

Franklin County Legal Journal

Vol. 32, No. 22

November 28, 2014

Pages 126 - 133

Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

Commonwealth of Pennsylvania v. Allen J. Fiddlestop, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Criminal Action No. 525-2013

HEADNOTES

Criminal Law- Pre-sentence Withdrawal of a Guilty Plea

Criminal Law; Withdrawal of Guilty Plea

1. There are two tests that are used to determine whether a motion to withdraw a guilty plea should be granted. Comm. v. Middleton, 473 A.2d 1358, 1359 (Pa. 1984).
2. If a defendant knows his sentence and the plea colloquy informs defendant of the rights he is waiving by pleading guilty, the guilty plea is not involuntary or unknowing simply because the court did not notify defendant of the standard that would apply to his or her petition to withdraw the plea. Comm. v. Prendes, 2014 WL 3586262 at *11 (Pa. Super. Ct. 2014).

Criminal Law; Withdrawal of Guilty Plea; “Fair and just” test

1. A pre-sentence motion to withdraw a guilty plea is judged by the “fair and just” test. Comm. v. Forbes, 299 A.2d 268, 271 (Pa. 1973).
2. Under the “fair and just” test, a motion to withdraw a guilty plea should be freely permitted, unless the Commonwealth has been substantially prejudiced, if a court finds any fair and just reason to withdraw the guilty plea. Comm. v. Forbes, 299 A.2d 268, 271 (Pa. 1973).
3. A defendant has no absolute right to withdraw a guilty plea. Comm. v. Randolph, 718 A.2d 1242, 1243 (Pa. 1998).
4. Neither participation in a guilty plea colloquy nor evidence of a defendant’s guilt bears upon his or her assertion of innocence in a pre-sentence motion to withdraw a guilty plea. Comm. v. Carrasquillo, 78 A.3d 1120, 1127-28 (Pa. Super. Ct. 2013).
5. When a defendant attempts to withdraw a guilty plea following the prosecution’s case-in-chief, prejudice to the Commonwealth becomes more of a possibility. Comm. v. Prendes, 2014 WL 3586262 at *11 (Pa. Super. Ct. 2014).

Constitutional Law; Criminal Law; Withdrawal of Guilty Plea; “Fair and just” test

1. Because entering a guilty plea may constitute the most devastating waiver under the constitution, courts should show concern for a defendant who wishes to undo a waiver of constitutional right that surround a criminal trial. Comm. v. Elia, 83 A.3d 254, 262 (Pa. Super. Ct. 2013).

Criminal Law; Withdrawal of Guilty Plea; “Manifest Injustice” standard

1. Under the “Manifest Injustice” standard, a plea is required to be withdrawn when it was entered involuntarily, unknowingly, or unintelligently.” Comm. v. Stork, 737 A.2d 789, 790 (Pa. Super. Ct. 1999).
2. In determining if a plea was voluntary, it is irrelevant under the “Manifest Injustice” standard whether or not the defendant knew of the procedural aspects of the right to withdraw a plea at the time of the plea. Comm. v. Prendes, 2014 WL 3586262 at *11 (Pa.

Super. Ct. 2014).

3. If the defendant knows the only possible sentence he can receive for the crime(s) he or she pled guilty to, then any pre-sentence motion to withdraw the plea is akin to a post-sentence motion to withdraw the plea, and the “Manifest Injustice” standard will apply to the pre-sentence motion. Comm. v. Prendes, 2014 WL 3586262 at *10 (Pa. Super. Ct. 2014).
4. Defendant was aware of the only possible sentence he would receive as he entered into a negotiated plea agreement, thus the “Manifest Injustice” standard should apply.
5. The sentencing proceeding in this case was a formality as Defendant knew, under his negotiated plea agreement, that he would receive a sentence of 11.5 months to 23 months incarceration along with a consecutive two-year term of probation.
6. Defendant signed a plea colloquy, which makes clear that his plea was knowing, voluntary, and intelligent.
7. Defendant understood what rights he was waiving, the charges against him, and the potential penalties he could receive

Criminal Law; Mental Competency when Entering a Guilty Plea

1. The test for determining whether a defendant was mentally competent to enter a guilty plea is whether he had the ability to discuss the matter with counsel with a reasonable degree of rational understanding and have both a rational and factual understanding of the proceedings against him. Comm. v. Scott, 414 A.2d 388, 390 (Pa. Super. Ct. 1979).
2. There is no evidence that Defendant’s use of medication prevented him from making a knowing, voluntary, and intelligent plea.

