

COMMONWEALTH OF PENNSYLVANIA VS. JOANNE  
NORTH, C.P. Crim. Div., Franklin County Branch, Crim.  
No. 955-1990

*Criminal Action - Accelerated Rehabilitative Disposition - DUI*

1. The ARD program provides a pre-trial disposition of certain cases in which the attorney for the Commonwealth agrees to suspend prosecution for an agreed upon period of time in exchange for the defendant's successful participation in a rehabilitative program, the terms of which are to be determined by the court and applicable statutes.
2. Participation in an ARD program results in a deferral of criminal charges until completion of the program.
3. In the event that the ARD program is successfully completed the charges are dismissed and no conviction results.
4. Only when the program is completed may an ARD participant feel secure in final disposition of charges.
5. If a defendant, during the period of the program, violates a condition imposed by the ARD order, under Pa.R.Crim.P. No. 184 the Commonwealth may file a motion alleging such a violation and a hearing shall be held.
6. Placement of an individual on the ARD program does not constitute a finding of guilt (or innocence) on the underlying charges, and a violation of the program's terms at worst merely result in the individual's removal from the program, and the prosecution can commence from where it left off prior to placement of the individual in the program.
7. The rules do not permit an appeal from the order removing a person from the program.
8. Pa.R.Crim.P. No. 182(b) provides: The period of such program for any defendant shall not exceed two years.

*T.R. Williams, Assistant District Attorney, for the  
Commonwealth  
Robert Trambley, Public Defender, for the Defendant*

OPINION AND ORDER

KAYE, J., December 27, 1994:

On September 19, 1990, Joanne E. North ("defendant") was charged with operating a motor vehicle in Franklin County while under the influence of alcohol, 75 Pa.C.S.A. §3731(a)(1), (a)(2), (a)(3), and (a)(4), and for reckless driving, 75 Pa.C.S.A. §3714. On October 5, 1990 the defendant appeared before District Justice David E. Hawbaker, waived her right to a preliminary hearing and the case was bound over to Court.

An information setting forth the crime of driving under the influence of alcohol was filed by the District Attorney of Franklin County on April 1, 1991. On April 3, 1991 the defendant was admitted to the Accelerated Rehabilitative Disposition (ARD) Program by order of this Court. The order further provided in part that she be placed under the supervision of the Franklin County Probation Office for one year, and that she complete certain conditions associated with the ARD program. Defendant's probation expired on April 3, 1992, before she had completed certain conditions of the ARD program. On June 12, 1992 this Court entered an order granting defendant's Petition and Stipulation whereby defendant agreed that she owed a balance of \$842.00 on the ARD order and sought an extension of probation to November 30, 1995 to permit her to pay the balance of the sums due at a rate of \$20.00 per month, beginning on May 22, 1992.

On September 2, 1994 the District Attorney of Franklin County filed a "Motion to Terminate ARD" alleging that defendant was in violation of the terms and conditions of the ARD disposition of this case. On September 2, 1994 the Honorable Douglas W. Herman entered an order granting a hearing regarding termination of defendant's ARD program to be held on September 27, 1994. On September 27, 1994 by application of the District Attorney a bench warrant was issued by this Court for the defendant's apprehension. On October 24, 1994 defendant appeared before The Honorable John W. Keller, Senior Judge, for a hearing on defendant's alleged ARD violation. Defendant moved that she be

discharged from the ARD program, and that the underlying criminal charges be dismissed. Judge Keller vacated the bench warrant, and directed that the other matters be put on the December, 1994 argument list.

Oral argument was held on December 1, 1994, and the Court is in receipt of counsels' legal memoranda, thereby rendering this matter ripe for disposition.

Defendant contends that when an individual's ARD program is extended for a period greater than two years she must be discharged from the ARD program, and the charges dismissed. Defendant argues that Pa.R.Crim.P. No. 182(b) expressly limits the ARD program to a two year period, thus requiring the Court to vacate any order that extends the defendant in ARD beyond a two year period. The Commonwealth maintains that defendant's extensions of ARD were voluntarily and knowingly entered into by defendant, and thus acted as a waiver to Pa.R.Crim.P. No. 182(b). The Commonwealth further asserts that the Rules of Criminal Procedure do not provide for sanctions or a remedy for ARD programs which extend beyond two years.

The ARD program provides a pre-trial disposition of certain cases in which the attorney for the Commonwealth agrees to suspend prosecution for an agreed upon period of time in exchange for the defendant's successful participation in a rehabilitation program, the terms of which are to be determined by the Court and applicable statutes. *Commonwealth v. Lutz*, 508 Pa. 294, 303, 495 A.2d 928, 931 (1985). The program is governed by Pa.R.Crim.P. Nos. 175-185. Under Pa.R.Crim.P. No. 176, the District Attorney can move the Court to place a defendant on ARD. If ARD is approved by the Court and the defendant satisfactorily completes the probationary period, the charges are dismissed.

