

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO: 00-11,326
		00-11,337
VS	:	
GREG RUFF	:	

OPINION AND ORDER

Before the Court is Defendant's Motion to Withdraw his Guilty Plea. Defendant has been charged with attempted homicide, aggravated assault (two counts), and related charges, as a result of an incident that occurred on August 10, 2000. On that date it is alleged that the Defendant sought out his victim, and after seeing him sitting on the porch of his residence, he pulled out a firearm. As the victim fled into the residence, the Defendant fired three shots through the door of the residence. The Defendant was also charged separately with retaliation against a witness, and related charges, as the victim in the shooting was a confidential informant who had engaged the Defendant in a drug transaction from which the Defendant was charged.

On May 18, 2001, at the time scheduled for his initial jury selection, the Defendant indicated that he wished to proceed to trial without a jury. On that date, the Court conducted a colloquy and the Defendant signed a waiver of jury trial. Trial was scheduled for June 7, 2001. On June 5, 2001, the Defendant appeared before this Court, and indicated that he now wished to proceed with a jury trial. A jury was selected for this case on June 29, 2001. On July 19, 2001, the date of the trial, the Commonwealth was present with over 20 witnesses. Just prior to the commencement of trial, the Defendant pled guilty to aggravated assault, possession of a firearm without a license, persons not to possess a firearm, and intimidation of a witness, in exchange

for an agreement to have the remaining charges dismissed, and a minimum five year mandatory on the aggravated assault charge. The Commonwealth also agreed to not argue for a longer minimum. Commonwealth released their witnesses at that time.

On the date scheduled for sentencing, Defendant, through new counsel, filed the instant motion alleging that his plea should be withdrawn because he is innocent of the charges and that his plea was not entered in a knowing, intelligent and voluntary manner. The Defendant testified at the hearing on his motion to withdraw. At no time did the Defendant state that he wished to withdraw his plea because he is innocent of the charges. Defendant testified that it was his intention to go to trial on that date. Defendant testified that while waiting for his trial to begin, his attorney spoke with him in his cell for over an hour, persuading him that they would not likely win the case, and that it was in his best interest to take the agreement and to have the attempted homicide charge dropped. He stated that he changed his mind after returning to the prison and talking to an inmate who told him that he was better off with 12 jurors deciding his fate.

Pa.R.Crim.P. Rule 591 provides that “at any time before sentence, the court may, in its discretion, permit or direct a plea of guilty to be withdrawn and a plea of not guilty substituted.” In determining whether to grant the request to withdraw a guilty plea the Court must determine whether the Defendant has provided a “fair and just reason,” for the withdrawal of the plea. When a Defendant asserts a fair and just reason, the withdrawal should be freely permitted, unless the prosecution has been “substantially prejudiced.” Commonwealth v. Forbes, 450 Pa. 185, 299 A.2d 268 (1973).

The Courts have held that an assertion of innocence is a fair and just reason for withdrawal of a guilty plea prior to sentencing, Commonwealth v. Rish, 414 Pa.Super.

220, 606 A.2d 946 (1992), *citing Commonwealth v. Forbes, supra*. Although Defendant's petition asserts his innocence, the Court would find under the circumstances of this case, the bald assertion of innocence appearing in the petition does not constitute a fair and just reason for allowing Defendant to withdraw his plea of guilty. At the hearing on this motion, Defendant made no mention of his innocence. He spoke only of the fact that his attorney was convinced that the agreement was in his best interest, and that he later spoke with another inmate who convinced him that he would have been better off with jurors deciding his fate. The Court therefore does not find the Defendant's assertion of innocence to be credible.

The Court additionally does not find credible Defendant's assertion that his plea was not knowingly and intelligently entered. The Defendant completed a full and complete written colloquy detailing the trial process and his rights. Additionally, the Court conducted an oral colloquy of the Defendant in which the elements of the charges were explained, and the Defendant admitted his guilt. Under the totality of the circumstances, it is clear that Defendant was well aware of the nature of the charges to which he pled guilty. The Court therefore finds the Defendant has not presented a fair and just reason for the withdrawal of his plea.

Even if it were found that the Defendant had asserted a fair and just reason for the withdrawal of his plea, the Court finds that the withdraw would substantially prejudice the prosecution. "A withdrawal cannot be granted if to do so would substantially prejudice the prosecution." *Rish, supra*, at 947, *citing Commonwealth v. Anthony*, 504 Pa. 551, 561, 475 A.2d 1303, 1308-1309 (1984) (*citation omitted*). In [Commonwealth v. Robinson](#), 228 Pa.Super. 179, 324 A.2d 790 (1974) the court held

that where the jury had been picked, the Commonwealth would have been substantially prejudiced in the prompt disposition of the case if the defendant were permitted to withdraw her plea.

The court reasoned that “[i]t is true that in this case the jury had not been sworn but all else had been done. The Commonwealth was ready to try its case. The witnesses were ready and costly time consumed when she decided to enter her plea of guilty. If her petition to change her plea again is permitted, the whole thing starts all over again with a further deterioration of the judicial capacity to try cases. She may then enter pleas like a yo-yo until she gets a sentence to her liking.” Robinson, at 182. See also [Commonwealth v. Carelli, 308 Pa.Super. 522, 454 A.2d 1020 \(1982\)](#)

(Commonwealth would be substantially prejudiced if pre- sentence motion to withdraw guilty plea were granted where Commonwealth witnesses were present in court on the day set for trial, and many of the witnesses had travelled great distances and had taken leave from their places of employment to be present at trial).

ORDER

AND NOW, this _____day of March, 2002, it is ORDERED and DIRECTED that the Defendant's Motion to Withdraw his Plea is DENIED. This case is scheduled for sentencing on April 22, 2001 at 1:30 p.m. in Courtroom #4.

By The Court,

Nancy L. Butts, Judge

cc: Eric Linhardt, Esquire
Kenneth Osokow, Esquire
Honorable Nancy L. Butts
Court Scheduling Technician
Law Clerk
Judges
Gary Weber, Esquire