

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

Vs. :

No. CR-1108-2014

AMIR EDWARDS,  
Defendant :

Defendants :

Jean Engler, Esquire

Counsel for Commonwealth  
District Attorney

Joseph Sebelin, Esquire

Counsel for Defendant

MEMORANDUM OPINION<sup>1</sup>

Matika, J. - September 20, 2018

Defendant, Amir M. Edwards (hereinafter "Edwards") filed an appeal from the Order of Sentence issued by this Court on May 18, 2018, which directed Edwards to undergo imprisonment in a State Correctional Institution for a period of not less than 96 months nor more than 192 months. Credit was provided against this sentence and other terms and conditions were imposed as well. This Memorandum Opinion is filed pursuant to Pennsylvania Rule of Appellate Procedure 1925(a). This Court recommends to the Superior

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<sup>1</sup> The Court previously issued an opinion on July 13, 2018 suggesting that the Appellate Court dismiss the appeal of Edwards for failure to file a concise statement as directed by Order of Court dated June 14, 2018. By Order of Court dated September 18, 2018 this Court granted Edwards' Motion for Nunc Pro Tunc Relief to reinstate his appellate rights. In essence this Court allowed the concise statement filed contemporaneously with the Motion for Nunc Pro Tunc Relief to stand as the concise statement in response to the June 14, 2018 1925(b) Order. At that time we also rescinded and vacated the previous Opinion suggesting dismissal of Edwards' appeal in light of the nunc pro tunc relief afforded Edwards.

Court that the appeal be denied and the judgment of sentence affirmed for the reasons set forth herein.

#### FACTUAL AND PROCEDURAL BACKGROUND

Edwards and a co-defendant, Elton Molina (hereinafter "Molina") were arrested as a result of an armed robbery that occurred on September 10, 2014 at the Tresckow Superfood, in Tresckow, Banks Township, Carbon County, Pennsylvania. Ultimately, on September 20, 2016, Edwards entered a guilty plea to one (1) count of robbery, a violation of 18 Pa. C.S.A. §3701(a)(1)(i). A pre-sentence investigation was conducted, but sentencing was deferred numerous times since a condition of Edwards' stipulation was to testify against his co-defendant, Elton Molina, and receive a certain recommended jail sentence.

On February 8, 2018, a Motion to Withdraw that guilty plea was filed. After a hearing held on February 27, 2018, that motion was denied. On May 7, 2018 Molina's jury trial commenced, however, Edwards refused to testify. Thereafter, on May 18, 2018, Edwards was sentenced by this Court to the term referenced above.

On June 13, 2018, Edwards filed a Notice of Appeal. Consequently, on June 14, 2018, this Court, pursuant to Pennsylvania Rules of Appellate Procedure 1925(b), issued an Order directing Edwards to file of record and serve upon the undersigned within twenty-one (21) days, a concise statement of matters

complained of on appeal. This order was filed and docketed on June 14, 2018 and mailed to Edwards' Counsel, Joseph Sebelin, Esquire on June 15, 2018. As explained in footnote 1 of this opinion, Edwards' concise statement of August 31, 2018 will serve as his response to the Rule 1925(b) Order. In that concise statement, Edwards claims two (2) reasons why his sentence should be vacated. These reasons are as follows:

1. This Honorable Court committed an error of law and/or abuse of discretion by denying Defendant/Appellant Amir Edwards(sic) Motion to Withdraw Guilty Plea, by the following:

- a. Misapplying the legal standard for a Defendant's request to Withdraw Guilty plea as set forth in Commonwealth v. Carrasquillo, 115 A.3d 1284 (Pa. 2015);
- b. By concluding that Appellant offered no evidence of innocence, despite Appellant testifying that he has an alibi, that he had filed a notice of alibi, that he had denied committing the offense(s); that he disputed that the video footage established that he committed the offense;
- c. Concluding that Defendant had to demonstrate "actual" innocence in order to succeed on his motion;
- d. Using the fact that the Defendant entered a guilty plea

as a reason to deny Defendant's Motion to Withdraw (See trial Court Opinion, page;

e. Ignoring Defendant's testimony regarding his assertion of innocence and prior assertion of an alibi defense;

f. Ignoring evidence of record of two alternate, yet plausible versions of the incident (one of guilt and one of innocence);

g. Disregarding the Commonwealth's failure to adduce any evidence of actual prejudice;

h. Appellant reserves the right to supplement this list of issues upon receipt of the transcript.

