



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

703-246-2221 • Fax: 703-246-5496 • TDD: 703-352-4139

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March 06, 2014

Mr. Keith A. Carpenter
Fairfax County Adult Detention Center
Fairfax, Virginia 22030

Re: *Commonwealth of Virginia v. Keith A. Carpenter*
FE-2013-0000910
Letter Opinion with Regard to Defendant's two *pro se* Motions for Reconsideration of Sentence

Dear Mr. Carpenter:

The purpose of this letter is to set out in detail why the Court has denied both of your *pro se* motions for reconsideration of sentence, each of which sought to persuade this Court to reduce the sentence it imposed on November 22, 2013. In sum, this Court concludes that you pose a grave danger to the people who live and work in the Commonwealth of Virginia and no sentence other than incarceration can protect the community from you.

PROCEDURAL HISTORY

On December 3, 2013, you were arrested and charged with Driving While Intoxicated and Habitual Offender (second or subsequent offense). The facts of the case, as presented in the Presentence Investigation Report, read as follows:

On December 3, 2012, Officer R.M. Theal of the Fairfax County Police Department was working an off-duty assignment directing traffic on 7600 Old Keene Mill Road, which is a public highway within Fairfax County. At approximately 4:45 pm, the officer stopped cars on Old Keene Mill to let traffic

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out of a parking lot. The defendant, Keith Alexander Carpenter, did not stop in time and bumped the car in front of him, causing a non-reportable accident. At the time, the officer observed the defendant in the driver's seat. The officer directed the defendant and the other car to move into the parking lot in order to exchange information. The cars moved into the parking lot.

When the officer went to check on the cars a few minutes later, the defendant had moved to the passenger seat and a passenger in the vehicle was seated in the driver's seat. The defendant denied being the driver of the vehicle. The officer observed that the defendant had an odor of alcohol about him, and asked if he would perform field sobriety tests. The defendant failed the one-leg stand, walk and turn, and finger dexterity tests. He was then arrested for DWI and for driving after being declared a Habitual Offender.

The defendant was taken to the Fairfax County Adult Detention Center and offered a breath test. He agreed to take the test and blew a .08.

You were subsequently indicted on two counts. Count I charged you with driving after being declared a Habitual Offender, second or subsequent offense. Count II charged you with Driving While Intoxicated ("DWI"). On September 23, 2013, you pled guilty to the Habitual Offender charge and, as part of the Plea Agreement, the DWI was nolle prossed. The Plea Agreement contained the following provision: "The Commonwealth agrees that the defendant receive a sentence within the Virginia Sentencing Guidelines."

The case came before the Court for sentencing on November 22, 2013. The Virginia Sentencing Guidelines indicated a low end of the guideline range of 1 year/0 months, a mid-point of 2 years/4 months, and a high end of 2 years/6 months. By law, one year of any sentence the Court might impose was a mandatory minimum. Your counsel, in her sentencing memorandum, requested that the Court impose the one year mandatory minimum to be followed by a treatment program. After hearing argument from counsel, and your statement to the Court, the Court imposed the following sentence, which was the maximum sentence the Court could have imposed given the terms of the Plea Agreement:

Total Sentence: 5 years imprisonment
Total Suspended Portion of Sentence: 2 years/6 months (suspended for life)
Total Unsuspended Portion of Sentence: 2 years/6 months
Length of Supervised Probation: Life, unless sooner released by the Court or Probation.

The Court imposed the following special conditions of probation in addition to maintaining "good behavior" for life: (1) mental health evaluation and treatment at the direction of the Probation Officer; and (2) complete abstinence from alcohol, with random screening for alcohol consumption.

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After sentencing, you filed two motions for reconsideration of sentence. The first motion, filed on December 16, 2013, contained the following statement:

All I am asking for is a chance to do the right thing. I feel that being incarcerated is not the answer. I am going to be free one day just to do this all over again, just like I have done in the past. What I need is help, professional help for mental health and substance abuse. I have had mental health treatment in the past and wish to resume that help.

The second motion, filed on January 6, 2014, contained the following statements:

Since I've been in jail, I've made it a point to attend every A.A. meeting they have to offer. I plan on doing this for the rest of my life.

I'm requesting you to court order me into the Salvation Army's substance abuse program upon completion of the IAP or any program that the ADS should recommend.

Your Honor, alcoholism is a disease and its caused me alot of legal problems, and medical problems.

