

COMMONWEALTH OF PENNSYLVANIA VS. DAVID
ADKINS, C. P. Cr. D., Franklin County Branch, Nos. 139,
140 and 141 of 1990

After entering a plea of guilty to *inter al.*, two counts of conspiracy, defendant filed a motion to modify sentence, claiming abuse of discretion by the court in imposing consecutive terms of incarceration. Defendant asserted that 18 Pa. C.S.A. §903(c) prohibited the court from entering consecutive sentences where the Commonwealth had not established that the offenses committed resulted from separate conspiracies.

The court denied the requested relief holding that a plea of guilty to separate counts of conspiracy waives the defendant's right to assert a claim that the charges emanated from only one conspiracy with multiple criminal objectives.

1. It is incumbent upon the Commonwealth to establish that separate conspiracies exist for separate convictions to be warranted.
2. A valid plea of guilty waives all non-jurisdictional defects and defenses.
3. By entering separate pleas of guilty to two separate counts of conspiracy, defendant is exposed to separate, consecutive sentences therefor.

*John F. Nelson, District Attorney, Counsel for the
Commonwealth*
Shawn D. Meyers, Esq., Counsel for the Defendant

OPINION AND ORDER

KAYE, J, August 18, 1995:

OPINION SUR PA.R.A.P. 1925

David D. Adkins ("defendant") was charged with the following crimes:

- 1) At criminal action number 139 of 1990, eleven (11) counts of burglary, and ten (10) counts of conspiracy to commit burglary;

- 2) At criminal action number 140 of 1990, one (1) count of burglary, one (1) count of conspiracy to commit burglary, and one (1) count of conspiracy to commit theft;

- 3) At criminal action number 141 of 1990, three (3) counts of burglary and three (3) counts of conspiracy to commit burglary; and

- 4) A number of additional undesignated criminal charges pending before District Justice Pentz as of the date of entry of his guilty pleas in this case, and referred to in the written guilty plea colloquy which were not assigned a case number.

Pursuant to the plea agreement, the defendant entered pleas of guilty to two (2) counts of burglary and one (1) count of conspiracy to commit burglary at criminal action number 139 of 1990; one (1) count of burglary and one (1) count of theft at criminal action number 140 of 1990; and one (1) count of burglary and one (1) count of conspiracy at number 141 of 1990. The remaining charges were to be nolle prossed under the terms of the plea agreement. The pleas were accepted by the Honorable John R. Walker on July 9, 1990, and a pre-sentence investigation report was ordered, and sentencing was deferred to September 19, 1990.

On the last-mentioned date, judgments of sentence were imposed on the charges on which guilty pleas were entered. On October 1, 1990, defendant filed a motion to modify the judgments of sentence, which the Court denied by its order of October 2, 1990.

On August 22, 1991, defendant filed a petition under the Post Conviction Relief Act ("PCRA") in which he alleged that he had been denied the effective assistance of counsel. New counsel, *i.e.* H. Anthony Adams, Esquire, was appointed by the Court to represent defendant.

Counsel filed a motion for hearing on August 13, 1992, and the Honorable John W. Keller ordered that a hearing be held on October 29, 1992.

The hearing was held as scheduled and the undersigned granted defendant leave to file an appeal *nunc pro tunc* to Superior Court by our order dated December 21, 1992. However, counsel failed to take the appeal.

On October 20, 1994, defendant filed a motion to modify sentence, followed by a second PCRA petition filed on April 26, 1995. On May 23, 1995, we entered an order which rescinded the appointment of H. Anthony Adams, Esquire, as defendant's counsel, appointed Shawn D. Meyers, Esquire, in his stead, and granted successor sixty (60) days to perfect an appeal to Superior Court to effectuate our order of December 21, 1992.

A Notice of Appeal was filed on July 21, 1995, followed by an Amended Notice of Appeal dated July 26, 1995.

On July 21, 1995, we entered an order pursuant to Pa.R.A.P. 1925 to compel the filing of a concise statement of matters complained of on appeal, together with citation to authorities. That statement was filed on August 4, 1995 and raised but a single issue, *i.e.*, whether the Court abused its discretion in imposing consecutive terms of incarceration where defendant had pled guilty to, *inter al.*, two counts of conspiracy.

In so asserting, defendant has cited 18 Pa.C.S.A. §903(c):

Conspiracy with multiple criminal objectives.-If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as the multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

Obviously, as this is a verbatim statement of the statutory law in the Crimes Code, we can have no disagreement with this as accurately stating the law. In a trial, to avoid the

application of the statutory limitations, it would be incumbent upon the Commonwealth to establish that separate conspiracies existed for separate prosecutions and/or convictions to be warranted.

However, defendant entered pleas of guilty in this case, so no trial was held. A plea of guilty is not an act which is devoid of meaning or consequence. A plea of guilty waives all nonjurisdictional defects and defenses, *Commonwealth v. Unger*, 494 Pa. 592, 432 A.2d 146 (1980). The plea of guilty generally leaves only the Court's jurisdiction, legality of sentence, and validity of plea open to challenge. *Commonwealth v. Orrs*, 433 Pa.Super 260, 640 A.2d 911 (1994), *alloc. dn.* 657 A.2d 489. By entering separate pleas of guilty to two separate conspiracy counts, defendant waived the issue he is attempting to raise herein, as he obviously received the benefit of a plea agreement in which at least thirty-one (31) criminal charges, most of them felonies of the first or second degree, were resolved through a plea of guilty to a total of six (6) felonies and one (1) misdemeanor count, thus obviously reducing his potential exposure to punishment.

At the time that the defendant entered his guilty pleas, it was explained, in the written guilty plea colloquy, that the potential imprisonment was a total of one hundred two (102) years, which correctly represents the potential punishment for all crimes to which defendant entered guilty pleas, including the three (3) conspiracy counts, so he clearly understood that the agreement he had entered into included the potential for separate punishments for the conspiracy counts.

Defendant cannot have the benefit of the plea agreement, *i.e.* the dismissal of most of the charges, and then complain when sentences are imposed on those very charges to which he entered the pleas.

We conclude that it was totally proper, in the context of a plea agreement, to impose discrete sentences for the conspiracy counts and that defendant is not entitled to relief.

ORDER OF COURT

NOW, August 18, 1995, the Court directs the Clerk of Courts to transmit the record to the Prothonotary of Superior Court, as the Court has determined that no error was made in the imposition of judgments of sentence in the within matter.

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