2. This Honorable Court committed an error of law and/or abuse of discretion by denying Appellant's request for a mental health expert in light of Defendant's mental state (suicide ideation and threats upon arrest/incarceration.)

This Court will address each of these two claims separately.

#### LEGAL DISCUSSION

##### 1. WITHDRAWAL OF GUILTY PLEA

Edwards' first contention on appeal is that the Court erred by not permitting Edwards to withdraw his plea, pre-sentencing.

In making such a claim, Edwards alleges that there are eight (8)<sup>2</sup> reasons why the Court erred. This Court believes that its Memorandum Opinion of March 23, 2018 fully details and explains its rationale for denying Edwards' request to withdraw his plea. This Court does agree that it would be error for the Court to consider the fact that Edwards entered a guilty plea as a basis for denying his request to withdraw that plea, however, if nothing else, that would be harmless error in light of all of the other reasons for denying this motion. This Court's Opinion, dated March 23, 2018, and attached hereto, further explains its rationale for denying the withdrawal of the guilty plea. There were several references to the Defendant's guilty plea hearing. One such reference was to illustrate the similarity between the facts as read by the Assistant District Attorney at the guilty plea hearing and contained in the affidavit of probable cause and those which Edwards had given pre-plea on two different occasions, once to Trooper Christman and once to Trooper Surmick.

The second reference in that opinion was to the fact that Edwards acknowledged that his guilty plea was being entered knowingly, intelligently, and voluntarily after counselling with then attorney, Adam Weaver, Esquire and that despite raising this as a basis to withdraw its plea, Edwards truly did not expand upon

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<sup>2</sup> The eighth reason, Letter "h", is a reservation of the right to supplement the concise statement upon a review of the transcript and is therefore truly not a claimed "error."

it at his hearing on the motion to withdraw his plea.

Finally, this Court believes that it is unnecessary to further explain our decision to deny the withdrawal of Edwards' guilty plea here in light of the opinion attached hereto which fully explains why that motion was denied.

## 2. MENTAL HEALTH EXPERT

Edwards next contends that the Court erred in denying his request to employ a mental health expert. As this Court explained in the footnote to the September 9, 2015 order explaining this denial, a copy of which is also attached hereto, this Court identified the failure of the Defendant to meet his burden to establish that his mental condition was in question in this trial or that he suffered a mental infirmity that would negate the *mens rea* element of the offenses.

It is also important to note that at one of the earliest hearings in this matter, Attorney Weaver referenced the fact that in Luzerne County where Edwards was also facing charges, a mental health evaluation was being done and that he hoped to obtain a copy of it when completed. This Court can only assume that the evaluation done in Luzerne County did not diagnose Edwards with any mental health concerns as it was never presented at the hearing on the motion in this case. Accordingly, without Edwards establishing more of a reason to warrant the granting of his

request for a mental health expert, this Court had no choice but to properly deny that request.

CONCLUSION

For the reasons stated herein, this Court asks this Honorable Appellate Court to deny the appeal of Edwards and allow the sentence to stand as imposed.

BY THE COURT:

  
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Joseph J. Matika, J.

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CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA,	:	
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AMIR M. EDWARDS,	:	
Defendant	:	
	:	
Jean A. Engler, Esquire	:	Counsel for Commonwealth
	:	District Attorney
Joseph Sebelin, Esquire	:	Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - March 23, 2018

Before the Court is a "Motion to Withdraw Guilty Plea" filed by the Defendant, Amir M. Edwards. After conducting a hearing and affording both the Defendant and the Commonwealth time to lodge memorandums of law in support of their respective positions, this Court is now prepared to answer the following question: "Should the Defendant, Amir M. Edwards, be permitted to withdraw the guilty plea he entered on September 20, 2016?" For the reasons stated herein, in accordance with the case law of this Commonwealth, that question is answered in the negative.