All I'm asking for is a chance to do the right thing. I've been incarcerated many times for this charge in the past and it's not the answer, I'm gonna be free one day to do it all over again, just like I have in the past. What I need is professional help, mental health also. I'm ready to comply.

On January 9, 2014, the Court issued an Order denying both motions.

YOUR PRIOR RECORD

Your criminal record spans 37 years and over 50 convictions. The Presentence Report contains the following entries (for ease of reference, the Court has highlighted those offenses related to either DWI, Habitual Offender, or Driving on a Revoked or Suspended License):

1. 1975 Larceny
2. 1976 Trespass
3. 1978 Defrauding an Innkeeper
4. 1978 Possession of Marijuana and Drug Paraphernalia
5. 1978 Possession of Marijuana
6. 1978 Food Stamp-Related Offense
7. 1979 Breaking and Entering
8. 1979 Possession of Marijuana
9. 1980 Escape
10. 1983 Disorderly Conduct

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11. 1984 Trespass
12. 1984 Petit Larceny
13. 1988 Vandalism
14. 1988 Probation Violation
- 15. 1988 DWI**
- 16. 1990 DWI**
- 17. 1990 DWI**
- 18. 1991 Driving on a Suspended or Revoked License**
- 19. 1991 DWI/3rd or Subsequent**
20. 1991 Burglary
- 21. 1991 Driving on a Suspended or Revoked License**
- 22. 1991 DWI**
- 23. 1991 DWI**
- 24. 1991 DWI**
- 25. 1991 Driving on a Suspended or Revoked License**
26. 1991 Unlawful Entry
27. 1991 Drunk in Public
28. 1992 Use of Profane/Threatening Language
29. 1993 Drunk in Public
30. 1993 Drunk in Public
31. 1993 Shoplifting
- 32. 1994 DWI/2nd**
- 33. 1994 Habitual Offender**
34. 1994 Possession of Marijuana
35. 1994 Concealment
- 36. 1994 Habitual Offender/2nd or Subsequent**
- 37. 1995 DWI/3rd or Subsequent**
- 38. 1995 Habitual Offender**
- 39. 1997 DWI**
- 40. 1997 Habitual Offender/2nd**
- 41. 1997 Habitual Offender**
- 42. 1997 Probation Violation**
43. 2004 Operating an uninspected vehicle
- 44. 2004 Habitual Offender/2nd or Subsequent**
45. 2004 False Pretenses
46. 2004 Contractor Operating Without a License
47. 2006 Advance Pay/Larceny: No Perform Construction Less than \$200
48. 2006 Probation Violation
49. 2006 Parole Violation

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50. 2007 DWI

51. 2007 Probation Violation

52. 2012 Not Comply with J&DR Order

53. 2012 Contempt of Court

54. 2012 Profane Swearing Or Intoxication in Public

55. 2012 Traffic; Driver Damage Property—Fail to Report

56. 2012 DWI

57. 2012 Habitual Offender/2nd or Subsequent (Instant Offense)

Your record can be summarized as follows: 12 DWI convictions, 10 habitual offender or driving on a suspended or revoked license convictions, 4 drug convictions, 4 probation or parole violations, and more than 25 other convictions of various sorts. The Presentence Report prepared for the instant case contains a quote from a prior Presentence Report. It reads as follows:

Subject's record speaks for itself. His criminal history covers a wide array of misdemeanors, both criminal and traffic. It is apparent that subject may spend his entire life in and out of the Court system. Of concern are the numerous convictions subject has for driving in the Commonwealth of Virginia, both drunk and as a habitual offender. As with the local jail system, subject is no stranger to probation and parole offices throughout the Eastern shore. In Virginia alone, subject has been on probation and parole twice throughout the 1990's. Regardless of arrests, convictions, probations and paroles, he continues to drink alcohol and he continues to drive motor vehicles.

That quote is from October 1997. Since then, you have accumulated two more DWI convictions, two more Habitual Offender convictions, two more probation violations, a parole violation, and other convictions as well.

Your record of convictions is instructive to this Court, for five reasons:

1. You have demonstrated by your conduct an absolute unwillingness or inability to stop driving drunk.
2. You have demonstrated by your conduct a complete and flagrant disregard of the prohibition against driving without a valid license.
3. Despite numerous periods of incarceration associated with these convictions, none have persuaded you to obey the law.
4. Neither probation nor parole has worked either; you violated both.
5. You have demonstrated a remarkable but quite unfortunate consistency and longevity in your criminal behavior, spanning as it does five decades and at least 17 jurisdictions.

