NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. AMIR EDWARDS Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2305 EDA 2018

Appeal from the Judgment of Sentence Entered May 18, 2018
In the Court of Common Pleas of Carbon County
Criminal Division at No: CP-13-CR-0001108-2014

BEFORE: OTT, and STABILE, and McLAUGHLIN, JJ.

MEMORANDUM BY STABILE, J.: **FILED MAY 1, 2019**

Appellant, Amir Edwards, appeals from the May 18, 2018 judgment of sentence imposing 96 to 192 months of incarceration for one count of robbery.[1] We affirm.

Appellant was arrested and charged with robbery (18 Pa.C.S.A. § 3701), aggravated assault (18 Pa.C.S.A. § 2702), and related offenses in connection with the September 10, 2014 robbery of a convenience store in Tresckow, Carbon County. The Commonwealth filed its information on January 5, 2015, and Appellant filed a notice of alibi defense on April 10, 2015. On June 8, 2015, Appellant filed a petition to employ a mental health expert, but the trial court denied that motion on September 9, 2015. On September 20, 2016,

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[1] 18 Pa.C.S.A. § 3701(a)(1)(i).

Appellant entered a guilty plea to one count of robbery. On February 8, 2017, Appellant filed a pre-sentence motion to withdraw that plea. The trial court conducted a hearing on the motion on February 27, 2018 and denied the motion. On May 18, 2018, the trial court imposed sentence. This timely appeal followed.

Appellant presents two questions:

> A Whether the trial court committed an error of law and/or abuse of discretion by denying Appellant's pre-sentence motion to withdraw his guilty plea, where Appellant asserted his innocence, had filed an alibi defense, the Commonwealth introduced no evidence (eyewitness/physical evidence) of Appellant's guilt, and the Commonwealth failed to introduce any evidence of prejudice?
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> B. Whether the trial court committed an error of law and/or abuse of discretion by denying [Appellant's motion] to appoint a mental health expert?

Appellant's Brief at 9.

We review the trial court's ruling on a pre-sentence motion to withdraw a plea for abuse of discretion. ***Commonwealth v. Islas***, 156 A.3d 1185, 1187-88 (Pa. Super. 2017); Pa.R.Crim.P. 591(A). A pre-sentence motion to withdraw a guilty plea should be liberally allowed. ***Commonwealth v. Forbes***, 299 A.2d 268, 271 (Pa. 1973). Nonetheless, a bare assertion of innocence is not a sufficient reason for a trial court to permit plea withdrawal. ***Commonwealth v. Carrasquillo***, 115 A.3d 1284, 1285 (Pa. 2015). Rather, the defendant's assertion of innocence must be at least colorable or plausible. ***Islas***, 156 A.3d at 1191.

We have reviewed the record, the applicable law, the parties' briefs, and the trial court's opinions. We conclude that the trial court's March 23 and September 20, 2018 opinions thoroughly and correctly address Appellant's argument. In particular, we observe that Appellant confessed his guilt on two occasions to two different police officers prior to his guilty plea. Appellant then waited seventeen months before moving to withdraw his plea and, at the hearing on the motions, he denied ever making the confessions. N.T. Hearing, 2/27/18, at 9, 27-32. Nonetheless, he admitted he was present at the preliminary hearing when a police officer gave a detailed account of one of Appellant's confessions. ***Id.*** at 9-20. Appellant's former counsel testified that he was present for the other confession. ***Id.*** at 43-44. Further, the Commonwealth had incriminating surveillance footage. ***Id.*** at 6. We agree with the trial court's conclusion that Appellant has offered nothing more than a bare and implausible assertion of innocence. The trial court did not abuse its discretion in denying Appellant's motion to withdraw his plea.

Given our disposition of Appellant's first issue, we need not address the second. Even if we did, his argument would fail, as Appellant does not identify any basis upon which he was entitled to funds for a mental health expert. Appellant never filed a notice of an insanity or a mental infirmity defense under Pa.R.Crim.P. 568. Presently, he cites ***Commonwealth v. Murray***, 83 A.3d 137, 159 (Pa. 2013) for the proposition that the government cannot deprive the defendant of the opportunity to make a complete defense. He also cites

Commonwealth v. McClellan, 887 A.2d 291, 300 (Pa. Super. 2005), ***appeal denied***, 897 A.2d 453 (Pa. 2006), in support of counsel's obligation to make a reasonable investigation into potential defenses. Finally, he cites a concurring and dissenting opinion in ***Commonwealth v. Lesko*** 15 A.3d 345, 422 (Pa. 2011), for the proposition that "counsel cannot be expected to be a mental health expert." ***Id.*** We do not dispute these general propositions, but none of them supports Appellant's specific request for relief in this case.

Appellant claims an expert "**may have** uncovered possible defenses to the charges" against him; and that "had his capacity been compromised during the officer's questioning, it **may have** been significant to render any statements inadmissible." Appellant's Brief at 26 (emphasis added). Further, he claims that "a full psychiatric evaluation **may uncover** a lingering mental illness or possible other cognitive impairments[.]" Appellant's Brief at 27 (emphasis added). Appellant does not identify any specific defense he would have asked a mental health expert to explore, nor does he provide any basis upon which a mental health expert might have concluded he was incapacitated during the confessions. As we explained above, Appellant denied the confessions ever happened.

We acknowledge that the Constitution requires appointment of a mental health expert in some circumstances. ***See McWilliams v. Dunn***, 137 S. Ct. 1790, 1794 (2017) (when certain threshold criteria are met, a State must provide a mental health expert) (citing ***Ake v. Oklahoma***, 470 U.S. 68

(1985)). Appellant does not cite ***McWilliams***, or any other pertinent case, nor does he argue any specific criteria warranting appointment of a mental health expert in this case. If we were to accept an argument that appointment of an expert "may have" helped develop some unidentified defense, then appointment of an expert would be available to every defendant in every case. Appellant's argument lacks merit.

In light of the foregoing, we affirm the judgment of sentence. We also direct that a copy of the trial court's opinions of March 23, 2018 and September 20, 2018 be filed along with this memorandum.

Judgment of sentence affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/1/19