FACTUAL AND PROCEDURAL BACKGROUND

On September 11, 2014, the Defendant, Amir M. Edwards

[FM-10-18]



of the Pennsylvania Crimes Code for his alleged involvement with his Co-Defendant, Elton Molina, in a robbery at Tresckow Superfood Market, located at 6 Walnut Street, Tresckow, Banks Township, Carbon County. On September 18, 2014, Edwards applied for a public defender to represent him, but due to a conflict within the Public Defender's Office, Attorney Adam Weaver was appointed as conflict counsel for Edwards.<sup>1</sup> A preliminary hearing was held on November 26, 2014, at which time all charges were bound over to Court. On August 15, 2016, after twenty (20) months of pre-trial maneuvering and negotiating, Edwards signed a stipulation to plead guilty to Count #2, Robbery, a felony of the first degree and a violation of 18 Pa.C.S.A. § 3701. Edwards' guilty plea hearing occurred on September 20, 2016. At that hearing, the following exchange took place:

The Court: . . . Has the Defendant executed a guilty plea colloquy form?

Mr. Gazo: He has, Your Honor. It is acceptable.

The Court: Mr. Edwards, all the answers you provided in that document truthful, correct and complete?

The Defendant: Yes.

The Court: Okay. We will make it part of the record. What are the facts leading up to the Defendant's arrest and this plea, Attorney Gazo?

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<sup>1</sup> On March 9, 2017, Attorney Weaver petitioned the Court to withdraw as Counsel for Edwards since Attorney Weaver was joining the Public Defender's Office. As a result of this new conflict of interest, this Court appointed Attorney Joseph Sebelin in his stead on March 10, 2017.

Mr. Gazo: Yes, Your Honor. On the evening of September 10, 2014, there were two black males entering the Tresckow Superfood Market. They demanded money from the proprietor, a Manoj Patel. They also assaulted Patel using an airsoft pistol. The pistol was damaged during the course of the assault. Also, the two black males used their fist to punch Patel. They removed a total of \$2,100 from the cash register, lottery machine register and change box.

Patel was injured. He had to be flown by a medical helicopter to Geisigner Wyoming Valley for treatment. He suffered a right orbital fracture, frontal sinus fracture, maxilla fracture and a laceration to his forehead requiring sutures.

Later on, there was a canvassing of the neighborhood and Trooper Surmick obtained surveillance video footage from someone named Dustin Lamonica who lived at 9 East Market Street, Tresckow. And that showed two black males walking up Market Street toward Tresckow Superfood just prior to the robbery and then running from the Tresckow Superfood approximately three minutes later. The footage fits the physical description provided by a witness named Ashley Cannon.

N.T. Guilty Plea, 9/20/16, at 3-4.

. . .

The Court: How do we identify Mr. Edwards as one of the perpetrators of the robbery?

. . .

Mr. Weaver: Your Honor, I believe that is based upon a confession that was noted in the affidavit of probable cause.

The Court: In which Mr. Edwards confessed to committing the robbery?

Mr. Weaver: That's correct, Your Honor.

*Id.* at 5.

. . .

The Court: . . . Mr. Edwards, you heard Attorney Gazo recite facts relative to the robbery, and also relative to another claim of another offense in another county. To the extent those facts as he recited them relative to the robbery and the reason you are before me, along with the supplementation by your Counsel that you admitted being involved in this robbery, are those facts essentially correct?

The Defendant: Yes.

The Court: As they relate to the robbery?

The Defendant: Yes.

The Court: Is anyone forcing you to enter this particular plea?

The Defendant: No.

The Court: You are doing this of your own free will?

The Defendant: Yes.

The Court: Are you doing this because you are in fact guilty of this robbery or is there some other reason why you are entering this plea?

The Defendant: I am guilty.

*Id.* at 5-6.

. . .

The Court: Attorney Weaver, any reason I should not accept your client's plea?

Mr. Weaver: No, Your Honor. I have reviewed this matter, including all the discovery, with Mr. Edwards.

. . .

The Court: I will accept Mr. Edwards' plea . . . Any questions?

Mr. Weaver: No.

The Defendant: No, Your Honor.

*Id.* at 8-9.

After accepting Edwards' guilty plea, the Court directed that a pre-sentence investigation report be conducted pursuant to Pennsylvania Rule of Criminal Procedure 703, and sentencing was initially scheduled for December 22, 2016.<sup>2</sup>

On February 8, 2018, Edwards filed the instant Motion to Withdraw Guilty Plea. In it he alleges: 1) that he is innocent of the charges; 2) he told prior counsel (Attorney Weaver) that he did not wish to enter a guilty plea, but counsel disregarded that statement; 3) that his plea was not entered knowingly, intelligently, and voluntarily, because prior counsel failed to advise him of the nature of the charges and the consequences of a guilty plea; and 4) that as a result of these facts, prior counsel was ineffective.

