

Ann Jorpy
CLERK KOSCIUSKO CIRCUIT COURT

STATE OF INDIANA)
)
COUNTY OF ELKHART)
) CAUSE NO.:
) 43C01-1602-F5-000144

STATE OF INDIANA)
 Plaintiff,)
)
 v.)
)
C. AARON ROVENSTINE,)
 Defendant.)

ORDER DENYING ALTERNATIVE MISDEMEANOR SENTENCING

The Defendant, C. Aaron Rovenstine, was sentenced on May 23, 2017, after his plea of guilty to Intimidation, a Class D felony, pursuant to a written plea agreement with the State of Indiana. The plea agreement called for the dismissal of eight other felony charges. No recommendation or agreement was made as to the sentence to be imposed by the Court. Alternative misdemeanor sentencing (AMS) was open to the Court.

The Court, after hearing evidence and considering the arguments of counsel and the allocution of the Defendant, entered judgment as a Class D felony. The Defendant was sentenced to one year at the Kosciusko County jail, with the entire jail term suspended on 365 days reporting probation. As a condition of probation, the Defendant was ordered to complete 250 hours of community service restitution. The Defendant was further ordered to participate in the Victim Offender Reconciliation Program at the Center for

Community Justice in Elkhart, Indiana. The Defendant was advised that he no longer had the right to carry a firearm.

On May 16, 2018, the Defendant filed a Petition for Alternate Misdemeanor Sentencing Treatment. The State of Indiana objected, and the Court set the matter for hearing. The Court conducted a hearing on June 5, 2018. The Defendant appeared in person and by his attorneys, James Voyles and Jennifer Lukemeyer. The State of Indiana appeared by Special Prosecuting Attorney Nelson Chipman. The victim, Detective Paul Heaton, also appeared.

Counsel advised the Court that the Defendant, through no fault of either Defendant or Detective Heaton, had not yet completed participation in the Victim Offender Reconciliation Program ("VORP"), which was one of the Court-ordered conditions of Defendant's probation. With the agreement of the parties, the Court took the Petition under advisement pending receipt of a final report from VORP. The Court advised that it would provide counsel an opportunity to review the report and to request further hearing. If no further hearing was requested, the Court advised it would rule on the Petition without further notice or hearing.

The Center for Community Justice Victim Offender Reconciliation Program filed a final report with the Court on September 24, 2018, advising that the parties had again met and that the program had been successfully completed by the Defendant. Neither the State of Indiana nor the Defendant has requested a further hearing. The Defendant, on September 26, 2018, moved for a ruling on the Petition for Alternative Misdemeanor Sentencing.

The Court having reviewed the record, and having considered the evidence, arguments, and authority presented, now DENIES alternative misdemeanor treatment for the reasons set out below.

Statutory Basis of Defendant's Petition

Authority for the Court to enter an alternative sentence as a Class A misdemeanor must be derived from one of two statutes: I.C. 35-50-2-7 or I.C. 35-38-1-1.5. The former statute states:

Sec. 7. (b) a person who commits a Level 6 felony ... shall be imprisoned for a fixed term of between six (6) months and two and one half (2 ½) years, with the advisory sentence being one (1) year. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(c) Notwithstanding subsections (a) and (b), if a person has committed . . . the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly.

I.C. 35-50-2-7. The Court must enter conviction of a felony if certain specified statutory conditions exist. None of those conditions applies in this case.

The statute goes on to say that:

[t]he court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection.

(d) Notwithstanding subsections (a) and (b), the sentencing court may convert ... a Level 6 felony conviction ... to a Class A misdemeanor conviction if, after receiving a verified petition as described in subsection (e) and after conducting a hearing of which the prosecuting attorney has been notified, the court makes the following findings:

(1) The person is not a sex or violent offender (as defined in IC 11-8-8-5).

(2) The person was not convicted of a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) that resulted in bodily injury to another person.

(3) The person has not been convicted of perjury under IC 35-44.1-2-1 (or IC 35-44-2-1 before its repeal) or official misconduct under IC 35-44.1-1-1 (or IC 35-44-1-2 before its repeal).

(4) At least three (3) years have passed since the person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D or Level 6 felony.

(5) The person has not been convicted of a felony since the person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D or Level 6 felony.

(6) No criminal charges are pending against the person.

(e) A petition filed under subsection (d) or (f) must be verified and set forth:

(1) the crime the person has been convicted of;

(2) the date of the conviction;

(3) the date the person completed the person's sentence;

(4) any obligations imposed on the person as part of the sentence;

(5) the date the obligations were satisfied; and

(6) a verified statement that there are no criminal charges pending against the person.

Ind. Code § 35-50-2-7.

