

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

COMMONWEALTH OF PENNSYLVANIA, :

:

v. :

No. 932-2018

:

SCOTT ALBERT, :

:

Defendant :

Robert S. Frycklund, Esquire
Assistant District Attorney

Counsel for the Commonwealth

David H. Knight, Esquire

Counsel for the Defendant

MEMORANDUM OPINION

Serfass, J. - April 7, 2021

Here before the Court is "Defendant's Motion to Withdraw Guilty Plea" relative to one count of Receiving Stolen Property (18 Pa. C.S.A. § 3925(a)), one count of Fleeing or Attempting to Elude Officer (75 Pa. C.S.A. § 3733(a)), and one count of Driving While Operating Privilege is Suspended or Revoked (75 Pa. C.S.A. § 1543(a)) which was entered on April 25, 2019. Based upon the arguments of counsel, our review of the guilty plea hearing transcript and the affidavit of the investigating officer, the testimony presented at the hearing on the Defendant's motion, and for the reasons set forth hereinafter, we are constrained to grant the motion and permit the Defendant to withdraw his guilty plea.

FACTUAL AND PROCEDURAL BACKGROUND

According to the affidavit of probable cause filed in the instant matter, Patrolman Bruce Broyles (hereinafter "Officer

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Broyles") was working uniformed patrol duties in an unmarked patrol vehicle on May 11, 2018. While patrolling the 200 block of North First Street around 8:30 p.m., Officer Broyles received an alert via the plate reader application on his vehicle pertaining to a "red in color sports type bike motorcycle." After some investigation, Officer Broyles learned that the bike was a 2016 Kawasaki motorcycle (hereinafter "the motorcycle"), which had been stolen from its owner in the Borough of Palmerton.

At the time that Officer Broyles had seen the motorcycle, it was travelling southbound on State Route 209. However, Officer Broyles had lost visual of the motorcycle during his investigation, and chose not to attempt to locate it.

At approximately 9:30 p.m., Officer Broyles again observed what he believed to be the same motorcycle. He observed the motorcycle enter the McCall Bridge from State Route 209. Officer Broyles was eventually able to get directly behind the motorcycle and confirm from the registration that it was the stolen motorcycle that he had observed earlier that evening. As the motorcycle turned right on State Route 248, Officer Broyles observed that the rider was a male wearing blue jeans, a black and white in color jacket, and a green helmet.

Officer Broyles then activated his overhead light. The rider failed to stop in response to Officer Broyles activating the patrol

vehicle's siren, accelerated at a high rate of speed, and began weaving through traffic.

The rider then took the Bowmanstown exit and continued westbound on State Route 895. The rider then turned right on North Kittatinny Road and briefly lost control of the motorcycle during the turn. The chase came to a dead end on North Kittatinny Road where the rider again lost control of the motorcycle. The motorcycle failed to come to a complete stop and landed on its right side. The rider jumped off of the motorcycle and ran to the back of a residence.

Officer Broyles stopped his patrol vehicle behind the motorcycle. However, because Officer Broyles had lost visual of the rider by that point, he chose to approach the motorcycle and secure the keys inside of his patrol vehicle. Officer Broyles then began speaking with neighbors who had exited their homes as a result of the commotion.

The residents informed Officer Broyles of a male, Tracy Horveath, who lived in the area and owned a similar motorcycle as the one that was involved in the chase. One resident directed Officer Broyles to the Horveath residence at 51 Bowmans Road, stating that they had seen a male running towards it. The lights in the Horveath residence were turned off shortly after.

After speaking with the residents, Officer Broyles returned to his patrol vehicle, where he had discovered that officers from

Palmerton Borough, Franklin Township, the Pennsylvania State Police (Lehigh Barracks), and Sergeant Prebosnyak had responded to the incident.

After speaking with Sergeant Prebosnyak about the incident, Officer Broyles walked with him to the Horveath residence. They observed a male inside the garage area of that residence with the light on, who was wiping down a Harley Davidson motorcycle. The male was identified as Tracy Horveath. In speaking with Horveath, he stated that he did not have any other motorcycles on his property. He also stated that he had no knowledge of the incident that had just occurred as he had been inside his garage all night.

As Officer Broyles continued speaking with Horveath, Sergeant Prebosnyak walked the perimeter of the residence. While walking, Sergeant Prebosnyak located a male matching the description of the rider sitting in a dark pavilion. The male stated that he had just walked back from the grocery store and was waiting for his girlfriend. He stated that he knew Horveath, but was not recently at the residence. The male also denied any knowledge of the incident that had just occurred.

The male was then detained and identified as Brandon Strohl. After being advised that he matched the description of the rider, Strohl stated that he was in the Horveath residence when an individual referred to as "Scotty," later identified as the Defendant, ran into the residence yelling that the police were

chasing him and that "Scotty" proceeded to hide in Horveath's residence.

