IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PA CRIMINAL DIVISION

COMMONWEALTH OF PA

= No. 1027-14

=

VS.

22-

LINDA KERR,

Defendant

=

.....

PRESIDING: DAVID J. TULOWITZKI, JUDGE

PROCEEDING: SENTENCING

DATE: JULY 26, 2016

APPEARANCES:

For the Commonwealth: FORREST FORDHAM, ESQ.

Assistant District Attorney

For the Defendant: THOMAS M. DICKEY, ESQ.

LYNN M. POROPATICH, RPR
Official Court Reporter
Ebensburg, Pennsylvania
(814) 472-1698

lporopatich@co.cambria.pa.us

1	PROCEEDINGS
2	ATTORNEY DICKEY: If I could approach, I have the
3	presentence investigation and post-sentence rights for
4	Linda Kerr that I have gone over with her. She understands
5	all those. There is no additions or deletions.
6	THE COURT: Let's have her sworn.
7	LYNDA KERR, sworn.
8	THE COURT: So there is no additions or
9	corrections, Mr. Dickey, to the presentence?
10	ATTORNEY DICKEY: That's correct, Your Honor.
11	THE COURT: Anything you or she would like to say
12	prior to sentencing?
13	ATTORNEY DICKEY: Your Honor, the only thing I
14	would ask, I know that the sentencing guidelines and
15	presentence report would be somewhat contradictory or
16	adverse to the plea agreement entered into by the
L7	Commonwealth recommending probation. My client is not
L8	nonetheless after review of the same, she is not desirous of
19	withdrawing her guilty plea. She would like to proceed. We
20	would ask the Court to consider one or the other, following
21	the plea agreement or we ask that the Court would consider
22	house arrest instead of incarceration.
23	THE COURT: I will tell you the truth, I am not
24	comfortable with the plea agreement but I think that house
25	arrest is an appropriate solution. So do you want to

- 1 proceed?
- 2 ATTORNEY DICKEY: I do, Your Honor. We would like
- 3 to proceed.
- 4 THE COURT: Tell me about your client for
- 5 sentencing purposes.
- 6 ATTORNEY DICKEY: Again, I would note most
- 7 importantly, Your Honor, my client has agreed to get some
- 8 mental health treatment. She believes that would be helpful
- 9 to her. This case has been going on for some time and she
- 10 hasn't been in any difficulty since the last incident. I
- 11 would like the Court to take that into consideration in
- 12 imposing a sentence here today, Your Honor.
- 13 THE COURT: What is the Commonwealth's position?
- 14 ATTORNEY FORDHAM: Your Honor, I would like to
- 15 place on the record initially this case was pretried for our
- Mental Health Court Program. It appeared that she did
- 17 qualify with respect to having the serious mental illness
- 18 that would be required for her eligibility into that
- 19 program. The problem was she was not a county resident and
- 20 was not able to take advantage of those types of services or
- 21 that program here in the county. So that's why the plea was
- 22 negotiated the way it was. We have no objection to a house
- 23 arrest sentence and I don't believe there is any restitution
- 24 in this case. I will say for the record the officers were
- 25 shook up. I believe that was testified to at the

- 1 preliminary hearing and also at the plea of this case and
- 2 they were also aware that there is probably mental health
- 3 issues connected to this case. With that, we will let the
- 4 Court proceed with the sentence.
- 5 THE COURT: Now, this 26th day of July, 2016,
- 6 relative to the charge entered to No. 1027-14, Count 3, it
- 7 is the sentence of this Court you pay the costs of
- 8 prosecution, undergo imprisonment for not less than 6 months
- 9 nor more than 23 months, be given automatic parole after 6
- 10 months. The 6 months can be served by way of house arrest
- 11 provided that the house arrest fee and this will be house
- 12 arrest with a monitor, the house arrest fee will be paid in
- 13 advance each month. Ma'am, where do you reside right now?
- 14 THE DEFENDANT: New Bethlehem, Pennsylvania, about
- 15 15 miles out of Clarion County.
- 16 THE COURT: In Clarion County?
- 17 THE DEFENDANT: Yes.
- 18 THE COURT: Are we able to reciprocate as far as a
- 19 monitor?
- 20 PROBATION OFFICER: Yes.
- 21 ATTORNEY DICKEY: On that issue would the Court be
- 22 so inclined, I believe the monitor is \$400 a month, Judge,
- 23 is that still roughly the fee for that? Your Honor, would
- 24 you defer sentencing until after the first of the month so
- 25 she would be able to have the \$400 to pay.

- 1 THE COURT: Sure. This sentence will be effective
- 2 August 5th, 2016. And then what about a payment plan for
- 3 the remainder of the probation?
- 4 ATTORNEY DICKEY: My client believes she can pay
- 5 \$150 a month.
- 6 THE COURT: That will start September 1st, 2016.
- 7 Incidentally, in order to accomplish the sentence I have, I
- 8 have assumed the Commonwealth is waiving the deadly weapon
- 9 enhancement?
- 10 ATTORNEY FORDHAM: Yes, Your Honor, I think
- 11 factually it was a BB gun so we would be willing to do that
- 12 at this point.
- 13 THE COURT: Thank you. Ma'am, do you understand
- 14 your sentence?
- THE DEFENDANT: Yes, Your Honor.
- 16 THE COURT: Do you have any questions about your
- 17 sentence?
- 18 THE DEFENDANT: No, sir.
- 19 THE COURT: Did you sign a two-page document that
- 20 explains your post-sentence appeal rights?
- 21 THE DEFENDANT: Yes, I did.
- 22 THE COURT: Do you understand those rights?
- 23 THE DEFENDANT: Yes, I did, sir.
- 24 THE COURT: Any questions about those rights?
- 25 THE DEFENDANT: No, sir.

1	REPORTER'S CERTIFICATE
2	I hereby certify that the proceedings and evidence
3	upon the hearing of the within cause are fully and
4	accurately contained in the notes taken by me and that
5	this copy is a true and correct transcript of the same.
6	
7	Lynn M. Poropatich
8	Court Reporter
9	
10	
11	CERTIFICATE OF JUDGE
12	The foregoing record of the proceedings and
13	evidence taken upon the hearing of the within cause
14	is hereby approved and directed to be filed.
15	
16	David J. Tulowitzki, Judge
L7	bavia o. raiowieżni, odage
18	
19	
20	
21	
22	
23	
24	
25	