

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-520-2015  
vs. :  
: CRIMINAL DIVISION  
: Notice of Intent to Dismiss PCRA  
SCOTT REPELLA, : Without Holding an Evidentiary Hearing  
Defendant : and Granting Counsel's Motion to  
: Withdraw

**OPINION AND ORDER**

This matter came before the court on Defendant's Post Conviction Relief Act (PCRA) petition.

By way of background, Defendant was charged with theft by unlawful taking, theft by deception, theft by failure to make required disposition, and criminal conspiracy to commit each of those offenses arising out of Defendant and his girlfriend, or wife, taking a \$2,300 deposit from a couple for the sale of a motor vehicle but never completing the transaction or returning the funds.

On November 18, 2015, Defendant pled no contest to Count 1, theft by unlawful taking, a felony of the third degree. Later that day, the court sentenced Defendant to fifteen months to seven years' incarceration in a state correctional institution with approximately nine months' credit for time served.

On December 8, 2015, Defendant filed a motion to withdraw his plea on the basis that counsel was ineffective, Defendant was not fully aware of the charges to which he pled due to his mental health issues, and his plea was not knowing and voluntary due to his mental health issues. A hearing on this motion was scheduled for January 20, 2016. After an oral colloquy on the record on that date, however, Defendant withdrew his motion to

withdraw his guilty plea and indicated that he did not wish to file any post-sentence motion or an appeal.

Defendant filed a timely pro se PCRA petition in which he asserted that his counsel was ineffective and his guilty plea was unlawfully induced where the circumstances made it likely that the inducement caused him to plead guilty and he was innocent. Defendant claimed that he did not take any money, the vehicle was not in his name, and there was no intent on his part to defraud the victims. He only tried to help his estranged wife, then girlfriend, who was never charged. He contends that the preliminary hearing transcript shows the vehicle was not titled in his name and that he took no money.

The court appointed counsel to represent Defendant and gave counsel an opportunity to file either an amended PCRA petition on Defendant's behalf or to file a no merit letter pursuant to *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super 1988)(en banc). Counsel obtained a transcript of the hearing on Defendant's motion to withdraw his guilty and then filed a no merit letter.

In conducting its independent review of the record, the court realized that Defendant's guilty plea hearing had not been transcribed. Since Defendant was contesting that his guilty plea was not knowingly, intelligently and voluntarily entered, the court wanted to review the guilty plea hearing transcript, in addition to Defendant's written guilty plea colloquy before issuing a decision on Defendant's petition.

After an independent review of the record, the court concludes that Defendant is not entitled to relief.

First, the court finds that Defendant's claims are waived. To be eligible for relief, the allegation of error must not have been previously litigated or waived. 42 Pa. C.S. §9543(a)(3). "[A]n issue is waived if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal or in a prior state postconviction proceeding." 42 Pa. C.S. §9544(b).

Defendant filed a motion to withdraw his guilty plea in which he desired to withdraw his guilty plea for the same reasons that he asserts in his PCRA petition. At the time for the hearing on that motion, however, Defendant indicated that he did not wish to withdraw his plea. Instead, he wished to go back to state prison, do his programs, finish his time and move on with his life. He indicated that he knew what was going on, and his plea was knowing, intelligent, and voluntary. He also indicated that his attorney was not ineffective. Defendant could have litigated these issues on January 20, 2016, but he chose not to do so. By withdrawing his motion to withdraw his guilty plea, Defendant waived (or gave up) his right to assert these reasons for challenging his guilty plea.

Second, Defendant's claims are belied by the transcript of the guilty plea hearing and his written guilty plea colloquy. Defendant indicated that, although he had some mental health issues and was taking medication for those issues, he understood what was going on in the proceedings and he did not think that his medication or mental health issues were impairing his thinking. Transcript, November 18, 2015, at 6-7. Defendant also indicated that: he had enough time to consult with counsel; counsel answered his questions and addressed his concerns; and he was satisfied with counsel's representation of him. *Id.* at 7-8. Defendant also indicated that no one was forcing him or promising or inducing him to

enter his plea. *Id.* at 8. Defendant gave the same answers in his written plea colloquy. Written Plea Colloquy at pp. 5-6 (specifically Questions 21, 24 through 27, and 32 through 35).

“A plea of *nolo contendere* [or no contest] is treated the same as a guilty plea.” *Commonwealth v. Stork*, 737 A.2d 789, 790 (Pa. Super. 1999). “Once a defendant has entered a plea of guilty, it is presumed he was aware of what he was doing, and the burden of proving involuntariness is upon him.” *Commonwealth v. Myers*, 642 A.2d 1103, 1105 (Pa. Super. 1994). “A criminal defendant who elects to plead guilty has a duty to answer questions truthfully.” *Commonwealth v. Cappelli*, 489 A.2d 813, 819 (Pa. Super. 1985). He is “bound by the statements he makes during his plea colloquy, and may not assert grounds for withdrawing the plea that contradict statements he made when he pled.” *Stork*, 737 A.2d at 790-91; see also *Commonwealth v. Pollard*, 832 A.2d 517, 523-24 (Pa. Super. 2003)(“The longstanding rule of Pennsylvania law is that a defendant may not challenge his guilty plea by asserting that he lied while under oath, even if he avers that counsel induced the lies.”).

