

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 02-10,789
	:
	:
vs.	:
	:
LEROY W. MILLER, JR.,	:
Defendant	:

OPINION IN SUPPORT OF ORDER
DATED APRIL 9, 2003 IN
COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant has appealed this Court’s Order of April 9, 2003, sentencing him to a period of incarceration of 11 ½ to 29 years on the charges of involuntary deviate sexual intercourse, indecent assault, endangering the welfare of a child, and corruption of minors. Also by Order dated April 9, 2003, the Court denied Defendant’s request to withdraw his guilty plea, which had been entered on January 15, 2003. In the instant appeal, Defendant indicates in his statement of reasons complained of on appeal that the only issue raised on appeal is the Court’s decision to deny his request to withdraw his guilty plea.

A request to withdraw a guilty plea prior to sentencing should be granted for any “fair and just” reason, although substantial prejudice to the prosecution may prevent allowing such a withdrawal. Commonwealth v Turiano, 601 A.2d 846 (Pa. Super. 1992). In the instant matter, the Court cannot find a “fair and just” reason to allow the withdrawal and does find prejudice, which further supports the Court’s decision to deny Defendant’s request. At the hearing on his motion to withdraw his plea, Defendant offered three reasons in support of his request: he contended he did not commit the crimes, that he had felt pressure from counsel and family members at the time of his plea, and that he had concerns regarding his possible sentence. The Court believed none of these constituted a fair and just reason to allow Defendant to withdraw

his plea.

At the time of his plea on January 15, 2003, Defendant's guilty plea colloquy was offered into evidence and as part of that colloquy, in response to the question of why he wished to plead guilty, Defendant responded "because I did it." The Court further notes the lapse of time from the plea on January 15, 2003 until his request to withdraw that plea first arose on March 21, 2003, the original date of sentencing, which was continued to April 9th based on Defendant's last minute request to withdraw the plea. Such a time lapse casts a shadow on Defendant's credibility when he later indicates that he did not commit the crime. In any event, Defendant is bound by the statements made at the time of his colloquy. Commonwealth v Barnes, 687 A.2d 1163 (Pa. Super. 1996).

With respect to his claim he was pressured into making the plea, again, in the written guilty plea colloquy, Defendant indicated he was not pleading guilty because of any pressure, specifically in his answers to questions #34 and #35. According to Commonwealth v Barnes, supra, Defendant is bound by those answers. Indeed, at the hearing on April 9, 2003, Defendant admitted on cross-examination that it had been his decision to plead guilty and that no one had pressured him to make that decision.

With respect to his concerns regarding the possible sentence, Defendant had been informed by this Court of the possible maximum sentences at the time of the plea. In support of his request to withdraw that plea, Defendant does not contend that he was provided with incorrect information. Defendant's general allegation of concerns regarding the possible sentence does not provide a fair and just reason to allow withdrawal of his plea.

The Court wishes to note further that Defendant entered his plea on the day of trial, after a jury had been selected and sworn and at the time the trial was about to start. He was told at that time that the Court would not look favorably upon any future request to withdraw the plea because of the fact a jury had already been sworn. The Court thus impressed upon Defendant the importance of his decision and the necessity to not make that decision lightly. A review of the guilty plea hearing transcript shows that Defendant did make an informed, voluntary decision. The Court thus believes that Defendant's request to withdraw his plea was properly denied.

Dated: August 28, 2003

By The Court,

Dudley N. Anderson, Judge

cc: District Attorney
Public Defender
Gary L. Weber, Esq.
Hon. Dudley N. Anderson