

IN THE INTEREST OF CHILD "M", C.P. Franklin County Branch, Juvenile Action, No. 79 of 1992, Volume 21, Pg. 103.

*Defendant is seeking dismissal of action arguing that because he is now twenty-two that the juvenile court no longer has jurisdiction over him, and that because the juvenile court no longer has jurisdiction over him that the juvenile petition filed against him should be dismissed.*

1. A child is one who is (1) under the age of 18 years; (2) is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years; or (3) was adjudicated dependent before reaching the age of 18 years, and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, but in no event shall a child remain in a course of instruction or treatment past the age of 21 years. 42 Pa.C.S.A. Section 6302.
2. Although a person may be classified as a juvenile at the time he committed the acts for which he has been charged and at the time charges were filed, he can no longer be classified as a juvenile under any provision of 42 Pa.C.S.A. Section 6302 upon reaching the age of 21.
3. Juvenile charges will not be forever dismissed simply because one is no longer under the jurisdiction of the court under which those charges were filed, but will continue as adult charges.
4. The inapplication of the Juvenile Act does not mean that one inhabits a jurisdictional limbo between the Family Court Division and the Trial Division.
5. A defendant may avail himself from the protection of the Juvenile Act by taking appeals if doing so places him outside the definition of a "child" pursuant to 42 Pa.C.S.A. Section 6302.
6. Although defendants should not be discouraged from taking appeals which have merit, they must also weigh the possibility that by taking them they may lose the benefits of being tried as a juvenile rather than an adult.

*John F. Nelson, District Attorney, Attorney for the Commonwealth*

*John Mancke, Esquire, Attorney for the Defendant*

**OPINION AND ORDER**

WALKER, P.J., May 9, 1995:

**FINDINGS OF FACT**

Defendant, Child "M", was born on August 16, 1972 and was just a few months shy of his eighteenth birthday when the events for

which he is charged occurred. Defendant was charged by a juvenile petition on March 11, 1992 with homicide by vehicle as a result of an accident that occurred on June 1, 1990. A juvenile hearing was scheduled but never occurred as defendant requested dismissal of the petition. A hearing was held on September 8, 1992 and defendant's request for dismissal was denied. A timely appeal to the Superior Court of Pennsylvania was filed and by order dated March 17, 1994, the lower court's decision was affirmed and remanded. A timely petition for allowance of appeal was then filed with the Pennsylvania Supreme Court and was subsequently denied. A hearing was set for December 29, 1994 but was continued pending the current filing of a motion to dismiss the petition.

Defendant presently argues that because he is now twenty-two the juvenile court no longer has jurisdiction over him. Defendant further argues that because the juvenile court no longer has jurisdiction over him that the juvenile petition filed against him should be dismissed.

**DISCUSSION**

Title 42 Pa.C.S.A. Section 6302 defines a child under the Juvenile Act as one who:

- (1) is under the age of 18 years;
- (2) is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years; or
- (3) was adjudicated dependent before reaching the age of 18 years, and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, but in no event shall a child remain in a course of instruction or treatment past the age of 21 years.

Although the court cannot find a case factually on point with the present case, the Commonwealth has cited a case decided by the Superior Court of Pennsylvania that this court deems compelling because of its sound reasoning and notable insight. The case of *Commonwealth v. Anderson*, 428 Pa.Super. 92, 630 A.2d 47 (1993) alloc. denied 536 Pa. 617, 637 A.2d 277 (1994), concerned a twenty-two year old who had committed crimes at age sixteen, fled, was arrested for a different crime at age nineteen, fled again, and then was

apprehended at age twenty-two for a different set of crimes. In this case as in the case before the court now, the Commonwealth sought to recharge the defendant as an adult for the crimes he committed as a juvenile. The defendant claimed that because he no longer was a juvenile as defined by 42 Pa.C.S.A. Section 6302 that the juvenile charges should be dismissed for lack of jurisdiction.

Our defendant was a juvenile pursuant to the Juvenile Act when the present charges were filed, being seventeen at the time of the accident and nineteen at the time charges were filed. The court has now arrived at a point where it can dispose of the case. However, as a result of several appeals taken by the defendant, he can no longer be classified as a juvenile under the statute.

As in *Anderson*, this court is of the opinion that the defendant is indeed no longer subject to the jurisdiction of the juvenile court. However, this court is not compelled by defendant's argument that the juvenile charges should be forever dismissed simply because he is no longer under the jurisdiction of the court under which those charges were filed. This court is concerned about creating such precedence, as a juvenile would be encouraged to take a number of appeals on his case with the hopes that his case would never be heard if the process lasted until he reached twenty-one. "The inapplication of the Act. . . does not mean that [one] inhabits a jurisdictional limbo between the Family Court Division and the Trial Division." *Anderson* at 96.

Although the defendant in *Anderson* availed himself of the protection of the Juvenile Act by deliberately avoiding the justice system by fleeing, our defendant availed himself of the protection of the Juvenile Act, albeit legally, by taking several appeals. Although defendants should not be discouraged from taking appeals which have merit, they must also weigh the possibility that by taking them they may lose the benefits of being tried as a juvenile rather than an adult.

#### CONCLUSION

Although defendant may not necessarily have utilized the appeal process to avoid the juvenile charge against him, the possibility would exist if this court would dismiss juvenile charges simply because the defendant is no longer subject to the jurisdiction of the juvenile court. Therefore, the court is denying defendant's motion to dismiss.

#### ORDER OF COURT

May 9, 1995, the court denies the defendant's motion to dismiss the juvenile petition.