

DEFENDER ASSOCIATION OF PHILADELPHIA

BY: Ellen T. Greenlee, Defender and
Assistant Defender

Identification No. 00001

1441 Sansom Street

Philadelphia, PA 19102

(215) 568-3190

Attorney for

COMMONWEALTH OF PENNSYLVANIA : THE COURT OF COMMON PLEAS
CRIMINAL TRIAL DIVISION
: NO.

VS.

: CHARGES:

PP#

: HEARING DATE:
HEARING ROOM:

RULE TO SHOW CAUSE

AND NOW, this day of , 2007, a
Rule is issued on the Commonwealth to appear on the
day of , 2007, in Courtroom 1108,
Criminal Justice Center, at a.m., to show cause why
the attached motion should not be granted.

BY THE COURT:

J.

that transfer of the instant case to Juvenile Court will serve the public interest.

5. In addition, Petitioner is in need of a program of supervision, care and rehabilitation. Petitioner is amenable to treatment, supervision and rehabilitation within Juvenile Court jurisdiction, under the criteria of 42 Pa.C.S.A., Section 6355 (a) (4) (iii) (A-G).

WHEREFORE, Petitioner, by his counsel, respectfully requests that the above Motion to Decertify be granted and the case(s) remanded to Juvenile Court for trial.

Respectfully submitted,

Assistant Defender
Juvenile Special Defense Unit

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ORDER

AND NOW, this day of , 2007, it is
hereby ORDERED and DECREED that Petitioner's Motion to Decertify
be granted.

BY THE COURT:

J.

VERIFICATION

The facts set forth in the foregoing are true and correct to the best of the undersigned's knowledge, information and belief and are verified subject to the penalties for unsworn falsification to authorities under Pennsylvania Crimes Code §4904 (18 Pa. C.S. § 4904).

SIGNATURE

DEFENDER ASSOCIATION OF PHILADELPHIA

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, Assistant Defender

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Attorney for

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS
VS. : CRIMINAL TRIAL DIVISION
: C.P.
: CHARGES:
: HEARING DATE:
PP# : HEARING ROOM:

MOTION TO DECERTIFY

Petitioner, , by his attorneys, ,Assistant
Defender, and Ellen T. Greenlee, Defender, respectfully represents
the following:

1. Petitioner is years old and his date of birth is
2. Petitioner was arrested on , and charged as
captioned above.
3. Petitioner was Held for Court on the above charges
on , in Room , Criminal Justice Center.
4. The instant case is not properly in adult court.
Petitioner was arrested under the "Direct Filing" legislation of
the Juvenile Act, effective March 18, 1996 (42 Pa.C.S. §6301
et.seq.). Section 6302 now provides that certain designated
felonies when committed by a person 15 years old or older will be

automatically under the jurisdiction of adult court and the defendant will be treated as an adult, unless or until the case is decertified.

Section 6302(D) provides that a robbery, when committed with a "deadly weapon" (as defined in 18 Pa.C.S. §2301) will place the defendant automatically in adult court. Note that this differs from what is required to establish a robbery under §3701 (1)(i)(ii)(iii) which merely requires the person be put in fear of immediate serious bodily injury, and not the actual use of a deadly weapon.

It is clear that a robbery as a felony of the first degree can be committed with a toy gun if the victim is legitimately put in fear of death or immediate serious bodily injury. Proof of the weapon's ability to "produce death or serious bodily injury" is not necessary at the preliminary hearing to establish an F-1 robbery. The requirements of §6302 are clearly NOT identical. The language in the statute which refers to the designated crimes being committed with a deadly weapon would be unnecessary unless the legislature intended an additional requirement beyond the mere elements of the crimes charged. In order for a case to be under the automatic jurisdiction of the adult court, an actual deadly weapon must be used. The Commonwealth must present some evidence beyond the victim's mere assertion that a gun was used to have Bills of Information filed and a juvenile automatically tried as an adult.

In the instant case no gun was recovered. With no evidence of operability or whether it is an instrument capable of causing

death or serious bodily injury, the Commonwealth cannot show a deadly weapon was used. As such, they cannot meet their burden, at a prima facie level, of establishing original jurisdiction in adult court under §6302. The Commonwealth may still seek certification from the juvenile system without proof of a deadly weapon, but original jurisdiction in the adult system cannot be established.

5. Petitioner further avers that, at a Decertification Hearing held in compliance with Section 6322 of The Juvenile Act, he/she will be able to establish that, by a preponderance of the evidence, transfer of the instant case to Juvenile Court will serve the public interest.

6. In addition, Petitioner is in need of a program of supervision, care and rehabilitation. Petitioner is amenable to treatment, supervision and rehabilitation in a juvenile facility under the criteria of 42 Pa.C.S.A. §6355(a)(4)(iii)(A-G).

WHEREFORE, Petitioner prays that this Motion to Transfer to Juvenile Court be granted and the case transferred to the Juvenile Court System.

Respectfully submitted,

Assistant Defender
Juvenile Special Defense Unit