

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-2278-2016  
 :  
 TROY BROWN, :  
 :  
 Defendant : Partial Plea

**OPINION AND ORDER**

By Information filed on January 6, 2017, the defendant is charged with three counts of criminal conspiracy, one count of possession with intent to deliver and one count of possession.

The issue before the court has surprisingly not been specifically addressed ever by any Pennsylvania appellate court. Indeed, this court, even now, questions its legal research abilities. This court has a very difficult time accepting that the issue is one of first impression.

Quite simply and directly, the issue is whether a defendant may plead guilty to some of the charges contained in a criminal Information and demand a trial on the remaining charges.

The defendant maintains that he may do so, while the Commonwealth adamantly disputes such.

On September 8, 2017, the defendant appeared before this court intending to plead guilty to all of the counts of the Information. The court colloquied the defendant on all of his rights, as well as all of the other issues addressed in a routine guilty plea colloquy. While the defendant stated that he pled guilty to all of the offenses, the court was unwilling

to accept the defendant's plea of guilty with respect to counts 2 and 4. The defendant specifically stated that he sought and received Xanax and Methadone because he was having pain, and he intended to use it only for himself and not distribute it or give it to anyone else, including his co-defendant.

With respect to the criminal conspiracy to commit contraband (2 counts), as well as possession of a controlled substance, the defendant indicated that he agreed with another person that he would obtain Xanax and Methadone, and that he made a phone call to obtain such, and that he actually received such while he was incarcerated. However, the defendant denied that the person he received the substances from was the co-conspirator alleged in the Information, and he refused to name the person from whom he received the controlled substances.

The court placed the case on the December 5, 2017 pretrial list and scheduled an argument on whether it would accept defendant's guilty plea to counts 1, 3 and 5, for September 22, 2017.

On September 22, 2017, the argument was held before the court. Neither party could produce for the court any legal authority in support of their respective positions. Instead, the Commonwealth argued that the court had "no legal authority" to accept a partial plea and that to permit such would make "no sense" from a practical standpoint. Specifically, the Commonwealth argued that by permitting a partial plea, a defendant could manipulate the processing of the case by forcing the Commonwealth to decide if it wanted to try the defendant on the remaining charges when it may not be prudent to do so. The defendant

argued to the contrary, that there is no authority that prevents the defendant from pleading guilty to whatever charges he so wishes and that often times during trial, a defendant may concede certain charges. Further, the defendant argues that it is disingenuous for the Commonwealth to argue “manipulation” when it routinely drops charges in exchange for a plea of guilty to “lesser charges” and that routinely law enforcement officers overcharge in an attempt to force a defendant into pleading guilty to lesser charges.

So defendant’s position is clear, the defendant argued that he was willing to plead guilty to certain counts and waive any Rule 110 or double jeopardy arguments with respect to the remaining counts.

The court will start its analysis with a review of the Pennsylvania Rules of Criminal Procedure. Rule 590 permits a defendant to plead, among other things, guilty. Rule 590 (A) (2). Nothing in the rule requires defendant to plead guilty to all of the charges or restricts the defendant from pleading guilty to some of the charges. The requirement of the court in connection with the defendant’s plea of guilty is such that the court must determine only if it is voluntarily and understandingly tendered. Rule 590 (A) (3).

While the court could not find any cases directly on point, the court has found a line of cases which infer that the court has the ability to accept and that a defendant has the right to plead to some of the charges and insist on a trial with respect to the remaining charges.

In *Commonwealth v. Tarver*, 467 Pa. 401, 357 A.2d 539 (Pa. 1976), the defendant pled guilty to some of the charges and demanded a jury trial on the remaining. Of

course, the defendant could not then argue that it was error not to try all of the charges together. The court concluded that double jeopardy did not apply and specifically stated: “In these circumstances there is no reason and logical policy that should prevent separate dispositions.” 357 A.2d at 543.

In *Commonwealth v. Stewart*, 483 Pa. 24, 425 A.2d 346, 349 (1981), in citing *Tarver*, supra., the court specifically acknowledged that a defendant may “waive his right to consolidation of all charges arising from the same criminal episode by pleading guilty to some but not all of the charges.”

Finally, in *Commonwealth v. Peifer*, 730 A.2d 489 (Pa. Super. 1999), the court again affirmed that a defendant de facto waives his double jeopardy and Section 110 rights when the defendant pleads guilty to some but not all of the charges. In citing *Commonwealth v. Cicconi*, 439 Pa. Super. 81, 653 A.2d 40, 42 (1995), the court noted as follows:

The protection afforded by Section 110 against successive trials or governmental harassment is neutralized if the defendant knowingly acquiesces in what appears to be an advantageous separation. Where such occurs, the defendant cannot later raise an objection claiming the statutory protection for multiple trials.

***Id.* at 495.**

Finally, and contrary to the Commonwealth’s argument, the court concludes that it does have the inherent authority to permit a defendant to plead guilty to some of the charges. 42 Pa. C.S.A. §§ 323, 912. Such authority ensures fairness in the legal proceedings, promotes judicial efficacy and protects against abuse. A defendant may plead guilty to any or

all of the charges.

**ORDER**

AND NOW, this \_\_\_\_ day of October, the court will permit the defendant to plead guilty to counts 1, 3, and 5, and proceed to trial on counts 2 and 4. Defense counsel shall schedule a guilty plea hearing through the Court Administrator's office as soon as practicable.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Matthew Welikovitch, Esquire (APD)  
Work File  
Gary Weber, Esquire (Lycoming Reporter)