURT: Mr. Fela has given me a printout
19 of the hospital bill for that particular visit.

20 MR. FELLA: There's a printout for each day.

21 THE COURT: Oh, I see.

22 MR. FELLA: The 4:00 days from Somerset. I
23 don't think Meyersdale submitted anything.

24 MR. CARROLL: Well, Your Honor will have to
25 make a determination about the reasonableness of any of those

1 charges; but, again, I will conclude by saying I think the
2 strength of my argument is that no charges can be imposed for
3 the visits to either hospital on April 12.

4 It is true that the Somerset Community
5 Hospital provided the services on those three days in March.

6 THE COURT: This bill would indicate that
7 something was provided to the defendant on that date in
8 addition to the basic ER charges. It is referred to as
9 K-E-T-O-R-O-L-A-C-T-R-D-M, 60 milligrams/2 milliliters 0.5,
10 four of them for a total of \$17.60.

11 MR. CARROLL: My argument is based on what is
12 in the criminal complaints.

:14A 13 THE COURT: Mr. Rullo.

14 MR. RULLO: Judge, I was not prepared to
15 discuss the nature of the treatment on the charges. I was
16 only indicating that--that--asked to come up for the hospital
17 because it had been represented to us that the defendant is
18 suggesting to pay the restitution at a rate of \$5 a month; and
19 at this rate, it will take over 15 years essentially to pay
20 it. So my suggestion was that we would ask that any
21 restitution that is awarded by the Court be tied to the amount
22 of period of time of her sentence.

23 MR. CARROLL: Well, she whispered to me that
24 she never said that to anybody, so I don't know where that
25 comes from. It might be that the person named there, the Miss

1 Burns might have said that to somebody, but I have no idea.

2 THE COURT: Well, I'm going to award the
3 restitution.

4 MR. CARROLL: I don't want to make a broken
5 record out of this. You see my argument.

6 THE COURT: I'm going to award the
7 restitution. If you wish to file a post-sentence motion, Mr.
8 Carroll, maybe we can address it at a separate restitution
9 hearing.

MR. CARROLL: Getting to the heart of the case
itself--getting to the heart of the case itself, you will see
from the Pre-Sentence Investigation, Judge, that there is an
ongoing problem with substance abuse in this case.

You will see that there is some question as to
whether that simply is an ongoing abuse problem or whether it
is really a migraine headache situation, which she has said it
was on these two particular cases on April 12; and you can
read what's in there as well as I can.

Be that as it may, you will see that the
defendant had very good gainful employment up until the mid
1990s; was a registered nurse; obviously, ran into some
problems. And you can see the whole history of counseling and
rehabilitation that follows since then.

I don't really have the ability to show that
any of those programs have been totally successful because,

LIE!! Lynda Fernichio
AKA Lynda Kerr has
never ever been
gainfully employed!!
And she was NEVER
a registered nurse!!

obviously, for some reason here in the spring of 1999, she presented herself at those hospitals and tried to get the substances. And she has been treating for this migraine headache situation. The irony is she was in a program at Conemaugh Hospital down in the Johnstown area in the spring of this year; and in one of the reports she indicates that she didn't want to embarrass herself by showing that program wasn't working and that's why she tried to get these other substances so that they wouldn't know it.

The standard in these cases would allow either probation or minimal incarceration and we ask you to consider that as either probation or minimal incarceration.

We ask you to note that there is a rather checkered history here in response to treatment. She's doing her best right now to not relapse into any of these problems. She has been engaged in the Alcoholics Anonymous type of situation. There is a friend here who is more or less her mentor in that. We would present him as a brief character witness for just a few moments in the record.

Mr. Coslin.

This is Nick Coslin, C-o-s-l-i-n.

Mr. Coslin, will you identify how--by what means do you know Lynda?

MR. COSLIN: We've become good friends through Alcoholics Anonymous. We go to meetings together. We talk

Kerr has often used the fake excuse of migraine headaches as the reason she commits her crimes.

RIDICULOUS!!!!!!

Heeeeeer's NICK!!!
Coconspirator and a "character" himself, he always appears at Mr. Kerr's criminal hearings to vouch for Ms. Kerr's character.
LAUGHABLE!!!!

about recover. We hang out.

MR. CARROLL: Do you have any knowledge of whether or not she is persisting in some type of illegal drug habit?

MR. COSLIN: I don't think she is because being a recovering addict and alcoholic myself, I would see something if she was.

MR. CARROLL: Is there anything further that you would like to say on her behalf?

MR. COSLIN: She's been in the program for nine and a half years--I've been in the program for nine and a half years. Since the time that I've known her, I have seen her come a long way in the program, make a lot of good changes.