Officer Broyles and Sargent Prebosnyak then returned to the Horveath residence. Horveath denied that there was anyone named Scotty inside his residence, and would not permit the officers to enter his residence.

Strohl was then transported to Lehighton Borough Police Department where he was placed in an interview room and Mirandized. Strohl agreed to speak with the officers. Strohl described Scotty as approximately five (5) feet and nine (9) or ten (10) inches in height, weighing approximately one hundred sixty (160) pounds, and wearing high style red sneakers and a red, black, and white motorcycle jacket.

Strohl had stated that he and Scotty were at Horveath's residence earlier in the day, and that Scotty had left on a red sports bike approximately one (1) to two (2) hours before the incident. Strohl added that Horveath was not in the room when Scotty returned. Strohl then provided a written statement to the officers.

Once "Scotty" was identified as the Defendant, he was brought to the Lehighton Borough Police Department on July 6, 2018. Officer Broyles alleges that the Defendant agreed to speak with him and admitted to operating the motorcycle on the night of the

incident and evading police, which led to the chase. The Defendant then provided a written statement.

The Defendant was subsequently charged with Escape (18 Pa. C.S.A. §5121(a)) and Flight to Avoid Apprehension/Trial/Punishment (18 Pa. C.S.A. 5126(a)) in addition to the three aforementioned offenses. The Defendant entered a guilty plea to Receiving Stolen Property, Fleeing or Attempting to Elude Officer, and Driving While Operating Privilege is Suspended or Revoked on April 25, 2019.

On July 5, 2019, the Defendant filed a "Pre-Sentence Motion to Withdraw Guilty Plea." The motion states that the Defendant continues to assert his innocence and that the guilty plea was a "misguided effort to end the case once and for all." The motion was denied on December 9, 2019 after an evidentiary hearing.

The Defendant's attorney, James L. Heidecker, Jr., Esquire, was granted permission by the Court to withdraw from the case before the Court ruled on the motion. Andrew T. Bench, Esquire, subsequently entered his appearance for the Defendant. On December 19, 2019, the Defendant appeared for sentencing. The Defendant requested that his motion be reconsidered. After a brief argument, the Court ordered that sentencing be continued so that the Defendant could file a second Motion to Withdraw Guilty Plea raising issues not asserted in his first petition.

The Defendant filed a second Motion to Withdraw Guilty Plea on December 20, 2019. In his motion, he raised multiple issues

that were not asserted in his first motion, including the existence of an alibi witness.

The Commonwealth filed a Response in Opposition to the Defendant's withdrawal motion. In its response, the Commonwealth raised the issue of Carbon County Local Rule of Criminal Procedure No. 590, which provides that "in order to withdraw his or her guilty plea, a defendant must state '(a) that your guilty plea was not knowing, intelligent, and voluntary; (b) that the Court did not have jurisdiction to accept your plea; (c) that the Court's sentence is beyond the maximum penalty authorized by law; [or] that your attorney was incompetent in representing you and advising you to enter a plea of guilty'" (Commonwealth's Response in Opposition to Defendant's Second Motion to Withdraw Guilty Plea).

Additionally, the Commonwealth argues that the Defendant is asserting an "ambiguous, general, and speculative" representation of innocence that would not meet the standard for leave to withdraw his guilty plea. Commonwealth v. Islas, 156 A.3d. 1185 (Pa. Super. 2017) (Commonwealth's Response in Opposition to Defendant's Second Motion to Withdraw Guilty Plea). Lastly, the Commonwealth asserts that the Defendant's Second Motion to Withdraw Guilty Plea is barred by the doctrine of collateral estoppel.

At the evidentiary hearing on the Defendant's Motion to Withdraw Guilty Plea, the Defendant was represented by newly retained counsel, David H. Knight, Esquire. The Defendant

presented the testimony of his father, Scott Albert, Sr. Mr. Albert testified that on May 11, 2018, the date of the motorcycle chase, the Defendant had driven him to "Lens Crafters" in Whitehall, Pennsylvania. Mr. Albert further elaborated that he and the Defendant were together from 5:30 p.m. to approximately 10:00 p.m. on that date. A receipt from "Lens Crafters" containing the date of the incident was entered into evidence by the Defendant.

The Defendant testified to the same set of facts at the hearing on his motion. The Defendant added that after his arrest later in the summer of 2018, he had given Officer Broyles two (2) different statements. The Defendant's first statement denied any involvement in the motorcycle chase.

ISSUES

1. Is the Defendant's Second Motion to Withdraw Guilty Plea barred by Carbon County Local Rule of Criminal Procedure No. 590 or the doctrine of collateral estoppel?
2. If the Defendant's motion is not barred, does Pennsylvania Law permit the Defendant to withdraw his guilty plea based on the aforementioned circumstances?

