

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : CRIMINAL ACTION - LAW
:
vs. : NO. 282-2005
:
ANDREW MONROE, :
Defendant : OPINION AND ORDER

DATE: May 9, 2007

OPINION

This Opinion and Order is entered in relation to the motion of Defendant to withdraw his guilty plea entered in the above captioned matter on March 1, 2007. An evidentiary hearing and argument of counsel was held on May 9, 2007. The court entered a brief on the record statement indicating some of its findings, but further stated that it was reserving its decision in order to assess the appropriateness of allowing Defendant to withdraw his guilty plea. The findings made by the court at that time are reaffirmed and supplemented by this opinion.

On March 1, 2007, the Defendant appeared for jury selection. At that time, he was represented by Kyle Rude, Esquire, substituting for appointed counsel of record, Andrew Smalley, Esquire, who was associated with Attorney Rude at the time. The charges involved accusations that Defendant had been involved in the theft of two vehicles, a Dodge Spirit, under Count 1, and a Dodge Caravan, under Count 4. Defendant entered a plea of guilty to Count 1, theft, and a plea of no contest to Count 4, receiving stolen property. Sentencing was deferred to conduct a pre-sentence investigation.

After entering this guilty plea, Defendant was then scheduled for a jury selection in case # 1774-2006 later in the day. Those charges included conspiracy to commit burglary and assault charges. Defendant was represented by different counsel in #1774-2006, Gregory Drab, Esquire, a public defender. Again, instead of following through with jury selection in that case, Defendant entered a plea of guilty before Judge Anderson and was sentenced on that date (March 1, 2007).

Although neither counsel supplied this court any controlling legal authority, the court believes that the case of *Commonwealth v. Muhammad*, 794 A.2d 378 (Pa. Super 2002), appropriately sets forth the standard to be applied in evaluating Defendant's motion to withdraw his guilty plea. Specifically, that standard as enunciated by *Muhammad* provides as follows:

We begin with the principle that a defendant has no absolute right to withdraw a guilty plea; rather, the decision to grant such a motion lies within the sound discretion of the trial court. *Commonwealth v. Hutchins*, 453 Pa. Super. 209, 683 A.2d 674, 675 (Pa. Super. 1996). In the seminal case of *Commonwealth v. Forbes*, 450 Pa. 185, 299 A.2d 268 (1973), the Supreme Court set forth the standard for determining when a motion to withdraw a guilty plea prior to sentencing should be granted. The Court stated that “[a]lthough there is no absolute right to withdraw a guilty plea, properly received by the trial court, it is clear that a request made before sentencing...should be liberally allowed.” 450 Pa. at 190, 299 A.2d 271. The Court then outlines the now well-established two prong test for determining when to grant a presentence motion to withdraw a plea: (1) the defendant has provided a “fair and just reason” for withdrawal of his plea; and (2) the Commonwealth will not be “substantially prejudiced in bringing the case to trial.” *Id.*

794 A.2d at 382-83.

The primary reason Defendant asserts for withdrawal of his plea is that he is innocent. Defendant asserts that he made up the statements relating to the factual basis for his plea to Count 1 in this case. Defendant's statement of admission barely conformed to the minimum factual

standard necessary to be guilty of theft as an accomplice. Defendant's own voluntary statement as to his involvement was that he helped steal a battery out of the stolen vehicle at some point after the vehicle had been stolen by another individual. To establish his liability for theft of the car, Defendant provided answers to somewhat leading questions posed by counsel and the court to sustain a sufficient factual colloquy.

In entering his plea to receiving stolen property, Count 4, Defendant did not offer any factual basis for the plea. He initially denied the fact that he was involved in receiving the stolen property as to the Dodge Caravan, stating, "I had nothing to do with the Dodge Caravan". Notes of Testimony, 12 (3/1/07). After consultation with counsel, Defendant indicated that he would enter a plea of no contest.

Defendant also now contends that at the time he pled he was confused about varying statements made to him by his various counsel about the reasons for entering his plea and the disposition of charges in this case and case # 1774-2006 under the plea agreements. Defendant was represented by three different appointed counsel in this case between the February 15, 2007 pretrial and the time he entered the plea. He also had at least two different counsel who represented him in the burglary case. The court does believe there is a factual basis for finding Defendant either been given inconsistent advice, incomplete advice, or had misunderstood advice given by counsel.

At the May 9, 2007 hearing, the Commonwealth did not present any evidence that contradicted Defendant's assertion as to representations made to him by his counsel. Nor did the

Commonwealth present any evidence indicating that it would be prejudiced in any way by allowing the guilty plea to be withdrawn.

All things considered, this court believes that it should follow the principle enunciated in *Muhammad* that prior to sentencing, a defendant's request to withdraw a guilty plea should be liberally allowed. That is especially true in this case where this court is not satisfied that justice would be served by proceeding to sentence Defendant on the above charges. Appropriate fairness and justice standards permit Defendant to assert his right, at this time, to proceed to trial in the case.

Accordingly, the following order.

ORDER

The Motion of Defendant to withdraw his guilty plea of March 1, 2007 entered in the above captioned matter is GRANTED.

This case should be added to this court's next pretrial list scheduled for May 31, 2007.

BY THE COURT,

William S. Kieser, Judge

cc: CA
DA (CB)
Paul Petcavage, Esquire
DCA
Christian J. Kalas, Esquire
Judges
Gary L. Weber, Esquire-Lycoming Reporter