

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	Nos: 183 CR 10
	:	185 CR 10
JEFFREY COPE,	:	186 CR 10
Defendant	:	187 CR 10

Michael S. Greek, Esquire	
Assistant District Attorney	Counsel for the Commonwealth
Kent D. Watkins, Esquire	Counsel for the Defendant

MEMORANDUM OPINION

Serfass, J. - January 10, 2012

Here before the Court is the Defendant's "Motion to Withdraw Plea of Guilty Pursuant to Pa. R. Crim. P. 591." For the reasons that follow, we will grant in part and deny in part the Defendant's Motion.

FACTUAL AND PROCEDURAL BACKGROUND

On April 7, 2010, the Commonwealth by Information charged the Defendant in Case No. 183-CR-2010 with one count of Rape (F1), one count of Statutory Sexual Assault (F2), one count of Sexual Assault (F2), three counts of Aggravated Indecent Assault (F2), two counts of Indecent Assault (M2), one count of Indecent Assault (M1), one count of Indecent Exposure (F1), and one count of Corruption of Minors (M1)¹. On April 7, 2010, the Commonwealth by Information charged the Defendant in Case No. 187-CR-2010 with two counts of Rape (F1), one count of Rape of a Child (F1),

¹ 18 Pa. C.S.A. §§ 3121(a)(1), 3122.1, 3124.1, 3125(a)(1), 3125(a)(2), 3125(a)(8), 3126(a)(1) and 3126(a)(2), respectively.

two counts of Statutory Sexual Assault (F2), four counts of Involuntary Deviate Sexual Intercourse (F1), one count of Involuntary Deviate Sexual Intercourse with a Child (F1), one count of Sexual Assault (F2), three counts of Aggravated Indecent Assault (F2), two counts of Indecent Assault (M2), two counts of Indecent Assault (M1), one count of Indecent Exposure (M1), and one count of Corruption of Minors (M1)².

On April 7, 2010, the Commonwealth by Information charged the Defendant in Case No. 186-CR-2010 with one count of Criminal Conspiracy (M3), and one count of Harassment (M3)³. On April 8, 2010, the Commonwealth by Information charged the Defendant in Case No. 185-CR-2010 with two counts of Indecent Assault (M2), and two counts of Indecent Assault (M1)⁴.

On January 4, 2011, the Defendant entered into a Stipulation to plead guilty to Counts 1, 10 and 11 of Case No. 183-CR-2010 (Rape, Indecent Exposure and Corruption of Minors, respectively), with a sentence of 120-240 months concurrent with the sentence in Case Nos. 185, 186 and 187 of 2010; plead guilty to Count 2 in Case No. 185-CR-2010 (Indecent Assault), with a sentence of 120-240 months concurrent to the sentence in Case

² 18 Pa. C.S.A. §§ 3121(a)(1), 3121(c), 3122.1, 3123(a)(1), 3123(a)(7), 3123(b), 3124.1, 3125(a)(1), 3125(a)(7), 3125(a)(8), 3126(a)(1), 3126(a)(2), 3126(a)(7), 3126(a)(8), 3127(a) and 6301(a), respectively.

³ 18 Pa. C.S.A. §§ 903(a)(1) and 2709(a)(5), respectively.

⁴ 18 Pa. C.S.A. §§ 3126(a)(1), 3126(a)(2), 3126(a)(7) and 3126(a)(8), respectively.

Nos. 183, 186 and 187 of 2010; plead guilty to Count 1 in Case No. 186-CR-2010 (Criminal Conspiracy), with the sentence to run concurrent with that in Case Nos. 183, 185 and 187 of 2010; and plead guilty to Counts 3, 10 and 18 in Case No. 187-CR-2010 (Rape of a Child, Involuntary Deviate Sexual Intercourse with a Child and Indecent Assault, respectively), with a sentence of 120-240 months to run concurrent with the sentence in Case Nos. 183, 185 and 186 of 2010. The Defendant also waived the right to withdraw his guilty plea in each of the four cases.

