

II. Discussion

There is no absolute right to withdraw a guilty plea. *Commonwealth v. Iseley*, 419 Pa. Super. 364, 371, 615 A.2d 408, 412 (1992), citing, *Commonwealth v. Hayes*, 462 Pa. 291, 341 A.2d 85 (1975). Prior to sentencing, courts have the discretion to grant or dismiss motions to withdraw guilty pleas. *Iseley*, 419 Pa. at 371, 615 A.2d at 412, citing, *Commonwealth v. Coles*, 365 Pa.Super. 562, 530 A.2d 453 (1987) and Pa.R.Crim.P. No. 591. However, our Supreme Court has consistently held that a pre-sentence request to withdraw a guilty plea should be liberally allowed. *Commonwealth v. Forbes*, 450 Pa. 185, 190, 299 A.2d 268, 271 (1973) and Pa.R.Crim.P. No. 591. The *Forbes*, court went on to state that, “[i]f the trial court finds any fair and just reason, withdrawal of the plea before sentence should be freely permitted, unless the prosecution had been substantially prejudiced.” *Forbes*, 450 Pa. at 191, 299 A.2d at 271 (1973).

Since *Forbes*, the issue of what constitutes a “fair and just reason” has been an area of contention amongst the lower courts. In *Forbes*, the court held that, a defendant’s mere assertion of innocence is a “fair and just reason” to withdraw a guilty plea prior to sentencing.¹ *Forbes*, 450 Pa. 185, 299 A.2d 268 (1973). Subsequent lower court decisions have criticized this aspect of *Forbes*; see for example, *Commonwealth v. Anthony*, 504 Pa. Super. 551, 475 A.2d 1303 (1984) ([a]s it pertains to a pre-sentence motion to withdraw, it diminishes the gravity of the entry of a guilty plea under Pa.R.Crim.P. No. 319 to allow the plea to be withdrawn prior to sentencing upon a bald assertion of innocence.); *Commonwealth v. Rish*, 414 Pa. Super. 220, 606 A.2d 946 (1992) (the developments in the guilty plea colloquy account for the concerns underling *Forbes* and if the colloquy is executed properly, it is more efficient than the *Forbes*

¹ The defendant in *Forbes* sought to withdraw his guilty plea after his attorney threatened to cease representing him if he did not. The defendant stated, “I don’t want to plead guilty to nothing I didn’t do.” *Forbes*, 450 Pa. 185, 299 A.2d 268 (1973).

standard); and *Commonwealth v. Iseley*, 419 Pa. Super. 364, 615 A.2d 408 (1992) (there are sufficient safeguards to ensure that a guilty plea is voluntary and intelligent that a defendant should not be permitted to withdraw his guilty plea prior to sentencing merely by asserting his innocence). Nevertheless, *Forbes*, and its progeny, are controlling regarding pre-sentence requests to withdraw guilty pleas.

Instantly, the Defendant knowingly and intelligently pled guilty to Driving Under the Influence of Alcohol. A person is guilty of this offense if they “drive, operate, or are in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.” 75 Pa.C.S.A. § 3802(a)(1). “Actual physical control of the of a motor vehicle is determined based on the totality of the circumstances, including the location of the vehicle, whether the engine was running and whether there was other evidence indicating that the defendant had driven the vehicle at some point prior to the arrival of police on the scene.” *Commonwealth v. Wolen*, 546 Pa. 448, 450, 685 A.2d 1384, 1385 (1996); *Commonwealth v. Byers*, 437 Pa. Super. 502, 506, 650, A.2d 468, 469 (1994).

During his April 21, 2005 guilty plea, the Defendant admitted and later at the January 26, 2006 hearing on this matter, affirmed the following:

THE COURT: Were you operating a motor vehicle back on September 19th?

MR. BOGART: Yes.

THE COURT: And what happened?

MR. BOGART: Well, Mr. Wodrig I was with him when he got his DUI they took him up to the hospital and the cop left me there he said do what you want after I leave here. Somehow the truck coasted back when I was trying to get it back on the road the cops, another state cop showed up.

...

THE COURT: They were investigating. Were you having problems on the side of the road?
MR. BOGART: Yeah, the truck wouldn't start.
THE COURT: Okay. So you were out drinking with Mr. Wodrig?
MR. BOGART: Yes.

N.T. 04/21/05, p.15-6. Clearly, the Defendant's actions meet the elements of the crime and, because he is not denying his admissions of guilt, his current profession of innocence is inconsequential; i.e. it is contradictory for the Defendant to support his claims of innocence with admissions of guilt. This Court refuses to entertain such a distortion of the *Forbes* standard.

ORDER

AND NOW, this _____ day of February 2006, the Court finds that the Defendant has not provided a "fair and just reason" to withdraw his guilty plea and, therefore, DENIES his Motion to Withdraw Guilty Plea.

By the Court,

Nancy L. Butts, Judge

cc: DA
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Judges
Law Clerk