

COMMONWEALTH OF PENNSYLVANIA v. THOMAS STONER, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action, Nos. 680 of 2006 and 60 of 2007

Withdrawal of Guilty Plea; Assertion of Innocence; Substantial Prejudice

1. There is no absolute right to withdraw a guilty plea properly received by the Court; rather a motion to withdraw a plea is subject to one of two standards depending upon the timing of the withdrawal.
2. After sentencing the defendant must prove that refusing to allow him to withdraw his plea would result in manifest injustice.
3. Prior to sentencing, the defendant may withdraw his plea for any fair and just reason, unless the Commonwealth proves that it has suffered substantial prejudice as a result of the plea.
4. An assertion of innocence constitutes a fair and just reason to withdraw a plea.
5. Substantial prejudice requires the Commonwealth to prove that, due to events occurring after the plea was entered, the Commonwealth is placed in a worse position than it would have been if trial had taken place as scheduled.
6. To be legally cognizable, substantial prejudice must directly impair the Commonwealth's ability to bring the case to trial.
7. The closing of the defendant's unrelated state parole case, so that the defendant's parole may no longer be violated, does not constitute substantial prejudice prohibiting a defendant from withdrawing his plea prior to sentencing.

Appearances

John M. Lisko, Esq., *Assistant District Attorney*

Ian M. Brink, Esq., *Assistant Public Defender*

OPINION

Walsh, J., November 9, 2007

Facts

The Court must decide Thomas Stoner's Motion to Withdraw No Contest Pleas. On September 26, 2007, a hearing was conducted exploring the defendant's ability to withdraw his plea. Both parties also presented letter briefs and oral arguments. This case has an extended history in which the salient facts are as follows.

On March 6, 2006, the defendant was charged with three counts of access device fraud. On September 11, 2006, the defendant failed to appear for jury selection, and a bench warrant was issued. After several continuances, the defendant waived his right to a jury trial, and trial on these charges was set for February 15, 2007. In the meantime, on December 31, 2006, the defendant was again arrested and charged in connection with a traffic stop. The defendant was charged with various violations of the Motor Vehicle Code, including DUI. Additionally, the defendant was charged with receiving stolen property since he was driving a car that had been reported stolen earlier that evening.

Subsequently, the defendant missed his February trial date on the access device fraud charges since he was incarcerated in the Dauphin County Prison. The Defendant was picked up on a bench warrant on May 22, 2007, and all charges from both incidents were listed for the July 2007 term of court. On July 5, 2007, just prior to the pre-trial conference on all charges, the defendant entered a plea of *nolo contendere* to one count of receiving stolen property and also pled *nolo* to one count of unauthorized use of a motor vehicle. Additionally, the defendant pled guilty to one count of driving under the influence. The plea agreement obligated the Commonwealth to *nolle prosequi* all other counts, including the three charges of access device fraud that had been pending since 2006. On July 30, 2007, the Commonwealth Board of Probation and Parole permanently closed the defendant's unrelated, 1994 parole case for which he could have been violated upon a conviction on the access device fraud charges.

On September 5, 2007, prior to the imposition of sentence, the defendant expressed his desire to withdraw his plea and assert his innocence. Under Pa.R.Cr.P.591, the Court required the defendant to submit a written motion, and the defendant submitted his Motion to Withdraw No Contest Pleas on September 12, 2007. An evidentiary hearing on September 26, 2007, developed the relevant facts. After this, the parties submitted letter briefs and provided oral argument, and the matter is ripe for the Court's decision.

Discussion

There is no absolute right to withdraw a plea properly received by the Court, rather a motion to withdraw a plea is subject to one of two standards depending upon the timing of the attempted withdrawal. Commonwealth v. Randolph, 718 A.2d 1242, 1243 (Pa. 1998). After sentencing occurs, the defendant must prove that manifest injustice will result if he is not permitted to withdraw his plea. Commonwealth v. Kirsch, 930 A.2d 1282 (Pa. Super. Ct. 2007). Prior to the imposition of sentence withdrawal should be liberally allowed for any fair and just reason, unless the Commonwealth can prove that it has suffered substantial prejudice as a result of the plea. Id. at 1284-1288. In this case, Stoner has attempted to withdraw his plea prior to sentencing; so, he can do so provided he has presented a fair and just reason and the Commonwealth fails to prove that it has been substantially prejudiced.