Criminal Law; Plea Agreements

1. It is imperative that plea agreements are enforced as 97 percent of federal convictions and 94 percent of state convictions are the result of guilty pleas. Comm. v. Hainesworth, 82 A.3d 444, 449 (Pa. Super. Ct. 2013).
2. Even though plea agreements arise in a criminal law context, they are essentially contractual in nature and should be governed by contract law. Comm. v. Kroh, 654 A.2d 1168, 1172 (Pa. Super. Ct. 1995).

Appearances:

Christopher Reibsome, *Attorney for Defendant*

Gerard N. Mangieri, *Franklin County District Attorney’s Office*

OPINION

Before Meyers, J.

This case is a criminal action involving alleged sexual encounters

between Allen J. Fiddesop (“Defendant”) and a fifteen-year-old complainant. Pursuant to the discussion that follows, Defendant’s *Motion to Withdraw Guilty Plea* should be DENIED.

PROCEDURAL HISTORY

On February 14, 2014, Defendant entered a guilty plea to Corruption of Minors. Under the plea agreement, Defendant was to serve 11.5 months to 23 months in Franklin County Jail followed by 24 months of probation. The Statutory Sexual Assault charge was to be dismissed. Sentencing was deferred in order to allow for evaluation by the Sexual Offenders Assessment Board. Defendant, however, in his July 16, 2014 *Motion to Withdraw Guilty Plea*, sought to withdraw his February 14, 2014 guilty plea as he claims innocence in this matter. The Commonwealth filed an Answer in opposition on July 30, 2014, arguing that the “manifest injustice” standard applied as the plea in question was a negotiated plea. A hearing on the issue was held on September 5, 2014. The issue is now ripe for decision by this Court.

DISCUSSION

In Pennsylvania, there are two tests that are used to determine whether a withdrawal of a guilty plea should be allowed. Comm. v. Middleton, 473 A.2d 1358, 1359 (Pa. 1984). First, a pre-sentence motion to withdraw a guilty plea is judged by the “fair and just” test. Comm. v. Forbes, 299 A.2d 268, 271 (Pa. 1973). Pennsylvania Rule of Criminal Procedure 591(A) governs such plea withdrawals and provides that: “[a]t any time before the imposition of sentence, the court may, in its discretion, permit, upon motion of the defendant, or direct, *sua sponte*, the withdrawal of a plea of guilty or *nolo contendere* and the substitution of a plea of not guilty.” Pa. R.Crim.P. 591(A). The “fair and just” test has been outlined as follows:

[I]n determining whether to grant a pre-sentence motion for withdrawal of a guilty plea, “the test to be applied by the trial courts is fairness and justice.” If the trial court finds “any fair and just reason”, withdrawal of the plea before sentence should be freely permitted, unless the prosecution had been “substantially prejudiced.”

Comm. v. Randolph, 718 A.2d 1242, 1244 (Pa. 1998) (quoting Forbes, 299 A.2d at 271).

Additionally, while a defendant has “no absolute right to withdraw a guilty plea,” Pennsylvania courts have consistently held that a pre-sentence

request to withdraw a guilty plea “should be liberally allowed[,]” unless the Commonwealth would be substantially prejudiced. Randolph, 718 A.2d at 1243 (quoting Forbes, 299 A.2d at 271); Comm. v. Gordy, 73 A.3d 620 (Pa. Super. Ct. 2013). Moreover, “(1) participation in a guilty plea colloquy does not prevent a defendant from later seeking to withdraw his guilty plea, . . . and, (2) evidence, such as a confession to police, that could be used to prove defendant’s guilt at trial does not bear upon his assertion of innocence in a pre-sentencing motion to withdraw a guilty plea.” Comm. v. Carrasquillo, 78 A.3d 1120, 1127-28 (Pa. Super. Ct. 2013) (citations omitted).

This policy stems from the idea that “before judgment, the courts should show solicitude for a defendant who wishes to undo a waiver of all constitutional rights that surround the right to trial – perhaps the most devastating waiver possible under our constitution.” Comm. v. Elia, 83 A.3d 254, 262 (Pa. Super. Ct. 2013) (quotations omitted).

The second test used for the withdrawal of guilty pleas is the “manifest injustice” test. The “manifest injustice” test requires that a plea be withdrawn “when it was entered into involuntarily, unknowingly, or unintelligently.” Comm. v. Stork, 737 A.2d 789, 790 (Pa. Super. Ct. 1999) (citations omitted). Under the “manifest injustice” standard, “[k]nowledge of the procedural aspects of the right to withdraw the plea” is irrelevant in determining whether the plea was voluntary. Comm. v. Prendes, 2014 WL 3586262 at *11 (Pa. Super. Ct. 2014) (citing Comm. v. Chumley, 394 A.2d 497, 504 (1978), cert. denied 440 U.S. 966 (1979)). Moreover,

i[f] the colloquy properly informs the defendant of the rights he is waiving by virtue of the plea, and the defendant knows his sentence, the guilty plea is not involuntary or unknowing simply because the court failed to inform the defendant beforehand of the standard that would apply to a petition to withdraw the plea.

