

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

IN RE: EXPUNGEMENT OF JUVENILE RECORDS AND VACATUR OF LUZERNE COUNTY JUVENILE COURT CONSENT DECREES OR ADJUDICATIONS FROM 2003-2008

RELATED TO:

IN RE: J.V.R.; H.T., A MINOR THROUGH: No. 81 MM 2008
HER MOTHER, L.T.; ON BEHALF OF :
THEMSELVES AND SIMILARLY :
SITUATED YOUTH :

ORDER

PER CURIAM

AND NOW, this 29th day of October, 2009, upon consideration of the Third Interim Report and Recommendations of the Special Master, the Commonwealth's Objections to the Third Report and Recommendations of the Special Master, the Juvenile Law Center's Reply to Objections to the Third Report and Recommendations of the Special Master, and the Commonwealth's Sur-Reply, it is hereby ordered as follows:

(1) The Commonwealth requests that this matter be "remanded" to the Court's Special Master, the Honorable Arthur E. Grim, so that specific factual findings underlying the Third Report and Recommendations can be set forth, and for a determination of whether additional evidentiary proceedings should be conducted based on the withdrawal of the agreement to plead guilty by Mark Ciavarella in United States

v. Michael T. Conahan and Mark A. Ciavarella, 3:09-CR-028 (U.S. District Court, M.D. Pa.). The Commonwealth believes a remand is necessary in order to assist this Court in determining whether the record supports the findings set forth in the Third Interim Report and Recommendations given the fact of Ciavarella's withdrawal of his agreement to plead guilty.

In its Reply to Objections to the Third Report and Recommendations of the Special Master, the Juvenile Law Center ("JLC")¹ responds that even in the absence of Ciavarella's guilty plea ample evidence exists to support Judge Grim's findings that the juvenile proceedings before Ciavarella were unfair and that all adjudications and all consent decrees should be vacated. The JLC also submits documents as exhibits to its Reply, including: (1) the July 2, 2009 sworn testimony of Ciavarella before President Judge William H. Platt of the Court of Common Pleas of Lehigh County, in Joseph v. The Scranton Times, 19 MM 2009, a matter over which this Court has assumed and still retains plenary jurisdiction; (2) an excerpt from the Transcript of Proceedings of Arraignment and Guilty Plea dated July 1, 2009, in United States v. Powell, No. 09-CR-189 (U.S. District Court, M.D. Pa.), relating to the federal guilty plea by Robert Powell, Esq., which details, among other things, that Powell paid Ciavarella and Conahan more than \$2.8 million in connection with the building and operation of the PA Child Care and Western PA Child Care juvenile facilities; and (3) an excerpt of the Transcript of Proceedings of Arraignment and Guilty Plea dated September 2, 2009, in United States v. Mericle, No. 09-CR-247 (U.S. District Court, M.D. Pa.), relating to the federal guilty plea of developer and builder Robert K. Mericle, which corroborates the payment of those monies to Ciavarella and Conahan in connection with the juvenile facilities.

¹ The JLC did not file objections, and indeed, asks this Court to adopt "in its entirety" the Third Interim Report and Recommendations of the Special Master.

The Commonwealth argues that this Court should not consider or rely upon the JLC's exhibits as a factual basis for adopting the Special Master's report and recommendations. The procedural posture of this matter is distinguishable, however, from the cases relied upon by the Commonwealth, which involved appeals from lower courts, and addressed compliance with the Rules of Appellate Procedure and related case decisions governing the scope of records on appeal and whether certain issues had been properly preserved for appeal.²

This matter does not involve a direct appeal. By order dated February 11, 2009, this Court assumed plenary jurisdiction through the exercise of our King's Bench powers and appointed Judge Grim to act on behalf of the Court as Special Master. This Court has continuously retained jurisdiction. Furthermore, for the reasons that follow, we conclude that a "remand" is unnecessary, since this Court may consider Judge Grim's recommendations based upon the present materials, which we deem more than adequate to proceed to adjudicate this matter.

Preliminarily, the Commonwealth cites no cases that support the notion that this Court is precluded from considering Ciavarella's prior entry of an agreement to plead guilty to the initial federal charges, for the distinct and collateral purpose of determining how to address and remedy the travesty of juvenile justice that Ciavarella perpetrated in Luzerne County, merely because Ciavarella was permitted to withdraw the plea after the federal district court rejected the negotiated sentence as inadequate. Drawing logical inferences from the plea, for the collateral purposes at issue here, does nothing

² The Commonwealth cites the unrelated decisions in Commonwealth v. Powell, 956 A.2d 406 (Pa. 2008) (appellant's claim that introduction of autopsy photograph was improper found to be waived because photograph had not been made part of the certified record), and in Commonwealth v. Kennedy, 868 A.2d 582 (Pa. Super. 2005) (records from county jail could not be considered in challenge to legality of sentence because records had not been made part of certified record).

to burden Ciavarella's rights as a federal criminal defendant. Moreover, Ciavarella has not sought to participate in this matter, or to explain his actions which are at issue here. This Court's concerns, now and at the outset of our exercise of plenary jurisdiction, are with finding the facts of the matter and acting swiftly to take remedial action. Nothing in Ciavarella's withdrawal of his plea calls into question the accuracy of the essential facts which formed the basis for the Special Master's recommendations.