Participation in an ARD program results in a deferral of criminal charges until completion of the program. *Commonwealth v. McSorley*, 335 Pa.Super. 522, 532, 485 A.2d 15, 20 (1984), *aff'd*, 509 Pa. 621, 506 Pa. 621, 506 A.2d 895 (1986); Pa.R.Crim.P. No. 181. In the event that the program is successfully completed, the charges are dismissed and no

conviction results. *Id.* citing *Commonwealth v. Knepp*, 307 Pa.Super. 535, 453 A.2d 1016 (1982). Only when the program is completed may an ARD participant feel secure in final disposition of charges. *Commonwealth v. McSorley*, 335 Pa.Super. at 532, 485 A.2d at 21.

If a defendant, during the period of the program, violates a condition imposed by the ARD order, under Pa.R.Crim.P. No. 184 the Commonwealth may file a motion alleging such violation and a hearing shall be held. If a violation is found to have occurred, the defendant's participation in the ARD program may be terminated, and the prosecution of the case may resume. Pa.R.Crim.P. No. 184(c). Over a long period of time, a practice has evolved in this Court whereby a defendant who is unable to pay all the costs and expenses during the ARD period may seek an extension of that ARD period to enable the defendant to remain on the ARD program, and thus ultimately to earn dismissal of the charges. The alternative would be possible termination of the ARD and resumption of prosecution pursuant to Pa.R.Crim.P. No. 184.

In the instant case, defendant's initial ARD probation expired on April 3, 1992 as the term of probation imposed on April 3, 1991 was one (1) year. By the former date, however, certain terms or conditions of the ARD program had been violated. Thereafter, on June 10, 1992 defendant entered into a stipulation requesting an extension of the probation to November 30, 1995. In the stipulation defendant agreed that there existed a balance of \$842.50 owing, and that the terms and conditions of the ARD program would be extended through November 30, 1995. By order of this Court dated June 12, 1992, the defendant's ARD program was extended as set forth in the stipulation, and defendant was directed to pay \$20.00 per month until all sums owing were paid in full.

Thereafter, on September 2, 1994, the District Attorney of Franklin County filed a motion to terminate defendant's participation in the ARD program, alleging that defendant had not completed the conditions of ARD. The defendant took the position as previously set forth in this opinion regarding the Court's authority to grant the relief sought by the Commonwealth.

Pa.R.Crim.P. No. 182 provides as follows:

*Conditions of the Program*

(a) The conditions of the program may be such as may be imposed with respect to probation after conviction of a crime, including restitution, except that a fine may not be imposed. In addition, the conditions of the program may include the imposition of costs, and the imposition of a reasonable charge relating to the expense of administering the program, and such other conditions as may be agreed to by the parties.

(b) *The period of such program for any defendant shall not exceed two years.*

[Emphasis added].

In the case *sub judice*, defendant initially was placed on the ARD program on April 3, 1991 for a period of one (1) year, which thus would have expired on April 3, 1992. However, according to the stipulation filed in this case, the terms of the ARD order were not fully satisfied by the end of that period. Pa.R.Crim.P. No. 184 establishes the procedure to be followed in the event of a violation of the conditions of the ARD program:

*Procedure on Charge of Violation of Conditions*

(a) If the attorney for the Commonwealth files a motion alleging that the defendant during the period of the program has violated a condition thereof, or objects to the defendant's request for an order of discharge, the judge who entered the order for ARD may issue such process as is necessary to bring the defendant before the court.

(b) A motion alleging such violation filed pursuant to paragraph (a) must be filed during the period of the program or, if filed thereafter, must be filed within a reasonable time after the alleged violation was committed.

(c) When the defendant is brought before the court, the judge shall afford the defendant an opportunity to be heard. If the judge finds that the defendant has committed a violation of a condition of the program, the judge may order,

when appropriate, that the program be terminated, and that the attorney for the Commonwealth shall proceed on the charges as provided by law. No appeal shall be allowed from such order.

The procedure established by the foregoing Rule, was not followed in this case. Rather, defendant executed a "petition and stipulation" on June 10, 1992 to extend the ARD program through November 30, 1995, or a period of three (3) years, five (5) months, twenty (20) days.

We think the initial question is whether the procedure followed to "extend" the ARD program was proper and, if not, the effect this would have on the Court's authority to enforce its order. To answer the first part of the question we think requires a reiteration of what an Accelerated Rehabilitative Disposition of a charge is, and what it is not. In the normal course, a criminal charge bound over to court proceeds either to a final disposition, by plea of guilty or nolo contendere, or to trial where a verdict is rendered. The ARD program is one of a limited number of exceptions to this process, and it is a form of conditional diversion of the case that permits an accused to avoid the normal course of her case to either guilty plea or trial, by placement on probation for a period of time with other conditions attached.