At the hearing held on Edwards' Motion, Edwards testified that he was innocent and that he "didn't do the crime." He also testified that he advised Attorney Weaver about possible alibi witnesses, which prompted Attorney Weaver to file a Notice of Alibi on April 10, 2015. He also testified that Attorney Weaver advised him that if he went to trial and lost, any time (sentence) he may

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<sup>2</sup> Edwards' sentencing hearing was continued seven (7) times from its originally scheduled date, primarily due to the fact that the stipulation he executed on August 15, 2016 was contingent upon his "full cooperation and testimony" against his Co-Defendant, if necessary. That case has yet to go to trial.

have received could have been added to any Luzerne County sentence.<sup>3</sup> On cross-examination, Edwards denied ever giving any statements to either Trooper Robert Christman or Trooper James Surmick that implicated him in the events that precipitated his arrest. When asked by District Attorney Jean Engler to confirm facts testified to by Trooper Christman at the preliminary hearing—facts that the Trooper stated came from the Defendant—Edwards denied ever giving those details to the Trooper. When pressed by Attorney Engler about a statement he made to Trooper Surmick at the Carbon County Correctional Facility several days before Edwards' guilty plea hearing, Edwards testified he did not recall such a meeting, even after District Attorney Engler showed Edwards two (2) documents that suggested such a meeting did in fact occur.

Additionally, Attorney Engler introduced Edwards' guilty plea colloquy, which had been completed and signed by him at the time he entered his guilty plea on September 20, 2016. Attorney Engler asked Edwards about certain questions on that form and his corresponding written responses, responses which he had indicated were "truthful, correct, and complete" when questioned by the Court at the guilty plea hearing.<sup>4</sup>

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<sup>3</sup> Edwards is facing criminal homicide charges in Luzerne County.

<sup>4</sup> Attorney Engler cross-examined Edwards as to certain questions contained on that colloquy, questions Edwards acknowledged that he had answered "Yes" to. These questions dealt with: 1) understanding the nature of the offense he was pleading guilty to (#14); 2) whether his attorney explained the elements of the offense he was pleading guilty to (#15); 3) whether Edwards was acknowledging committing this offense and the legal elements constituting that offense (#16);

The Commonwealth then called Attorney Weaver as a witness for the limited purpose of testifying about the meeting between himself, Edwards, and Trooper Surmick. Attorney Weaver acknowledged not only that this meeting took place, but also that Edwards, when asked by Trooper Surmick about the statement he had previously given to Trooper Christman, confirmed that statement as well as the detailed facts that were consistent with the Commonwealth's evidence. Attorney Weaver also testified that, at that meeting, Edwards never denied making the statement to Trooper Christman.

#### LEGAL DISCUSSION

The granting or denial of a motion to withdraw a guilty plea pre-sentencing is discretionary with the trial court. *Commonwealth v. Forbes*, 299 A.2d 268, 271 (1973). Though a defendant has no absolute right to withdraw a guilty plea, the discretion possessed by the trial court should be liberally exercised in a defendant's favor. *Id.* Prior to the Supreme

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4) whether he understood the permissible range of sentence for this offense (#28); 5) whether he was entering this guilty plea of his own free will (#36); 6) whether he understood that the decision to enter this guilty plea was his to make (#39); 7) whether he was satisfied with the representation of Attorney Weaver (#43); 8) whether he had had enough time to consult with Attorney Weaver before entering the guilty plea (#44); and 9) whether Attorney Weaver went over the meaning of the terms of the guilty plea colloquy with him (#45). Attorney Engler also asked Edwards a series of questions regarding responses of "No" that he had given to other questions on the colloquy, which Edwards acknowledged were accurate responses. These included: 1) whether anyone forced him to enter this guilty plea (#35); 2) whether any threats were made to him to enter this plea (#37); and 3) whether any promises, other than those spelled out in the plea agreement, were made in order for him to enter his guilty plea (#38).

Court's decision in *Commonwealth v. Carrasquillo*, 115 A.3d 1284 (Pa. 2015), for a court to grant a request to withdraw a guilty plea, all that was required of a defendant was to show a "fair and just reason" for the withdrawal and that the Commonwealth would not be prejudiced. *Forbes* at 271. However, since then and in accordance with the *Carrasquillo* decision, such a "per se" approach is no longer the law of the land.