On February 14, 2011, the Defendant wrote a letter to the Court indicating that he wanted to withdraw the pleas and have a trial on each of the four cases. The letter indicated that the Defendant does not want to serve a sentence of 10-20 years for "something that [he] didn't do," and that his attorney talked him into signing the pleas. On March 15, 2011, this Court issued an Order removing this matter from the guilty plea list and listing the matter for trial on April 11, 2011 based upon the Defendant's desire to no longer plead guilty.

On April 7, 2011, the Defendant entered into another Stipulation to plead guilty to Counts 1, 10 and 11 in Case No. 183-CR-2010 (Rape, Indecent Exposure and Corruption of Minors, respectively), with a sentence of 120-240 months concurrent with the sentence in cases 185, 186 and 187 of 2010; plead guilty to Count 2 in Case No. 185-CR-2010 (Indecent Assault), with a

sentence of 120-240 months concurrent to the sentence in Case Nos. 183, 186 and 187 of 2010; plead guilty to Count 1 in Case No. 186-CR-2010 (Criminal Conspiracy), with the sentence to run concurrent with that in Case Nos. 183, 185 and 187 of 2010; and plead guilty to Counts 3, 10 and 18 in Case No. 187-CR-2010 (Rape of a Child, Involuntary Deviate Sexual Intercourse with a Child and Indecent Assault, respectively), with a sentence of 120-240 months to run concurrent with the sentence in Case Nos. 183, 185 and 186 of 2010. The Defendant again waived the right to withdraw his guilty plea in each of the four cases.

The Defendant completed the written Guilty Plea Colloquy on April 6, 2011. The Defendant completed the Megan's Law Supplement to the Guilty Plea Colloquy on April 7, 2011. The Defendant also completed a "Defendant's Waiver of Right to Withdraw Guilty Plea" form on April 7, 2011, which prohibited the Defendant from withdrawing the guilty pleas unless the sentencing court does not accept the guilty pleas. He also completed a "Waiver of All Appeals and Post Conviction Rights" form on April 7, 2011. The Defendant entered the guilty pleas on April 7, 2011. On April 7, 2011, this Court also ordered that a Pre-Sentence Investigation and a Megan's Law Assessment be conducted prior to sentencing.

On July 5, 2011, the Defendant wrote another letter to the Court indicating that he desired to withdraw his guilty pleas.

The letter indicates that the Defendant believes that his attorney, Gregory L. Mousseau, Esquire, coerced him into entering the guilty pleas, and that the Defendant wants to take his cases to trial. The letter also requests that new out-of-county counsel be appointed for the Defendant because he believes his previous counsel was ineffective. The letter further indicated that the Defendant wants to withdraw the confession that he gave to the Nesquehoning Police, because he believes that the police coerced him into making a false confession. The Defendant stated that the police told him that he could leave if he told them what they wanted to hear, and that he was scared and gave into them. He also stated that the police told him that he wouldn't be serving much time in prison.

On July 18, 2011, Attorney Mousseau filed a Petition to Withdraw as Counsel. On August 19, 2011, the Court appointed Kent D. Watkins, Esquire, to represent the Defendant. On September 2, 2011, the Defendant filed a "Motion to Withdraw Plea of Guilty Pursuant to Pa. R. Crim. P. 591." The Defendant avers that he was coerced into pleading guilty by Attorney Mousseau, and that he has not been sentenced on any of the charges. He also avers that the Commonwealth will not be prejudiced by a withdrawal of the pleas, and that he withdrew the pleas as soon as possible under the circumstances. The Defendant also avers that he is innocent and that he desires to

take his cases to trial. Accordingly, the Defendant requests that he be permitted to withdraw his guilty pleas.

On October 14, 2011, this Court held a hearing on the Defendant's Motion. At the hearing, the Defendant testified that he entered into the pleas based on his attorney's advice, and that he felt threatened by a harsher sentence. He also alleged that his pleas were not knowing and voluntary because he did not know what he was up against. The Defendant also asserted his innocence as to the underlying charges.