MR. CARROLL: Do you have any reason to believe whether or not a period of incarceration of lengthy duration would have a good or bad effect on Lynda?

COSLIN: I think a period of incarceration would probably have a bad effect on her because I think it might freak her out and hurt her.

MR. CARROLL: Does the Commonwealth have any thoughts?

MS. YOUNG: No.

MR. CARROLL: Does the Court have questions?

THE COURT: No. Thank you, sir.

LIE: Koslin and Kerr have only known each other for two years at this point. Not nine and a half.

Well, Nick is being honest here.

1 MR. COSLIN: Thank you.

2 MR. CARROLL: Is there anything that you want
3 to say?

4 THE COURT: Ma'am?

5 DEFENDANT: Your Honor, I sent his Honor a
6 letter.

7 THE COURT: I can't hear you, Miss. I'm
8 sorry.

9 DEFENDANT: I sent His Honor a letter. I
10 didn't know if you received it or not.

11 THE COURT: Yes, I did.

12 DEFENDANT: And basically what I had to say I
13 said in the letter to you.

14 THE COURT: Miss Fernichio, I have looked at
15 the Pre-Sentence Investigation here and I have looked at your
16 prior record here and I can see how insidious this problem is;
17 and it's taken you from a situation where you had a
18 profession; it's--I don't know what your licensure situation
19 is or anything like that at the present time, but I--it just
20 occurred to me I wondered if there is any kind of professional
21 aid available to you through your profession to help you with
22 this kind of a situation? I'm sure it is fairly common in
23 your profession because of being exposed to medications that
24 you are.

25 DEFENDANT: May I speak, Your Honor?

Such LIES!!!

Kerr is trying to create the misconception that at one time she worked as an ER Nurse.

SHE NEVER DID.

She was briefly an LPN, not an RN and she never got near an emergency room or an ICU unit.

The only thing she got near was the Demerol closet when she was BRIEFLY and LPN.

She helped her self to a ton of Demerol, got caught, got arrested, got convicted, and the State took away her LPN. Period.

That's the understatement of the year, Judge.

THE COURT: Yes.

DEFENDANT: Yes, sir.

Back in 1990, I went through a rehab center called Gateway in Alliquippa and I stayed clean and sober for three and half years. I did not work as a nurse in the emergency room at the time. I chose to go back into nursing; and within two weeks, I picked back up again. I picked the Demerol back up. Therefore, when I signed myself into--before I signed myself into the rehab center at CoForge, I signed myself into an eating disorder clinic because I was also dealing with that. This was in '97. I called the State Board in Harrisburg. I told them what was going on with me.

What I would like to do when I get a little more time under my belt as far as my drug and alcohol is not to work with--not to work in an Emergency Room situation, ICU situation. I would like to put my nursing degree towards a degree where I can help teenagers with eating disorders which would not put me in and around drugs. It would put me into helping teenagers with the same disease that I had, which was an eating disorder.

THE COURT: Well, I think that's an appropriate goal, but you got a major way to travel before you get to that, ma'am.

In looking at your prior record, I don't think that probation is appropriate here. I think some additional

Ms. Kerr is very lucky when it comes to sentencing. The judge could not have given her a lighter sentence. But beware. In the not too distant future when she is on probation for this case, at another hospital, in another county, and using another fake identity, she is arrested once again for trying to trick a hospital ER in to giving her Demerol, her drug of choice. This act will constitute a violation of probation in Somerset County and the judge will order significantly more incarceration.

jail time is required.

I am going to shorten the recommendation here, but I--we need some supervision and we need to assure you're going to get the treatment that you need.

In Case No. 230 Criminal 1999 on the charge of acquiring controlled substance by fraud, first count, we sentence you to pay the costs of prosecution and supervision;

To pay a fine in the amount of \$100;

To pay restitution to Somerset Hospital in the amount of \$882.30;

And to be incarcerated in the Somerset County

Jail for not less than 15 days nor more than 23 months.

On the charge of acquiring controlled substance by fraud, second count, we sentence you to pay the costs of prosecution and supervision;

And to be incarcerated in the Somerset County

Jail for not less than 15 days nor more than 23 months.

On the charge of forgery, a misdemeanor of the first degree, first count, we sentence you to pay the costs of prosecution and supervision;

And to be placed on the supervised probation of this Court for a period of two years.