Stoner seeks to withdraw his *nolo* pleas in order to assert his innocence. An assertion of innocence qualifies as a fair and just reason. Commonwealth v. Forbes, 299 A.2d 268, 271 (Pa. 1973). Consistently, the Commonwealth conceded this point at oral argument. Accordingly, Stoner may withdraw his *nolo contendere* pleas to receiving stolen property and to unauthorized use of a motor vehicle, unless the Commonwealth can prove that withdrawal will substantially prejudice it.

In a recent decision, the Superior Court acknowledged that little case law exists explaining what constitutes substantial prejudice in the context of the withdrawal of a guilty plea. Kirsch at 1286. Nonetheless, the Superior Court reasoned that substantial prejudice required a showing that due to events occurring after the plea was entered, the Commonwealth is placed in a worse position than it would have been if trial had taken place as scheduled. Id. In a footnote to Kirsch, the Superior Court adds that prejudice is "satisfied where the prosecution substantially relies upon the plea to its detriment." Id. Effectively, then, two aspects comprise substantial prejudice. First, some significant impairment of the Commonwealth's position must occur that would not have happened without the guilty plea. Second, the impairment must have occurred after the putative trial date. In this case, the trial date would have been in the July 2007 trial term, and this becomes the operative date in Stoner's case.

Initially, the Commonwealth advanced three arguments in favor of a finding of substantial prejudice. First, the prosecution argued that the deportation of the victim of the car theft caused prejudice. However, since this event transpired prior to the July 2007 trial term, the Commonwealth abandoned this position. Second, the prosecution argued that it was placed in a worse position for trial since a video surveillance tape concerning the 2006 access device fraud charges had been overwritten. But, the Commonwealth failed to produce any evidence that this occurred after the relevant date in question, namely the July 2007 trial term. Therefore, the Court finds no prejudice due to the overwritten tape.

The Commonwealth also advances a third argument for substantial prejudice; this argument is at once ingenious, enticing, and dangerous. The Commonwealth's reasoning employs the following stipulated facts. First, prior to entering his plea and due to the access device fraud charges, the defendant faced a state parole violation. In return for the defendant's pleas for DUI and unauthorized use, the Commonwealth was to dismiss the three access device fraud charges. On July 30, 2007, after the defendant had entered his guilty plea, the state parole office closed out his state parole case. If there were no plea agreement dismissing the access device fraud charges, the defendant would have been violated from his state parole. The closing of the state parole case permanently precludes the defendant from being violated from his parole. Thus, allowing the defendant to withdraw his plea would substantially

prejudice the Commonwealth, because it may not now violate the defendant when it would have done so without any plea arrangement. Upon initial inspection, this line of reasoning seems to allow the Commonwealth to prove both elements of substantial prejudice, and the Court must navigate this minefield without the comfortable guide of any precisely on point case law dealing with prejudice and lost parole violations. Nonetheless, for several reasons, the Court finds it can not legally recognize this prejudice and thereby preclude Stoner from withdrawing his plea.

First, the parole violation stems from an earlier and completely unrelated offense that the defendant committed in 1994, and impairing the parole violation impacts in no way on the Commonwealth's prosecution of the present case. In order to qualify as prejudice, the impairment of the Commonwealth's position must relate directly to its ability to bring the case to trial. Commonwealth v. Muhammad, 794 A.2d 378, 383 (Pa. Super. Ct. 2002). Although Muhammad involved a defendant's attempt to withdraw his plea after sentencing, the Superior Court's clear statement of the standard for substantial prejudice, drawn as it is from the seminal case of Forbes, illustrates a practical limit to the prejudice that the Commonwealth may claim as a basis for overriding a defendant's desire to withdraw his plea. The prejudice must relate directly to the ability of the Commonwealth to prosecute the offenses that are set to go to trial.

At least implicitly, all extant case law seems to recognize this practical limitation, as the Court can find no case in which prejudice has extended to charges beyond those set to be adjudicated in the upcoming trial. See Commonwealth v. Dicken, 895 A.2d 50 (Pa. Super. Ct. 2006); Forbes, 299 A.2d 268, 271 (Pa. 1973); Kirsch, 930 A.2d 1282 (Pa. Super. Ct. 2007). Here, the Commonwealth seeks to extend prejudice to a parole violation that clearly lies beyond the charges leveled against Stoner and slated to be resolved in the July 2007 trial term. Existing law does not warrant such an extension of the concept of prejudice.