DISCUSSION

"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 plea of guilty or *nolo contendere* and the substitution of a plea of not guilty." Pa. R. Crim. P. 591(a). "When a motion to withdraw a plea is made prior to sentencing, the motion shall be granted where the defendant has offered a 'fair and just reason.'" Commonwealth v. Gunter, 771 A.2d 767, 770 (Pa. 2001), citing Commonwealth v. Forbes, 299 A.2d 268 (Pa. 1973). "If the trial court finds 'any fair and just reason,' withdrawal of the plea before sentence should be freely permitted, unless the prosecution had been substantially prejudiced." Commonwealth v. Randolph, 718 A.2d 1242, 1244 (Pa. 1998).

In order to demonstrate prejudice, the Commonwealth must show, due to events that occurred after the plea was entered, that it has been placed in a worse position than it would have been had trial taken place as scheduled. Commonwealth v. Kirsch, 930 A.2d 1282, 1286 (Pa. Super. 2007). In other words, the Commonwealth must rely on the plea to its detriment. Id. 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 entry of the plea, such as returning to the pre-trial stage of the proceedings. Id.

A. The Defendant's Guilty Plea in Case No. 186-CR-2010

In this case, the Defendant has asserted two grounds for withdrawing his guilty pleas; an assertion of innocence and coercion into pleading guilty by his counsel. However, the Defendant executed stipulations and agreements in which he agreed to waive the right to withdraw his guilty pleas unless the sentencing court did not accept the pleas. While we acknowledge the execution of the waiver, a recent decision of the Pennsylvania Superior Court compels us to conclude that the waiver cannot be enforced against the Defendant in the aforementioned case.

In Commonwealth v. Pardo, --- A.3d ---, 2011 Pa. Super. 266 (2011), the Court held that a waiver provision similar to the one executed in this case did not prevent the defendant from

withdrawing his guilty plea prior to sentencing. The Court specifically held that it was an abuse of discretion for the trial court to find that a defendant has waived his right to withdraw a plea prior to sentencing where he entered an open plea as to sentencing, asserted his innocence, and no prejudice to the Commonwealth would result if the plea were withdrawn.

As to Case No. 186-CR-2010, which involves the charges of Criminal Conspiracy (M3) and Harassment (M3) involving an adult victim, the Defendant entered an open plea as to the length of the potential sentence. The only provision regarding sentencing directed that any sentence imposed would run concurrent with the sentence imposed in the three other cases discussed herein. The Commonwealth also did not set forth any argument that it would be prejudiced if the Defendant were permitted to withdraw his guilty plea in the aforementioned case.

Thus, based upon the Court's holding in Pardo, we conclude that the waiver of the right to withdraw the guilty plea executed by the Defendant in Case No. 186-CR-2010 cannot be enforced against him. As a result, we must consider whether the Defendant has established sufficient grounds to withdraw his guilty plea. The mere articulation of innocence is a fair and just reason for withdrawal of a guilty plea prior to sentencing, absent substantial prejudice to the Commonwealth. Commonwealth v. Katonka, --- A.3d ---, 2011 Pa. Super. 223 (2011). Requests

to withdraw a guilty plea prior to sentencing should be liberally granted. Forbes, 299 A.2d at 271-272. Therefore, since the Defendant has moved to withdraw his guilty pleas based upon an assertion of innocence, he has presented a fair and just reason to withdraw his guilty plea. Accordingly, the Defendant's Motion as to Case No. 186-CR-2010 must be granted.

