

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**STEPHEN TIMLIN,
Defendant**

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**CR: 734-2012
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion to Reinstate Plea Agreement or, in the alternative, Remand Case for Preliminary Hearing on December 7, 2012. A hearing on the Motion was held on April 16, 2013 and May 3, 2013.

Background

Stephen Timlin (Defendant) was charged with two counts of Delivery of a Controlled Substance, two counts of Possession With Intent to Deliver, two counts of Criminal Use of a Communication Facility, and one count of Criminal Conspiracy. A Preliminary Hearing was scheduled for this case on April 19, 2012. On that same day, Defendant agreed to a “Guilty Plea Recommendation” made by the Commonwealth. The agreement, *inter alia*, stated that “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and agrees that he/she **MAY NOT** remand this matter for a preliminary hearing should this plea recommendation be withdrawn by the Commonwealth prior to the entry of the guilty plea.” The Defendant waived his Preliminary Hearing in exchange for the plea suggestion. The Waiver of Preliminary Hearing document, which is a separate document to the Guilty Plea Recommendation, stated that “I understand that I have a right to this hearing . . . I knowingly, voluntarily, and intelligently make this waiver of my preliminary hearing.” Both documents were signed by the Defendant and his attorney.

On May 21, 2012, at Arraignment, the District Attorney informed the Defendant that he would not accept the terms of the plea recommendation. The Defendant's Motion first requests that the Court to enforce the plea suggestion that was given to him at the Preliminary Hearing. Second, the Defendant argues that if the plea recommendation is not enforced that the Court remand the matter for a Preliminary Hearing.

Motion to Enforce Plea Agreement

The Defendant argues that the Court should enforce the plea recommendation that was given to the Defendant at the Preliminary Hearing. In support of his position, the Defendant cites to Mebane, where a trial court enforced a plea agreement in the interest of justice even though the Commonwealth rescinded prior to the presentation of the plea to the court. Commonwealth v. Mebane, 58 A.3d 1243, 1244 (Pa. Super. 2012). While the facts in Mebane are different from the case at hand, the Superior Court stated *in dicta* that "memorialization in open court of the terms of a plea agreement is required for a defendant to successfully assert a right to specific enforcement of the agreement." Id. at 1248. Unrelated to this case, the Superior Court still found that an agreement does exist prior to memorialization and that a trial court may enforce that agreement in the interest of justice. Id. at 1250.

The fact that a plea agreement is required to be presented to a court before the terms must be abided by has been previously established by Pennsylvania Courts. "Our Supreme Court has . . . held that 'where a plea agreement has been entered of record and has been accepted by the trial court, the [Commonwealth] is required to abide by the terms of the plea agreement.'" Commonwealth v. McElroy, 665 A.2d 813, 816 (Pa. Super. 1995) (citations omitted). "However, prior to the entry of a guilty plea, the defendant has no right to specific performance of an executory agreement." Id. (citations omitted).

Here, the Defendant waived his preliminary hearing in exchange for a guilty plea recommendation. The document entitled “Guilty Plea Recommendation” stated that the recommendation was subject to the final approval of the District Attorney and may be withdrawn at any time prior to the guilty plea. The recommendation was in fact withdrawn by the District Attorney at Arraignment. Even if the recommendation was found to be a plea agreement, it was not presented to this Court and is therefore not enforceable for its specific performance.

Motion to Remand For Preliminary Hearing

The Defendant requests that this Court remand the case for a preliminary hearing. This Court has recently addressed this issue, however, with different facts. Commonwealth v. McNally, Lyc. Cty. No. 164-2012 (Butts, J. May 23, 2012); Commonwealth v. Butler, Lyc. Cty. No. 524-2012 (Butts, J. Oct. 3, 2012). Relevant to this case is the recent amendment to Pa.R.Crim.P. 541, which now states:

Rule 541. Waiver of Preliminary Hearing

- (A) The defendant who is represented by counsel may waive the preliminary hearing at the preliminary arraignment or at any time thereafter.
 - (1) The defendant thereafter is precluded from raising the sufficiency of the Commonwealth’s *prima facie* case unless the parties have agreed at the time of the waiver that the defendant later may challenge the sufficiency.
 - (2) If the defendant waives the preliminary hearing by way of an agreement, made in writing or on the record, and the agreement is not accomplished, the defendant may challenge the sufficiency of the Commonwealth’s *prima facie* case.

The language of the rule does not distinguish whether the preliminary hearing was waived for a plea agreement or any other kind of agreement, therefore the Court believes that the rule is applicable in this case.

Applying Pa.R.Crim.P. 541(A)(2), the Court must determine whether the agreement was accomplished. The “Guilty Plea Recommendation” states that “[t]his document sets forth the plea recommendation between the Defendant and the Commonwealth, if any.” It states that “[t]he Defendant will plead guilty to: Count 1 Delivery for 2 ½ months IP, first 4 months PRC; Count 4 Delivery for 2 ½ months IP, first 4 months PRC. Waive mandatories. Agree to reduce bail to \$40,000 cash. Cooperation to be noted. Counts run c/s.” Further, the agreement notes that “[t]he Defendant, by signing this plea recommendation, understands and agrees that it is subject to final approval of the District Attorney . . .”

