

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
DOCKET NO. 459-2021-CR-00606

9TH CIRCUIT COURT
DISTRICT DIVISION – NASHUA

STATE OF NEW HAMPSHIRE

v.

LAURIE ORTOLANO

**CITY OF NASHUA'S MOTION TO INTERVENE
AND BE HEARD ON DEFENDANT'S PETITION TO ANNUL CONVICTION**

NOW COMES the City of Nashua ("the City") and moves to intervene in the above referenced matter. The City respectfully requests to be heard on the pending Petition to Annul Conviction and have its objection noted for the record. In support of this motion, the City notes that the Defendant's Petition is untimely and is appears not to be aimed at rehabilitation but rather to gain a tactical advantage in federal claim recently filed by the Defendant against the City, several City officials and employees, and private parties.

PROCEDURAL HISTORY

Defendant was originally charged with a class A misdemeanor of criminal trespass, which is punishable by up to one year in jail. Though not within the definition of "crime" as defined by RSA 21-M:8-k, so-called victims of criminal trespass offenses are routinely consulted by the Nashua Police Department and kept informed of the prosecution as it proceeds.¹ This is consistent with the rights afforded to crime victims. See RSA 21-M:8-k, II (crime victims entitled to: be informed of criminal justice process/progress, notice of court hearings including post-conviction

¹ Based on information and belief, past practice of the Nashua PD Legal Bureau has been to notify and/or subpoena the property owner to attend pre-trial hearings in criminal trespass prosecutions. The NPD Legal Bureau also routinely includes in its plea offers a condition that the Defendant must stay away from the involved property for a certain period of time.

proceedings, attend court hearings and be heard regarding sentencing, consultation with prosecution as to plea negotiations, etc.).

Consistent with past practice, the City was consulted about plea negotiations with the Defendant prior to the resolution of this case. At the City's request, the condition that Defendant not enter the "legal bureau at City Hall without an appointment for one year" was included in the offer that Defendant ultimately accepted.² This condition was adopted and enforced by the Court.

During the course of the prosecution, the City was notified of Defendant's arrest, her bail conditions, and her initial arraignment date as set by the bail commissioner. As mentioned, the City was consulted as to potential terms of any negotiated resolution. After the Defendant pleaded guilty, the City was notified of this, to include the terms of her sentence. In August 2021, Nashua PD Legal Bureau contacted the City and inquired as to its position on Defendant's Motion to Compel State to Honor Its Agreement. Nashua PD Legal Bureau further agreed to notify the City of any hearing on that motion. Ultimately, undersigned counsel attended such a hearing and represented the position of the City.

On June 17, 2022, Defendant filed Assented to Motion to Conditionally Discharge the Conviction. The City was not notified or consulted regarding the filing. Therein, Defendant represented that the "conviction will be an impediment to [her] obtaining a Portuguese Visa." The Defendant asserted that she and her husband were going through the process of obtaining visas to reside in Portugal.³ If it had been consulted, the City would have objected to this motion because:

² See Acknowledgement and Waiver of Rights form signed by Defendant and her counsel on July 8, 2021.

³ Though this was the reasoning initially provided to Nashua PD Legal Bureau, based on information and belief, the Legal Bureau was later informed that the Defendant was intending to visit her son in Portugal, not reside there. According to the US Embassy & Consulate in Portugal, a visa is not needed for any visit lasting less than 90 days. <https://pt.usembassy.gov/u-s-citizen-services/additional-resources-of-u-s-citizens/travelling-to-portugal/> (last visited 9/7/2022).

(1) it constitutes an illegal re-sentencing; and (2) does not serve the best interests of the City or society. Nonetheless, the motion was granted.

Based on information and belief, Defendant has filed a Petition to Annul her conviction in this matter. As an interested party, and the owner of the property to which the Defendant pleaded guilty to trespassing, the City respectfully requests this Honorable Court to grant the City's motion to intervene, and allow the City to be heard on the pending Petition to Annul Conviction.

