

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

COMMONWEALTH OF PENNSYLVANIA, :

v. :

No. 947-2015

RUSSELL B. WOODWARD, JR., :

Defendant :

Michael S. Greek, Esquire
District Attorney

Counsel for the Commonwealth

Joseph V. Sebelin Jr., Esquire

Counsel for the Defendant

MEMORANDUM OPINION

Serfass, J. - December 15, 2020

Here before the Court is "Defendant's Motion to Withdraw Guilty Plea" relative to one count of Criminal Attempt to Commit Burglary (18 Pa. C.S.A. § 901(a)), which was entered through the Carbon County Veterans Treatment Court (hereinafter "VTC") on February 21, 2018. Based upon the arguments of counsel, our review of the guilty plea hearing transcript and 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

On August 19, 2015, Officer Joshua Tom of the Lansford Police Department filed a criminal complaint against Russell B. Woodward, Jr. (hereinafter "the Defendant") charging him with two (2) counts of Burglary- Overnight Accommodation, Person Present- Criminal

FS-35-2020

Attempt (Criminal Attempt to Commit Burglary) (F1) (18 Pa. C.S.A. § 901(a)), two (2) counts of Defiant Trespass- Fenced/Enclosed (M3) (18 Pa. C.S.A. § 3503(b)(1)(iii)), one (1) count of Theft by Unlawful Taking- Movable Property (M3) (18 Pa. C.S.A. § 3921(a)), and one (1) count of Public Drunkenness (S) (18 Pa. C.S.A. § 5505).

On October 15, 2015, pursuant to the order of Judge Joseph J. Matika, the criminal information was amended to include one (1) count of Criminal Attempt to Commit Criminal Trespass (F3) (18 Pa.C.S.A. §902(a)). The Defendant, who was initially represented by Assistant Public Defender Matthew J. Mottola, Esquire, entered a guilty plea to that charge on November 24, 2015. The remaining charges were dismissed for purposes of the plea agreement. However, pending sentencing in the instant matter, the Defendant applied for entry into VTC. The Defendant's application was subsequently approved and, in order to admit him into that program, the Defendant was permitted to withdraw his guilty plea pursuant to Judge Matika's order of February 21, 2018. On that same date, the Defendant, now represented by Chief Public Defender Gregory L. Mousseau, Esquire, entered a guilty plea in this case through VTC to one (1) count of Burglary-Overnight Accommodation, Person Present-Criminal Attempt (F1) and one (1) count of Theft by Unlawful Taking-Movable Property (M3).

While Judge Matika was reviewing the VTC guilty plea colloquy with the Defendant, the following exchange occurred:

FS-35-2020

THE COURT: Do you understand, Mr. Woodward, or do you believe that the facts as presented in these three cases as to these charges are sufficient to prove you guilty beyond a reasonable doubt should you go to trial?

MR. WOODWARD: The one is hard, but I'm not sure how the - I didn't - with the criminal trespass and attempt to burglarize, I didn't - it's - I don't know what to say to that. I thought it was criminal trespass.

ATTORNEY MOUSSEAU: We think we have a strong case on that matter. On the charges filed, we believe that at the conclusion of the Commonwealth's case, that the Court - the district attorney could have the Court charge the jury with a lesser included offense. That's what we were thinking with the criminal trespass. So to answer your question, if you went to trial would he be found guilty of those charges, probably not, but he could be found guilty of the lesser included offense.

THE COURT: But the charge he is here to plead guilty to is criminal attempt to commit burglary.

ATTORNEY MOUSSEAU: It is. But for today's purposes, he is willing to admit, so he gets his entry into the program, that there is sufficient evidence.

THE COURT: Is that correct Mr. Woodward? I mean, this is all voluntary on your part.

MR. WOODWARD: If that's the best we can do, yeah, I guess.

The Court then accepted the guilty pleas to Criminal Attempt to Commit Burglary and Theft by Unlawful Taking- Movable Property, and placed the Defendant into the Carbon County Veterans Treatment Court program.

