

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1860-2019**
 v. :
 :
 DERRICK ERWIN, JR., : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

David Lopez (Defendant) was charged with Resisting Arrest¹, Driving Under the Influence: General Impairment², and a summary traffic violation³. On June 29, 2021, Defendant plead guilty to all three (3) charges. However, subsequent to his plea, Defendant filed a Motion to Withdraw Guilty Plea on October 21, 2021. This Court held a hearing on the motion on March 15, 2022.

Background and Testimony

A transcript of Defendant's guilty plea was obtained by this Court. While under oath, Defendant testified that on December 1, 2019, he was operating a motor vehicle. N.T. 6/29/2021, at 4. Defendant admitted to drinking or using controlled substances. Id. Defendant also admitted to speeding at some point while operating his vehicle. Id. at 4-5. Defendant agreed that he acted in such a way while police were attempting to place him under arrest that required law enforcement to use more officers or additional circumstances to ultimately get him to submit to the arrest. Id. at 6. Defendant indicated that no one was forcing him to plead guilty and he understood the rights he was waiving by pleading on that day. Id. at 7. At one point during the guilty plea hearing, Defendant asked the Court if he could withdraw his plea if he wanted to. Id. at 10. This Court advised him to speak with his lawyer about that particular

¹ 18 Pa.C.S. § 5104.

² 75 Pa.C.S. § 3802(a)(1).

³ 75 Pa.C.S. § 3362(a)(1-5).

issue. Id. Defendant then asked this Court about a suppression issue regarding the initial reason police pulled his vehicle over for a traffic stop. Id. at 11-12. In particular, Defendant believed that his headlights were on and functional at the time of the stop, but law enforcement stated the reason he was pulled over was for not having his headlights illuminated. Id. This Court abstained from giving Defendant any legal advice on this issue and suggested Defendant speak with his attorney. Id. at 12.

At the hearing on this motion, Defendant testified on his own behalf. Defendant testified that on December 1, 2019, he had been at a bar on 4th Street and Market Street in the city of Williamsport. Defendant had parked his car at the Jersey Shore Bank parking lot and was walking back to his car alone after leaving the bar. Defendant entered his car, left the parking lot onto Market Street, and saw a police officer travelling in the opposite direction as Defendant at the light for West 4th Street. The light was green at the time Defendant was at the intersection. Defendant stated that he saw police emergency lights but was not sure if they were for him, so he kept travelling. Once he was sure that the lights were meant for him, he pulled his vehicle over. Defendant testified that police officers approached his car with guns drawn and told him to exit his vehicle. Defendant noted that he felt scared so he stuck his hands out of the car window and told the police that they could come get him out of the car. The police pulled him out and arrested him. Defendant stated that he did not resist once he was out of the vehicle. Defendant did not believe this was a normal traffic stop. Defendant also testified that the police claimed that he did not have his headlights on, but Defendant indicated that they were illuminated at the time in question.

Analysis

Defendant asserts that he should be able to withdraw his guilty plea. Pa.R.Crim.P. 320 establishes that “[a]t any time before sentence, the court may, in its discretion, permit or direct a plea of guilty to be withdrawn and a plea of not guilty substituted.” A defendant does not have an absolute right to withdraw his guilty plea. Commonwealth v. Muhammad, 794 A.2d 378, 383 (Pa. Super. 2002). “[T]he decision to grant such a motion lies within the sound discretion of the trial court. Id. A request to withdraw the guilty plea before sentencing “should be liberally allowed.” Id. (quoting Commonwealth v. Forbes, 299 A.2d 268 (Pa. 1973)). In determining whether to grant this motion, “the test to be applied by the trial courts is fairness and justice.” Commonwealth v. Forbes, 299 A.2d 268, 271 (Pa. 1973). The following two elements must be met in order for the Court to grant a “presentence motion to withdraw a plea: (1) the defendant has provided a ‘fair and just reason’ for withdrawal of his plea; and (2) the Commonwealth will not be ‘substantially prejudiced in bringing the case to trial.’” Muhammad, 794 A.2d at 383 (quoting Forbes, 299 A.2d 268). An assertion of innocence early in the proceedings is a “fair and just” reason for withdrawal of a guilty plea. *See* Commonwealth v. Randolph, 718 A.2d 1242, 1244 (Pa. 1998). However, an individual is “bound by one’s statement made during a plea colloquy, and may not successfully assert claims that contradict such statements.” Muhammad, 794 A.2d at 384; *see also* Commonwealth v. Barnes, 687 A.2d 1163, 1167 (Pa. Super. 1996).

Defendant argues his innocence of only the charge of Resisting Arrest and believes that he has a viable motion to suppress issue to assert regarding the headlights and the reason for police conducting a traffic stop on him. Defendant believes that these two (2) assertions provide a fair and just reason for this Court to allow him to withdraw his guilty plea. Defendant also asserts that filing a motion to suppress does not prejudice the Commonwealth. Counsel for

the Commonwealth strongly disagreed with this allegation of lack of prejudice, arguing that the time for filing an omnibus pretrial motion in Defendant's case was due in March of 2020, or with an extension, April of 2020. As such, the Commonwealth argues that any omnibus motion would be patently untimely and should be denied for the significant delay in filing. The Commonwealth reiterated that this Court has denied the untimely filing of pre-trial motions with less delay than the one at issue here. The Commonwealth articulated that Defendant's wish to file an omnibus motion should not be considered at this time. Additionally, the Commonwealth asserted that the only reason to open the record would be for Defendant to file a Post-Conviction Relief Act petition alleging ineffective assistance of counsel for failure to file a motion to suppress. However, the Commonwealth believes that Defendant does not wish to do this because the burden would be on him to prove ineffective assistance, whereas the burden is on the Commonwealth during a suppression motion. The Commonwealth also contends that, although Defendant now asserts his innocence regarding Count 1: Resisting Arrest, Defendant gave facts at the guilty plea hearing to support this charge.

This Court believes that Defendant has provided a fair and just reason for this Court to grant his motion to withdraw his guilty plea. Even though Defendant asserts his innocence on one charge, the Pennsylvania Supreme Court has held that an "admission that [defendant] was not innocent of all the crimes charged should not have defeated his requested withdrawal." Commonwealth v. Randolph, 718 A.2d 1242, 1245 (Pa. 1998). Furthermore, the Pennsylvania Supreme Court has required that these requests prior to sentencing should be "liberally allowed." Commonwealth v. Forbes, 299 A.2d 268, 271 (Pa. 1973). Precedent establishes that asserting innocence meets the test of a fair and just reason and Defendant has asserted his innocence on the charge of Resisting Arrest. This Court also finds that the Commonwealth

would not be substantially prejudiced by allowing Defendant to withdraw his guilty plea. However, Defendant's allegation of a meritorious suppression issue that he wishes to litigate plays no part in the Court's consideration of a fair and just reason to support the withdrawal of Defendant's guilty plea.

Conclusion

The Court finds that the Defendant provided a fair and just reason supporting the withdrawal of his guilty plea and has shown that the Commonwealth will not suffer from substantial prejudice because of the withdrawal. As a result, Defendant's Motion for Permission to Withdraw Pleas of Guilty is granted.

ORDER

AND NOW, this 25th day of March, 2022, based upon the foregoing Opinion, Defendant's Motion for Permission to Withdraw Pleas of Guilty is **GRANTED**. Therefore, this Court's Order accepting Defendant's guilty plea on June 29, 2021 is hereby **VACATED**. The above-captioned case for Defendant shall be placed on the Criminal Pre-Trial List on July 11, 2022.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
Peter T. Campana, Esq.
Law Clerk (JMH)