

2014 PA Super 248

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
LARRY LEE STOPPARD, JR.,	:	
	:	
Appellant	:	No. 1835 MDA 2013

Appeal from the Judgment of Sentence Entered May 22, 2013,
 In the Court of Common Pleas of Lebanon County,
 Criminal Division, at No. CP-38-CR-0001298-2012.

BEFORE: PANELLA, SHOGAN and FITZGERALD,* JJ.

DISSENTING OPINION BY FITZGERALD, J.: **FILED OCTOBER 29, 2014**

I respectfully dissent. In the case *sub judice*, the police department filed felony burglary charges against Appellant based on the allegation that he “and a co-conspirator stole metal drums from under a carport located on a residential property.” Stipulation, 10/24/12, a ¶ 1. Appellant filed a petition for writ of habeas corpus in that burglary case. The Commonwealth **agreed** with Appellant’s petition and withdrew the felony burglary charge, as well as the conspiracy to commit burglary charge, leaving only the misdemeanor offenses of theft and conspiracy to commit theft. *Id.* at ¶ 9.

Accordingly, the police department filed the charges, but the District Attorney’s Office later conceded that the alleged facts *ab initio* could not establish a *prima facie* case for burglary. I emphasize that the burglary charge—the sole basis for the felony-three grading of the escape charge—

* Former Justice specially assigned to Superior Court.

was not withdrawn as a part of plea negotiations or because a necessary witness did not appear, nor dismissed because the trial court found insufficient facts to establish a *prima facie* case. Instead, the Commonwealth itself agreed there was no legally sustainable charge for burglary under the law.