

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-1531-2016  
vs. :  
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:   
RICKY PITTENGER, JR., :   
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 judgment of sentence dated June 27, 2017.

By way of background, Appellant Ricky Pittenger Jr. was charged with indecent assault of a complainant less than 13 years of age, corruption of minors, indecent exposure, and rape of a child as a result of engaging in sexual conduct with a child. Appellant's crimes came to light after his wife walked into a bedroom and observed the eleven year old child lying at the edge of the bed with her legs spread and up and Appellant standing between her legs. Although both were still clothed during this particular incident, the sexual nature of the pose was readily apparent to Appellant's wife. Appellant's wife asked the child if Appellant had touched her, the child said yes, and Appellant's wife called 9-1-1. The child was subsequently interviewed at the hospital by a SANE nurse and at the Children's Advocacy Center (CAC). During these interviews, the child revealed that Appellant had been touching her inappropriately for years, and also that he penetrated her vagina with his fingers and his penis. See Transcript of Tender Years Hearing, 2/16/17, at 6-

15, 25-59.

On March 9, 2017, Appellant pled no contest to indecent assault of complainant less than 13 years of age, a felony of the third degree, corruption of minors, a felony of the third degree, and indecent exposure, a misdemeanor of the first degree, in exchange for dismissal of the rape charge and an aggregate minimum sentence of 27 months' incarceration.

On June 27, 2017, the court sentenced Appellant to an aggregate term of 27 months to 19 years' incarceration in a state correctional institution, which consisted of 1 to 7 years for indecent assault, 1 to 7 years for corruption of minors, and 3 months to 5 years for indecent exposure.

Although Appellant wished to appeal, his attorney failed to file an appeal on his behalf. When Appellant realized his attorney had not filed his requested appeal, Appellant filed a Post Conviction Relief Act (PCRA) petition and his appeal rights were reinstated nunc pro tunc.

Appellant asserts two issues on appeal:

1. Whether [Appellant's] plea was unlawfully induced because the Commonwealth did not have a strong case against him as the victim was not going to testify and [the Commonwealth] acknowledged such at sentencing.
2. Whether [Appellant's] fifth and fourteen[th] amendment rights were violated based on the lack of evidence.

When a defendant enters a plea, he waives all claims and defenses except the jurisdiction of the court, the legality of his sentence, and the validity of his plea.

*Commonwealth v. Harvey*, 598 A.2d 1280, 1282 (Pa. Super. 1991); *Commonwealth v.*

*Johnson*, 466 A.2d 636, 642 (Pa. Super. 1983). By entering his no contest plea, Appellant waived any and all claims regarding the strength of the Commonwealth's case or the sufficiency of the evidence against him. *Commonwealth v. Williams*, 600 A2.d 614, 619 (Pa. Super. 1995)(any issue relating to the sufficiency of evidence is waived by the entry of a plea of guilty or no contest).

The transcript of the plea hearing and the written guilty plea colloquy establish that Appellant's no contest plea was knowingly, intelligently, and voluntarily entered. Appellant entered his plea immediately prior to trial. See Transcript, 3/9/17, at 15 (hereinafter Plea Transcript). The court explained to Appellant that by entering a plea of no contest he did not have to admit facts which would constitute his guilt, but he was not contesting the Commonwealth's testimony or that the jury could find him guilty based on those facts. The court also explained that for purposes of sentencing, Appellant would be sentenced as if he were found guilty or pled guilty. Appellant indicated that he understood. Plea Transcript, at 3. It was also understood that everywhere in the written colloquy form where it said guilty meant no contest in this case. Plea Transcript, at 10.

At the plea hearing, Appellant confirmed he understood that by entering his plea he was giving up his right to proceed to trial, be presumed innocent, and have the Commonwealth prove him guilty beyond a reasonable doubt. Plea Transcript, at 15. Appellant also stated that it was his decision to plead no contest and that no one was forcing or pressuring him or giving him any promises to plead no contest. Plea Transcript, at 14. The court explained the elements of the offenses and the maximum penalties of those offenses, and Appellant indicated he understood. Plea Transcript, at 3-5. The court explained

that the plea agreement was for an aggregate minimum of 27 months and the maximum would be up to the court. Plea Transcript, at 6. The court also informed Appellant that the best case scenario would be a sentence of 27 months minimum and 54 months maximum and the worst case scenario would be a 27 month minimum and a 19 year maximum. Plea Transcript, at 6. He also understood that by pleading no contest he was giving up his rights to challenge any issues other than the jurisdiction of the court, the legality of his sentence, the voluntariness of his plea, and the effectiveness of his attorney. Plea Transcript, at 15. He agreed that if the Commonwealth presented witnesses at trial and the jury believed those witnesses that the Commonwealth could prove that he had indecent contact with someone less than 13 years of age and he was more than 18 years of age, that he convinced or enticed the minor in the commission of a sexually related offense, and that he exposed his genitals in his house but under circumstances where the child was present and he knew or should have known that she would likely be alarmed or offended. Plea Transcript, at 16-17. The child was eleven years old when the offenses were committed. Plea Transcript, at 13. Both parties were aware this was a compromise in that if the case went to trial and Appellant was convicted of rape of a child that he would be facing a minimum sentence in the range of 6 to 20 years and a maximum sentence of up to 40 years but the Commonwealth was willing to forgo that possibility due to concerns about the child having to testify and the effect on her emotional health and future well-being. Plea Transcript, at 12-14.

In the written colloquy, Appellant indicated that he understood that he was presumed innocent, that the Commonwealth must prove his guilt beyond a reasonable doubt each element of every crime charged, and that by entering his plea he was waiving or giving

up his right to have the Commonwealth prove his guilt beyond a reasonable doubt. Written Colloquy, Questions 9 and 13. Appellant was also advised of his right to a jury trial and the jury selection process, as well as his right to confront and cross-examine the Commonwealth's witnesses, and Appellant indicated he understood those rights and that he was waiving or giving up those rights by entering his plea. Written Colloquy, Questions 7, 16-18. Appellant also answered yes to questions asking if his plea was being given freely and voluntarily without any force, threats, pressure, intimidation, or promises. Written Colloquy, Questions 34, 35, 40. The coversheet of the written colloquy set forth the maximum penalties and the sentencing guideline ranges for each offense to which Appellant pled guilty.

Appellant was fully aware of the rights he was giving up and the consequences of his plea. He was aware that the court could impose the sentence that it did. Appellant is simply dissatisfied with the maximum sentence imposed by the court. A defendant, however, does not need to be satisfied with the sentence imposed; he need only have entered a knowing, intelligent, and voluntary plea. *Commonwealth v. Bedell*, 954 A.2d 1209, 1212 (Pa. Super. 2008). As the record establishes that Appellant entered a knowing, intelligent and voluntary plea, Appellant waived any claims regarding the strength of the Commonwealth's case or the sufficiency of the evidence against him.

DATE: \_\_\_\_\_

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: District Attorney  
Trisha Hoover Jasper, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)