

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

**COMMONWEALTH**

**v.**

**DERRICK OWENS,  
Defendant**

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**CR: 581-2013  
CRIMINAL DIVISION**

**OPINION AND ORDER**

The Defendant filed a Motion to Remand Back to Preliminary Hearing on May 13, 2013.

A hearing on the Motion was held on June 11, 2013.

***Background***

Based upon a vehicle accident that occurred on August 19, 2012, Derrick Owens was charged by the Williamsport Bureau of Police with DUI with the Highest Rate of Alcohol, a misdemeanor of the first degree;<sup>1</sup> DUI of Alcohol or Controlled Substance, an ungraded misdemeanor;<sup>2</sup> and Accidents Involving Damage to Vehicle or Property, a summary offense.<sup>3</sup> On April 11, 2013, the Defendant waived his right to have a preliminary hearing. On the same day, the Defendant signed a “Guilty Plea Recommendation,” which recommended that he plead guilty to the Driving Under the Influence (DUI) charge in exchange for the mandatory minimum for a first offense. The “Guilty Plea Recommendation” states, in part, that:

1. This document sets forth the plea recommendation between the Defendant and the Commonwealth, if any.
2. The Defendant, by signing this plea recommendation, understands and agrees that it is subject to final approval of the District Attorney, and may be subject to being withdrawn by the Commonwealth at any time prior to the entry of the guilty plea.
3. The Defendant, by signing this plea recommendation, understands and agrees that he/she **MAY NOT** remand this matter for a preliminary hearing should this plea recommendation be withdrawn by the Commonwealth prior to the entry of the guilty plea.

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<sup>1</sup> 75 Pa.C.S. § 3802(c).

<sup>2</sup> 75 Pa.C.S. § 3802(a)(1).

<sup>3</sup> 75 Pa.C.S. § 3745(a).

This agreement was signed by the Defendant and his attorney.

On April 29, 2013, the District Attorney of Lycoming County revoked the plea recommendation that was made at the time scheduled for the preliminary hearing. It was discovered that the Defendant's current DUI was his second offense within ten (10) years and therefore the plea recommendation would have resulted in an illegal sentence.

On May 13, 2013, the Defendant filed a Motion to Remand Back to Preliminary Hearing. The Defendant's Motion did not state a reason why the Court should remand his case for a preliminary hearing, only the facts that lead to the Motion being filed. There was no legal argument made in the Motion. At the hearing on June 11, 2013, defense counsel argued that the Court should remand the case due to mutual mistake between the parties and in the interest of justice.

*Whether the Court should remand the Defendant's case for a preliminary hearing in the interest of justice*

The Defendant contends that he is entitled to have his preliminary hearing in the interest of justice. The Defendant argues that a mutual mistake was made by the parties when they believed that the current DUI was his first offense. As a result, the Defendant believes the Court should place the parties back to where they were when the mutual mistake was made. A mutual mistake occurs when each party misunderstands the other's intent and the mistake is shared and relied on by both parties to a contract. Regions Mortg., Inc. v. Muthler, 889 A.2d 39, 41 (Pa. 2005).

The Court finds that there is no mutual mistake in this case. At the preliminary hearing, the Commonwealth did not have full knowledge of the Defendant's driving history and whether this DUI was in fact his first DUI offense. However, by the time formal court arraignment was held, the Commonwealth reviewed the Defendant's driving record and for the first time learned

of the Defendant's previous DUI offense. The Defendant, however, was aware of his previous DUI at the time the "Guilty Plea Recommendation" was made at the preliminary hearing. The Defendant knew that he had a previous DUI and would have appeared to have misled the Commonwealth into making a plea recommendation for the mandatory minimum sentence for a first offense DUI within ten (10) years.

There is no "interest of justice" to be promoted to have the case remanded for a preliminary hearing. "The doctrine of unclean hands requires that one seeking equity act fairly and without fraud or deceit as to the controversy at issue." Terraciano v. Dept. of Transportation, 753 A.2d 233, 237-38 (Pa. 2000). Here, the Defendant is seeking his preliminary hearing be restored in the interest of justice even though it appears he may have misled the Commonwealth. The Defendant cannot misrepresent his prior record to the Commonwealth inferring his DUI was a first offense and then argue he was unjustly wronged when it was discovered to be his second offense. The Defendant must negotiate a plea recommendation in good faith in order to request the Court to remand in the interest of justice.

**ORDER**

AND NOW, this \_\_\_\_\_ day of June, 2013, based upon the foregoing Opinion, the Court finds that the Defendant is not entitled to a preliminary hearing in the interest of justice. Therefore, the Defendant's Motion to Remand Back to Preliminary Hearing is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

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