On June 6, 2018, the Court ordered that the Defendant serve fourteen (14) days of incarceration in the Carbon County Correctional Facility as a sanction for violating certain rules

and regulations of VTC. Following written notice of termination from VTC dated August 29, 2018, the Court scheduled a hearing to consider the Defendant's continued participation in or termination from the program. Because Attorney Mousseau is a member of the VTC treatment team, the Court appointed Joseph V. Sebelin, Jr., Esquire, to represent the Defendant at the aforesaid hearing. Upon Judge Matika's order of November 27, 2019, the Defendant was terminated from VTC and scheduled for sentencing before the undersigned.

On January 17, 2020, the Defendant filed the instant motion to withdraw his guilty plea, in which he argues that his plea was not entered knowingly, intelligently, and voluntarily, and that he is innocent of the charges to which he pleaded guilty. District Attorney Michael S. Greek, Esquire, filed a memorandum of law in opposition to the Defendant's withdrawal motion, stating that the Defendant's execution of the Veterans Treatment Court Written Colloquy form, the Veterans Treatment Court Participant Contract, and Pennsylvania law support the position that the Defendant knowingly, intelligently, and voluntarily entered his guilty plea on February 21, 2018 and that his motion should be denied accordingly.

The Court held an evidentiary hearing on the Defendant's motion at which both the Defendant and Attorney Mousseau testified as to what occurred in VTC on the day of the guilty plea hearing.

The Defendant testified that he believed he was pleading guilty to Criminal Trespass, not Criminal Attempt to Commit Burglary. The Defendant further asserted that he signed the paperwork to enter his plea within what he believed to be a span of five (5) minutes in the hallway outside of the courtroom and that, for the most part, he had just signed and initialed what he was told to. He claimed that he did not read any of the forms and was confused as to what was going on. According to the Defendant, his medication may have contributed to his confusion on the day he entered his guilty plea. He contends that the VTC forms were not fully explained to him and that he thought the burglary charge was being dropped as he would not have pleaded guilty to that offense. Lastly, the Defendant asserted at the hearing that he was not guilty of attempted burglary on the date that he entered his plea and that he remains "absolutely innocent" of that charge. Moreover, he claims that he told Attorney Mousseau that he was not guilty of attempted burglary at the time of the plea hearing.

According to Attorney Mousseau, he reviewed the guilty plea colloquy form and Veterans Treatment Court Contract with the Defendant and explained to him anything that he did not understand. Attorney Mousseau asserted that both he and Judge Matika had explained to the Defendant that he would be pleading guilty to Criminal Attempt to Commit Burglary. Although Attorney Mousseau admitted that the Defendant was probably taking medication and may

have had undiagnosed diabetes at the time of the guilty plea hearing, he believed that the Defendant understood the charge to which he was pleading guilty. However, Attorney Mousseau admitted that he had mentioned during the guilty plea hearing that he did not believe that the Defendant would be found guilty of Criminal Attempt to Commit Burglary or Criminal Trespass if the case had gone to trial.

Counsel for the Commonwealth argues that the Defendant has waived his right to withdraw his guilty plea by signing the Veterans Treatment Court Written Colloquy form and the Veterans Treatment Court Participant Contract. Additionally, District Attorney Greek argues that the Commonwealth would be prejudiced by allowing the Defendant to withdraw his guilty plea as the case is now five (5) years old.

The defense responds that every defendant entering a guilty plea submits a signed colloquy form which does not, in and of itself, bar a subsequent plea withdrawal. Therefore, according to Attorney Sebelin, the documents signed by the Defendant should not be dispositive as to the withdrawal motion.

DISCUSSION

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). However, we also recognize 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.

In a post-Carrasquillo decision, the Pennsylvania Superior Court reversed a trial court's denial of a defendant's motion to withdraw a guilty plea. Commonwealth v. Islas, 156 A.3d 1185, 1191 (Pa. Super. 2017). The decision in Islas was partially based on the defendant's maintenance of innocence throughout the proceedings. Id.