With respect to those cases where juveniles appeared before Ciavarella without counsel, Judge Grim's independent review of the transcripts of individual cases disclosed Ciavarella's systematic failure to determine whether a juvenile's waiver of the right to counsel was knowingly, intelligently and voluntarily tendered; the failure to conduct the requisite waiver colloquy on the record; the failure to advise the juvenile of the elements of the offenses charged; and the failure to determine whether an admission was tendered, and then to apprise the juvenile of the consequences of an admission of guilt. In addition, this Court's review of those same transcripts reveals a systematic failure to explain to the juveniles the consequences of foregoing trial, and the failure to ensure that the juveniles were informed of the factual bases for what amounted to peremptory guilty pleas. The transcripts reveal a disturbing lack of fundamental process, inimical to any system of justice, and made even more grievous since these matters involved juveniles. Even in the absence of the admissions inherent in the original federal plea agreement Ciavarella was permitted to withdraw, Ciavarella's complete disregard for the constitutional rights of the juveniles who appeared before him without counsel, and the dereliction of his responsibilities to ensure that the proceedings were conducted in compliance with due process and rules of procedure promulgated by this Court, fully support Judge Grim's analysis.

Thus, Judge Grim's review of transcripts of juvenile proceedings over which Ciavarella presided provides a sufficient, independent basis upon which to consider his recommendations regarding the adjudications and consent decrees entered by Ciavarella between January 1, 2003 and May 31, 2008, in cases in which the juveniles were unrepresented by counsel. We conclude that the record supports Judge Grim's determination that Ciavarella knew he was violating both the law and the procedural rules promulgated by this Court applicable when adjudicating the merits of juvenile cases without knowing, intelligent and voluntary waivers of counsel by the juveniles.

With respect to the remaining cases, where counsel was not waived, we likewise find that the materials before us provide an adequate basis upon which to assess Judge Grim's recommendations. The staggering financial payments made to Ciavarella and Conahan in connection with PA Child Care and Western PA Child Care are well documented. In this regard, we have taken judicial notice of Ciavarella's testimony in Joseph v. The Scranton Times, 19 MM 2009; the Transcript of Proceedings of Arraignment and Guilty Plea dated July 1, 2009, in United States v. Powell, No. 09-CR-189 (U.S. District Court, M.D. Pa.), relating to the guilty plea of Robert Powell; and of the Transcript of Proceedings of Arraignment and Guilty Plea dated September 2, 2009, in United States v. Mericle, No. 09-CR-247 (U.S. District Court, M.D. Pa.), relating to the guilty plea of Robert K. Mericle. During the hearing conducted by President Judge Platt in Joseph v. The Scranton Times, 19 MM 2009, Ciavarella admitted under oath that he had received payments from Robert Powell, a co-owner of the PA Child Care and Western PA Child Care facilities, and from Robert K. Mericle, the developer who constructed the juvenile facilities, during the period of time that Ciavarella was presiding over juvenile matters in Luzerne County. It is a matter of record that Ciavarella routinely committed juveniles to one or another of these facilities. It is also a matter of record that

Ciavarella failed to disclose his ties to Powell, much less the financial benefits he received in connection with the facilities to which he routinely committed Luzerne County juveniles. Ciavarella's admission that he received these payments, and that he failed to disclose his financial interests arising from the development of the juvenile facilities, thoroughly undermines the integrity of all juvenile proceedings before Ciavarella. Whether or not a juvenile was represented by counsel, and whether or not a juvenile was committed to one of the facilities which secretly funneled money to Ciavarella and Conahan, this Court cannot have any confidence that Ciavarella decided any Luzerne County juvenile case fairly and impartially while he labored under the specter of his self-interested dealings with the facilities.

In short, there is ample support in the materials properly before us to assess the bases cited by Judge Grim for his finding that all juvenile adjudications and consent decrees entered by Ciavarella between January 1, 2003 and May 31, 2008, are tainted. Accordingly, we **DENY** the Commonwealth's request to remand.

(2) Given the above decision and discussion, this Court now approves of Judge Grim's recommendation that, for all cases in which Ciavarella entered adjudications of delinquency or consent decrees between January 1, 2003 and May 31, 2008, orders shall be entered vacating those adjudications and consent decrees, regardless of whether the juvenile was represented by counsel. See In Interest of McFall, 617 A.2d 707 (Pa. 1992). We note that the parties are in agreement that this particular remedial measure is proper; indeed, the Commonwealth continues to concede as much, notwithstanding its request to remand.

