

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 00-11,870
	:
	:
vs.	: CRIMINAL DIVISION
	:
KURTIS WAYNE NIXON,	: Motion to Withdraw Guilty Plea
Defendant	:

OPINION AND ORDER

Before the Court is Defendant’s Motion to Withdraw Guilty Plea, filed June 6, 2002, as amended on June 18, 2002. A hearing on the motion was held June 20, 2002 and July 5, 2002.

Defendant has been charged with multiple counts of delivery of a controlled substance and related offenses. On April 19, 2002, he pled guilty to four counts of delivery of a controlled substance. Sentencing was scheduled for June 10, 2002, but prior to sentencing, Defendant filed the instant motion, seeking to withdraw his guilty plea on three grounds. First, Defendant alleges that his plea was coerced, inasmuch as he believed appointed counsel would not adequately represent him at trial. Second, Defendant alleges his plea was not knowing, intelligent and voluntary inasmuch as he was under the impression he would be eligible for, and have a chance to enter, the state boot camp program, but actually is not eligible for the program due to his age. Finally, Defendant challenges the knowing, intelligent and voluntary nature of his plea on the grounds that appointed counsel should have pursued a speedy trial motion but failed to do so.

The two-part test to be applied in evaluating a request to withdraw a guilty plea prior to sentencing was thoroughly discussed by the Superior Court in Commonwealth v. Turiano, 601 A.2d 846 (Pa.Super. 1992). First, a withdrawal cannot be granted if to do so would substantially prejudice the prosecution. Second, such a request should be granted for any “fair and just” reason.

The Court further explained that although there is no absolute right to withdraw a guilty plea, requests to withdraw guilty pleas prior to sentencing should be “liberally allowed.” The Court directed trial courts to exercise their discretion with a view toward permitting withdrawal for any fair and just reason. Finally, the Court observed that the existence of substantial prejudice to the Commonwealth has been called the crucial factor in determining whether to allow a pre-sentence withdrawal, and that, where no prejudice exists to the Commonwealth, a defendant does not have to articulate a very substantial “fair and just” reason to support the granting of a request to withdraw a guilty plea. With respect to the particular defendant in the matter before it, the Court found that simply the fact that he “seems to have changed his mind” constituted a sufficiently “fair and just” reason to allow him to withdraw his plea.¹ Turiano, *supra*, at 854.

In the instant case, since the Commonwealth concedes its prosecution of the matter would not be substantially prejudiced by allowing the withdrawal, the Court finds Defendant’s claim that his plea was not knowingly and voluntarily entered, based on his incorrect belief that he might be admitted into the state boot camp program, even though he was told that his age made him technically ineligible, constitutes a sufficiently fair and just reason to grant his request.

¹ Although the Superior Court allowed Mr. Turiano to withdraw his plea only reluctantly, opining that the developments in the guilty plea colloquy have so successfully fulfilled the policy concerns underlying the standard that the standard itself is obsolete, and urged our Supreme Court to adopt a standard which would allow for the withdrawal of a plea only to avoid a manifest injustice, even when the request is made prior to sentencing, the Supreme Court has failed to rise to the Superior Court’s challenge, denying the Commonwealth’s appeal in Turiano, 613 A.2d 559 (Pa. 1992), and failing to address the matter in any subsequent case.

ORDER

AND NOW, this 5th day of July, 2002, for the foregoing reasons, Defendant's Motion to Withdraw Guilty Plea is hereby GRANTED. The case shall be placed back on the trial list and the Deputy Court Administrator is directed to schedule the matter for pre-trial on the next available date.

By the Court,

Dudley N. Anderson, Judge

cc: DA
Eric Linhardt, Esq.
Eileen Grimes, DCA
Gary Weber, Esq.
Hon. Dudley N. Anderson