As to whether the Commonwealth would be prejudiced as a result of allowing a defendant to withdraw his guilty plea, "In 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 case at bar, the Defendant desires to withdraw his guilty plea based on his assertion of innocence. In reviewing the Defendant's testimony from the date of his guilty plea, this Court finds the Defendant's assertion of innocence to be plausible on the charge of Criminal Attempt to Commit Burglary.

The Defendant was clearly confused during the guilty plea colloquy concerning the charge that he was pleading to, and never gave a straight answer as to whether he believed that he could be found guilty of Criminal Attempt to Commit Burglary. The Defendant's response of "If that's the best we can do, yeah, I guess" is insufficient to prove voluntariness on the Defendant's part. Further, the fact that the Defendant had previously pleaded

guilty to the charge of Criminal Trespass, and was told that the Criminal Attempt to Commit Burglary charge was being withdrawn (only to later reappear), further complicates the issue.

The Court acknowledges that the Defendant signed both the Veterans Treatment Court Written Colloquy form and the Veterans Treatment Court Participant Contract, both of which contain language stating that the signing defendant waives the right to withdraw his guilty plea. The Court acknowledges that these documents should be taken into consideration and treated as evidence of the Defendant's knowing, intelligent, and voluntary guilty plea. However, the Court does not find the documents to be conclusive in this case due to the exceptional circumstances of the guilty plea hearing wherein the Defendant was confused concerning the charge to which he was pleading guilty.

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 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.

Lastly, the Commonwealth asserted during the hearing on the Defendant's Motion to Withdraw his Guilty Plea that it would be prejudiced as a result of the Defendant withdrawing his guilty plea because the case is over five (5) years old. However, the Commonwealth failed to elaborate on how the lapsed time would impair the Commonwealth's ability to try the case as per the Gordy standard. Counsel for the Commonwealth simply stated that he would be working with witnesses concerning events that occurred five (5) years ago, but did not state any specific issues that he anticipated the delay in trial to cause. At the hearing on the withdrawal motion, the Commonwealth did not argue that securing its witnesses would be a problem and chose not to present evidence concerning witness availability, relying instead upon the passage of time to establish substantial prejudice. Without more, this amounts to mere speculation. In the absence of actual evidence of an adverse impact on the Commonwealth's ability to try this particular case, such speculation does not supersede a defendant's constitutional right to a trial. See Islas, 156 A.3d at 1193. Therefore, we do not find that the Commonwealth will be prejudiced by allowing the Defendant to withdraw his plea in this case.

This Court, however, does not intend to create an exception whereby all expelled participants of Veterans Treatment Court may

gain a second bite at the apple via a guilty plea withdrawal motion. We analyze this Defendant's situation with special consideration to the exceptional circumstances of his testimony on February 21, 2018 and the series of events surrounding his case. In this matter, we find that allowing the Defendant to withdraw his guilty plea would promote fairness and justice, as the Defendant's statements at the guilty plea hearing demonstrate both confusion and the maintenance of innocence. Further, the Commonwealth has not demonstrated that substantial prejudice would result by allowing 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

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

COMMONWEALTH OF PENNSYLVANIA, :

v. :

No. 947-2015

RUSSELL B. WOODWARD, JR., :

Defendant :

Michael S. Greek, Esquire
District Attorney

Counsel for the Commonwealth

Joseph V. Sebelin Jr., Esquire

Counsel for the Defendant

ORDER OF COURT

AND NOW, to wit, this 15th day of December, 2020, upon consideration of "Defendant's Motion to Withdraw Guilty Plea" and the hearing held thereon, and following our review of the guilty plea hearing transcript and the briefs of counsel, 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 and that this case is scheduled for Call of the List at 11:00 a.m. on January 25, 2021 in Courtroom No. 1 of the Carbon County Courthouse at Jim Thorpe, Pennsylvania.

BY THE COURT:



Steven R. Serfass, J.