

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1010-2015
vs. :
 : CRIMINAL DIVISION
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 :
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 :
 :
 : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this court's judgment of sentence dated May 27, 2016 ad docketed June 7, 2016. The relevant facts follow.

On March 4, 2015, Trooper Travis Pena of the Pennsylvania State Police filed a criminal complaint against Appellant charging him with persons not to possess firearms,¹ possession of a small amount of marijuana,² possession of drug paraphernalia,³ driving under the influence of alcohol (DUI)-incapable of safely driving (refusal),⁴ and several summary traffic offenses.

On January 5, 2016, Appellant entered an open guilty plea to all of the charges. The plea was entered at the call of the list.

On April 20, 2016, the court sentenced Appellant to an aggregate term of 6 ½ to 15 years' incarceration in a state correctional institution, consisting of 5 to 10 years for

¹ 18 Pa.C.S. §6105.

² 35 P.S. §780-113(a)(31).

³ 35 P.S. §780-113(a)(32).

⁴ 75 Pa.C.S. §3802(a)(1).

persons not to possess a firearm and 1 ½ to 5 years for DUI.

On April 26, 2106, Appellant filed a post sentence motion in which he challenged the discretionary aspects of his sentence as unduly harsh and he sought to withdraw his guilty plea because he allegedly “unintelligently entered the plea with an expectation of successfully arguing for a mitigated range sentence.” Following a hearing held on May 27, 2106, the court denied Appellant’s request to withdraw his guilty plea, but granted reconsideration of Appellant’s aggregate sentence. The court agreed with Appellant that the overall sentence was unduly harsh. Therefore, the court amended Appellant’s sentence so that the 1 ½ to 5 year sentence for DUI would be served concurrent with the 5 to 10 year sentence for persons not to possess firearms.

On June 21, 2016, Appellant filed a notice of appeal. Appellant’s sole issue on appeal is that the court erred when it denied his motion to withdraw his guilty plea after his sentencing hearing when he made a showing of manifest injustice after testifying that he entered into the plea with the expectation of receiving a county sentence despite the nature of the crime and his prior record score. This issue clearly lacks merit.

A defendant has no absolute right to withdraw a guilty plea. *Commonwealth v. Muhammad*, 794 A.2d 378, 382 (Pa. Super. 2002). The decision to grant such a motion lies with the discretion of the trial court and will not be reversed on appeal unless the court abused that discretion. *Commonwealth v. Gordy*, 73 A.2d 620, 624 (Pa. Super. 2013); *Muhammad*, supra. “An abuse of discretion is not a mere error of judgment but, rather, involves bias, ill will, partiality, prejudice, manifest unreasonableness, and/or misapplication of law.” *Gordy*, supra.

The standard for deciding a motion to withdraw a guilty plea varies based on

the timing of the motion. Such a request should be liberally allowed prior to sentencing if the defendant has provided a fair and just reason and the Commonwealth will not be substantially prejudiced. After imposition of sentence, however, the standard is much higher and it requires the defendant to show prejudice on the order of manifest injustice before withdrawal is properly justified. *Muhammad*, 794 A.2d at 383.

A plea rises to the level of manifest injustice when it was entered into involuntarily, unknowingly, or unintelligently. *Id.* Once a defendant has entered a plea of guilty, it is presumed he was aware of what he was doing and the burden of proving involuntariness is upon him. *Commonwealth v. Munson*, 615 A.2d 343, 348 (Pa. Super. 1992)(quoting *Commonwealth v. McClendon*, 589 A.2d 706, 707 (Pa. Super. 1991)). Disappointment in the sentence actually imposed does not constitute manifest injustice. *Commonwealth v. Byrne*, 833 A.2d 729, 737 (Pa. Super. 2003); *Muhammad*, supra; *Munson*, 615 A.2d at 349.

Appellant's reason for wanting to withdraw his guilty plea was that he had an expectation of receiving a county sentence. This is nothing more than buyer's remorse or disappointment in the sentence actually imposed, which clearly does not constitute manifest injustice as a matter of law.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Joshua Bower, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)