This type of program was established by the Supreme Court to apply to those accused in non-violent crimes, who are, in most cases, first time offenders - and who can earn dismissal of the charges, and thereby avoid a criminal conviction on their records. The program also is of benefit to the prosecution in that it permits a prompt disposition of non-violent cases, so that more time is available to prosecute the more serious cases, or repeat offenders, and to the Courts, which also have limited time and personnel to deal with these matters.

Placement of an individual on the ARD program does not constitute a finding of guilt (or innocence) on the underlying charges, and a violation of the program's terms at worst merely results in the individuals removal from the program, and the prosecution can commence from where it left off prior to placement of the individual in the program. Pa.R.Crim.P. No. 184(c). The

unique nature of the program is that the Rules permit no appeal from an order removing a person from the ARD program. *Id.*

In the instant case, the procedure for a violation of the ARD program as set forth in Pa.R.Crim.P. No. 184 was not followed. Rather than having a formal notice of violation, and a court hearing, defendant opted to execute a "petition and stipulation" prepared by the Probation Department to extend the program. She has not alleged that she was coerced into executing this agreement, nor has she alleged that any fundamental rights that she has were violated in the employment of this procedure. In fact, it is a near certainty that almost any individual, presented with the possibility of removal from the ARD program, and a potential mandatory jail sentence if the subsequent prosecution resulted in a conviction, would freely elect to continue on the ARD program to avoid those possibilities.

Had the alleged violation been pursued in the manner set forth in Pa.R.Crim.P. No. 184, at the time of the initial violation alleged, the Court could have: 1) found no violation; or 2) found a violation and removed defendant from the ARD program, in which latter case the Commonwealth either could proceed with the prosecution, recommend the individual for placement anew on the ARD program, or nol pros the charges.

The effect of the petition and stipulation avoided requiring defendant to be present in court for a hearing on the alleged violation, and the potential risk that she may have been removed from the ARD program and her case scheduled for trial. While the procedure employed is not provided for in the Rules of Criminal Procedure, the reality is that what occurred vis-a-vis defendant was less onerous to her than what is provided for in the Rules in that it provided her with another opportunity to complete the program successfully without the disruption of her life and emotional turmoil inherent in a formal hearing before the Court. It also might be noted that she could simply have declined to sign the stipulation, and then a violation hearing would have been scheduled. Finally, defendant has not identified any resultant prejudice that has resulted as a consequence of the extension of her participation in the ARD Program.

We are of the opinion that the effect of the extension was identical to that of the Court's having removed defendant from the ARD program because of her failure to fulfill its conditions, and then putting her on the program again upon the motion of the District Attorney and her agreement to adhere to its terms and conditions. However, we note that the Rules do expressly limit the length of the ARD program to two (2) years, and to the extent the "petition and stipulation" purported to extend the program beyond the permissible period for the program, we find that the order entered pursuant thereto exceeded that which was permitted by the Rules of Criminal Procedure which concern Accelerated Rehabilitative Disposition.

The order which extended defendant's ARD program was entered on June 12, 1992, and, under the Rules, had to terminate no more than two (2) years thereafter, i.e. on June 12, 1994. Thus, we find that the order was ineffective after that date.

We are unaware of the date or dates of the alleged violation(s) of the ARD program in this case, as we did not preside over the ARD violation hearing. Under Pa.R.Crim.P. No. 184(b), the motion alleging the violation "...must be filed during the period of the program or, if filed thereafter, must be filed within a reasonable time after the alleged violation has occurred." The somewhat curious language in the second clause of the cited Rule clearly limits the otherwise unqualified language of the first clause, *i.e.* it permits the filing of the violation motion *after* the ARD program has come to an end, so long as it is filed within a reasonable time of the violation. The alleged violation itself obviously would have had to occur while the ARD program was extant, in this case no later than June 12, 1994. Because of the limited record before us, we are unable to determine whether the alleged violation(s) occurred within this time period, and thus our ruling will be conditioned upon the date on which the alleged violation(s) occurred.

*Conclusion:* The "petition and stipulation" filed in this case was effective to the extent that it extended defendant's ARD program to June 12, 1994. If the alleged violations of the program occurred on or prior to that date, the Court has jurisdiction to hear

the alleged violations and, conversely, if the alleged violations occurred after that date, the ARD program expired, and the motion to hold the defendant in violation of the ARD program will be dismissed.

**ORDER OF COURT**

NOW, December 27, 1994, the Court having considered defendant's motion to dismiss charges and to discharge from the ARD program, the Court rules thereon as set forth in the attached Opinion.

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