

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

JUVENILE COURT DEPARTMENT
TAUNTON JUVENILE COURT
YOUTHFUL OFFENDER NO.: 15YO0001NE

COMMONWEALTH

V.

MICHELLE CARTER

COMMONWEALTH'S MOTION TO REVOKE STAY OF SENTENCE

NOW COMES THE COMMONWEALTH in the above-captioned matter and respectfully request that This Honorable Court REVOKE the stay of sentence, previously imposed on August 3, 2017. In support of this request, the Commonwealth relies on the decision issued by the Supreme Judicial Court on February 6, 2019, affirming the conviction of the defendant. A copy of the slip opinion is attached.

BACKGROUND

On June 16, 2017 the defendant was convicted, after a jury waived trial of Involuntary Manslaughter in the death of Conrad Roy III. At the conclusion of her sentencing hearing on August 3, 2017, the defendant requested a stay of the execution of her sentence. The court, indicating that it had prepared itself for such a request, stayed the committed period of incarceration based on the consideration that the incarcerated sentence was short and the defendant's case was worthy of presentation to an appeals court.

During the pursuit of her appeal, the defendant requested that the Supreme Judicial Court take direct appellate review of her conviction, thereby bypassing the Appeals Court. Notwithstanding that the Court previously addressed many of the defendant's claims in her interlocutory appeal, the Commonwealth did not oppose the defendant's application for direct appellate review and the appeal was heard directly by the Court.

DISCUSSION

As this Court acknowledged at the time the stay was imposed, in Massachusetts stays of sentence are not the general practice. Mass. R. Crim. P. 31, reporters note, [Tr. Vol. X, 40]. A decision to impose a stay is in the sound discretion of the trial judge. E.g. Commonwealth v. Hodge, 380 Mass. 851, 854 (1980). In determining whether to order a stay, the court must consider the likelihood of the defendant's success on appeal and whether the defendant's release is adverse to the public safety. E.g. Commonwealth v. Mattier, 474 Mass. 227, 228 (2016). By operation of the rule, a stay is automatically terminated upon issuance of a rescript opinion affirming the conviction, unless an appellate court orders an extension. Mass. R. Crim. P. 31.

Here, although the rescript opinion has not yet issued, the history of the case to present establishes that, at least as of this moment, the defendant has no issue worthy of presentation to any court in the Commonwealth. In addition to having been found guilty beyond a reasonable doubt, the Supreme Judicial Court has twice held that the defendant's claims of errors or defects are not meritorious. The acts that make up this indictment took place almost five years ago. The defendant has been on a stay of her sentence for more than 18 months.

Weighing further against unnecessary delay of her incarceration, is the evidence that the defendant does pose the potential for harm to herself or others while she is in the community. The evidence at trial and in the pre-sentence report established that the defendant deceived and manipulated not only Conrad Roy for her own purposes, but almost everyone she came into contact with—Conrad’s family and friends and her own family, friends and community. As the Commonwealth pointed out at the sentencing hearing, the defendant although ostensibly in therapy at the time of the killing and after, was not engaged and not honest and she simply had made no attempts to mitigate her dangerous behavior.

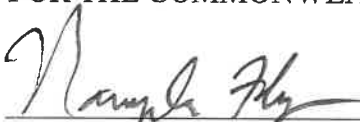
CONCLUSION

WHEREFORE, the Commonwealth respectfully requests that This Honorable Court REVOKE the stay of execution of sentence.

RESPECTFULLY SUBMITTED,

FOR THE COMMONWEALTH

BY:



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