

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

COMMONWEALTH OF PENNSYLVANIA	:	CR-477-2018;
	:	CR-660-2018
	:	
v.	:	
	:	POST SENTENCE MOTION
SHARIEF CLAY,	:	
Defendant	:	

OPINION and ORDER

Background

On June 28, 2018, Defendant pled guilty to two counts of Delivery of a Controlled Substance, heroin less than one gram, an ungraded felony, one count of Possession with the Intent to Deliver a Controlled Substance, heroin, an ungraded felony,¹ and Possession of a Firearm by a Minor.² The same day this Court sentenced Defendant to an aggregate sentence of a minimum of three and a half (3 ½) years to seven (7) years. A timely Post Sentence Motion was filed on July 9, 2018, challenging the validity of his guilty plea or in the alternative asking for a modification of his sentence. The Court held an evidentiary hearing on the matter on August 7, 2018.

Discussion

The competency to plead guilty depends on whether Defendant has the ability to comprehend his position as the accused and can cooperate with counsel in making a rational decision. *Commonwealth v. Frey*, 904 A.2d 866, 872 (Pa. 2006). This includes whether Defendant had “sufficient ability at the pertinent time to consult with his lawyers with a

¹ 35 P.S. § 780-113(a) 30.

² 18 Pa.C.S. § 6110.1.

reasonable degree of rational understanding, and a rational as well as factual understanding of the proceedings against him.” *Commonwealth v. Minarik*, 427 A.2d 623, 628 (Pa. 1981).

Manifest injustice is required to withdraw guilty pleas which are requested after a sentence has been imposed. *Commonwealth v. Flick*, 802 A.2d 620, 623 (Pa. Super. 2002). Such a manifest injustice occurs when a plea is not tendered knowingly, intelligently, voluntarily, and understandingly. *Commonwealth v. Persinger*, 615 A.2d 1305 (Pa. 1992). It does not matter if the Defendant is pleased with the outcome of his decision to plead guilty as long as he did so knowingly, voluntarily, and intelligently. *Commonwealth v. Yager*, 685 A.2d 1000, 1004 (Pa. Super. 1996). Defendant must demonstrate a “miscarriage of justice has taken place which no civilized society could tolerate, in order to be entitled to relief.” *Commonwealth v. Allen*, 732 A.2d 582, 588 (Pa. 1999).

The minimum inquiry required of a trial court must include the following six areas: (1) Does the defendant understand the nature of the charges to which he is pleading guilty? (2) Is there a factual basis for the plea? (3) Does the defendant understand that he has a right to trial by jury? (4) Does the defendant understand that he is presumed innocent until he is found guilty? (5) Is the defendant aware of the permissible ranges of sentences and/or fines for the offenses charged? (6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

Commonwealth v. Young, 695 A.2d 414, 417 (Pa. Super. 1997). In *Yeomans*, the Superior Court further summarized:

In order for a guilty plea to be constitutionally valid, the guilty plea colloquy must affirmatively show that the defendant understood what the plea connoted and its consequences. This determination is to be made by examining the totality of the circumstances surrounding the entry of the plea. Thus, even though there is an omission or defect in the guilty plea colloquy, a plea of guilty will not be deemed invalid if the circumstances surrounding the entry of the plea disclose that the defendant had a full understanding of the nature and consequences of his plea and that he knowingly and voluntarily decided to enter the plea.

Commonwealth v. Yoemans, 24 A.3d 1044 (Pa. Super. 2011) (citing *Commonwealth v. Fluhart*, 632 A.2d 312, 314 (Pa. Super. 1993)).

The Pennsylvania Supreme Court has found that mental competency can affect whether a plea is entered into knowingly, intelligently, and voluntarily, but it has been found rarely and under more glaring circumstances. *Commonwealth v. Marshall*, 312 A.2d 6 (Pa. 1973). In *Marshall*, the court found the defendant was not competent to enter his guilty plea when evidence was presented showing a psychiatric or nervous breakdown occurred while awaiting trial and prior to his plea, he was not questioned by sentencing judge as to whether plea was voluntarily, intelligently, and knowingly entered, and a subsequent evaluation showed that defendant was suffering from paranoia and was therefore incompetent at the time of his plea. *Id.*

This Court through reviewing the records, by presiding over the guilty plea/sentencing hearing, and considering the evidence and allegations made by Defendant in his Post Trial Motion and at the hearing is confident that he entered his plea knowingly, intelligently, and voluntarily. In reviewing the entire record the Guilty Plea Written Colloquy's one question asked "To your knowledge, are you now suffering from any mental or emotional problems?" to which Defendant answered "Yes." This seems to be the only evidence demonstrating incompetence at or around the time of entering his plea. Guilty Plea Written Colloquy at 6. In contrast to this question Defendant also answered "[w]hy do you wish to plead guilty?" with "I think it's my best option." *Id.* at 5. This demonstrates his understanding of the case and the situation and his ability to assist and communicate with counsel in his defense. *Minarik*, 427 A.2d at 628. Additionally he acknowledged that he was not presently under any treatment for mental health issues. *Id.* at 6. The Court inquired into his mental and emotional problems health at his sentencing hearing, in addition to a lengthy colloquy, both verbal and written, to assure Defendant was knowingly, intelligently, and voluntarily entering his plea. N.T. 06/28/18, at 7-8.

Unlike *Marshall*, there is no evidence to demonstrate Defendant had a mental episode while awaiting or through his plea and sentencing, the Court undertook both a verbal and written

colloquy to make sure his plea was knowingly, intelligently, and voluntarily entered, and there was no evidence provided at the hearing to demonstrate Defendant suffered from mental illness at the time of his plea. For these reasons the Court denies Defendant's Post Sentence Motion.

ORDER

AND NOW, this _____ day of August, 2018, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Post-Sentence Motion is hereby DENIED. Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4), the Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of entry of this Order; (b) the right to assistance of counsel in the preparation of the appeal; (c) if indigent, the right to appeal in forma pauperis and to proceed with assigned counsel as provided in Pennsylvania Rule of Criminal Procedure 122; and (d) the qualified right to bail under Pennsylvania Rule of Criminal Procedure 521(B).

By the Court,

Nancy L. Butts, President Judge

cc: DA
Bill Miele, Esq. Chief Public Defender