

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

WILLIAM WODRIG,
Defendant

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:
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CR-347-2016

WITHDRAW GUILTY PLEA

OPINION AND ORDER

Defendant Counsel filed a Motion to Withdraw Guilty Plea. A hearing was held on February 21, 2017.

Procedural History

Defendant pled guilty for the first time on May 9, 2016.

At the sentencing scheduled for August 17, 2016, the Honorable Marc F. Lovecchio directed *sua sponte* the withdrawal of Defendant's guilty plea.

Defendant pled for the second time in front of this Court on November 18, 2016. Defendant pled *nolo contendere*.

At the sentencing scheduled for December 6, 2016, Defendant indicated that he would like to withdraw his plea. As the Commonwealth's attorney could not indicate prejudice to the Commonwealth it requested Defense Counsel file a written motion and that hearing and argument be set for a later date.

Factual Background

In a Criminal Information filed May 6, 2016, Defendant was charged with Count 1, Indecent Assault (under 13 years of age)¹, graded as a misdemeanor of the first degree; and, Count 2, Indecent Assault², graded as a misdemeanor of the second

¹ 18 Pa. C.S. § 3126 (a)(7).

² 18 Pa. C.S. § 3126 (a)(8).

degree.

The facts underlying the criminal complaint include a call from the victim's aunt to the Children and Youth Agency of Lycoming County that she had seen Defendant fondling the then 11-year-old female over her clothes. Victim was interviewed at the Child Advocacy center where she indicated that Defendant had touched her "you know". At the time of his first guilty plea, Defendant admitted the following facts:

THE COURT: Okay, Mr. Wodrig, with respect to count 1, indecent assault on an individual under 13 years of age, a misdemeanor one offense, how do you plead?

WILLIAM WODRIG – DEFENDANT: Guilty

THE COURT: June – tell me what happened between June 1st of 2015 and September 30th. Did you have indecent contact with someone under 13?

WILLIAM WODRIG – DEFENDANT: Yes, at one point in time I did.

THE COURT: Who was it with? Do you know the person? Don't give me their name, but –

WILLIAM WODRIG – DEFENDANT: Yes, I know the person.

THE COURT: Was it a relative?

WILLIAM WODRIG – DEFENDANT: It was my fiancé's niece.

THE COURT: Okay. How old was she?

WILLIAM WODRIG – DEFENDANT: I think 11 at the time.

THE COURT: Okay, and how did you touch her or did she – you force her to touch you?

WILLIAM WODRIG – DEFENDANT: I inappropriately touched her breasts and vaginal areas on the outside of her clothing.

THE COURT: How many times?

WILLIAM WODRIG – DEFENDANT: Just once.

N.T., 5/9/2016, AT 13.

At the time set for sentencing, The Honorable Marc F. Lovecchio stated

Defendant has maintained under oath on today's date that he did not intentionally touch the victim on her breast or in her vaginal area for the purposes of sexual gratification for himself or her. Defendant maintains that he was wrestling with the 11-year-old victim and accidentally touched her. He claims as well that when he admitted to doing it intentionally he was lying to police and just wanted to get it over with. Under these circumstances, the Court finds that there is sufficient reason to *sua sponte* withdraw the guilty plea.

ORDER OF COURT, 8/23/2016, AT 1.

On November 18, 2016, this Court accepted Defendant's plea of *nolo contendere* to Count 1, Indecent Assault, a misdemeanor of the first degree after being satisfied to

1) the factual basis of the plea and 2) that the Defendant is in fact guilty of the charges contained in Count One, Indecent Assault, a misdemeanor of the first degree, the Court accepts as knowing, understanding, intelligent and voluntary the Defendant's plea of no contest to the said charge.

ORDER OF COURT, 11/18/2016, AT 1.

At the time scheduled for sentencing, 12/6/2016, Defendant sought to withdraw his plea of *nolo contendere*. As the Commonwealth was unable to speak to prejudice to the Commonwealth if the Court granted the request, a hearing was set for a later date.