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DISCUSSION

It is obvious to this Court that you have an addiction to alcohol and that it has largely wrecked your life. As awful as that is, a critical concern of this Court is that your addiction to alcohol not be permitted to wreck the lives of others. It is also obvious to this Court that you have had innumerable opportunities to get help for your addiction and you have been unwilling or unable to fully avail yourself of these opportunities. The Presentence Report makes it clear that you have been in intensive treatment in the past and that you have been referred for additional treatment. As your prior counsel acknowledged in her sentencing memorandum, it is your own lack of commitment to sobriety when you were younger, and your frequent incarcerations, that have been substantial impediments to treatment; but that hardly argues in favor of reducing your sentence. Put another way: Between 1978 and 2012, you had approximately twenty convictions associated directly with the abuse of drugs and alcohol; each of those convictions—any one of which should have been the proverbial “wake up call”—now stands as a lost opportunity for you to turn your life around.

Most unfortunately, your addiction to alcohol has been accompanied by a willful and apparently intractable determination to drive without regard for the commands of the law that prohibit driving while intoxicated and prohibit driving after having been declared a habitual offender. It is this toxic combination of alcohol addiction and refusal to comply with the law that poses such a danger to the community. The criminal justice system has tried to coerce you into complying with the law. To date, this effort has failed. Despite all of the efforts of the criminal justice system, you persist in driving drunk and driving after being ordered by proper authority not to do so.

And so the Court now comes to your motions for reconsideration, in which you ask for rehabilitation rather than incarceration. Rehabilitation is an estimable goal of sentencing. It holds out the promise that a defendant will fundamentally, even permanently, turn away from criminal activity. But this court has no confidence in your contention that you are now ready for rehabilitation, and that—as you tell the Court—you are “ready to comply” and all you are “asking for is a chance to do the right thing.” Put simply, the Court does not believe you. Your plea for release-for-rehabilitation cannot be viewed in a vacuum, as if this was your first or second or third or even tenth appearance in a court of law; rather, your plea must be measured against the knowledge that on literally dozens and dozens of prior occasions you have stood before a Court just like this Court, been forced to face the terrible prospect of imprisonment, and then the actual reality of imprisonment, and yet these experiences *time and again* somehow failed to deter you from further criminal conduct.

You say in your motion that “being incarcerated is not the answer,” and you are partially correct. Incarceration is not a complete solution to the danger you pose to the public. But this is what incarceration can accomplish: It can incapacitate you for the duration of your incarceration, one of the recognized goals of sentencing. *See, e.g., Gilliam v. Commonwealth*, 21 Va. App. 519, 524 (1996) (“[T]he sentencing decision . . . is a quest for a sentence that best effectuates the criminal justice system’s goals of deterrence (general and specific), incapacitation, retribution and rehabilitation.”) (quoting *United States v. Morris*, 837 F. Supp. 726, 729 (E.D.

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Va. 1993)). For the two-and-a-half years that you are in jail or in prison, you will be entirely unable to commit new crimes on the streets of our community. For that substantial period of time, all the other drivers on the road, the pedestrians on the sidewalks, the bicyclists on the trails, the children walking to and from school and to and from bus stops, and every other person who uses our roads, will be protected *from you*.

The Court is well aware of your statement in your motion for reconsideration “I’m gonna be free one day to do it all over again, just like I have in the past.” The solution, you argue, is to put you in a program; you claim that you are “ready to comply.” The Court certainly hopes that this is the case. But hope alone—especially in the face of your dreadful record—is no substitute for taking tangible action that will, at least for a substantial period of time, protect the community.

After you have served your sentence, you will have the opportunity to demonstrate what you contend is a sincere commitment to rehabilitation. As you know, the Court has set strict conditions that require sobriety for life, that require mental health evaluation and treatment, that bar you from driving, and that have as a potential sanction for non-compliance another two-and-a-half years of incarceration.

Sincerely,

A solid black rectangular redaction box covering the signature of Randy I. Bellows.

Randy I. Bellows

cc. Mr. Raymond Morrogh
Commonwealth’s Attorney

Ms. Lauren Whitley
Office of the Public Defender

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