**B. The Defendant's Guilty Pleas in Case Nos. 183, 185
and 187 CR 2010**

1. Waiver of Right to Withdraw Guilty Plea

While we conclude that the waiver executed by the Defendant cannot be enforced against him in Case No. 186-CR-2010, we do not reach the same conclusion as to the Defendant's remaining cases. "It is firmly established that a plea of guilty generally amounts to a waiver of all defects and defenses except those concerning the jurisdiction of the court, the legality of sentence, and the validity of the guilty plea." Commonwealth v. Langston, 904 A.2d 917, 921 (Pa. Super. 2006). "[A] plea agreement is quasi-contractual in nature and must be analyzed under the terms of contract law." Commonwealth v. Lutz, 788 A.2d 993, 1000 (Pa. Super. 2001). "Assuming the plea agreement is legally possible to fulfill, when the parties enter the plea agreement on the record, and the court accepts and approves the plea, then the parties and the court must abide by the terms of

the agreement." Commonwealth v. Anderson, 995 A.2d 1184, 1191 (Pa. Super. 2010).

In Commonwealth v. Porreca, 595 A.2d 23 (Pa. 1991), the Court determined that a defendant had waived the right to withdraw his plea because the written plea agreement included specific language that he knowingly waived his right to withdraw the plea if the court did not concur in the recommended sentence. Also, when entering into a plea bargain, a defendant is permitted to expressly, knowingly and voluntarily waive valuable statutory rights in exchange for important concessions by the Commonwealth as part of a bargained-for exchange. Commonwealth v. Byrne, 833 A.2d 729, 735-36 (Pa. Super. 2003).

Here, in each case, the Defendant and the Commonwealth entered into a stipulation on April 7, 2011, in which the Defendant expressly waived his right to withdraw his guilty pleas. On April 7, 2011, the Defendant also completed a "Defendant's Waiver of Right to Withdraw Guilty Plea" form, which prohibited the Defendant from withdrawing the guilty pleas unless the sentencing court does not accept the guilty pleas. The Defendant completed the written Guilty Plea Colloquy on April 6, 2011, and completed the Megan's Law Supplement to the Guilty Plea Colloquy on April 7, 2011. The Defendant then entered the guilty pleas on April 7, 2011. At the guilty plea hearing held on April 4, 2011, the Defendant testified that he

both understood and voluntarily accepted the terms of the plea agreement. (N.T., Guilty Plea Hr'g, 4/4/11, p. 7). He also testified that he signed the wavier form and understood that he was waiving his right to withdraw his guilty pleas. (N.T., Guilty Plea Hr'g, 4/4/11, p. 18). Also, at the hearing held on the instant Motion on October 14, 2011, the Defendant testified that, when he signed the "Defendant's Waiver of Right to Withdraw Guilty Plea" form on April 7, 2011, he understood that he could not subsequently withdraw the guilty pleas. The Defendant's testimony on October 14, 2011 also indicates that he entered the guilty pleas of his own free will, without force or coercion, and with full knowledge of his rights, the nature of the charges, and the consequences of pleading guilty.

While we acknowledge the recent holding of the Pennsylvania Superior Court in Pardo, that case is distinguishable from the instant case in several respects. First, the defendant in Pardo entered an open plea as to sentencing, while the Defendant here entered a plea with a binding sentence in each of his remaining three cases. Additionally, the defendant's counsel in Pardo created a misimpression in the defendant's mind that he would be eligible for the Recidivism Risk Reduction Incentive (RRRI) program as part of his sentence. Here, the Defendant had full knowledge of the sentence he would receive upon acceptance of his guilty pleas by this Court.

Second, the defendant in Pardo waived his right to withdraw as part of the written plea colloquy, while the Defendant here did so by executing a waiver form separate and apart from the multi-question written colloquy. Third, the Commonwealth in Pardo never alleged that it would suffer prejudice if the defendant were permitted to withdraw his plea. The Court also determined that it would not. Here, the Commonwealth has alleged that it would suffer substantial prejudice if the Defendant were permitted to withdraw his guilty pleas, and as discussed in the following portion of this Memorandum Opinion, we have determined that the Commonwealth would suffer such prejudice in the Defendant's remaining three cases.

Accordingly, we conclude that the holding in Pardo regarding the waiver of the right to withdraw a guilty plea prior to sentencing is inapplicable where, as here, the Defendant entered into binding guilty pleas as to sentencing and the Commonwealth will be substantially prejudiced if the Defendant were permitted to withdraw his guilty pleas.

