

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**HAROLD MCGRAW,
Defendant**

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**No. 1704-2007
CRIMINAL**

OPINION AND ORDER

Before this Honorable Court is the Defendant’s oral Motion to Withdraw his Guilty Plea. A hearing on the Motion was held on November 25, 2008.

Background

On August 24, 2007, Defendant was arrested and charged with Driving under the influence at 75 Pa. C.S. § 3802(a)(1), Driving Under Suspension (DUI related) at 75 Pa. C.S. § 1543(b)(1), Habitual Offenders at 75 Pa. C.S. § 6503.1, and various other charges. On June 3, 2008, Defendant pled guilty to Driving Under the Influence at 75 Pa. C.S. § 3802(a)(1), Driving under suspension (DUI related) at 75 Pa. C.S. § 1543(b)(1), and Habitual Offenders at 75 Pa. C.S. § 6503.1. Thereafter, at the time set for sentencing, the Defendant made this oral motion to withdraw his guilty plea.

At the hearing, Defendant testified he felt threatened by his Attorney Robert Cronin of the Public Defender’s Office into entering a guilty plea. Specifically, Defendant alleges on the date of his Pre-Trial conference, there were a number of other people in the Courtroom waiting and during this time, he witnessed Mr. Cronin yelling, loudly speaking with clients, and as he described it, “ranting and raving.” Defendant related that he told Mr. Cronin that he wanted a trial and Mr. Cronin told him that “he needed to take the plea bargain.” Defendant also testified

he wanted a trial and was innocent. Defendant related he remembered telling the Court at the time of the guilty plea that he was not being forced or threatened into pleading. However, Defendant alleges he only answered that way because he felt threatened by Mr. Cronin. Also, at the time of the hearing on the withdrawal, the Commonwealth reported they would not suffer substantial prejudice if this Court allowed the Defendant to withdraw his plea.

Discussion

Defendant asserts that he should be able to withdraw his guilty plea because he entered a plea under threats and coercion.

A defendant does not have an absolute right to withdraw his guilty plea. Commonwealth v. Muhammad, 794 A.2d 378,383 (Pa. Super. Ct. 2002). “[T]he decision to grant such a motion lies within the sound discretion of the trial court. Id. A request to withdraw the guilty plea before sentencing “‘should be liberally allowed.’” Id. (quoting Commonwealth v. Forbes, 299 A.2d 268 (Pa. 1973)). The following two elements must be met in order for the Court 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.’” Muhammad, 794 A.2d at 383 (quoting Forbes, 299 A.2d 268). An assertion of innocence early in the proceedings is a “fair and just” reason for withdrawal of a guilty plea. See Commonwealth v. Randolph, 718 A.2d 1242, 1244 (Pa. 1998).

Defendant testified at the hearing on November 25, 2008 that at the pre-trial conference Mr. Cronin coerced him by his behaviors into accepting the plea bargain offered by the Commonwealth; although the Court witnessed nothing, and the Defendant did not express any fears at the time of the plea itself. Defendant also testified that he was innocent and wanted to go

to trial. Therefore, in light of the Defendant's assertion of innocence and lack of prejudice to the Commonwealth, the court will grant Defendant's request.

ORDER

AND NOW, this ____ day of December 2008, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's oral Motion to Withdraw his Guilty Plea is GRANTED. It is ORDERED and DIRECTED that this case is placed back onto the criminal trial list. Defendant shall be scheduled for a Pre-trial Conference on **February 4, 2009 at 9:00 a.m. in Courtroom No. 4, Lycoming County Courthouse, Williamsport, Pennsylvania 17701.**

By the Court,

Nancy L. Butts, Judge

cc. DA (MK)
PD (RC)
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)