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IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND
STATE OF MARYLAND

vs. Criminal Trial No.
CT07-0356X
MYLES SPIRES,
Defendant.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Hearing)

Upper Marlboro, Maryland
Tuesday, March 31, 2009

BEFORE:
HONORABLE MELANIE M. SHAW GETER, Associate Judge

APPEARANCES:
For the State:
SHELLY GLENN, ESQ.
For the Defendant:
WILLIAM BRENNAN, ESQ.

ROBIN WATSON,
Official Court Reporter
P. O. Box 401
Upper Marlboro, Maryland

1 THE DEPUTY CLERK: Criminal Trial 07-0356X,
2 State of Maryland versus Myles Spires, Jr.

3 THE COURT: Everyone identify yourselves for
4 the record, please.

5 MS. GLENN: Good morning, Your Honor. For the
6 record, Shelly Glenn on behalf of the Office of the State
7 Prosecutor.

8 MR. BRENNAN: William Brennan on behalf of the
9 defendant, Myles Spires. Mr. Spires is standing to my
10 right, Your Honor.

11 THE COURT: This matter was originally set in
12 for the Department of Parole and Probation's request to
13 have an early termination of his probation. Then I
14 requested that counsel be involved. Now, it's set in for
15 a reconsideration.

16 MR. BRENNAN: That's correct, Your Honor.

17 THE COURT: Okay. How are we proceeding?

18 MR. BRENNAN: I previously filed a motion for
19 reconsideration, which the Court is holding under
20 advisement. I would now move, Your Honor, that my client
21 be granted probation before judgment, pursuant to
22 Maryland Criminal Code -- excuse me, Maryland Code
23 Procedure Article 6-220. The reasons, Your Honor, is
24 somewhat set forth in the reasons put forth in why my
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client's probation should be terminated early.

1 The probation agent wrote, and I know the Court
2 has seen this, that while Mr. Spires was on supervised
3 probation, he had certain requirements to meet, one of
4 which was to perform 240 hours of community service, which
5 he has done. He paid restitution. He paid Court fees. He
6 has maintained a crime free lifestyle. The probation
7 agent, without request from counsel, has urged that the
8 probation -- I did not speak to the probation agent.

9 THE COURT: I know. You didn't even know about
10 it.

11 MR. BRENNAN: I didn't even know about it, Your
12 Honor. So, I think it's an indication of a citizen, Your
13 Honor, who has done everything that the Court asked of
14 him. He actually served some jail time in this case, if
15 the Court remembers early on. He served some jail time,
16 paid the fines, paid the restitution, and performed
17 community service. I think the Court can make findings,
18 Your Honor, that it's in the best interest of the
19 defendant and public welfare to grant probation before
20 judgment pursuant to Maryland Criminal Procedure Article
21 6-220. I will say further, Your Honor, it requires that my
22 client waive certain rights in writing. I think the Court
23 has a form. He's prepared to waive his right to
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1 appeal and withdraw his appeal, Your Honor, should the
2 Court grant the motion.

3 THE COURT: I'm not sure that the statute says
4 a writing.

5 MR. BRENNAN: Well, I have --

6 THE COURT: I thought it said that the Court
7 has to advise him, but maybe it does.

8 MR. BRENNAN: I have a statute here under b (1)
9 (ii) says, "The defendant gives written consent after
10 determination of guilt or acceptance of a nolo contendere
11 plea."

12 THE COURT: Can I see it because I thought that

13 MS. GLENN: It is usually just signing the
14 paperwork, Your Honor --

15 MR. BRENNAN: It's just signing the paperwork,
16 Your Honor. But, I think usually what the form is, Your
17 Honor, there's a probation before judgment form that's
18 handed to the defendant, and there's a consent on it that
19 must be executed by the defendant, Your Honor.

20 THE COURT: Yes, on the form. I thought you
21 were trying to get me to do a separate document.

22 MR. BRENNAN: No, Your Honor. It's a consent
23 that must be executed on the form, Your Honor.

24 THE COURT: I understand. All right. I have
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1 done this very rarely in the Circuit Court.

2 MR. BRENNAN: I can appreciate that.

3 MR. BRENNAN: In the District Court I would
4 have really understood that. Go ahead.

5 MS. GLENN: Your Honor, on behalf of the State as
6 you know Mr. Spires is represented by separate counsel for
7 purposes of appellate issues. An appeal was filed. I spoke
8 with his appellate attorney, whose name is Brian Zaven
9 (ph.), from the office of the Public Defender. With that
10 appeal pending, the State has filed a response. In light
11 of that, we've spoken to Mr. Brennan, and the State is now
12 agreeing to recommend the PBJ modification of sentence at
13 this point.

14 I have spoken with mayor of Forest Heights,
15 Ms. Andrea McCutcheon. While she was certainly not happy
16 to hear the news originally, I explained the pros and
17 cons, and the whole situation. She said fine. I had
18 explained, obviously, that any time we go to trial, who
19 knows what could happen. So, she agreed on behalf of the
20 city that they want the definite guilty with the PBJ now
21 entered with the agreement, obviously, that we're not
22 going to have any issue about trying to get back any
23 restitution that has already been paid.

