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

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| **COMMONWEALTH OF PA** | **:** | **No. CR-245-2017** |
| | **:** | |
| **vs.** | **:** | |
| | **:** | |
| | **:** | |
| **KEITH SPRINGER,** | **:** | |
| **Defendant** | **:** | **Post-Sentence Motion** |

**OPINION AND ORDER**

By Information filed on February 24, 2017, Defendant was charged with one count of possession of a controlled substance (heroin) and one count of possession of drug paraphernalia, both ungraded misdemeanors.

Defendant had previously waived his preliminary hearing and had indicated that he would plead "open" when he signed a Lycoming County Criminal Case Scheduling form on February 7, 2017. Defendant's arraignment was scheduled for February 27, 2017.

At defendant's arraignment, he indicated that he desired to retain private counsel. Accordingly, his arraignment was continued to March 27, 2017.

Defendant did not obtain private counsel and, on March 27, 2017, he pled guilty to both counts of the Information. Defendant admitted that he was at the Burger King in Williamsport on December 15, 2016. At the time and place, he had in his possession one bag of heroin and a syringe.

Defendant's written guilty plea colloquy form, which was answered, initialed and signed by Defendant, indicated that it was an "open" plea. On the written guilty plea colloquy form, Defendant indicated that nobody told him, promised him or suggested to him in any manner what the actual sentence of the judge would be. He indicated further that the guilty plea was given freely and voluntarily, that his attorney fully explained to him the

meaning of all of the terms of the document and that he completely understood all of the instructions, terms, provisions, questions and answers on the written guilty plea colloquy form.

The court accepted Defendant's plea as knowing, intelligent and voluntary. While the court was dictating the order in Defendant's presence, the court noted that it was an open plea and directed the Lycoming County Probation office to prepare a Pre-Sentence Investigation (PSI) report. The court also noted in defendant's presence and in the guilty plea order that Defendant's prior record score appeared to be a 5, the offense gravity score for possession of a controlled substance was a 3, and the standard minimum guideline range was 6 to 16 months. The court further noted that this appeared to be Defendant's second conviction on a similar controlled substance offense.

Finally, the court noted that Defendant was looking to serve any county sentence at the Tioga County Correctional facility but that counsel and Defendant would need to make appropriate arrangements to present to the court as an alternative with respect to sentencing.

Defendant's sentencing hearing was scheduled for June 28, 2017, but Defendant failed to appear. Accordingly, a bench warrant was issued for Defendant's arrest.

On July 3, 2017, the court vacated the bench warrant but committed Defendant until his sentencing date of July 6, 2017. The court noted its concern that Defendant was "continuing to use controlled substances."

On July 6, 2017, Defendant appeared before the court for his sentencing. After considering the relevant sentencing factors and reviewing the PSI report, the court sentenced Defendant to an aggregate term of 18 months to 4 years' incarceration in a State Correctional

Institution, which consisted of 1 to 3 years for possession of a controlled substance followed by a consecutive 6 months to 1 year for possession of drug paraphernalia. The court gave Defendant credit for time served from July 3, 2017 to July 5, 2017 and noted that Defendant was eligible for a RRRI minimum of 13 ½ months.

Defendant subsequently wrote the court a letter that was dated July 9, 2017, but was not postmarked until July 11, 2017 and not received by the court until July 14, 2017. Defendant claimed that he had "accepted an open plea of 6 to 19 months." He further indicated that "the purpose and intent" of the letter was to "explain" himself. He requested that the court "please reconsider" the "sentencing decision."

The court responded to Defendant that it could not act on the basis of the letter and that any post-sentence motion would need to be filed by his attorney in a timely manner.

Defense counsel filed a post-sentence motion on Defendant's behalf on July 14, 2017. In the motion, Defendant sought to withdraw his guilty pleas. According to the written motion, Defendant contended that he was unaware of the consequences that could be imposed in the matter when he entered his plea; the plea was entered into unknowingly and unintelligently because he did not fully understand the potential consequences of entering an open plea; and he met the standard of showing prejudice amounting to manifest injustice.