DISCUSSION

1. The Defendant's motion is not barred by Carbon County Local Rule of Criminal Procedure No. 590 or the doctrine of collateral estoppel.

Before we address the merits of the Defendant's motion, we must decide whether the motion is barred, which requires us to look to both the state and local rules surrounding the issue of guilty plea withdrawal. Rule 591 of the Pennsylvania Rules of Criminal Procedure, which governs the withdrawal of guilty pleas or nolo contendere pleas, provides as follows:

- (A) At 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 guilty plea or nolo contendere and the substitution of a plea of not guilty.
- (B) When a defendant moves for the withdrawal of a plea of guilty or nolo contendere, the attorney for the Commonwealth shall be given 10 days to respond.

Under Pennsylvania law, the trial court has discretion in determining whether a withdrawal request will be granted. Commonwealth v. Henderson, 47 A.3d 797, 803 (2012). Additionally, such discretion is to be administered liberally in favor of the

accused; and any demonstration by a defendant of a fair and just reason will suffice to support a grant, unless withdrawal would substantially prejudice the Commonwealth. See Commonwealth v. Forbes, 299 A.2d 268, 271 (1973).

The Commonwealth argues that Carbon County Rule of Criminal Procedure No. 590 bars the Defendant's motion because he has not raised any of the three (3) issues cited in the rule. However, the Supreme Court of Pennsylvania has provided the broader standard that a defendant need only raise "any fair and just reason" to withdraw his guilty plea. Where a conflict exists between a state standard and a local rule, "although the local courts have broad authority to promulgate local rules of procedure, '[l]ocal rules shall not be inconsistent with any general rule of the Supreme Court or any Act of Assembly.'" Commonwealth v. Williams, 125 A.3d 425, 428 (Pa. Super. 2015) (citing Pa.R.Crim.P. 105(B)). Therefore, because Rule 590 would limit the broad discretion that the Supreme Court of Pennsylvania allotted to the Trial Court, the Commonwealth's first argument must fail.

Next, we must address the Commonwealth's argument that the Defendant's motion is barred by the doctrine of collateral estoppel. In support of its argument, the Commonwealth cites the standard on subsequent motions from the civil case of Goldey v. Trustees of the University of Pennsylvania, 695 A.2d 264, 267 (Pa. 1996).

However, "collateral estoppel does not operate in the criminal context in the same manner in which it operates in the civil context. For instance, in civil practice the doctrine is applicable, in equal measure, to both parties, whereas in the criminal context, the use of the doctrine is considerably restricted, particularly where the Commonwealth seeks to use it against a criminal defendant." Commonwealth v. States, 938 A.2d 1016, 1020 (Pa. 2007). The Supreme Court of Pennsylvania stated in Commonwealth v. Lagana that "we believe that some limited form of collateral estoppel is dictated, since it would have the beneficial effect of discouraging the relitigation [sic] of the same issues based on the same evidence, while at the same time preventing judges of equal jurisdiction from entering diverse rulings on the same evidence." Commonwealth v. Lagana, 509 A.2d 863, 866 (Pa. 1986).

There were no witnesses presented at the evidentiary hearing on the Defendant's first "Motion to Withdraw Guilty Plea." During the hearing on the Defendant's second motion, he was represented by newly retained counsel, who introduced an alibi witness. The witness's substantive testimony was previously unknown to the Court. The Court denied the Defendant's first "Motion to Withdraw Guilty Plea" because the Defendant failed to show that his assertion of innocence was plausible. However, we now find that because the Defendant is represented by new counsel who has

introduced new evidence to support the Defendant's claim of innocence, the Defendant's second motion raises new issues that we have not previously reviewed and decided. Therefore, the Defendant's motion is not barred by the doctrine of collateral estoppel.

2. The Defendant has met the standards under Pennsylvania Law to withdraw his guilty plea.

As mentioned in the previous section of this memorandum opinion, a trial court has broad discretion in deciding guilty plea withdrawal requests and should administer that discretion liberally in favor of the accused for any fair and just reason unless the Commonwealth would be substantially prejudiced. However, Pennsylvania courts have also recognized that "there is no absolute right to withdraw a guilty plea[.]" Commonwealth v. Carrasquillo, 115 A.3d 1284, 1292 (2015); Commonwealth v. Baez, 169 A.3d 35, 39 (2017).

