

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1166-2011
vs. :
:
JAMES KAYE, :
Defendant :

OPINION AND ORDER

Before the Court is Defendant's pro se "Motion for Dismissal, Remand, and/or Petition for Writ of Habeas Corpus."

By Criminal Complaint filed on April 11, 2011, Defendant was charged with one count of Possession of Drug Paraphernalia, an ungraded misdemeanor in violation of 35 Pa. C.S.A. § 780-113 (a) (32). Because the degree of such an offense is without specification, it is declared to be a misdemeanor of the third degree. 18 Pa. C.S.A. § 106 (b) (9).

The preliminary hearing was scheduled for August 22, 2011. Defendant appeared and was represented by counsel. Defendant waived his preliminary hearing and signed a guilty plea recommendation form acknowledging, among other things, that by signing the form, he understood and agreed that it was subject to final approval of the District Attorney and may be subject to being withdrawn by the Commonwealth at any time prior to the entry of the guilty plea.

The guilty plea recommendation form signed by the Defendant also acknowledged that by signing it, the Defendant understood and agreed that he "may not" remand the matter for a preliminary hearing should the guilty plea recommendation be withdrawn by the Commonwealth prior to the entry of the guilty plea.

Finally of significance is the fact that the guilty plea recommendation form noted that the Defendant would plead guilty to the charge for "adult supervision."

A hearing was held in this matter on March 12, 2012. Defendant testified that he attended the preliminary hearing and negotiated a plea agreement for probation. Defendant further testified that he then expressed a desire to plead guilty before Magisterial District Judge (MDJ) Kenneth Schriener who was presiding over the case. Defendant testified that upon making his request, MDJ Schriener glanced at the Assistant District Attorney handling the hearing, the prosecuting law enforcement officer and a Pennsylvania Probation and Parole officer who all nodded in the negative. Following such, MDJ Schriener indicated that he was not willing to permit the Defendant to plead guilty noting that it was not the type of case similar to a “joint being found in a truck.”

As a result, Defendant then signed the guilty plea recommendation form, waived his preliminary hearing and signed the written waiver of preliminary hearing form.

Defendant was subsequently arraigned on February 27, 2012. Defendant waived his right to proceed with counsel and the Court permitted the Defendant to reinstate his Motion for Dismissal, Remand and/or Petition for Writ of Habeas Corpus that was previously filed pro se while he was represented by counsel. The Court notes that it informed Defendant then that because he was represented by counsel, no action would be taken on Defendant’s Motion.

Defendant first argues that MDJ Schriener erred in not accepting his plea in violation of the Pennsylvania Rules of Criminal Procedure. Defendant submits that this Court should sit as a Magisterial District Judge, as it is permitted to do, and then permit Defendant to plead guilty pursuant to the plea agreement.

Rule 550 of the Pennsylvania Rules of Criminal Procedure governs pleas of guilty before Magisterial District Judges in court cases. It specifically notes that a Defendant may plead guilty before a Magisterial District Judge at any time up to the completion of the preliminary hearing or the waiver thereof. Rule 550 (A). It further notes that the Magisterial District Judge may refuse to accept the plea of guilty, and the Magisterial District Judge shall not accept such plea unless there has been a determination, after inquiry of the Defendant, that the plea is voluntarily and understandingly tendered. Rule 550 (B).

Defendant argues that this language mandates a Magisterial District Judge to accept a plea except when the MDJ has determined that the plea is not voluntary or understanding. The Court disagrees.

When interpreting the Rules of Criminal Procedure, the Court is guided by the Statutory Construction Act, 1 Pa. C.S. § 1501 et. seq. Pa.R.Cr.P. 101(C) (“To the extent practicable, these rules shall be construed in consonance with the rules of statutory construction.”); Commonwealth v. Cooper, 27 A.3d 994, 1003 (Pa. 2011). The Court’s task is to effectuate the intent of the legislature and when the terms of the statute are clear and unambiguous, they will be given affect consistent with their plain and common meaning. 1 Pa. C.S.A. § 1921 (b); Commonwealth v. Folk, 2012 PA Super 63 (March 9, 2012); Commonwealth v. Hart, III, 28 A.3d 898, 908 (Pa. 2011); Commonwealth v. Reed, 607 Pa. 629, 9 A.3d 1138, 1142 (Pa. 2010).