24 The only other thing, as Your Honor is probably
25 aware, in small municipalities, in small cities, in P.C.

1 County, politics becomes very personal. What
2 Ms. McCutcheon said is that she and the council are just
3 concerned that, and I told her I would express this to the
4 Court -- they're okay with the PBJ disposition, but would
5 ask that the Court order for any period of probation that
6 he be ordered not to harass or file frivolous lawsuits.
7 Their concern is that he's going to think -- her words
8 were he's going to think he got off scout free, and he's
9 going to come back and try to sue us for this.

10 I tried to explain that I don't think that was
11 going to happen, basically, because there's still a
12 guilty finding of a PBJ, it's not that he got off. She
13 understood it on the one hand, but she still said, well,
14 I still think he's going to come back and harass us. I
15 told her I would represent that to the Court. I explained
16 to her that, obviously, you may order that as some sort
17 of condition of probation or you may not, but she's okay
18 -- the city is okay with the PBJ because they don't want
19 to risk going through another trial, but they're
20 concerned about harassment.

21 THE COURT: Well, is there any civil litigation
22 pending?

23 MS. GLENN: I don't believe so.

24 MR. BRENNAN: I don't believe there's any
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1 pending, certainly none that I'm representing Mr. Spires
2 on. My client has advised me that it's all closed, Your
3 Honor.

4 I saw parenthetically Mr. Ticer, who is still
5 the city attorney in the next courtroom because I thought
6 he was actually here on this, Your Honor, since he
7 represents the city. He didn't indicate to me that there
8 was anything pending, although I didn't specifically asked
9 him, I just sort of asked generally what's going on down
10 in Forest Heights.

11 THE COURT: Well, I presume that the city is
12 not pursuing any litigation against him.

13 MS. GLENN: No. They want this to end too.

14 THE COURT: Oh.

15 MR. BRENNAN: Your Honor, I will say this, I
16 think counsel for the State is correct, that small town
17 politics sometimes become very personal. Whether or not
18 my client chooses to, for example, run for election
19 again, I mean he has a first amendment right to do so --

20 THE COURT: Absolutely.

21 MR. BRENNAN: -- so asking -- the current mayor
22 asking the Court to restrict his ability to campaign or do
23 whatever, I --

24 THE COURT: I'm not concerned about that, I'm
25 concerned about having an end to this matter. As to what

1 happens in the future, obviously I can't prevent someone
from, like you said, exercising their rights.

2 MS. GLENN: I certainly explained that.

3 THE COURT: But to the extent that there would be
4 an end to this aspect of public life, I certainly would
5 like to see that. If he says there's no litigation
6 relating to this --

7 MS. GLENN: I would put on the record, Your
8 Honor, Ms. McCutcheon didn't represent that there's
9 anything pending at this point.

10 THE COURT: You've also indicated that the city
11 is not pursuing anything against him per se.

12 MS. GLENN: No. Like I said, one of her main
13 questions was is he going to get the restitution back
14 now. I said no, that's not part of this. As long as that
15 was off the table, she was fine with it.

16 MR. BRENNAN: Your Honor, I'll spoken to my
17 client again. I can represent to the Court after having
18 just spoken with him, there is no pending litigation
19 involving my client in the city of Forest Heights at the
20 present time.

21 I think, Your Honor, the Court can make --
22 excuse me. The State has now given notice to the
23 so-called victims pursuant to the statute. They've
24 fulfilled all statutory requirements, Your Honor. I

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2 of 6-220 of probation before judgment. My client is
3 prepared to consent to that.

4 THE COURT: Very well. Based upon the motion
5 for reconsideration, which was filed before, and the
6 Court held in abeyance, the Court believes that it is
7 appropriate under the circumstances present that I
8 reconsider the defendant's original sentence that I stay
9 the entry of judgment now, and I do find that it is in
10 the best interest of the defendant, as well as the public
11 welfare in that restitution has been paid. There is no
12 indication that this matter is not resolved. It is
13 resolved for all intents and purposes. That's based upon
14 the defendant's statement that there is no litigation
15 present, and the State's statement that there is no other
16 civil litigation present.

17 So, I believe because he has paid the
18 restitution and has conducted himself in an appropriate
19 manner, that it is appropriate to stay the entry, and to
20 defer any further proceedings.

21 I am going to place him on probation because
22 that's what it says I should do for a period of one day,
23 so that will be until the 31st. That's based upon the
24 fact that he has served his sentence, and he has

basically done all the other things that were in

1 accordance with the sentence.

2 Based upon that, and the reliance on that, sir,
3 you are advised that you have the right certainly to
4 appeal, and it was in an appeal process or in an appeal
5 mode, and by me putting this stay and giving you
6 probation before judgment, you will have to give up your
7 right to appeal. So, you would have to terminate those
8 proceedings. Now, you're not required to do so, you don't
9 have to. You can decide you want to pursue your appeal
10 and anything that flows therefrom. Certainly, you've had
11 the opportunity to talk to your attorney regarding
12 possibilities, consequences of pursuing the appeal.

13 Have you had the opportunity to talk to your
14 lawyer about that?

15 THE DEFENDANT: I have.

16 THE COURT: Based upon that, is it your desire
17 to waive your right to appeal and accept probation before
18 judgment?

19 THE DEFENDANT: It is.

20 THE COURT: All right. Very well.

21 MS. GLENN: Your Honor, is there a way I can
22 get a copy of the hearing sheet to provide to the Public
23 Defender's Office?

24 THE COURT: We can give you a copy of the
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MS. GLENN: That works.

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(Thereupon, the proceedings were concluded at

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9:50 a.m.)

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