IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	**No. 98-11,496; 98-11,530**
	:	**98-11,114**
	:	
vs.	:	**CRIMINAL DIVISION**
	:	
	:	
MARK WALKER,	:	**Motion to Withdraw**
Defendant	:	**Guilty Plea**

OPINION AND ORDER

This matter came before the Court on the defendant's Motion to Withdraw Guilty Pleas. The defendant pled guilty before the undersigned judge on February 16, 1999 to intimidation of witnesses,[1] a felony of the third degree, in case 98-11,496; simple assault,[2] a misdemeanor of the second degree, in case 98-11,530; and obstructing administration of law,[3] a misdemeanor of the second degree, in case 98-11,114. These pleas occurred immediately before jury selection and trial on one of the cases. On March 8, 1999, the defendant pled guilty before the Honorable Nancy L. Butts to theft,[4] a misdemeanor of the third degree. Sentencing was scheduled for April 8, 1999.

On April 8, 1999, the defendant appeared, but requested a continuance because he was hiring private counsel to represent him and he was contemplating filing a motion to withdraw his guilty pleas. As a result, sentencing was rescheduled for May 6,

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[1] 18 Pa.C.S.A. §4952(a)(3).

[2] 18 Pa.C.S.A. §2701(a)(1).

[3] 18 Pa.C.S.A. §5101.

[4] 18 Pa.C.S.A. §3921(a).

1999.

On or about April 20, 1999, new counsel, George Lepley, Esquire, filed a written motion on behalf of the defendant to withdraw the guilty pleas. This hearing was scheduled for May 14, 1999. However, on May 14, 1999, Attorney Lepley did not appear for the defendant, and the Court learned there was some confusion over whether he would, in fact, continue to represent the defendant. Ultimately, Attorney Lepley withdrew his appearance and the Public Defender's office resumed their representation of the defendant. After some additional delays because of the confusion over Attorney Lepley's role in the matter, the Motion to Withdraw the guilty pleas was heard by this Court on January 7, 2000. The defendant was represented by Public Defender Mark Shea at this hearing.

The defendant was the only witness to offer testimony at the hearing. The defense introduced the written guilty plea colloquy for the March 8, 1999 guilty plea entered before Judge Butts in case No. 99-10,155 (Defendant’s Exhibit 1) and the written guilty pleas colloquy for the guilty pleas entered before the undersigned on February 16, 1999 in case numbers 98-11,496, 98-11,530 and 98-11,114 (Defendant's Exhibit 2) into evidence, and the Court admitted both documents. Both colloquies had been read and signed by the defendant at the time he entered his plea. Further, the Court incorporated transcripts of the guilty plea hearings of February 16, and March 8, 1999 as part of the record . The Commonwealth also offered into evidence or asked the Court to take judicial notice of three earlier case files - 91-10,233, 93-10,050 and 93-10,915 - where the defendant entered guilty pleas in Lycoming County Criminal Court.

The basic thrust of the defendant's testimony in support of his Motion to Withdraw his guilty pleas was that he only pled guilty because his public defender at that time, Joseph Cottrell,[5] told him that if he didn't take the offered plea agreement to his cases[6] he would be incarcerated for 11 years, the maximum in the four cases. Thus, the defendant appears to claim his guilty pleas were involuntarily entered. The Court does not find this testimony of the defendant to be believable. At one point on cross-examination during the defendant's testimony, he testified that he knew that if he took his cases to trial he was facing a maximum sentence of 11 years. The face sheet of the written guilty plea colloquy for cases 98-11,496, 98-11,530 and 98-11,114 shows the aggregate maximum as 11 years and 90 days. See Defendant's Exhibit 1. The face sheet also shows the respective sentencing guidelines for each case as being much lower, i.e., RS-4, 15-21 and RS-<12. It appears the defendant would have known very well the minimum sentences would be much lower than 11 years incarceration. It is also unlikely that an individual who has been through the guilty plea and sentencing process on three earlier cases would believe that if he failed to plead guilty in cases with sentencing guideline ranges which are below two years, he would be sentenced to 11 years incarceration. The defendant's

[5]Several months ago Attorney Cottrell left his employment with the Lycoming County Public Defender's office and the Court believes he works somewhere in New Jersey or the Philadelphia area at this time.

[6]The plea agreement was that the Commonwealth would recommend an aggregate minimum sentence of 15 months incarceration to the Court. See N.T., February 16, 1999, at pp. 7-8. Further, the defendant would receive six month probation and restitution on case No. 99-10,155, the case to which the defendant pled guilty to before Judge Butts. This was a relatively favorable agreement for the defendant. In light of the defendant's prior criminal record, the standard range of the sentencing guidelines for the intimidation of witnesses conviction alone is 18-24 months.

testimony, therefore, does noes not carry with it a ring of truth or credibility. Nor does it ring true that an experience public defender such as Mr. Cottrell, who practiced for a number of years before the Court, would make such statements to the defendant.

Although the withdrawal of a guilty plea before sentencing should be liberally allowed, there is no absolute right to withdraw such a plea. See Commonwealth v. Holmes, 234 Pa.Super. 141, 338 A.2d 639, (1975). Further, once a defendant has pled guilty, it is presumed that he was aware of what he was doing, and the burden of proving involuntariness is upon him. See Commonwealth v. Owens, 32 Pa.Super. 122, 467 A.2d 1159 (1983). A defendant seeking to withdraw a guilty pleas has the burden of showing a fair and just reason for withdrawing the plea. See Commonwealth v. Mosley, 283 Pa.Super. 28, 423 A.2d 427 (1980). In assessing a request to withdraw a guilty plea, a defendant may be bound by statements which he makes during the plea colloquy. See Commonwealth v. Barnes, 687 A.2d 1163, 1167 (Pa.Super. 1996).

In the instant case, the defendant was subject to three separate guilty plea colloquies for these four cases. The first colloquy in case 98-11,114 reveals the defendant read over, answered and understood all his rights explained in the lengthy written guilty pleas colloquy. N.T., February 16, 1999, pp. 4-6; Defendant's exhibit 2. The defendant further acknowledged to the Court that he fully understood all his rights discussed in the oral guilty pleas colloquy. N.T., February 16, 1999, p. 5. The defendant also stated that no one had pressured him into the guilty pleas. Id. The defendant made similar, if not identical, responses with respect to 98-11,496 and 98-11,530. N.T., February 16, 1999, pp. 6-7 (where the defendant again acknowledges understanding of all his rights and not

being pressured by anyone to enter the pleas).

Since the only reason asserted for withdrawal of the guilty pleas in the defendant's testimony is his assertion of his former attorney's pressure and incompetence and the Court does not find this testimony believable, the defendant has not met his burden of proof to allow withdrawal of his guilty pleas. Accordingly, his Motion to Withdraw his Guilty Pleas is denied.

O R D E R

AND NOW, this 18 day of February 2000, the defendant' Motion to Withdraw Guilty Pleas is DENIED.

Sentencing is rescheduled in these cases for March 21, 2000 in Courtroom No. 2. at 3:30 p.m.

By The Court,

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Kenneth D. Brown, J.

cc: Mark Shea, Esquire (APD)
District Attorney
Work File
Gary Weber, Esquire (Lycoming Reporter)