Additionally, statutory language must be accorded its common and approved usage. 1 Pa. C.S. § 1903 (a); Reed, supra, citing Commonwealth v. McClintic, 589 Pa. 465, 909 A.2d

1241, 1245 (Pa. 2006). The general assembly does not intend a result that is absurd, impossible of execution or unreasonable. 1 Pa. C.S. § 1922 (1); Reed, supra.

Despite Defendant's argument, Rule 550 (B) is clear. An MDJ may refuse to accept a plea of guilty. The word "may" indicates that something **could** happen or that there is a **possibility** of it happening; it does not mean that it must happen. The common and approved usage of the word "may" as utilized in the Rule clearly gives the MDJ discretion to accept or reject a plea of guilty. See Commonwealth v. Hemingway, 13 A.2d 491, 499 n.7 (Pa. Super. 2011)(discussing use of the word "may" in Rule 230 regarding disclosure of grand jury transcripts); Commonwealth v. Brown, 603 Pa. 31, 981 A.2d 893, 899 (Pa. 2009)(Prior to 1995 restitution was discretionary: "the offender may be required to make restitution." After the 1995 and 1998 amendments, restitution was mandatory: "the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.")

Defendant argues that the subsequent portion of the Rule indicating that an MDJ shall not accept such a plea unless there has been a determination, after inquiry of the Defendant, that the plea is voluntarily and understandingly tendered means that is the only circumstance when the MDJ can refuse to accept a plea. Again, the Court cannot agree.

The use of the comma after the phrase giving an MDJ discretion to refuse to accept a plea indicates a separation of ideas within the structure of the sentence. The language is clear and the meaning is obvious. More specifically, an MDJ has the discretion to refuse to accept a plea of guilty but if the MDJ does decide to accept a plea, he shall not do so unless the plea is determined to be voluntary and understanding.

This interpretation is also abundantly reasonable. There are many varied reasons why

an MDJ may decide to refuse a plea. For example, he may not have sufficient sentencing information. Additionally, he may not have the means to impose supervision. Finally, he may be uncertain as to what factors he is mandated to consider in imposing a sentence given his or her lack of training or experience.

Accordingly, Defendant's Motion for Remand shall be denied.

Defendant next argues that his due process rights were violated when the MDJ refused to accept his plea ostensibly relying upon the decision of the "biased" Assistant District Attorney, prosecuting law enforcement officer and Pennsylvania Board of Probation and Parole officer. Defendant's argument, however, is without any factual or legal basis whatsoever.

More specifically, there are no facts of record as to why the MDJ made his decision. Moreover, he was certainly free to consider the view points of the respective parties. The Defendant made his position clear, and those opposing the Defendant were given their opportunity to state their position. In fact, the comment to Rule 550 specifically suggests that the MDJ should consult with the attorney for the Commonwealth about the case before accepting a guilty plea. Pa.R.Cr.P. 550, comment ("Prior to accepting a plea of guilty under this rule, it is suggested that the magisterial district judge consult with the attorney for the Commonwealth concerning the case, concerning the defendant's possible eligibility for ARD or other types of diversion, and concerning possible related offenses that might be charged in the same complaint.").

Moreover, the Defendant has not advanced any legally sufficient reason to substantiate a due process violation. He has not claimed, for example, that the decision to

refuse him his request to plead was based upon any improper or illegal factor such as race, sex or age.

Accordingly, Defendant's due process claim will be denied.

Defendant next argues that he was treated unconstitutionally when he was allegedly denied the opportunity to plead guilty before an MDJ, thus exposing him to incarceration and loss of parole street time.

In support of Defendant's position, he cites Goodwine v. Pennsylvania Board of Probation and Parole, 960 A.2d 184 (Pa. Cmwlth. 2008) and Barna v. Pennsylvania Board of Probation and Parole; 8 A.3d 370 (Pa. Cmwlth. 2010). Defendant's reliance on these cases is misplaced. Neither of the cases addresses the specific issue raised by the Defendant under the factual scenario present.