The City objects to the granting of the Petition to Annul Conviction as it is not timely brought and the conviction is not yet eligible for annulment, but even if it were, annulment will not assist in Defendant's rehabilitation nor will it be consistent with the public welfare.

ARGUMENT

The Defendant's Petition should be denied as untimely and unsupported.

A. Petition is not timely brought

Defendant pleaded guilty and was sentenced on July 12, 2021. The negotiated plea agreement, as accepted by this Court, reduced the offense from a class A misdemeanor to a violation. Upon her plea of guilty, this Court convicted the Defendant of violation level criminal trespass and sentenced her to a fine, partially suspended for a period of one year. The suspension was conditioned on Defendant remaining of good behavior and not entering the legal department at City Hal without an appointment. Accordingly, this conviction is not eligible for annulment until one year after the suspension period lapsed. RSA 651:5, III(a)(2). Based on the date of conviction, this conviction will not be eligible for annulment until July 12, 2023.

Defendant's Assented to Motion to Conditionally Discharge the Conviction, and resulting order, does not change this analysis. RSA 651:2, III-a sets forth the potential sentences for a violation level offense. The sentences available are conditional discharge, or unconditional

discharge, or a fine. RSA 651:2, III-a. In this matter, the Court imposed a fine and partially suspended it on certain conditions for a defined period of time. Though the Court has broad discretion in sentencing, by the conclusion of the proceeding, “a Defendant and the society which brought him to court must know in plain and certain terms what punishment has been exacted by the court as well as the extent to which the court retained discretion to impose punishment at a later date and under what conditions the sentence may be modified.” *Stapleford v. Perrin*, 122 N.H. 1083, 1087 (1982).

Sentences are not left open to modification indefinitely because doing so “does not provide the Defendant or society with a sentence in plain and certain terms.” *State v. Ingerson*, 130 N.H. 112, 116 (1987) (internal quotations excluded). The original sentence was clear and unambiguous, and did not allow for modification at a later date. Accordingly, the Court did not have the authority to change the sentence from a suspended fine to a conditional discharge. *State v. Burgess*, 141 N.H. 51, 53 (1996) (original sentence was clear and did not include term of probation, therefore trial court erred in ordering probation at deferred sentence hearing); *see also State v. Huot*, 136 N.H. 96, 99-101 (1992) (original sentence clearly made suspended sentence concurrent and trial court erred in imposing sentences consecutively); *State v. Timmons*, 130 N.H. 831, 836 (1988) (trial court erred in imposing deferred sentence early when sentencing order clearly allowed Defendant two years to complete rehabilitation program).

The granting of Defendant’s motion to conditionally discharge her conviction constituted an unlawful re-sentencing and, therefore, is void as a matter of law. The original sentence, which was partially suspended for one year, must stand. RSA 651:5 renders this conviction ineligible for annulment until one year after the completion of all terms and conditions, including the one year

of good behavior. The Court should dismiss, without a hearing, Defendant's petition to annul as untimely. See RSA 651:5, I & VIII.

B. Annulment will not assist in Defendant's rehabilitation nor will it be consistent with the public welfare

Should the Court consider Defendant's petition timely, it should still be denied as annulment will not assist in the Defendant's rehabilitation nor will it be consistent with public welfare. Since the day of the criminal trespass incident, January 22, 2021, the Defendant has repeatedly discussed the incident in various public forums, often mischaracterizing the nature of her actions and has repeatedly asserted she did nothing wrong, despite pleading guilty.

- January 22, 2021 – Defendant posted about the incident on Facebook in “The Nashua Scoop.”⁴ See Exhibit A (includes comments).
- January 22, 2021 – Defendant emailed contents of “The Nashua Scoop” post to Board of Alderman, Board of Assessors, the Mayor's Office and others. See Exhibit B.
- February 2, 2021 – Defendant emailed a Right-to-Know request to the City and copied the Mayor's Office, Assessing Department, State Department of Revenue Administration and Board of Alderman, claiming she was almost arrested over helping senior citizens. See Exhibit C.
- March 9, 2021 – Defendant spoke at public Board of Alderman meeting asserting what the City did (reported her criminal conduct) was horrendous. See Exhibit D (excerpt only).
- April 29, 2021 – Defendant posted on Facebook in “The Nashua Scoop,” alleging Attorney Leonard fabricated events related to the criminal trespass. See Exhibit E (includes comments).