A defendant should be permitted to withdraw his guilty plea for "any fair and just reason" as long as there is no substantial prejudice to the prosecution. Commonwealth v. Kirsch, 930 A.2d 1292, 1285 (Pa. Super. 2007). While Pennsylvania courts have long held that an assertion of innocence is a fair and just reason to permit the withdrawal of a guilty plea. Commonwealth v. Woods, 307 A.2d 880 (1973), our Supreme Court stated in Commonwealth v. Carrasquillo that "a bare assertion of innocence is not, in itself,

a sufficient reason" to justify the trial court granting a motion to withdraw a plea. Carrasquillo, 115 A.3d at 1285. "Presently, we are persuaded by the approach of other jurisdictions which require 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." Id. at 1292. Therefore, whether to grant a motion to withdraw a guilty plea rests "on consideration, under the circumstances, such that permitting withdrawal of the plea would promote fairness and justice." Id.

Moreover, because "it is necessary for a criminal defendant to acknowledge his guilt during a guilty plea colloquy prior to the court's acceptance of a plea, such an incongruity will necessarily be present in all cases where an assertion of innocence is the basis for withdrawing a guilty plea." Commonwealth v. Katonka, 33 A.3d 44, 49 (Pa. Super. 2011). Thus, a defendant's participation in a guilty plea hearing may not be used to negate his later assertion of innocence when seeking to withdraw. See Id., at 50. To conclude otherwise would convert the liberal-allowance standard into a rule of automatic denial. See Islas, 156 A.2d at 1191. Thus, the agreement made by the Defendant to waive his right to withdraw the guilty plea is void.

As to whether the Commonwealth would be prejudiced as a result of allowing a defendant to withdraw his guilty plea, "[i]n the context of a pre-sentence request for plea withdrawal, the term

"prejudice" means that, due to events occurring after the entry of the plea, the Commonwealth's prosecution of its case is in a worse position that it would have been had the trial taken place as originally scheduled. Thus, prejudice is about the Commonwealth's ability to try its case, not about the personal inconvenience to complainants unless that inconvenience somehow impairs the Commonwealth's prosecution." Commonwealth v. Gordy, 73 A.3d 620, 624 (Pa. Super. 2013) (citing Commonwealth v. Kirsch, 930 A.2d 1282, 1286 (Pa. Super. 2007)). Moreover, prejudice is not established where the consequence of withdrawal is to require the Commonwealth to do something that it was already required to do prior to the entry of the plea. Commonwealth v. Kirsch, 930 A.2d 1282, 1286 (Pa. Super. 2007).

In the instant matter, the Defendant requests to withdraw his guilty plea based on his assertion of innocence. According to the caselaw surrounding guilty plea withdrawal, an assertion of innocence is a fair and just reason for the Court to permit a criminal defendant to withdraw their guilty plea so long as his claim is plausible and the Commonwealth would not be substantially prejudiced.

The Defendant has introduced both the testimony of an alibi witness and physical evidence substantiating that witness's testimony in the form of a "Lens Crafters" receipt from the date of the incident. Though the evidence presented does not alone

prove that the Defendant is innocent of the offenses with which he is charged, it demonstrates sufficient plausibility of the Defendant's claim of innocence to permit withdrawal of the guilty plea.

Although the Defendant admitted guilt at the guilty plea hearing on April 25, 2019, Pennsylvania Law prohibits us from considering that admission in deciding whether to permit the Defendant to withdraw his guilty plea based on his later assertion of innocence.

Additionally, by its own admission, the Commonwealth would not be prejudiced if the Court would permit the Defendant to withdraw his guilty plea beyond the expenditure of time and resources necessary to try the case. The Commonwealth did not demonstrate that the trial of the case would require any greater commitment of time or resources now than if it had taken place as originally scheduled. Accordingly, we cannot find that the Commonwealth would be prejudiced by allowing the Defendant to withdraw his plea of guilty. Therefore, because the Defendant has presented a fair and just reason for withdrawal and the Commonwealth would not be significantly prejudiced, this Court is constrained to allow the Defendant to withdraw his guilty plea.

CONCLUSION

For the reasons stated hereinabove, the "Defendant's Motion to Withdraw Guilty Plea" will be granted and we will enter the following

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Defendant :

Robert S. Frycklund, Esquire
Assistant District Attorney

Counsel for the Commonwealth

David H. Knight, Esquire

Counsel for the Defendant

ORDER OF COURT

AND NOW, to wit, this 7th day of April, 2021, upon consideration of "Defendant's Motion to Withdraw Guilty Plea" and after a hearing held thereon, and following our review of the guilty plea hearing transcript, and for the reasons set forth in our Memorandum Opinion bearing even date herewith, it is hereby

ORDERED and DECREED that the aforesaid motion is GRANTED, that Defendant's sentencing hearing scheduled at 10:00 a.m. on April 12, 2021 is stricken from the Court's calendar, and that this case is scheduled for a Judicial Status Conference at 9:00 a.m. on May 18, 2021 in Courtroom No. 1 of the Carbon County Courthouse at Jim Thorpe, Pennsylvania.

BY THE COURT:



Steven R. Serfass, J.