

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-76-2022
	:	123 MDA 2024
vs.	:	
	:	
KEVIN R. BRADLEY,	:	
Appellant	:	Appeal

Date: April 3, 2024

**OPINION IN COMPLIANCE WITH RULE 1925(a) OF THE
RULES OF APPELLATE PROCEDURE**

On or about June 25, 2021, Kevin R. Bradley (“Appellant”) was charged with two counts of Intercepting Communications¹ and two counts of Disclosure of Intercepted Communications². These charges were related to the Appellant recording conversations with the Mayor of Williamsport, Pennsylvania, and the Pennsylvania Supreme Court Deputy Prothonotary without their knowledge or consent and subsequently posting the conversations to his YouTube channel, “The Pissed Off Taxpayer.” The only pre-trial motion, a Motion for Discovery, was withdrawn by Appellant’s counsel. On December 29, 2023, upon motion of the Commonwealth and with no objection by the defense, the Information was amended to add Count 5, Obstructing Administration of Law or Other Governmental Function³ and Count 6, Harassment⁴. Also on that date, the Appellant entered a *Nolo Contendere Plea* to Counts 5 and 6 and was sentenced to a period of three

¹ 18 Pa.C.S. §5703(1).

² 18 Pa.C.S. §5703(2).

³ 18 Pa.C.S. §5101.

⁴ 18 Pa.C.S. §2709(a)(7).

years of probation supervision, without eligibility for early release. Upon motion of the Appellant, the Court deferred his report date to Adult Probation to January 30, 2024, to give him the opportunity to appeal the sentence. There were no Post-Sentence motions filed.

Appellant filed a timely appeal, *pro se*, on January 22, 2024, and on January 30, 2024, filed a Concise Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. §1925(b). Appellant raises the following issues on appeal:

1. Lawyer gave me bad advice and was incompetent:

My attorney Mr. Richard Coble advised me to plead No Contest knowing I planned to appeal. I was lead (sic) to believe that Mr. Richard Coble was going to be the one representing me on my appeal. Later on I get an email from Mr. Richard Coble advising me that I still need to be the one to appeal and he is not qualified as an appeals lawyer.

2. Pennsylvania's 2 party consent law goes against the Pennsylvania Constitution and the United States Constitution as well as violates the United States Constitution's Supremacy Clause:

The recording laws pertaining to public officials violate the 1st amendment. In that recording public officials who are working in their capacity as an official regardless of what branch of government they are in be it executive, judicial, or legislative are at that time are not private citizens and not subject to any laws that hinder transparency. The mayor was working in his official taxpayer funded capacity when he was recorded without his permission. There are several circuits that have ruled their 2 party consent laws unconstitutional.

3. **Pennsylvania's 2 party consent law violates the freedom of the press of the 1st Amendment:**

The act of making an audio or audiovisual recording is necessarily included within the First Amendment's guarantee of speech and press rights as a corollary of the right to disseminate the resulting recording. The First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.

4. **When I called the Pa Supreme Court prothonotary I got a recording telling me that I'm being recorded, there is already Pa case law for that:**

Gunderman v. UN. COMP. BD. Of REV. (3rd Cir. 1986); ("The Wiretapping Act provides that a person is guilty of a felony of the third degree if, inter alia, that person intercepts or discloses an oral communication. 18 Pa.C.S. §5703. An "oral communication" is defined as "[a]ny oral communications uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation." 18 Pa.C.S. §5702 (emphasis added). Here, the communication intercepted was testimony given at a hearing before the referee. As a record of such testimony is taken as a matter of course so that a record can be made for purposes of review by the Board and the courts, no legitimate expectation of privacy existed. Therefore, the act of recording the hearing did not violate the Wiretapping Act.")

5. **Pennsylvania's 2 party consent law may violate a persons ADA rights:**

A person with a disability that requires them to use an auxiliary device to record what someone is telling them should not have to suffer the humiliation of having to

explain why they are recording, especially if the person being recorded is a taxpayer funded public servant.

A plea of *nolo contendere* should be treated the same as a guilty plea in terms of its effect upon a particular case. *See Commonwealth v. Hayes*, 369 A.2d 750 (Pa. Super. 1976); *Commonwealth v. Warner*, 324 A.2d 362 (Pa. Super. 1974). “A plea of guilty constitutes a waiver of all nonjurisdictional defects and defenses.... When a defendant pleads guilty, he waives the right to challenge anything but the legality of his sentence and the validity of his plea.” *Commonwealth v. Thomas*, 506 A.2d 420, 422 (Pa. Super. 1986). Non-waivable jurisdictional defects as encompassed by the above axiom include only those which undermine a court's subject-matter jurisdiction. *See Commonwealth v. Little*, 455 Pa. 163, 314 A.2d 270 (1974).

At the time of the no contest plea and sentencing, the Appellant's then-counsel requested for a deferment of his report date to the Adult Probation Office. It appears as though the Appellant was under the mistaken belief that, while admitting he understood the law as currently constructed, his no contest plea would be a vehicle to challenge the constitutionality of the law on appeal. However, none of the five issues Appellant raises in his Concise Statement of Matters Complained of on Appeal involve challenges to the legality of his sentence or the validity of his plea. Unfortunately for the Appellant, he has failed to preserve the issues he intends to raise on appeal as his plea of *nolo contendere* rendered them waived pursuant to *Com. v. Thomas, supra*.

The Court is cognizant of the fact that, while appellate courts have not specifically addressed the validity of conditional plea agreements, they have proceeded to review the merits of issues specifically reserved in plea agreements. *See Commonwealth v. Cotto*, 562

Pa. 32, 753 A.2d 217 (2000) (providing review of the appellant's challenges to the constitutionality of the Juvenile Act, issues which the appellant sought to reserve the right to appeal in his plea agreement); *Commonwealth v. Zelasny*, 430 Pa.Super. 585, 635 A.2d 630 (1993) (reaching the merits of the appellant's suppression challenge which he sought to preserve in a conditional plea agreement). However, even if this Court were to give the Appellant the benefit of the doubt and consider his *nolo contendere* plea a conditional plea, it would not overcome the waiver issue associated with the plea as there were no pre-trial motions filed which raised, and subsequently preserved, these issues for appellate review.

As the Appellant has failed to preserve any issues for appellate review by virtue of his plea of *nolo contendere*, this Court respectfully requests that his appeal be dismissed and his judgment of sentence dated December 29, 2023, be affirmed.

BY THE COURT,

Ryan M. Tira, Judge

RMT/jel

cc: Superior Court (Original +1)
DA
PD (Nicole Spring, Esquire)
Gary Weber, Esquire
Jennifer Linn, Esquire