Id.

In addition, “[i]f the [defendant] knows the only possible sentence he can get for the crime to which he pled guilty, then any pre-sentence motion to withdraw the plea is akin to a post-sentence motion to withdraw the plea, and the ‘manifest injustice’ standard will apply to the pre-sentence motion.” Prendes, 2014 WL 3586262 at *10 (citing Comm. v. Lesko, 467 A.2d 307, 310 (Pa. 1983)) (emphasis added).

With this backdrop in mind, the Court will now address Defendant’s and the Commonwealth’s claims.

First, this Court must decide whether to apply the “fair and just” or the “manifest injustice” standard. In Paragraph 5 of its Answer, the

Commonwealth asserts that “Defendant’s assertion of innocence does not justify withdrawal of his guilty plea in this matter” because the “guilty plea calls for a specific, negotiated sentence.” As such, the Commonwealth claims Defendant has the burden of proving that a manifest injustice is present in order for this Court to allow Defendant to withdraw his guilty plea. To support its proposition, the Commonwealth cites Prendes, 2014 WL 3586262 at *13 and Lesko, 467 A.2d at 310. It appears that Defendant believes that the “fair and just” standard applies as, in Paragraph 6 of his *Motion to Withdraw Guilty Plea*, Defendant claims that the Commonwealth will not be “substantially prejudiced by a withdrawal of Defendant’s guilty plea.”

In Prendes, the defendant had agreed to plead guilty after not only a jury was sworn in and *voir dire* was completed but also after the jury heard opening statements, testimony from 15 witnesses, closing arguments and the charge of the court. Prendes, 2014 WL 3586262 at *1. The Prendes Court noted that the jury even deliberated and provided a note listing each charge Prendes was guilty of and how many jurors voted guilty and how many voted not guilty as to each charge. Id. at *1-*2. Prendes also decided to enter into a guilty plea after the foreperson of the jury notified the court that the jury had reached a verdict on some charges. Id. at *2. Prendes then sought to withdraw his guilty plea before sentencing and the trial court denied the motion to withdraw. Id. at *4. The Prendes Court found that when a defendant tries to withdraw a guilty plea following the prosecution’s case-in-chief, “prejudice to the Commonwealth may be a very real possibility.” Id. at *11 (citing Comm. v. Morales, 305 A.2d 11, 13 (1973)). Moreover, Prendes knew the sentence that he would receive under the plea agreement. Id. He also saw the jury vote on each of the charges and could attempt to withdraw his plea in hopes of obtaining another jury that would vote in his favor. Id.

In the seemingly distinguishable case, the Prendes Court noted that Prendes plead guilty to a negotiated sentence, which the trial court accepted. Id. at *13. Therefore, Prendes “was fully aware of the sentence he would receive,” and the “manifest injustice” standard should apply. Id. The Prendes Court noted that the trial court had no duty to notify the Defendant that his withdrawal of his guilty plea would be judged under a stricter standard. Id. Prendes was already under notice that any motion to withdraw his guilty plea may be denied. Id. As such, Prendes’ assertion of innocence was not a sufficient basis under the “manifest injustice” standard for a withdraw of his guilty plea. Id.

The Commonwealth also cites the Pennsylvania Supreme Court’s decision in Lesko, which affirmed a trial court’s refusal to allow a defendant,

who plead guilty to second-degree murder, to withdraw his guilty plea prior to sentencing. Lesko, 467 A.2d at 308-09. The Lesko Court also upheld the trial court's decision to apply the "manifest injustice" standard. Id. at 310. The trial court applied the "manifest injustice" standard as Lesko "was pre-advised of the only possible sentence" before he agreed to the plea. Id. The Lesko Court held that when a defendant knows of the only possible sentence he can receive after he pleads guilty, his pre-sentence motion to withdraw his guilty plea is "akin to a post-sentencing petition." Id.¹