What concerns Defendant is whether he can be recommitted as a convicted parole violator. More specifically, because a conviction by an MDJ is not a conviction in a court of record within the meaning of the Parole Act, the Board is not authorized to recommit a parolee as a convicted parole violator for such a conviction. Goodwine, supra. On the other hand, the Board would be authorized to commit the Defendant as a convicted parole violator if he pleads guilty before the Court of Common Pleas. Barna, supra.; citing Jackson v. Pennsylvania Board of Probation and Parole, 951 A.2d 1238 (Pa. Cmwlth. 2008).

Defendant argues that his equal protection rights are implicated because a parolee pleading guilty to a misdemeanor before a MDJ would not be subject to losing street time or being recommitted while on the other hand a parolee pleading guilty to a misdemeanor before a Common Pleas Judge would lose his street time and face recommitment. Defendant

argues that this anomaly is even more accentuated by the fact that Judges have the inherent power to sit as District Justices. See Goodwine, supra.; Barna, supra. (dissenting opinion, J. Pellegrini).

It is true that a parolee who is charged and pleads guilty to a misdemeanor paraphernalia offense before a MDJ suffers far less intrusions on his liberty in comparison to a parolee who is charged and pleads guilty to the same offense before a Common Pleas Judge.

The equal protection provisions of the Pennsylvania Constitution are analyzed under the same standards utilized by the United States Supreme Court when reviewing equal protection claims under the U.S. Constitution. Commonwealth v. Albert, 563 Pa. 133, 758 A.2d 1149 (2000). The essence of the Constitution principle of equal protection under the law is that like persons and like circumstances will be treated similarly. Albert, supra.

An equal protection analysis balances the differential classification against a level of governmental purpose. The range of classifications run from a suspect class to an unprotected class. Albert, supra.

This Court need not, however, engage in such an analysis. Defendant's dispute, if any, is with the Pennsylvania Board of Probation and Parole if in fact he is recommitted and if in fact he loses street time. Indeed, the cases cited by the Defendant acknowledge such. With respect to this case, the MDJ was within his authority to decline to accept Defendant's plea. The MDJ did not treat any similarly situated defendants differently than the Defendant. Moreover, aware that the MDJ would not accept his plea, the Defendant knowingly,

voluntarily and intelligently agreed to waive his preliminary hearing and proceed to the Court of Common Pleas.

Accordingly, Defendant's equal protection argument fails and his Motion to Dismiss on those grounds will be denied.

Finally, because the Court ruled against Defendant in connection with his substantive claims, Defendant asserts the Court should certify this matter so that he can immediately appeal the Court's decision. Defendant recognizes that he would not normally have the right to appeal the Order as it would be interlocutory. Accordingly, Defendant requests permission to appeal.

An appeal from an interlocutory Order may be taken by permission. Pa. R.A.P.312. This Court must be of the opinion that such Order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the matter. 42 Pa. C.S.A. § 702 (b).

This Court cannot conclude either that its Order involves a controlling question of law as to which there is a substantial ground for difference of opinion, or that an immediate appeal from the Order may materially advance the ultimate termination of the matter. Indeed, Defendant's "fight" so to speak is with the Pennsylvania Board of Probation and Parole. Defendant wishes to mandate that this matter be either remanded to the MDJ or that this Court sit as an MDJ in order to accept his negotiated plea. Under those circumstances, the Defendant would not face recommitment or a loss of street time. The consequences of

Defendant's plea are collateral to the plea itself or the substance of the case. Moreover, there are absolutely no grounds for difference of opinion with respect to the issues addressed by the Court. Controlling law vests the MDJ with discretion in accepting a plea to a misdemeanor, and Defendant has not even arguably stated a due process or equal protection violation concerning the case before this Court.

ORDER

And now this ____ day of March 2012, Defendant's pro se Motion for Dismissal, Remand and/or Petition for Writ of Habeas Corpus filed on October 3, 2011 is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
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Gary Weber, Esquire (Lycoming Reporter)
Work File