

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

COMMONWEALTH :
 :
 v. : CP-51-CR-0006367-2016
 :
 DEMETRIUS D. MAYFIELD :

THE COMMONWEALTH'S MOTION FOR RECONSIDERATION

The Commonwealth respectfully requests that this Court reconsider its September 19, 2018 order appointing a special prosecutor. The grounds for this motion are set forth in the accompanying memorandum of law.

Respectfully Submitted,

/s/ Peter Carr

Peter Carr

Paul M. George

Assistant District Attorneys

PHILADELPHIA DISTRICT ATTORNEY'S OFFICE

Three South Penn Square

Philadelphia, PA 19107

(215) 686-5734

peter.carr@phila.gov

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

COMMONWEALTH :
 :
v. : CP-51-CR-0006367-2016
 :
DEMETRIUS D. MAYFIELD :

**THE COMMONWEALTH’S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION FOR RECONSIDERATION**

I. INTRODUCTION

While on probation for violating 18 Pa.C.S. § 6105 by unlawfully possessing a firearm, defendant was arrested on drug charges,¹ which are docketed at CP-51-CR-00062474-2018.² The District Attorney’s intention, consistent with the preferred approach of the Pennsylvania Supreme Court precedent and the policy he has established for his office, is to wait until the drug charges result in a verdict before seeking revocation of defendant’s probation.

This Court, evidently dissatisfied with the District Attorney’s exercise of discretion (and the Supreme Court’s guidance on the issue), entered an order on

¹ This Court sentenced defendant to eleven-and-one-half to twenty-three months of incarceration, to be followed by three years of probation, on May 15, 2018.

² The District Attorney filed a bill of information in the drug case on September 10, 2018.

September 19, 2018, purporting to replace the District Attorney with a “special prosecutor” because the District Attorney would not immediately seek revocation of defendant’s probation. As set forth below, that ruling exceeds this Court’s authority.

II. ARGUMENT

The District Attorney has the discretion to wait until the conclusion of defendant’s pending criminal case before seeking probation revocation; this Court has no authority to replace him with a special prosecutor based on the Court’s dissatisfaction with his decision to exercise that discretion.

The District Attorney is responsible for “the investigation of crime and the apprehension and prosecution of persons charged with or suspected of the commission of crime” in Philadelphia. 16 P.S. § 7708. With that responsibility necessarily comes the discretion to choose whether and when to investigate and prosecute potential crimes, and what sentences to seek in the event of successful prosecution. *Commonwealth v. Stipech*, 652 A.2d 1394, 1295 (Pa. 1995); *Commonwealth v. Pittman*, 528 A.2d 138, 143 (Pa. 1987); *Thomas v. City of Philadelphia*, 804 A.2d 97, 106 n.13 (Pa. Cmwlth. 2002).

In this case, the District Attorney has chosen to exercise his discretion by waiting until the resolution of defendant’s new charges before potentially seeking revocation of probation. Longstanding Pennsylvania Supreme Court precedent

establishes that to be a permissible exercise of discretion. *See Commonwealth v. Burrell*, 441 A.2d 744, 745-46 (Pa. 1982) (“[I]t is not unreasonable for a probation revocation hearing to be postponed pending adjudication of criminal charges which are the basis for the revocation, even if that postponement results, as here, in a revocation hearing held after the expiration of the probationary sentence.”); *see also Commonwealth v. Infante*, 888 A.2d 783 (Pa. 2005) (“[I]t may be proper to defer the VOP hearing until after the outcome of the trial for new charges. ... “[T]he rationale underlying deferral is to ‘avoid[] the possibly unjust result of revoking probation, only to find later that the probationer has been acquitted of the charges that prompted the revocation hearing.’”) (quoting *Commonwealth v. Brown*, 469 A.2d 1371, 1376 (Pa. 1983)).

Indeed, the Supreme Court has made clear that it **prefers** for the Commonwealth to wait for the disposition of any new charges before seeking revocation. *See Infante*, 888 A.2d at 793 (reiterating Supreme Court’s “stated **preference** for deferral of VOP sentencing until the final outcome of any new criminal charges”) (emphasis added). There is no basis in law upon which this Court may replace the District Attorney with a “special prosecutor” merely because the District Attorney has chosen to exercise his discretion in the manner preferred by the Supreme Court. If defendant is found beyond a reasonable doubt

to have committed new crimes, the Commonwealth intends to hold him accountable for those offenses. But this Court has no authority to usurp the District Attorney's decision as to the order in which he prosecutes cases.

The order at issue represents an error of law and a manifest violation of the constitutional separation of powers. *Cf. Pittman*, 528 A.2d at 1443 (explaining that trial court may not usurp prosecutor's discretionary decision regarding what sentence to seek). The Commonwealth therefore respectfully requests reconsideration.³

³ The Commonwealth intends to file a notice of appeal pursuant to Rule 3331(a)(1) of the Pennsylvania Rules of Appellate Procedure, which authorizes the Commonwealth to appeal an order relating to "the appointment, supervision, administration or operation of a special prosecutor." Nevertheless, this Court may grant reconsideration of its own order and withdraw that order, which would effectively moot the Commonwealth's appeal. Pa.R.A.P. 1701(b)(3).

III. CONCLUSION

This Court should reconsider its order appointing a special prosecutor.

Respectfully submitted,

/s/ Peter Carr

Peter Carr

Paul M. George

Assistant District Attorneys

PHILADELPHIA DISTRICT ATTORNEY'S OFFICE

Three South Penn Square

Philadelphia, PA 19107

(215) 686-5734

peter.carr@phila.gov