Again, on the charge of forgery, a misdemeanor of the first degree, second count, we sentence you to pay the costs of prosecution and supervision;

1 And to be placed on the supervised probation
2 of this Court for a period of two years.

3 In Case No. 249 Criminal 1999 on the charge of
4 criminal attempt to acquire a controlled substance by fraud,
5 we sentence you to pay the costs of prosecution and
6 supervision;

7 To pay a fine in the amount of \$100;

8 Restitution to the Meyersdale Medical Center
9 in the amount of \$120;

10 And to be incarcerated in the Somerset County
11 Jail for not less than 15 days nor more than 23 months.

12 You are entitled to eight days' credit on this
13 sentence from April 12th through April 19, 1999.

14 The periods of incarceration shall be served
15 concurrently with one another and the period of probation will
16 be served concurrently with one another, but consecutive to
17 the incarceration making the aggregate sentence not less the
18 15 days nor more than 23 months in jail followed by one year
19 supervised probation.

11:24A 20 You may be granted automatic parole at the
21 expiration of your minimum sentence should no problems arise
22 during your incarceration.

23 As special conditions of your sentence and of
24 your parole, you will seek a drug and alcohol evaluation
25 within 30 days and successfully complete recommended

1 counseling and treatment and be responsible to seek funding or
2 arrange payment on your own.

3 You will also complete 80 hours of community
4 service and be responsible for the costs of the program.

5 In addition to what I have already told you, I
6 have considered the contents of the Pre-Sentence
7 Investigation.

8 I have also considered the seriousness of the
9 offense and the number of the offenses and your prior record.

10 I have taken into account also that you were
11 on probation when these offenses were committed;

12 And I have taken into consideration that these
13 offenses are within the standard Sentencing Guideline ranges.

14 Under the circumstances, I think any lesser
15 sentences would depreciate the seriousness of these offenses.

16 You have the right to file a post-sentence
17 motion in both of these cases. In it, you may raise a number
18 of issues including the legality of your sentences and the
19 legality of your pleas; you may also move to modify your
20 sentences and to withdraw your pleas.

11:25A 21 I would have 120 days to decide the motions
22 and you could ask for a 30-day extension. If I were to fail
23 to act within that time period, the motions would be deemed
24 automatically denied and orders would be entered to that
25 effect.

1 You also have the right to appeal these
2 sentences to a higher Court. Those appeals would have to be
3 filed within 30 days of the day the Order is entered deciding
4 your post-sentence motions or within 30 days of the day the
5 Order was entered denying the post-sentence motions. Even if
6 you don't file post-sentence motions, you may still appeal,
7 but your appeals would have to be filed within 30 days of
8 today. Regardless of whether or not you file a post-sentence
9 motions, all issues raised in these cases are preserved for
10 consideration by the Appeals Court.

11 You have the right to be represented by a
12 lawyer in filing these motions or in filing an appeal; and if
13 you can't afford one, and otherwise qualify, an attorney will
14 be appointed for you by the Court without charge.

15 You may also be eligible for bail pending
16 appeal under the appropriate provisions of the Pennsylvania
17 Rules of Criminal Procedure.

11:26A 18 MR. CARROLL: Two points: Judge, when you
19 were summarizing the aggregate nature of the sentence, I
20 believe you said the incarceration would be followed by one
21 year of supervised probation.

22 THE COURT: I think I said--

23 MR. CARROLL: You actually imposed two and we
24 would suggest that the summary says what you mean.

25 THE COURT: All right. Then I would correct

that to say that the incarceration is followed by two years of supervised probation.

MR. CARROLL: I didn't want there to be confusion in the transcript.

THE COURT: Thank you.

MR. CARROLL: More importantly, the defendant asks me to request that you defer the imposition of the sentence until early next week possibly--well, she's asking for Friday; but the reason is this: The Pre-Sentence indicates that her daughter Leslie resides with her and she's returning back to Edinboro State College--or Edinboro State University on Sunday. I think that's the only family member--the family that they have together is basically the two of them and she's made plans for that. We are asking you to allow her to accomplish that going back to school with her daughter and allowing her to come into jail some day next week.

17

11:27A 18

THE COURT: Does the Commonwealth object?

19

MS. YOUNG: Commonwealth does not object.

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THE COURT: All right.

21

Execution of the sentence may be deferred

22

until Monday, September 20, 1999, at 4:00 P.M. provided that

23

the defendant signs the appropriate conditions of deferral.

24

MR. CARROLL: Thank you very much.

25

MS. YOUNG: Thank you.

Leslie, the daughter
Ms. Kerr abandoned
not once, but twice!!
Leslie is a smart
young lady. She
picked up and moved
to Arizona and never
looked back. She has
not seen or spoken to
her mother in nearly
two decades!!
She is happy and
doing well in her life.

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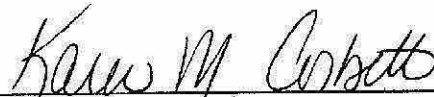
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(11:27 A.M.)

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REPORTER'S CERTIFICATE:

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the hearing of the above cause, and that this copy is a correct transcript of the same.



Karen M. Corbett
Official Reporter
16th Judicial District

Date: _____

9-10-99