Under IC 35-50-2-7, the Court may only enter judgment conviction of a Class A misdemeanor at the time of sentencing; or at least three years have passed since the person completed the person's sentence, and satisfied any

other obligation imposed on the person as part of the sentence for the Class D or Level 6 felony, and the person has not been convicted of a felony since the person completed the person's sentence, and satisfied any other obligation imposed on the first as part of the sentence for the Class D or Level 6 felony, and no criminal charges are pending against the person. Additionally, the statute sets out specific requirements for the Petition, namely that it must be verified and set forth:

1. The crime the person has been convicted of;
2. the date of the conviction;
3. the date the person completed the person's sentence;
4. any obligations imposed on the person as part of the sentence;
5. the date the obligations were satisfied; and
6. a verified statement that there are no criminal charges pending against the person.

I.C. 35-50-2-7(e).

I.C. 35-38-1-1.5 Converting Level 6 felony to Class A misdemeanor states:

(a) A court may enter judgment of conviction as a Level 6 felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor if the person fulfills certain conditions. A court may enter a judgment of conviction as a Level 6 felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor only if the person pleads guilty to a Level 6 felony that qualifies for consideration as a Class A misdemeanor under IC 35-50-2-7, and the following conditions are met:

- (1) The prosecuting attorney consents.
- (2) The person agrees to the conditions set by the court.

(b) For a judgment of conviction to be entered under subsection (a), the court, the prosecuting attorney, and the person must all agree to the conditions set by the court under subsection (a).

(c) The court is not required to convert a judgment of conviction entered as a Level 6 felony to a Class A misdemeanor if, after a hearing, the court finds:

(1) the person has violated a condition set by the court under subsection (a); or

(2) the period that the conditions set by the court under subsection (a) are in effect expires before the person successfully completes each condition.

However, the court may not convert a judgment of conviction entered as a Level 6 felony to a Class A misdemeanor if the person commits a new offense before the conditions set by the court under subsection (a) expire.

(d) The court shall enter judgment of conviction as a Class A misdemeanor if the person fulfills the conditions set by the court under subsection (a).

(e) The entry of a judgment of conviction under this section does not affect the application of any statute requiring the suspension of a person's driving privileges.

(f) This section may not be construed to diminish or alter the rights of a victim (as defined in IC 35-40-4-8) in a sentencing proceeding under this chapter.

I.C. 35-38-1-1.5. Except as provided in the statute cited above, the authority of the trial court to reduce a Class D felony conviction to a Class A misdemeanor is limited to the moment of conviction and prior to sentencing. *See State v. Brunner* 947 N.E.2d 411 (Ind. 2011). Indiana law makes no other provision reduction of a Level 6 felony to a Class A misdemeanor.

The Defendant has not indicated under which statute he seeks alternate misdemeanor treatment in this case. The State, framing the issue under I.C.35-50-2-7, objects because the Petition is not verified. The Court adds that the Petition was brought fewer than three years from the date the Defendant completed his sentence. The Court is compelled by the clear mandate of I.C.35-50-2-7 to deny Defendant's unverified and premature Petition.

The Court next addresses the Petition under I.C. 35-38-1-1.5, which permits conversion of the judgment of conviction to a Class A misdemeanor if certain conditions are met.

The plea agreement entered into between the State of Indiana and the Defendant expressly states: "AMS open to the Court." It is not entirely clear if that language in the plea agreement is intended as an expression of consent by the State to reduction of the Defendant's sentence to a Class A misdemeanor at this time. Although I.C.38-1-1.5 does not require a verified petition contain detailed allegations, it does provide that a court may enter a judgment conviction as a Level 6 felony to a Class A misdemeanor if the defendant fulfills certain conditions. The Court must establish the conditions, the prosecuting attorney must consent, and the person must agree to the conditions set by the Court. Obviously, the defendants in such cases must not violate a condition set by the court and must fulfill such conditions in a timely manner.

Arguably the consent of the prosecuting attorney, the conditions set by the Court, and the agreement of the Defendant to those conditions, are implied by the plea agreement and the terms and conditions of probation set by the Court. But the Court did not set the terms of probation as conditions of an agreed reduction of the conviction to a Class A misdemeanor. No promise

or representation was made or intimated that the Court would reduce the conviction from a felony. For the sake of argument, the Court assumes, without deciding, that the parties intended the plea agreement to fall under I.C. 35-38-1-1.5.

The Court turns now to the merits of the Petition for Alternate Misdemeanor Sentencing. All the considerations addressed at the time of the Defendant's original sentencing are relevant to this issue as well. The Defendant, C. Aaron Rovenstine, has carried out an exemplary life of service until the events that led up to his conviction as a Level 6 felon. In addition to his service as a law enforcement officer, including almost two terms as the elected Sheriff for Kosciusko County, the Defendant has been actively involved in service to his community through his church and service club.