The Court finds that the “Guilty Plea Recommendation” agreement was fulfilled. Based upon the agreement, the Commonwealth did in fact have his bail modified to \$40,000. The District Attorney reviewed the plea recommendation and withdrew it prior to the guilty plea. The Recommendation did not require that the Commonwealth honor the plea recommendation, only that the Recommendation would be given to the District Attorney and be subject to his final approval. The benefit sought by the Defendant through the “Guilty Plea Recommendation” agreement was reduced bail of \$40,000 and for the District Attorney to review the recommendation agreed upon by the parties at the preliminary hearing, which had been fulfilled. As the agreement was accomplished the Defendant is not entitled to challenge the sufficiency of the Commonwealth’s *prima facie* case in accordance with Pa.R.Crim.P. 541(A)(2).

The Defendant has alleged a multitude of contract theories to argue that the “Guilty Plea Recommendation” provision stating that the Defendant may not remand the matter for a preliminary hearing is unenforceable. Specifically, this portion of the agreement states:

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.

The Defendant, however, also waived his right to remand for a preliminary hearing in the “Waiver for Preliminary Hearing” agreement. As stated above, Pa.R.Crim.P. 541(A)(1) states that if a defendant waives his preliminary hearing he is precluded from raising the sufficiency of the Commonwealth’s *prima facie* case unless agreed upon otherwise. Even if the “Guilty Plea Recommendation” agreement was found unenforceable, the Defendant would still have to prove that the “Waiver of Preliminary Hearing” agreement was unenforceable to challenge the *prima facie* case.

The one contract theory of law that the Defendant alleges that would grant him relief within both agreements is the theory of reliance or promissory estoppel.¹ The Defendant’s Motion states that “[u]nequivocally, Stephen Timlin waived his sacred right to a Preliminary Hearing in specific reliance upon the Guilty Plea Recommendation that was extended by Assistant District Attorney Martin Wade.” This Court, however, has already addressed whether reliance on the “Guilty Plea Recommendation” was reasonable:

The contract law theory of reliance, also known as promissory estoppel, requires three elements that include: “(1) the promisor made a promise that he should have *reasonably* expected would induce action or forbearance on the part of the promisee; (2) the promisee actually took action or refrained from taking action in reliance on the promise; and (3) injustice can be avoided only by enforcing the promise.”² Thatcher’s Drug Store of West Goshen Inc. v. Consolidated Supermarkets Inc., 636 A.2d 156, 160 (Pa. 1994) (emphasis added). The Defendant argues that he relied on the agreement that he signed. This Court, however, finds that if the Defendant did in fact rely on the document, he did so unreasonably.

The “Guilty Plea Recommendation” form that the Defendant signed does not say “plea agreement” anywhere on the document. The document constantly refers to itself as a “plea recommendation.” Further, there were only seven enumerated sections in the document. The second section unambiguously states that final approval of the elected

¹ Even if the Guilty Plea Recommendation was found to be illusory, adhesive, unconscionable, or without consideration, the Defendant would still not be able to prove that the Waiver of Preliminary Hearing agreement was unenforceable without reliance.

² See also The Restatement (Second) of Contracts § 90 (“A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.”).

District Attorney is needed and that the plea recommendation may be withdrawn by the Commonwealth at any time prior to the entry of the guilty plea. The document does not hide the relevant and important language in boilerplate but actually places it at the beginning of the document. The Defendant also had an attorney present when he reviewed and signed the document and the District Attorney has rescinded plea recommendations in the past. Therefore, the Court finds that reliance on the plea recommendation was unreasonable and therefore there is no reliance or promissory estoppel.

Commonwealth v. Butler, Lyc. Cty. No. 524-2012 (Butts, J. Oct. 3, 2012). This case presents the same exact facts as in Butler and the Court still finds that reliance on the “Guilty Plea Recommendation” was unreasonable.

The Defendant waived his preliminary hearing in the “Waiver of Preliminary Hearing” agreement. The Defendant and his attorney signed that the waiver was made knowingly, voluntarily, and intelligently. Magisterial District Judge Allen P. Page III also found that the Defendant made the waiver knowingly, voluntarily, and intelligently. Besides reliance on the “Guilty Plea Recommendation” and Pa.R.Crim.P. 541(A)(2), the Defendant has not alleged any additional facts to show his waiver was invalid and that entitle him to challenge the Commonwealth’s *prima facie* case.

ORDER

AND NOW, this _____ day of June, 2013, based upon the foregoing Opinion, the Court finds that the plea recommendation is not enforceable by the Court. Further, the Court finds that the Defendant's waiver of his preliminary hearing was made knowingly, voluntarily, and intelligently and he is not entitled to challenge the sufficiency of the Commonwealth's *prima facie* case. Therefore, the Defendant's Motion to Reinstate Plea Agreement, or, in the alternate, Remand Case for Preliminary Hearing is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

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