

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

COMMONWEALTH	: NO. CR-1247-2022
	:
vs	:
	:
MATTHEW GEORGE,	:
Defendant	:

OPINION AND ORDER

AND NOW, this **28th** day of **June, 2024**, before the Court is a Motion to Enforce Plea Agreement filed on behalf of the Defendant by George E. Lepley, Jr., Esquire, on May 1, 2024. Defendant was charged with three (3) Counts in this case: Count 1 Terroristic Threats-M1, Count 2 Stalking-M1, and Count 3 Harassment-Summary.

Pennsylvania Rule of Criminal Procedure 590 governs plea agreements. The rule has been interpreted to mean that no plea agreement exists unless and until it is presented to the court. The Supreme Court has also held that where a plea agreement has been entered of record and has been accepted by the court, the Commonwealth is required to abide by the terms of the plea agreement. However, prior to the entry of a guilty plea, the defendant has no right to specific performance of an ‘executory’ agreement. *See Commonwealth v. McElroy*, 665 A.2d 813, 816 (Pa. Super. 1995) (citations and internal quotation marks omitted).

Here, we have neither entry on the record nor acceptance by the Court. In fact, Defendant concedes there was no written agreement. Instead, the Defendant is asserting that the District Attorney’s Office made a verbal offer at the preliminary hearing that if the Defendant completed MAAPs then the Commonwealth would accept a plea to one of the

lower counts that had been filed against the Defendant. The Commonwealth stated that there were no specific terms conveyed regarding which count or what the penalty would be for the offense. While the Defense acknowledges that all of the details were not agreed upon by the parties, they assert a detrimental reliance argument to support their position that the Defendant is entitled to a plea agreement in line with pleading to a lesser charge without any period of incarceration. However, the Commonwealth argued, and Defense Counsel did not dispute, that almost immediately following the offer made at the preliminary hearing, ADA Welickovitch contacted Attorney Lepley and informed him that the victim in the case objected to a plea deal that did not include a period of incarceration. ADA Welickovitch, while disclosing to Attorney Lepley that he may not be able to proceed with the plea deal they had discussed, also stated to Attorney Lepley that he hoped with time the victim would change his mind and be agreeable to a plea deal that did not include incarceration. This has not occurred.

The Defendant has successfully completed MAAPs and is ready to proceed with a plea to a lesser charge with a penalty that does not include incarceration. While it is clear that the Defendant acted in accordance with the initial plea discussions for him to complete MAAPs in exchange for being allowed to plea to a lesser charge and receive a penalty without incarceration, his action was not without the knowledge that the initial plea framework lacked a firm foundation. ADA Welickovitch disclosed the problems with the initial plea framework before the Defendant could even start MAAPs. Thus, the Defendant knew that the initial plea framework was fragile at best and proceeded at his own risk that completing MAAPs would not result in him receiving the plea agreement he desired. Therefore, there was no meeting of the minds between the Defendant and the

Commonwealth regarding the offer and acceptance of the plea deal and therefore no agreement and the Defendant's Motion to Enforce Plea Agreement must be denied.¹

Since the Motion has been disposed as stated above, the Court does not reach the issue concerning the lack of a Court's acceptance and approval of the plea agreement. As stated above, all plea agreements are subject to Court approval before they become enforceable. Even if the Court had found that there was a meeting of the minds between the Defendant and the Commonwealth, that agreement would still be subject to Court review for approval. That determination is not ripe for decision and the Court declines to speak to the appropriateness of the terms of the plea agreement.

Accordingly, the Motion to Enforce Plea Agreement filed on May 1, 2024, is

DENIED.

BY THE COURT,

Ryan M. Tira, Judge

RMT/jel

Cc: District Attorney (MW)
George E. Lepley, Jr., Esquire
Gary Weber, Esquire

¹ While the completion of MAAPs does not entitle the Defendant to an enforceable plea agreement, the Defendant can present it to the Court, if the Defendant either pleads guilty or is convicted of a count(s) in this matter, for consideration at sentencing.