In *Carrasquillo*, the Court held that "a defendant's innocence claim must be at least plausible to demonstrate, in and of itself, a fair and just reason for presentence withdrawal of a plea . . . More broadly, the proper inquiry on consideration of such a withdrawal motion is whether the accused has made some colorable demonstration, under the circumstances, such that permitting withdrawal of the plea would promote fairness and justice." *Id.* at 705-06. In other words, "a bare assertion of innocence is not, in and of itself, a sufficient reason to require a court to grant such a request." *Id.* at 1285.

In the case at bar, Edwards testified at the hearing on his motion to withdraw his plea that his desire to withdraw his plea is grounded in the fact that he "didn't do the crime." Edwards also made overtures suggesting that he entered the guilty plea because if he had gone to trial he might have received a longer sentence and had it added to a Luzerne County sentence. Additionally, Edwards testified that he himself had not reviewed

some of the discovery in this case, including a video of the alleged incident.<sup>5</sup> He further testified that he advised Attorney Weaver that he had an alibi, which prompted Attorney Weaver to file notice of the same on April 15, 2015.<sup>6</sup>

Assuming *arguendo* that factually this is accurate, it does not withstand the reality of the fact that the Commonwealth presented evidence at the hearing to show that Edwards acknowledged his role in the robbery in his statement to Trooper Christman, and also later to Trooper Surmick at the Carbon County Correctional Facility several days before his guilty plea, and at the guilty plea hearing itself. Edwards' own words belie his claims of innocence.

In his brief, Edwards relies on the case of *Commonwealth v. Islas*, 156 A.3d 1185 (Pa. Super. Ct. 2017) to support the proposition that Edwards' claim of innocence was "at least plausible."<sup>7</sup> This reliance is misplaced under the fact scenario

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<sup>5</sup> Edwards did testify that Attorney Weaver reviewed all of the discovery and had discussed it with Edwards.

<sup>6</sup> This notice was from long before the stipulation of August 15, 2016 and guilty plea of September 20, 2016, and would effectively be abandoned by virtue of the entry of this plea.

<sup>7</sup> The facts in *Islas* were those supporting of the grant of the withdrawing of the guilty plea. In that case, the defendant maintained his innocence with law enforcement. He also testified that if the incident truly occurred, other people would have witnessed it. Additionally, he believed that the victim had motivation to fabricate the charges and that she had delayed reporting the first incident. None of this type of supporting testimony is present in our case. Nor did Edwards testify that his change in counsel came armed with new or different advice that would cause Edwards to have a desire to withdraw his plea, as was the case in *Islas*.



we have here. None of what Edwards testified to supported a claim of innocence that was "at least plausible." In fact, Edwards' testimony in relation to this claim was implausible and disingenuous in light of his cross-examination over the statement given to Trooper Christman and the testimony of Attorney Weaver with regard to the meeting with Trooper Surmick—said meeting being an affirmation of the facts given by Edwards to Trooper Christman, facts which wholeheartedly pointed to his guilt.

Edwards also attempts to argue that his notice of alibi is further proof of his innocence. However, like all defenses, this was abandoned and no longer plausible when his guilty plea was entered. Assuredly, this reference and any other defenses would have been considered, explored, and researched by Edwards and his counsel before the negotiated plea was reached.

The case *sub judice* is factually similar to not only the Carrasquillo case, but also *Commonwealth v. Hvizda*, 116 A.3d 1103 (Pa. 2015) and *Commonwealth v. Blango*, 150 A.3d 45 (Pa. Super. Ct. 2016). In all three of those cases, the defendants were not permitted to withdraw their guilty pleas, as their claims of innocence were refuted by inculpatory statements given to the police or through evidence at a co-defendant's trial. In addition, at Edwards' guilty plea hearing, after the Commonwealth recited the factual basis for Edwards' plea, he acknowledged that those facts were substantially correct as they related to the charge he

was pleading guilty to. It is noteworthy that many of those same recited facts mirrored information that he had provided to Trooper Christman and later re-affirmed in his meeting with Trooper Surmick.