Therefore, despite the fact that an assertion of innocence and/or proof of counsel's ineffectiveness can establish valid grounds to withdraw a guilty plea, the Defendant has knowingly, voluntarily and intelligently waived the right to withdraw his guilty pleas as part of a bargained-for exchange with the

Commonwealth. As a result, the Defendant's Motion must be denied as to Case Nos. 183, 185 and 187 of 2010.

2. The Defendant's Assertion of Innocence

While the Defendant's assertion of innocence is not dispositive in light of the Defendant's waiver of his right to withdraw the guilty pleas, we will nevertheless address the issue as it applies to the charges outlined in Case Nos. 183, 185 and 187 of 2010. An assertion of innocence is a fair and just reason for the withdrawal of a guilty plea, especially where the Commonwealth does not demonstrate that prejudice will result from the withdrawal. Commonwealth v. Boofer, 375 A.2d 173, 174 (Pa. Super. 1977). Acknowledging guilt during the plea colloquy does not prevent the later withdrawal of a guilty plea upon a later inconsistent assertion of innocence. Kirsch, 930 A.2d at 1286. However, an assertion of innocence does not divest a judge of discretion to weigh its sincerity according to the totality of circumstances known to the judge, and to deny the motion where the motion is not founded not upon a sincere assertion of innocence. Commonwealth v. Tennison, 969 A.2d 572, 573 (Pa. Super. 2009).

In this case, while the Defendant's assertion of innocence would normally constitute a fair and just reason to withdraw his guilty pleas, there is substantial prejudice to the Commonwealth given the nature of the case and the ages of the alleged

victims. The above-cited cases involve serious allegations of criminal sexual conduct that allegedly occurred between July 2007 and May 2009. The alleged victims are three (3) female minor children. One alleged victim is now seventeen (17) years of age, being between twelve (12) and fourteen (14) years of age when the alleged crimes occurred. The second alleged victim is now nine (9) years of age, being between four (4) and six (6) years of age when the alleged crimes occurred. The third alleged victim is now twelve (12) years old, being between seven (7) and nine (9) years of age when the alleged crimes occurred.

Based on the above timeframe, there is a gap of roughly two (2) to four (4) years between the occurrence of the alleged crimes and the date of this Memorandum Opinion, which will certainly continue to grow if this matter were listed for trial. Given said timeframe, the substantial delay would undoubtedly affect the ability of the alleged victims, at trial, to recall the events that allegedly transpired years earlier. In Commonwealth v. Walker, 26 A.3d 525 (Pa. Super. 2011), the trial court denied the defendant's pre-sentence motion to withdraw his guilty plea to two counts of aggravated assault. The Court affirmed the denial of the motion, finding that substantial prejudice to the Commonwealth existed since the period of roughly 6-7 years that had passed since the commission of the alleged crimes affected the memories of the witnesses. Id. at

531. Also, in Commonwealth v. Carr, 543 A.2d 1232, 1234 (Pa. Super. 1988), the Court concluded that substantial prejudice was present where an eight (8) month delay would dull a five year old child victim's recall of the events at issue. See also Commonwealth v. Weimer, 93 Westmoreland L.J. 131 (C.P. Westmoreland 2011)(holding that the passage of nearly two years since the alleged criminal conduct would substantially prejudice the ability of the Commonwealth to try the defendant).

Therefore, the significant gap in time from the commission of the alleged offenses to the present will undoubtedly have a negative effect on the memories of the alleged victims in this case, affecting their ability to recall the events at issue, and cause the Commonwealth to be irrevocably prejudiced. As a result, the Defendant's withdrawal of the guilty pleas would certainly place the Commonwealth in a worse position than it would have been if this matter were initially resolved by way of a trial rather than a guilty plea. Accordingly, we conclude that substantial prejudice would result if the Defendant was permitted to withdraw his guilty pleas. Therefore, the Defendant's Motion must be denied as to Case Nos. 183, 185 and 187 of 2010.