Also, the underlying policies behind the Forbes rule support a finding of no prejudice. These policies are two-fold. First, the ability to withdraw a plea exonerates the defendant's key right to trial by jury. Forbes, 299 A.2d at 271 (Pa. 1973). Second, allowing withdrawal limits the number of appeals contesting the validity of pleas. Id. Thus, the Pennsylvania Supreme Court has shown a strong preference for a trial court's allowing a defendant to withdraw a plea prior to sentencing. Kirsch, 930 A.2d at 1288 (Pa. Super. Ct. 2007). This policy of encouraging the withdrawal of guilty pleas prior to sentencing militates against finding prejudice on the basis of a lost parole violation only tenuously connected to the present case.

Furthermore, the Court notes that the Commonwealth has produced the very prejudice of which it complains. Nothing in the dearth of case law dealing with prejudice explicitly precludes this as a basis for finding prejudice; however, the Court is reluctant to set a precedent that could, in the future, allow the Commonwealth to unilaterally lock in the pleas of any defendants who may happen to be subject to outstanding but otherwise unrelated parole sentences. In denying the Commonwealth its proffered prejudice, the Court does not, in any way, insinuate that the Commonwealth orchestrated the quick closing of Stoner's state parole case in an attempt to circumvent the Forbes rule or that the prosecution's actions and motives have been anything but sterling. Rather, the Court is looking ahead and attempting to avoid creating legal pitfalls for defendants who may wish to plead and yet are subject to outstanding and unrelated parole sentences. Thus, on this basis as well, the Court declines to find prejudice.

Finally, the Court understands that its ruling today affords the defendant the benefit of his bargain and leaves the Commonwealth empty-handed. This is because, with the parole case having been closed, the Commonwealth may not violate Stoner's parole. Truly, the defendant admitted at oral argument that he has received the very immunity from the parole violation that he sought in entering his plea. But, the defendant did not in any way wrongfully induce the Parole Board to close his parole case; rather, through no fault of Stoner's, the Board apparently prematurely closed his parole case. The Court sees no point in penalizing Stoner for receiving an unexpected windfall following his attempt to withdraw his plea. Also, allowing a benefit of the bargain exception would eviscerate the Forbes test and the Court has no inclination to tinker with the balance prescribed by the Pennsylvania Supreme Court.

In conclusion, Thomas Stoner seeks to withdraw his *nolo contendere* pleas prior to sentencing. To do so, the defendant must provide a fair and just reason. He wishes to assert his innocence, and that constitutes a fair and just reason. The Commonwealth now must demonstrate that it has suffered substantial prejudice after the time set for trial, and the Commonwealth has failed to do this. Clearly, the Commonwealth's case was impaired when the theft victim was deported and the surveillance tape was overwritten. But, the Commonwealth failed to prove that either of these occurred after the defendant entered his plea on July 5, 2007. Finally, the Court concludes that, although the Commonwealth is no longer able to violate Stoner's parole, this diminishment in the Commonwealth's position is not legally cognizable as prejudice since it does not impair prosecution of any of the charges on which the defendant would have been going to trial during the July 2007 trial term.

Conclusion

Accordingly, the Court grants Thomas Stoner's Motion to Withdraw No Contest Pleas. Thomas Stoner wishes to assert his innocence; this is a fair and just reason to withdraw his plea. Also, the Commonwealth has failed to demonstrate that it has suffered any legally cognizable prejudice. In light of the law's marked preference for allowing a proper withdrawal prior to sentencing, the Court grants the defendant's motion.

ORDER OF COURT

November 9, 2007, this matter having come before the Court on Defendant's Motion to Withdraw No Contest Pleas, and the Court having reviewed the record, the motion, the Commonwealth's and the Defendant's briefs, the arguments, and the law, it is hereby ordered that Defendant's request for relief is granted. Further, it is ordered that the Defendant will report for Call of the List on Monday, December 17, 2007, unless otherwise ordered, and these cases are listed for trial in the January, 2008 trial term.