The hearing was held before this court on August 8, 2017. At the hearing, defendant testified.

Defendant first indicated that at his preliminary hearing, he was informed by his attorney that he could accept a plea agreement of 1 to 2 years. Defendant asked if that would include work release to which he was told no because it would be a state sentence.

Defendant then apparently reviewed the guidelines with his attorney and determined that if he pled open, he could receive a sentence in the 6 to 19 month range.

Prior to pleading guilty, Defendant met with Nicole Spring, the First Assistant Public Defender. He filled out the guilty plea colloquy form truthfully. He read and initialed the first page which referenced his prior record score of a 5 and the offense gravity scores of 3 and 1. The standard ranges on both of the charges were, respectively, 6 to 16 months and RS to 6 months with aggravated ranges of plus 3. The terms of the plea agreement specifically noted that it was "open."

According to Defendant, he understood that the sentence could "go between 6 to 19 months" although he was "figuring 6 months."

Upon cross-examination by the Assistant District Attorney office and further examination by the court, Defendant indicated that he did not read the PSI report, which indicated the standard ranges for the offenses and included a comment that due to the fact that Defendant completed the State Intermediate Punishment (SIP) program previously, the writer did not believe that a county sentence would be appropriate and recommended a state sentence at the bottom-end of the standard range.

While Defendant first indicated that he did not "believe" that an open plea could result in a state sentence, he later changed his mind and indicated that he understood state prison was an option but was expecting a county sentence. He explained that he thought one thing was going to happen but something else happened. He was not expecting to be sent to state prison.

Defendant's claims about not understanding the nature of an open plea are not at all credible. First, and according to the PSI report, Defendant has experience in both the

juvenile and adult criminal justice system. In 2002, he was charged as an adult and received a three-year intermediate punishment sentence. In 2014, he was charged as an adult and received a State Intermediate Punishment sentence. It begs logic that he would not understand, in light of his experience, the nature of an open plea.

Additionally, the guilty plea colloquy form was clear. There were absolutely no representations that Defendant would receive a sentence, the minimum of which was 6 and the maximum of which was capped at 19. The defendant's "expectations", "hopes" and "figuring" did not amount to an agreement and did not constitute a misunderstanding on his part. While the transcript of the guilty plea colloquy was not made part of the record, Defendant conceded that consistent with this court's practice, he was fully explained the nature of an open plea including the worst case scenario, that being a state prison sentence of 2 to 4 years and the best case scenario, likely a county work release sentence.

Finally, Defendant virtually conceded the point at the hearing in this matter. He understood that state prison was an option but was hoping for a county sentence. He knew he was facing a "potential period of state incarceration" but was asking for leniency.

After the imposition of sentence, the standard to withdraw a plea of guilty requires the defendant to show prejudice on the order of manifest injustice before the withdrawal is properly justified. ***Commonwealth v. Muhammad***, 794 A.2d 378, 383 (Pa. Super. 2002). "A plea rises to the level of manifest injustice when it was entered into involuntarily, unknowingly or unintelligently." ***Id.*** (quoting ***Commonwealth v. Stork***, 737 A.2d 789, 790 (Pa. Super. 1990)). "However, [o]nce 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)(quoting ***Muhammad***, supra).

Clearly, Defendant's reason for wanting to withdraw his guilty plea at this point is his dissatisfaction with the court's decision to sentence him to state prison. Defendant attempts to mask his reasons by claiming that he did not understand the nature of an open plea. Defendant has not proven such to this court. Accordingly, Defendant's motion will be denied. Under all of the circumstances, the court finds that Defendant's plea was knowing, intelligent and voluntary and that Defendant's "buyer's remorse" at this point does not constitute manifest injustice.

**ORDER**

**AND NOW**, this ____ day of September 2017, following a hearing and argument, the court **DENIES** Defendant's post-sentence motion.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Greta Davis, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)