

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
v.	:	<b>No. 04-10,893</b>
	:	<b>CRIMINAL DIVISION</b>
<b>LIONELL HARRIS,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

Before this Honorable Court, is the Defendant’s Motion to Withdraw Guilty Plea, filed on January 9, 2006 and, his Amended Motion to Withdraw Guilty Plea, filed on January 30, 2006. In his Motions, the Defendant contends that his guilty plea was not entered into knowingly or intelligently because his prior record score was in dispute thereby restricting his ability to accurately ascertain his exposure to jail time. Although the Court acknowledges that the Defendant’s prior record score was unknown at the time of his plea, for the following reasons, the Court does not find this as an impediment to a knowing and intelligent plea and, therefore, DENIES the Defendant’s Motion.

**I. Background**

The Defendant was arrested for numerous drug charges in February 2004. In December 2004, the Defendant pleaded guilty to one count each of Possession with Intent to Deliver a Controlled Substance, Delivery of a Controlled Substance, Possession of a Controlled Substance, and Possession of Drug Paraphernalia *after* a jury had been selected and a trial date scheduled. After failing to appear for his original sentencing date and, several subsequent sentencing dates being continued, the Defendant filed his instant Motion to Withdraw Guilty Plea and his

Amended Motion to Withdraw Guilty Plea on January 9, 2006 and January 30, 2006 respectively.

## **II. Discussion**

In order to ensure a defendant enters a plea of guilty knowingly, intelligently and voluntarily, as required by law, *Pennsylvania Rule of Criminal Procedure No. 590* requires the court accepting the defendant's plea to inquire into several areas during the guilty plea colloquy, including, *inter alia*, the nature of the charges and the permissible range of sentences, including the maximum possible punishment. *Commonwealth v. Baney*, 2004 PA Super 342, P18 860 A.2d 127, 131 (2004) citing *Commonwealth v. Muhammad*, 2002 PA Super 55, 794 A.2d 378 (2002); *Commonwealth v. Kulp*, 476 Pa. 358, 382 A.2d 1209 (1978); and Comment to Pa. R. Crim. P. 590.

If a defendant contends that he did not enter into a guilty plea knowingly, intelligently and voluntarily, the Court has the discretion to permit the defendant to withdraw his plea, prior to sentencing, if the Court finds a fair and just reason to withdraw the plea and, the Commonwealth is not prejudiced by allowing the withdraw his plea. *Commonwealth v. Forbes*, 450 Pa. 185, 191, 299 A.2d 268, 271 (1973) and Pa.R.Crim.P. No. 591.

Instantly, the Defendant contends that, because he believed, at the time he pleaded guilty, that his prior record score was four (4) when it was actually two (2), that his plea was not entered knowingly and intelligently and, therefore, the Court should grant his Motions to Withdraw Guilty Plea. The Court does not believe that an erroneously higher estimated prior record score is a fair an just reason to permit the Defendant to withdraw his plea; this fact indicates that the Defendant pleaded guilty thinking his sentence would be harsher than it was. Although a plea entered under the impression that a sentence would be more lenient would be appropriate

grounds to withdraw, this Court will not apply that rationale to a plea entered under the impression that a sentence would be harsher. Furthermore, because a jury was previously selected and the Commonwealth prepared for a jury trial, allowing the Defendant to withdraw his plea would unduly prejudice the Commonwealth.

**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. The Defendant is hereby ORDERED and DIRECTED to appear for sentencing on March 21, 2006 at 9:00 a.m. in Courtroom Number 4, the Lycoming County Courthouse, Williamsport, Pennsylvania; Defense counsel is responsible for notifying the Defendant of this Sentencing date.

By the Court,

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Nancy L. Butts, Judge

cc: DA  
Jay Stillman, Esq.  
Gary L. Weber, Esq.  
Judges  
Law Clerk