⁴ At all relevant times, “The Nashua Scoop” was as a private Facebook group and had nearly 13,000 members.

- June 30, 2021 – Defendant spoke at public Board of Assessors meeting asserting her arrest was about getting abatement applications date stamped (a service NOT provided by Office of Corporation Counsel) and claiming lack of City response to her questions was “some kind of slamming punishment that goes with the arrest just to . . . blow me off.” See Exhibit E, pgs. 7-8.

The Defendant did not contest her arrest or the basis for the criminal charge in court. Rather, she pleaded guilty to her conduct. Despite this, she continued to mischaracterize the incident in various public forums, after pleading guilty in July 2021.

- July 22, 2021 – Defendant posted on good-gov.org, a website owned and maintained by Defendant, describing her arrest as “shameful,” “unwarranted,” “bogus” and asserted that it “should have never happened.” See Exhibit G (includes comments).
- July 22, 2021 – Defendant posted contents of above referenced blog to “The Nashua Scoop,” and emailed same to Board of Alderman, Board of Assessors, and the Mayor’s Office, among others. See Exhibits H & I.

It is clear from these public representations that the Defendant still has not accepted responsibility for her actions and continues to blame others. This, despite not contesting the arrest or basis of the criminal trespass charge in court. To grant the annulment would severely impede the City’s ability to correct the record each time the Defendant misrepresents the truth.⁵ It would be a miscarriage of justice to annul the Defendant’s conviction knowing that she continues to pervert the facts and circumstances surrounding her conviction. The Defendant is not rehabilitated

⁵ RSA 651:5, IX(b) allows law enforcement officers to use records or information of an annulled conviction in defense of a civil suit “arising out of the facts of the arrest.” However, the City and many executive level employees other than law enforcement officers are being sued in federal court. Additionally, many untrue representations are made outside the context of a lawsuit.

and society will suffer the resulting harm of Defendant's inaccurate representations going unchecked.

C. Annulment will not assist in Defendant's rehabilitation nor will it be consistent with the public welfare

On August 23, 2022, Defendant filed 67 page, ten Count Complaint against the City and several of its officials and employees, including the Mayor, Corporation Counsel, and two current or former police officers. *Laurie Ortolano v. The City of Nashua, et al*, U.S. District Court N.H., Docket 22-cv-00326-LM. Therein, Defendant references her arrest, which she continues to mischaracterize as to the level of offense, referring to the original charge as a "*felony trespass*" in a federal lawsuit filed against the City. The Defendant also asserts in that lawsuit that the City "found a way to cause the municipal police department . . . to actually arrest her." *Id.*

The timing of the instant Petition suggests Defendant's purpose is less about advancing societal goals and more about securing an advantage in the pending federal court case. In any event, however, granting Defendant's petition to annul her conviction while the federal case is pending would vindicate her in her attempts to obfuscate the truth – that Defendant pleaded guilty to violation level criminal trespass for conduct which occurred on January 22, 2021- and unfairly hamper the City's (and other defendants') ability to fully defend itself in the federal court.

WHEREFORE the City of Nashua prays:

- A. Grant the City's Motion to Intervene;
- B. Allow the City to be heard on Defendant's Petition to Annul Conviction;
- C. Dismiss Defendant's petition to annul conviction; and
- D. Make such other and further order as equity and justice require.

Respectfully submitted,

THE CITY OF NASHUA

By its Attorneys,

CULLEN COLLIMORE SHIRLEY PLLC

Date: September 12, 2022

By:



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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2022, a copy of the foregoing City of Nashua's Motion to Intervene and Be Heard on Defendant's Petition to Annul Conviction was served via the first class mail to the Nashua Police Department and Defendant's counsel of record, Timothy Goulden, Esq.

Date: September 12, 2022



Brian J.S. Cullen