3. The Defendant's Assertion of Coercion by Counsel

As with the Defendant's assertion of innocence, his allegations of coercion into entering the guilty pleas by

counsel are not dispositive in light of the Defendant's waiver of the right to withdraw his guilty pleas in Case Nos. 183, 185 and 187 of 2010. However, we will nevertheless address the issue.

"A criminal defendant has the right to effective counsel during a plea process as well as during a trial." Commonwealth v. Hickman, 799 A.2d 136, 141 (Pa. Super. 2002). "Allegations of ineffectiveness in connection with the entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea." Id. "Where the defendant enters his plea on the advice of counsel, the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.'" Id. In order to prevail on an ineffectiveness claim, the Defendant must satisfy a three-factor test, the first two being: 1) whether the underlying claim is of arguable merit; that is, whether the disputed action or omission by counsel was of questionable legal soundness; and 2) whether counsel had any reasonable basis for the questionable action or omission which was designed to effectuate his client's interest. Id. at 140-41. If he did, the inquiry ends; if not, [an appellant may prevail on his ineffectiveness claim by demonstrating] that counsel's improper course of conduct worked

to his prejudice, i.e., had an adverse effect upon the outcome of the proceedings. Id.

"The goal sought to be attained by the guilty plea colloquy is assurance that a defendant's guilty plea is tendered knowingly, intelligently, voluntarily and understandingly." Commonwealth v. Persinger, 615 A.2d 1305, 1308 (Pa. 1992); see also Pa. R. Crim. P. 590(A)(3). In order to achieve this goal the trial court, at a minimum, must inquire into the following six areas in non-homicide cases:

- (1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or *nolo contendere*?
- (2) Is there a factual basis for the plea?
- (3) Does the defendant understand that he or she has the right to trial by jury?
- (4) Does the defendant understand that he or she is presumed innocent until found guilty?
- (5) Is the defendant aware of the permissible range of sentences and/or fines for the offenses charged?
- (6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Comment to Pa. R. Crim. P. 590(b).

At the guilty plea hearing, the Defendant was advised of the factual basis for the guilty pleas. (N.T., Guilty Plea Hr'g, 4/4/11, pp. 12-15). He was also questioned regarding his completion of the written Guilty Plea Colloquy, which addresses

the other five of the six critical areas described above. The written Guilty Plea Colloquy indicates that the Defendant understood the nature of the charges to which he plead guilty (Question 14); understood that he has the right to a trial by jury (Question 17); understood that he is presumed innocent until proven guilty (Question 19); was aware of the permissible range of sentences and/or fines for the offenses charged (Question 28); and understood that the Court is not bound by the terms of any plea agreement unless it accepts said agreement (Question 26). The Defendant testified that he understood all of the questions, had an opportunity to review the questions with his counsel, provided true and correct answers to the questions, and signed the colloquy of his own free will. (N.T., Guilty Plea Hr'g, 4/4/11, pp. 7-8). At the hearing, the Defendant was also advised of the terms of the plea agreement, and indicated that he understood and voluntarily accepted said terms. (N.T., Guilty Plea Hr'g, 4/4/11, p. 7).

The Defendant also indicated that he reads, writes and understands the English language; that he was not under the influence of drugs or alcohol which impaired his ability to understand the proceedings; and that he does not suffer from any mental or physical ailments that prevent him from understanding the proceedings. (N.T., Guilty Plea Hr'g, 4/4/11, p. 7). He also testified that no one threatened or forced him to enter into the

guilty pleas, and that no one promised him anything in exchange for the plea other than what was presented to the Court. The written Guilty Plea Colloquy also reflects that the Defendant was not forced or threatened into entering into the guilty pleas, that he plead guilty of his own free will, and that he understood that the decision to plead guilty was his and his alone. (See Questions 35-39). The Defendant also testified that he was satisfied with the representation of his counsel. (N.T., Guilty Plea Hr'g, 4/4/11, pp. 15-16). (See also Written Colloquy, Question 43).