This Court is aware, of course, that some juveniles appeared before Ciavarella with counsel and were not committed to either of the PA Child Care facilities. We agree with the parties and Judge Grim, however, that those cases are no less tainted by

Ciavarella having presided. Judge Grim refers to the “pall” that was cast over all juvenile matters presided over by Ciavarella, given his financial interest, and his conduct in cases where juveniles proceeded without counsel. We fully agree that, given the nature and extent of the taint, this Court simply cannot have confidence that any juvenile matter adjudicated by Ciavarella during this period was tried in a fair and impartial manner.

(3) This Court approves of Judge Grim’s further recommendation that adjudications of delinquency and consent decrees be reversed and dismissed with prejudice, and that expungement of records proceed (with copies to be retained under seal in accordance with any other order of court), in all cases, whether final or not, where a juvenile either proceeded before Ciavarella without counsel, or was committed by Ciavarella to PA Child Care or Western PA Child Care. Judge Grim suggests that this remedy is commanded by the double jeopardy protections in the Pennsylvania Constitution, see PA. CONST. art. I, § 10, citing cases involving intentional prosecutorial misconduct. The JLC likewise has asked us to extend the double jeopardy analysis in Commonwealth v. Smith, 615 A.2d 321 (Pa. 1992), which is applicable to intentional prosecutorial misconduct, to foreclose the Commonwealth from retrying any juvenile matter on the basis of judicial misconduct.³ We need not reach this Pennsylvania constitutional question. This matter is unlike any prior Pennsylvania case examining the parameters of the double jeopardy doctrine. In this review, we consider a broad class of

³ The JLC has also claimed that vacating the adjudications and consent decrees with prejudice is the proper remedy based upon the District Attorney’s Office’s failure to object to or challenge Ciavarella’s actions during the relevant time period, which it alleges amounts to prosecutorial misconduct. The Third Interim Report and Recommendations does not set forth any findings of prosecutorial misconduct, and the JLC filed no exceptions challenging the absence of such findings. Thus, we will not address the argument.

cases; not all of the affected juveniles are represented at present; the Commonwealth has provided no indication of which, if any, of the individual cases it would actually seek to re prosecute; and thus it is unclear which claims of double jeopardy would ripen. The situation at hand is so unique and extreme that it has already warranted exercise of this Court's plenary review pursuant to our King's Bench powers. We award the relief suggested by Judge Grim in the interest of justice and in the exercise of our plenary powers, and we do not pass upon Judge Grim's suggestion that state constitutional double jeopardy principles command that result.

(4) Pursuant to the exercise of this Court's King's Bench powers, and in the interest of justice, we also approve of Judge Grim's recommendation that orders of dismissal with prejudice and expungement of records be entered in those of the "remaining cases" which are final, with copies to be retained under seal in accordance with any other order of court.⁴ We agree with Judge Grim that "neither the victims, the juveniles, nor the community will benefit by having new proceedings" in cases of juveniles who have received final discharge either from commitment, placement, probation or any other disposition and referral, and who have paid all fines, restitution, and fees. In addition, we note that the Commonwealth, in its objections, has presently identified no interest that would be served by permitting re prosecution in these cases.

(5) We accept, in part, Judge Grim's recommendation with respect to those of the "remaining cases" that are not yet final. As for this class of cases, the Luzerne County District Attorney is directed to submit a document under seal to Judge Grim identifying the specific juvenile cases in which it intends to proceed with further delinquency proceedings, and to file a sealed copy of the document with the Supreme

⁴ The remaining cases consist of those juvenile matters adjudicated before Ciavarella where the juvenile had counsel and the juvenile was not committed to either PA Child Care or Western PA Child Care.

Court Prothonotary's Office. The sealed document shall be submitted within thirty (30) days of this Court's order.

(6) This Court authorizes Judge Grim to vacate and dismiss with prejudice those juvenile adjudications and consent decrees in the "remaining cases" that are not identified by the Commonwealth as matters that it would intend to pursue. Judge Grim is further authorized to direct that the records of those juvenile matters be expunged, with copies to be retained under seal in accordance with any other order of court.

(7) With respect to those juvenile matters in which the Commonwealth expresses an interest in exercising its discretion to initiate further delinquency proceedings, Judge Grim shall permit the juvenile to pursue claims of double jeopardy, or any other theory, in support of an argument that reprosecution should not be permitted.

(8) Judge Grim is directed to make a further recommendation to this Court, at the appropriate time, respecting disposition of the cases where a prospect of reprosecution has emerged.

Jurisdiction retained.