Defendant is bound by his statements at the plea hearing and in his plea colloquy. He has not asserted any ground for relief which does not contradict the statements he made when he pled no contest. Therefore, he is not entitled to relief.<sup>1</sup>

Finally, contrary to Defendant’s assertions, the preliminary hearing does not establish his innocence. Even if the vehicle was in his girlfriend’s name and she was the one who accepted the money from the couple, such does not equate to Defendant’s innocence.

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<sup>1</sup>There also is a potential risk to Defendant that if he continues to make assertions contrary to the statements he made at the plea hearing he could be charged with perjury if the statements he made under oath were false or

An individual can be guilty of an offense as the principal actor or as an accomplice.

A person is liable for the conduct of another person when he is an accomplice of the other person in the commission of an offense. 18 Pa. C.S. §306(b)(3). A person is an accomplice of another person in the commission of an offense if, with the intent of promoting or facilitating the commission of the offense, he aids or agrees or attempt to aid such other person in planning or committing it. 18 Pa. C.S. §306(b).

The transcript of the preliminary hearing shows that Defendant was a participant in the transaction either as a principal actor or an accomplice. The vehicle was posted on Craig's list with Defendant's name and cell phone number. The victims contacted Defendant through his cell phone number and made arrangements with him to meet to look at the vehicle on July 14, 2014. The husband was negotiating the price with Defendant and he was discussing it with his girlfriend because it was her vehicle, but she was deferring to him because "he knew their finances and what they could accept." Ultimately, the parties agreed on a price of \$4,150. The victims gave Defendant's girlfriend a \$2300 down payment on the vehicle with the balance due at the time of the delivery of the vehicle with the title. In a matter of days, the victims had the remainder of the money to complete the transaction. Defendant and his girlfriend told the victims that there was an unexpected family emergency in North Carolina and they could not complete the transaction until Defendant's girlfriend returned from North Carolina. The victims repeatedly sent texts inquiring when they could meet to complete the transfer. Several messages went unanswered. On August 2, however, the victims received a text message from Defendant's phone number that his girlfriend would

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unsworn falsifications if the statements he made in his PCRA petition are false.

be heading back that week and she would text them. At some point, the victims threatened to contact an attorney. Defendant's girlfriend then suggested that they just refund the victims' money. The victims agreed and provided an address so that their money could be refunded to them by sending a check to them in the mail, but the victims never received a check. When Trooper Steven Runyon investigated the matter, he discovered that Fidelity Bank had repossessed the vehicle on July 31, 2014.

From this evidence and the reasonable inferences to be drawn from the evidence, the factfinder could conclude that Defendant and his girlfriend advertised the vehicle on Craigslist and accepted a deposit for the transfer of the vehicle when they knew that they did not have title to the vehicle to transfer it regardless of whether the victims were ready to pay the balance of the purchase price in a matter of days or a matter of weeks.<sup>2</sup> Even after the vehicle had been repossessed, making any transfer impossible, Defendant and his girlfriend did not return the victims' money. Therefore, even if the vehicle was registered in Defendant's girlfriend's name and she was the one who accepted the money from the victims, Defendant, at a minimum, aided his girlfriend in the commission of the offense and would be guilty of theft as her accomplice.

As the Pennsylvania Superior Court noted in *Myers*, "A defendant may plead guilty for any reason: to shield others, avoid further exposure, to diminish the penalty, to be done with the matter, or any secret reason that appeals to his needs." 642 A.2d at 1106

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<sup>2</sup> The written document provided to the victims stated: "Lewis Pfirman Jr paid \$2300.00 of \$4150.00 for '05 Jeep Liberty. With a balance of 1850.00 to be paid at same time of delivery of vehicle with title in August 2014." The document then lists the VIN number of the vehicle and the contact information for Defendant and his girlfriend.

(quoting *Commonwealth v. Anthony*, 504 Pa. 551, 558, 475 A.2d 1303, 1307 (1984)). It appears that Defendant pled guilty for several of these reasons, including to shield his girlfriend. Now that his girlfriend is his estranged wife, Defendant is not happy with his plea. The law, however, “does not require that a defendant be pleased with the outcome of his decision to plead guilty. All that is required is that the defendant’s decision to plead guilty be knowingly, voluntarily, and intelligently made.” *Myers*, 642 A.2d at 1105 (citing *Commonwealth v. Martin*, 416 Pa. Super. 507, 512, 611 A.2d 731, 733 (1992)).

For the foregoing reasons, the following order is entered.

**ORDER**

AND NOW, this \_\_\_ day of November 2017, upon review of the record and pursuant to Rule 907(1) of the Pennsylvania Rules of Criminal Procedure, the parties are hereby notified of this court's intention to dismiss the petition without holding an evidentiary hearing. Defendant may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the court will enter an order dismissing the petition.

The court also grants PCRA counsel’s motion to withdraw from this case. Defendant is notified that he may represent himself or he may hire private counsel to represent him.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
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Work file