Discussion

At the outset, the Court notes that a plea of guilty and a plea of *nolo contendere* are treated the same in the Pennsylvania Rules of Criminal Procedure. Part H. Plea Procedures is comprised of two rules: **Rule 590. Pleas and Plea Agreements** and **Rule 591. Withdrawal of a Plea of Guilty or *Nolo Contendere***. One difference is that Rule 590 (A)(2) requires the consent of the judge for a defendant to plead *nolo contendere*. In all other respects, the procedures described in Rules 590 and 591 are the same regardless of whether the defendant has entered a plea of guilty or *nolo contendere*. As such the Court treats this "Motion to Withdraw Guilty Plea" as the second withdrawal of plea of guilty or *nolo contendere* pursuant to Pa.R.Crim.P. 591 and case law³.

³ "In terms of its effect upon a case, a plea of *nolo contendere* is treated the same as a guilty plea."

The standard for withdrawing a guilty plea or a plea of *nolo contendere* prior to sentencing is a liberal one:

The policy underlying this liberal exercise of discretion is well-established: The trial courts in exercising their discretion must recognize that before judgment, the courts should show solicitude for a defendant who wishes to undo a waiver of all constitutional rights that surround the right to trial - perhaps the most devastating waiver possible under our constitution.

COMMONWEALTH V. ISLAS, 2017 PA SUPER 43, NO. 1270 EDA 2016 (PA. SUPER. CT. FILED FEBRUARY 24, 2017; INTERNAL CITATIONS OMITTED).

Though the standard for allowing a withdrawal of a plea prior to sentence is a liberal one, defendants seeking to withdraw their plea must show a fair and just reason for seeking to withdraw the guilty plea and the trial court does have discretion to deny the withdrawal. In Commonwealth v. Carrasquillo, 115 A 3d 1284 (Pa. 2015), the Supreme Court held that there is no *per se* rule in Pennsylvania that defendants may withdraw their plea based upon a bare assertion of innocence. Though the standard is liberal, in a presentence motion to withdrawal a guilty plea, the trial court still has discretion in making its determination. Carrasquillo at 1292.

The proper inquiry is whether the accused has made some colorable demonstration under the circumstances such that permitting withdrawal of the plea would permit fairness or justice. The trial court does not have to accept a bare assertion of innocence as a fair and just reason for withdrawal. On the other hand, that fact that Defendant pled to facts at the original guilty plea colloquy is also not dispositive in motion to withdraw a guilty plea because

it is necessary for a criminal defendant to acknowledge his guilt during a guilty

Commonwealth v. Lewis, 2002 PA Super 31, 791 A.2d 1227, 1230 (Pa. Super. 2001) (internal citations omitted).

plea colloquy prior to the court's acceptance of a plea, such an incongruity will be necessarily be present in all cases where the assertion of innocence is the basis for withdrawing a plea.

COMMONWEALTH V. ISLAS, 2017 PA SUPER 43, No. 1270 EDA 2016 (PA. SUPER. CT. FILED FEBRUARY 24, 2017; INTERNAL CITATIONS OMITTED).

Here the Court cannot find a fair and just reason to allow Defendant to withdraw his plea of *nolo contendere*. The Court compares the proffer of Defendant with that in Islas and Carasquillo, and finds that while not as outlandish as in Carasquillo⁴ it is mere and bare and thus unlike Islas. Islas testified at the hearing on his motion to withdraw; Defendant has submitted nothing to this Court other than the statements Judge Lovecchio made at the August 17, 2016, sentencing. These statements were made prior to his pleading *nolo contendere* to this Court on November 18th. The Defendant in Islas testified that

he did not engage in the charged conduct; he had maintained his innocence when interviewed by law enforcement had the conduct occurred as alleged, it would have been witnessed by other campers and counselors in the cabin at the time; the victim had a motive to fabricate the charges; the victim had delayed in reporting the first incident, and Islas was of good character, had no criminal record, and had never received a similar complaint in the many years he had been working in the field.

