

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 : No. CR-874-2010  
vs. :  
 :  
JONATHAN BROWN, :  
Defendant :

**OPINION AND ORDER**

Before the Court is Defendant's Motion for Remand for a Preliminary Hearing. Argument in this matter was held before the Court on December 17, 2010.

By Criminal Complaint filed on May 13, 2010, Defendant was charged with various offenses including, but not limited to, delivery of controlled substances, possession with intent to deliver controlled substances and criminal use of a communication facility.

Defendant's initial preliminary hearing was scheduled for May 18, 2010 but was continued at Defendant's request. At Defendant's June 8, 2010 scheduled preliminary hearing, the Commonwealth and Defendant agreed that in exchange for Defendant pleading guilty to one consolidated count of delivery of a controlled substance, with the weight of the controlled substance (cocaine) being between 2.5 and 10 grams, the Commonwealth would recommend to the Court a sentence within the standard range minimum of 12 to 18 months.

The Lycoming County Criminal Case Scheduling Form notes that the preliminary hearing was waived, that a plea agreement was reached and sets forth the terms of the "plea agreement."

At the time the plea agreement was reached, both the Commonwealth and

Defendant were aware that there were two additional criminal matters involving the Defendant. The first was an additional “drug case.” The preliminary arraignment on this matter was waived on June 8, 2010. The second matter concerned a “gun charge” which arose out of the arrest of the Defendant on the charges involved in this matter. Following his arrest, a search warrant was obtained which resulted in the alleged discovery of a gun.

The Commonwealth does not dispute the fact that at the time the plea agreement was negotiated in this case, it was aware of the additional charges and/or pending charges involving the drugs and gun.

Defendant’s court arraignment on this matter was scheduled for July 12, 2010. It was continued to August 2, 2010 in order that Defendant could be arraigned on all three pending cases.

On July 28, 2010 the Commonwealth revoked the plea agreement previously negotiated in this case indicating that the Defendant would need to plead to all three cases for a different recommended sentence.

Defendant argues that in reliance upon the negotiated plea agreement, he waived his preliminary hearing and thus is entitled to a remand in light of the fact that the Commonwealth revoked the plea agreement due to no fault of the defendant.

The Commonwealth counters that the plea agreement that was reached at the preliminary hearing was nothing more than “an offer” without any guarantee and that defense counsel and Defendant were aware that it would not become an actual agreement until it was approved by the District Attorney. The Commonwealth argues that there is nothing on the

Case Scheduling form that notes the plea agreement was a binding contract and that Defendant knowingly accepted the possibility that it could be revoked.

The Court does not accept the Commonwealth's position that the result of the negotiations at the preliminary hearing constituted an offer by the Commonwealth which could be revoked at any time in the future by the District Attorney without consequences. The Case Scheduling form clearly notes that a "plea agreement" was reached. In addition, the Case Scheduling form specifically sets forth the terms of the "plea agreement." The Defendant clearly waived his statutory right to proceed to a preliminary hearing in exchange for the plea agreement.

While indeed an offer was made by the Commonwealth, that offer was accepted by the Defendant once he chose to waive the preliminary hearing.

While the District Attorney certainly has the right and perhaps even obligation to review all of the cases and to make a decision with respect to the appropriateness of any plea agreement, if a plea agreement is revoked through no fault of the Defendant, the Defendant should be entitled to be placed in the same position he would have been had the plea agreement never been made. Because Defendant waived his right to a preliminary hearing in anticipation of the plea bargain, which was withdrawn through no fault of the Defendant, he is entitled to the reinstatement of his right to have a preliminary hearing.

**ORDER**

**AND NOW**, this 21<sup>st</sup> day of December 2010 following a hearing and argument, Defendant's Motion for Remand for a Preliminary Hearing is **GRANTED**. A preliminary hearing shall be held on the 18<sup>th</sup> day of January, 2011 at 2:00 P.M. in Courtroom # 4 of the Lycoming County Courthouse before the undersigned. .

By The Court,

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Marc F. Lovecchio, Judge

cc: DA (PP)  
PD (NS)  
CST  
Work file  
Gary Weber, Esquire (Lycoming Reporter)