

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-905-2015
vs. :
: CRIMINAL DIVISION
: MATTHEW R. SMITH,
: Appellant : 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 order entered on December 15, 2015. The relevant facts follow.

On May 18, 2015, Officer Ryan Brague of the Williamsport Bureau of Police charged Appellant, Matthew Smith, with one count of possession with intent to deliver marijuana. Appellant waived his arraignment, which was scheduled for June 22, 2015. A guilty plea was scheduled for July 31, 2015. Appellant, however, changed his mind and requested that his case be scheduled for a status conference.

On November 4, 2015, Appellant filed a motion to suppress evidence, which the court denied as untimely in an opinion and order entered on December 15, 2015.

On February 16, 2016, Appellant entered a guilty plea to an amended charge of possession of drug paraphernalia in exchange for a 30 day minimum sentence to be served consecutive to any other sentence. On February 18, 2016, the court imposed a sentence of 30 days to one year of incarceration to be served consecutive to his probation violation sentence under information 434-2011.

On February 29, 2016, Appellant filed a post sentence motion, which alleged that the interests of justice called for a hearing on his motion to suppress evidence. The court summarily denied the post sentence motion and specifically noted that Appellant waived any issue regarding the legality of the search when he pled guilty.

On March 17, 2016, Appellant filed a notice of appeal. The sole issue asserted on appeal is that the trial court “erred, abused its discretion, as well as denied [Appellant] his constitutional rights by dismissing his motion to suppress as untimely when the opportunity to file said motion did not exist until after the expiration of the 30 days due to the parole officer withholding information and documentation therefore causing Appellant and counsel to be unaware of the grounds for the motion and when the interests of justice called for the motion to be heard due to the nature of the illegal search.”

This issue lacks merit and the factual assertions contained therein are not supported by the record.

Appellant waived the right to appeal the court’s order denying his motion to suppress when he entered his guilty plea. It is well settled that a guilty plea constitutes a waiver of all non-jurisdictional defects and defenses. *Commonwealth v. Jones*, 593 Pa. 295, 929 A.2d 205, 212 (2007). Therefore, Appellant waived all grounds for appeal other than the jurisdiction of the court, the validity of the plea, and the legality of his sentence.

Commonwealth v. Eisenberg, 626 Pa. 512, 98 A.3d 1268, 1275 (2014).

Moreover, Appellant was advised in the written guilty plea colloquy that by pleading guilty he was giving up his right to appeal the court’s decision and that his appeal rights were so limited. Appellant indicated that he understood he was giving up these rights.

Specifically, questions 15 and 20 asked:

15 a. Do you understand that by pleading guilty you are waiving, or giving up, your right to file any pre-trial motions and waiving any such motions already filed?

b. Do you understand that you are giving up your right to appeal any adverse decision on motions already heard by the court?

20 There are certain rights that you do not waive even after sentencing. You have a right to appeal your conviction to the Superior Court within 30 days after the date of sentencing. The appeal of a guilty plea is limited to four grounds. They are:

a. That your guilty plea was not a knowing, understanding, and voluntary act;

b. That the Court did not have jurisdiction to accept your plea (in other words, the crime or crimes for which you are pleading guilty did not occur in Lycoming County);

c. That the sentence was improper or in excess of a plea agreement or illegal; and,

d. That your attorney was not competent.

Do you understand these four areas of appeal, what they mean, and the fact that they are not waived?

Appellant answered “yes” to each of these questions.

Even if Appellant had the ability to appeal the denial of his suppression motion, the court did not abuse its discretion in denying it as untimely.

“An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence of record, discretion is abused.” *Commonwealth v. Haney*, 131 A.3d 24, 39 (Pa. 2015)(internal quotation marks omitted).

Rule 581 of the Pennsylvania Rules of Criminal Procedure governs the timeliness of suppression motions.

Unless the opportunity did not previously exist, or the interests of justice otherwise require, such motion shall be made only after a case has

been returned to court and shall be contained in the omnibus pretrial motion set forth in Rule 578. If timely motion is not made hereunder, the issue of the suppression of such evidence shall be deemed to be waived. Pa. R. Crim. P. 581(B). An omnibus pretrial motion must be filed “within 30 days after arraignment, unless opportunity therefor did not exist, or the defendant or defense attorney...was not aware of the grounds for the motion, or unless the time for filing has been extended by the court for cause shown.” Pa. R. Crim. P. 579(A).

Appellant’s arraignment date was June 22, 2015. His motion to suppress was not filed until November 4, 2015. Therefore, the motion was facially untimely.

Appellant argued that the court should have heard his motion in the interests of justice and/or because the opportunity to file the motion did not previously exist. The court could not agree.

Appellant admitted that he had knowledge of the facts in support of his motion more than 30 days before his motion was filed. He indicated that he received a packet of information from his parole agent in May of 2015 and that the facts regarding the tip that allegedly formed the basis for the search of his residence were contained in that packet. He simply did not read the packet until after July 30, when he told his counsel that he no longer wished to plead guilty. Therefore, contrary to Appellant’s assertions, the parole officer did not withhold information and documentation or cause Appellant or his counsel to be unaware of the grounds for the motion. Rather, it was Appellant’s own failure to read the packet or provide the information to his attorney in a timely manner.

The court also did not find Appellant’s explanations or excuses

particularly credible. For example, Appellant claimed that he rejected the plea agreement because he was told it would be a county sentence and served concurrently to his probation or parole violation sentences. However, the written guilty plea recommendation, which was signed by Appellant, his counsel, the prosecutor and the affiant at the preliminary hearing, stated Appellant would plead guilty for a minimum of 6 months in a state correctional institution consecutive to any probation or parole violation.

The court also did not find that the interests of justice required that the motion be heard. To the contrary, the court found that the suppression motion was nothing more than a last ditch effort to further delay the trial. The motion was filed the day after notice was sent to Appellant informing him that his jury selection was scheduled between January 5 and January 8 and the trial term was January 11 through January 29, 2016. Furthermore, the suppression motion was based on facts that Appellant was or should have been aware of since May of 2015. It was neither the Commonwealth's nor the parole officer's fault that Appellant did not read his paperwork until the late summer of 2015 or that he allegedly did not share that paperwork with his counsel until October of 2015.

The court also rejected Appellant's argument that his failure to file the motion in a timely manner was due to the Commonwealth's failure to provide discovery. Appellant did not even request discovery until November 4, 2015, the same date that he filed his untimely suppression motion. Clearly, the motion was based on the packet of information that Appellant conceded his parole officer

provided to him in May of 2015.

Since the court's decision was based on the law and facts of this case, and not bias, partiality, ill-will, or prejudice, the court did not abuse its discretion in denying as untimely Appellant's motion to suppress evidence.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Anthony Cuica, Esquire (ADA)
Andrea Pulizzi, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)