In short, Islas presented an at least plausible, and even colorable claim of

⁴ Compare these statements with those in Carrasquillo: The Defendant in Carrasquillo said that he was surprised by his portrayal at the sentencing hearing. That he only pled guilty to spare the 11-year-old victim more suffering. That a polygraph test would clear him and that CIA had victimized him by seeking to employ him as an assassin abroad where a serpent assertedly [sic] appeared and “[t]he Antichrist, he came out of me.” Carrasquillo at 1286. The trial court while recognizing the liberal standard set by Forbes in a pre-sentence request to withdraw a guilty plea felt that denial was appropriate in this case where the reasons by the Defendant are belied by the record and the Commonwealth would be substantially prejudiced because withdrawal of the plea would place the “Commonwealth in the dilemma of reopening the wounds of a healing child or withdrawing its prosecution.” Carrasquillo at 1287.

innocence.⁵ Therefore, the Superior Court found that the trial court abused its discretion in not allowing Islas to withdraw his plea. In Commonwealth v. Iseley, 419 Pa. Super. 364, 615 A.2d 408 (1992), the Superior Court called into question the *per se* approach established by Forbes and disallowed the second withdrawal of a guilty plea stating that

there is no basis in logic to extend the Forbes rule to apply to second or subsequent pleas to the same charge. The rule in Forbes is made, perhaps oversolicitously, in favor of justice, to protect against the possibility that an innocent defendant will erroneously plead guilty. The rule was not designed, nor intended, to permit the gamesmanship and cyclical manipulation which could quickly become the hallmark of our guilty plea process should we adopt the position urged upon us by appellant.

COMMONWEALTH V. ISELEY, 419 PA. SUPER. 364, 375, 615 A.2D 408, 412 (1992).

After the first withdrawal of the guilty plea on August 17, 2016, the above docketed matter was placed on the trial list. Defendant was given the opportunity to go to trial again and yet he fashioned another plea agreement with the Commonwealth. He then pled guilty on November 18, 2016 six months after his original plea. Defendant has ample opportunity to assert his innocence and go to trial and yet has chosen to plead once again and then attempt to withdraw that plea on the sentencing day. In accordance with the reasoning in Iseley, finally adopted by the Supreme Court of Pennsylvania in Carrasquillo – there is no automatic withdrawal of plea in the presentence period; there mere assertion of innocence is not a fair and just reason. Defendant still must proffer a fair and just reason. As Defendant has already successfully withdrawn his guilty plea once, relying on that assertion of innocence from a date prior to the second plea is insufficient to warrant a second withdrawal.⁶

⁶ Commonwealth v. Walker, 2011 PA Super 162, 26 A.3d 525 (Pa. Super 2011) (trial

Even if there were a “fair and just reason” to permit withdrawal of a guilty plea, withdrawal should not be permitted if the “prosecution has been substantially prejudiced”. COMMONWEALTH V. BLANGO, 150 A.3D 45 (PA. SUPER. 2016) (CITING COMMONWEALTH V. FORBES, 450 PA. 185, 299 A.2D 268, 271 (1973)). Because Defendant has not presented a fair and justice reason to the Court for a withdrawal of his plea, the Court does not reach the prejudice prong.

courts denial of second withdrawal of guilty plea affirmed in light of no fair and just reason being offered for allowing such withdrawal; mere assertion of innocence not sufficient on second request to withdrawal guilty plea).

ORDER

AND NOW, this 13th day of April, 2017, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Withdraw Guilty Plea is hereby DENIED.

Sentencing is scheduled for **May 23, 2017**, at **10 a.m.** in **Courtroom #1**.

BY THE COURT,

Nancy L. Butts, P.J.

cc: Greta Davis, Esq.
Melissa Kalas, Esq.
Gary Weber, Esq. Lycoming Law Reporter
Eileen Dgien, DCA
S. Roinick, work file