Of similar import is the consideration of the passage of time between Edwards' guilty plea and the filing of the Motion to Withdraw that plea—a period of almost seventeen (17) months. Prior to pleading guilty, Edwards had ample opportunity to examine and re-examine, evaluate and re-evaluate, weigh and consider all of the evidence in this case while deliberating on whether to maintain a claim of innocence. If anything, based upon the time delay subsequent to his guilty plea, Edwards' attempt to now withdraw that plea could be construed as nothing more than an attempt to manipulate the system.<sup>8</sup>

Edwards also argues in his motion that his guilty plea was not knowingly, intelligently, and voluntarily made. However, Edwards did not further that claim through any testimony. To the contrary, the questions asked in the written guilty plea colloquy form, as well as the questions asked of Edwards by the Court, would suggest that Edwards' plea was entered in a manner consistent with the above: knowingly, intelligently, and voluntarily. Furthermore, nothing in Edwards' testimony suggested that Attorney

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<sup>8</sup> An assertion of innocence is not a fair and just reason for withdrawal of a guilty plea when it is based upon an intent to manipulate the system. *Commonwealth v. Tennison*, 969 A.2d 572, 573 (Pa. Super. Ct. 2009).

Weaver's advice steered Edwards in the wrong direction, was inaccurate, or inappropriate. In fact, Edwards claimed that he was satisfied with Attorney Weaver's representation of him. Query then, why would an otherwise innocent man enter a guilty plea, if he was truly not guilty, after accepting the advice of counsel?

Accordingly, this Court does not find a basis to allow Edwards to withdraw his guilty plea in this case. Consequently, this Court does not need to address the issue of prejudice to the Commonwealth.

#### CONCLUSION

For the reasons stated in this Opinion, the Motion to Withdraw Guilty Plea filed by the Defendant, Amir M. Edwards, is DENIED.

BY THE COURT:

  
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Joseph J. Matika, J.

FILED  
APR 23 4:32  
CLERK OF COURT  
J. C. McGINLEY

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
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COMMONWEALTH OF PENNSYLVANIA :  
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 AMIR EDWARDS, :  
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 Defendant :  
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Jean Engler, Esquire Counsel for Commonwealth  
Adam Weaver, Esquire District Attorney  
Counsel for Defendant

ORDER OF COURT

AND NOW, this 9<sup>th</sup> day of September, 2015, upon consideration of the Defendant's "Petition for Approval to Employ a Mental Health Expert" and after hearing thereof, it is hereby ORDERED and DECREED that the Motion is DENIED<sup>1</sup>.

<sup>1</sup> Before the Court is a motion filed by Defendant requesting the Court to require the County of Carbon to bear the costs for the Defendant to employ a psychiatrist or psychologist in order to perform an evaluation of the Defendant and potentially testify at trial. The law of this Commonwealth has consistently recognized the right of an indigent defendant to have access to the same resources as a non-indigent defendant in a criminal proceeding. "[T]he state cannot discriminate against appellants on the basis of their indigency." *Commonwealth v. Franklin*, 823 A.2d 906, 909 (Pa. Super. Ct. 2003). As the United States Supreme Court has held, procedural due process guarantees that a defendant has the right to present competent evidence in his defense, and accordingly, the State must ensure that an indigent defendant has a fair opportunity to present his defense. *Ake v. Oklahoma*, 470 U.S. 68, 70 (1985).

As stated by the *Ake* Court: [W]hen a defendant demonstrates to the Trial Judge that his sanity at the time of the offense is to be a significant factor at trial, the state must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of defense. *Id.* at 83.

However, the Commonwealth is not mandated to provide for the services of an expert merely based upon the defendant's request for one. *Commonwealth v. Carter*, 643 A.2d 61, 73 (Pa. 1994). In fact, the burden falls upon the Defendant to show that his mental condition is in question. In making his argument for the appointment of the expert, Defense Counsel, in his motion, claimed that "The Defendant was placed on suicide watch when he entered the

BY THE COURT:

  
Joseph J. Matika, Judge

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[Luzerne County] prison" (paragraph 11 of motion filed June 8, 2015). At the hearing on this matter, Defendant presented no testimony suggesting that the Defendant may even remotely be suffering a mental infirmity that may negate the *mens rea* of the offenses charged nor was there any testimony as to why the Defendant was placed on suicide watch in Luzerne County. Counsel's only response to the Court's inquiry on this issue was that his client wanted him to explore all possible defenses on his behalf. Accordingly, the Defendant presented no factual basis that his mental condition was in question. Further, he filed no notice of insanity, or mental infirmity defenses, nor a motion claiming the Defendant was incompetent. In fact, the only defense raised of record was the filing of a notice of alibi, filed on April 10, 2015. Without a factual basis to do so, the Court must deny the request for an expert.