The Defendant's testimony at the guilty plea hearing and his responses to the questions contained in the written Guilty Plea Colloquy clearly demonstrate that he was not coerced into entering the guilty pleas by his counsel, and that he entered a knowing, voluntary and intelligent plea. As a result, the Defendant cannot contradict his testimony and responses at a later hearing. "A defendant is bound by the statements he makes during his plea colloquy, and may not assert grounds for withdrawing the plea that contradict statements made when he pled." Commonwealth v. Stork, 737 A.2d 789, 790-791 (Pa. Super. 1999). "[O]nce a defendant has entered a plea of guilty, it is presumed that he was aware of what he was doing, and the burden of proving involuntariness is upon him." Id. "Therefore, '[w]here the record clearly demonstrates that a guilty plea

colloquy was conducted, during which it became evident that the defendant understood the nature of the charges against him, the voluntariness of the plea is established.' " Id. (quotations omitted). The law does not require that a defendant be completely satisfied with the outcome of his decision to plead guilty, only that a plea be voluntary, knowing, and intelligent. Commonwealth v. Rush, 909 A.2d 805, 810 (Pa. Super. 2006). "The mere fact that a defendant was 'under pressure' at the time he entered a guilty plea will not invalidate the plea, absent proof that he was incompetent at the time the plea was entered." Commonwealth v. Myers, 642 A.2d 1103, 1107 (Pa. Super. 1994).

Based on the foregoing, the evidence of record demonstrates that the Defendant was not coerced into pleading guilty by his counsel, and that he entered knowing, voluntary and intelligent pleas. The Defendant has not presented sufficient evidence to meet his burden to demonstrate the involuntariness of the guilty pleas, or that his counsel provided ineffective representation during the plea negotiation process. Accordingly, the Defendant's Motion must be denied as to Case Nos. 183, 185 and 187 of 2010⁵.

⁵ Given that we have granted the Defendant's motion to withdraw his guilty plea as to Case No. 186-CR-2010, his allegations of his counsel's ineffectiveness as to that case are moot.

CONCLUSION

After a thorough review of the transcript of the Defendant's guilty plea hearing, the record in this matter, the submissions of the parties, and following the hearing on Defendant's motion to withdraw his pleas, we conclude that the waiver cannot be enforced against the Defendant in Case No. 186-CR-2010, and that he has presented a fair and just reason to withdraw his guilty plea in that case. We further conclude that the Defendant has waived his right to withdraw his guilty pleas in the remaining three cases and, in any event, that the Commonwealth would suffer substantial prejudice if he were permitted to do so. We are also convinced that Defendant knowingly, voluntarily and intelligently entered his guilty pleas, fully cognizant of his rights, the nature of the charges and the consequences of his plea. As a result, the Defendant's Motion seeking to withdraw his guilty pleas must be granted in part and denied in part.

BY THE COURT:

Steven R. Serfass, J.

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	Nos: 183 CR 10
	:	185 CR 10
JEFFREY COPE,	:	186 CR 10
Defendant	:	187 CR 10

Michael S. Greek, Esquire	
Assistant District Attorney	Counsel for the Commonwealth
Kent D. Watkins, Esquire	Counsel for the Defendant

ORDER OF COURT

AND NOW, to wit, this 10th day of January, 2012, upon consideration of the Defendant's "Motion to Withdraw Plea of Guilty Pursuant to Pa. R. Crim. P. 591," the submissions of the parties, and following oral argument thereon, and in accordance with our Memorandum Opinion of this same date, it is hereby **ORDERED and DECREED** that the Defendant's "Motion to Withdraw Plea of Guilty Pursuant to Pa. R. Crim. P. 591" is **GRANTED IN PART and DENIED IN PART**, as follows:

1. The Defendant's Motion as to Case No. 186-CR-2010 is **GRANTED**, and said case shall be listed for trial on the next available criminal trial list; and
2. The Defendant's Motion as to Case Nos. 183, 185 and 187 CR 2010 is **DENIED**.

BY THE COURT:

Steven R. Serfass, J.