This criminal offense is a shocking departure from his normal standards of behavior. The Court believes that the Defendant is genuinely remorseful for his conduct. Weighed against these mitigating circumstances is the egregious breach of public trust that comes from the elected sheriff committing a felony offense against another law enforcement officer. This Court believes that the violation of public trust would have been even more severe if the victim had been an average citizen without the support of another law enforcement agency. This Court also cited the fact that this was not an isolated incident where threatening comments were made in the heat of the moment. On the contrary, it appears that the Defendant used his position of trust in the community to create personal and professional difficulties for the victim.

When the Defendant was originally sentenced, the Court felt strongly that reduction of the offense to a Class A misdemeanor would have depreciated the seriousness of the offense. The Court considered a term of

imprisonment for Defendant. In part because the policy of the State of Indiana to house Level 6 felons in county jails would have resulted in the Defendant serving his sentence in a jail over which he had been the sheriff, the Court elected not to incarcerate Defendant. Had the Defendant been convicted of any of the eight felonies that were dismissed under the terms of the plea agreement, the Court would have incarcerated the Defendant without hesitation.

The Court is mindful that the victim in this case, Detective Heaton, feels that some in the community, including some officers with the Kosciusko County Sheriff's Department, continue to be upset with him for having initiated the complaint that led to charges being brought against the Defendant. The Court has no reason to believe that the Defendant is responsible for such conduct by others. The Defendant in this case has never suggested that he did nothing wrong. On the contrary, the Defendant pleaded guilty and took personal responsibility for his criminal acts. His conduct since sentencing has been consistent with his expression of remorse at the time he was sentenced by this Court.

The Court also notes that the Defendant has fully complied with the terms and conditions of his sentence in this case. All of those obligations were met in a timely fashion, except the completion of the Victim Offender Reconciliation Program meetings with the victim. The Court has already noted that neither the Defendant nor the victim is responsible for that delay. In fact, the Defendant has done more than the Court required of him. The Court finds it highly unlikely that this Defendant would ever commit another criminal offense. Court is unaware of any pending criminal charges or any investigation of criminal charges against the Defendant that would rule out reduction of this conviction to a misdemeanor.

One of the key considerations for the Court at the time of sentencing was the personal impact of a felony conviction on the Defendant's reputation. The humiliation of suffering a felony conviction as an elected sheriff (and the son of another elected sheriff) is no small thing. In addition, the Defendant was disqualified from his position as the elected sheriff of Kosciusko County as a result of his conviction of a felony in this case. Indiana law makes it quite clear that the Defendant is barred from seeking further public office in this State, even if the Court reduces his conviction to a Class A misdemeanor. I.C.3-8-1-5(d)(6).

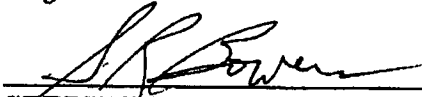
The Court has another significant concern if the defendant's sentence is reduced to a Class A misdemeanor. So long as the Defendant's sentence remains a felony, he is not eligible for expungement of the record of conviction record of conviction under I.C. 35-38-9-3. That statute expressly states that the section does not apply to an elected official convicted of an offense while serving the official's term or as a candidate for public office. I.C. 35-38-9-3(b)(1). But that does not appear to be the case if the Court reduces the Defendant's conviction to a misdemeanor. The statute governing expungement of misdemeanor convictions, including misdemeanor convictions resulting from a reduction to a misdemeanor does not include the same exception for elected officials. I.C. 35-38-9-2. This section does not apply to a person convicted of two or more felony offenses that involve unlawful use of a deadly weapon and were not committed as part of the same episode of criminal conduct or by a sex or violent offender as defined in I.C. 11-8-8-5. Construing these two statutes together, the Court concludes that Defendant would be eligible to seek expungement of his conviction if the same is reduced a Class A misdemeanor.

The question then becomes if the Defendant runs for political office in Indiana and his only criminal record has been expunged, is his candidacy still barred by I.C.3-8-1-5? No Indiana appellate court has yet addressed this issue. Because of the unusual set of circumstances that would give rise to a case calling for an interpretation of the law in this regard, it is unlikely that Court will have the benefit of guidance from the Indiana Court of Appeals or the Indiana Supreme Court any time in the foreseeable future.

This Court is unwilling to reduce Defendant's conviction to a misdemeanor if doing so would allow him to ever again run for political office in the State of Indiana. The Court is similarly unwilling to reduce the Defendant's conviction to a misdemeanor if doing so would potentially lead to the expungement of any conviction record in this case. Only if these impediments were removed and all the requirements of I.C. 35-50-2-7 were met, would the Court consider reduction of the conviction to a Class A misdemeanor.

It is therefore ORDERED that the Defendant's Petition for Alternative Misdemeanor Sentencing is DENIED.

SO ORDERED THIS 28th DAY OF September, 2018.


STEPHEN R. BOWERS, Judge
Elkhart Superior Court No. 2