In light of the above, since Defendant entered into a negotiated plea agreement and was aware of the only possible sentence he would receive, this Court will apply the "manifest injustice" standard. Id. Here, the Commonwealth and Defendant both correctly assert that Defendant entered into a negotiated plea agreement. Similar to the plea agreements in Lesko and Prendes, the plea agreement here fully pre-advised Defendant of his only possible sentence. As outlined in his plea colloquy, Defendant agreed to plead guilty to Corruption of Minors in exchange for a sentence of 11.5 months to 23 months in Franklin County Jail plus a consecutive two year term of probation. In addition, the plea colloquy that was filled out and signed by Defendant makes clear that his plea was knowing, voluntary, and intelligent. As such, his claim of innocence is largely irrelevant under the "manifest injustice" standard, even though it may be highly relevant under the "fair and just" standard. See Prendes, 2014 WL 3586262 at *13. Here, like Lesko, sentencing is therefore "a mere formality." Middleton, 473 A.2d at 1359 fn. 3 (Pa. 1984).

Indeed, Defendant in his *Motion to Withdraw Guilty Plea*, does not allege that his plea was unknowing, involuntary, and/or unintelligent. Id. In Defendant's written motion, the only basis mentioned for the withdrawal of his guilty plea is that he is innocent of the charge he plead guilty to. At the September 5, 2014 hearing, Defendant also asserted that he was taking prescribed medication and was intimidated by police during pre-trial events. However, in his plea colloquy, Defendant stated that he understood the rights he was waiving, the nature of the charges to which he was pleading guilty to, the maximum penalties that could be imposed on him and that he was satisfied that his plea was voluntary. In addition, if Defendant took medication near the time of his guilty plea, there are no signs that his medication influenced his ability to make a knowing, voluntary, and intelligent plea. See Comm. v. Hazen, 462 A.2d 732, 735 (Pa. Super. Ct. 1983) (holding that use of medication did not make defendant's guilty plea unknowing or involuntary); Comm. v. Long, 456 A.2d 644 (Pa. Super. Ct. 1983) (finding defendant's medication only kept him calm and did not

¹ The Court also found that applying the "fair and just" reason standard also would not have given Lesko the relief he requested. Id.

interfere with his ability to make a voluntary, understanding, and intelligently tendered plea); and Comm. v. Scott, 414 A.2d 388, 390 (Pa. Super. Ct. 1979) (holding that the appropriate “test for determining a defendant’s mental competency to enter a guilty plea is whether he had sufficient ability at the pertinent time to consult with counsel with a reasonable degree of rational understanding, and have as a rational, as well as a factual understanding of the proceedings against him”).

In closing, this Court notes that almost all criminal matters in the United States end with a plea agreement: “[n]inety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas.” Comm. v. Hainesworth, 82 A.3d 444, 449 (Pa. Super. Ct. 2013), appeal denied, 95 A.3d 276 (Pa. 2014) (quoting Missouri v. Frye, — U.S. —, 132 S.Ct. 1399, 1407 (2012)). Therefore, “it is critical that plea agreements are enforced, ‘to avoid any possible perversion of the plea bargaining system.’” Id. (quoting Comm. v. Fruehan, 557 A.2d 1093, 1094 (Pa. Super. Ct. 1989)). Indeed, even though a plea agreement originates “in a criminal context, it remains contractual in nature and is to be analyzed under contract law standards.” Comm. v. Kroh, 654 A.2d 1168, 1172 (Pa. Super. Ct. 1995) (quoting United States v. Hall, 730 F. Supp. 646, 650 (M.D. Pa. 1990)); Hainesworth, 82 A.3d at 449.

Therefore, this Court finds that Defendant was pre-advised of the only possible sentence he would receive under his negotiated plea agreement and no “manifest injustice” is evidenced.

CONCLUSION

In light of the record and applicable law, the Court finds that Defendant should not be permitted to withdraw his plea.

ORDER OF COURT

AND NOW THIS 16th day of September, 2014, having read and considered Defendant’s *Motion to Withdraw Guilty Plea* along with the Commonwealth’s Answer thereto and having held a hearing.

IT IS HEREBY ORDERED that Defendant’s Motion to Withdraw Guilty Plea shall be DENIED.

IT IS FURTHER ORDERED the the 6th day of November, 2014, at 1:00 o'clock p.m. in courtroom number 3 of the Franklin County Courthouse, Chambersburg, Franklin County, Pennsylvania is fixed as the time and place of sentencing.

IT IS SO ORDERED.

Pursuant to Pennsylvania Rules of Criminal Procedure, the Clerk of Courts shall immediately docket this Order and record in the docket the date it was made. The Clerk shall forthwith furnish a notice of the Order by mail or personal delivery, pursuant to Pa.R.Crim. P. 536(A)(2)(b), to each party or attorney, and shall record in the docket the time and manner thereof.