

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-41-CR-0001511-2023
	:
vs.	: Order Denying Motion to Withdraw
	: Guilty Plea
KAYLA RENAY BAUSINGER,	:
Defendant	:

OPINION AND ORDER

This matter came before the court on November 24, 2025 for a hearing and argument on Defendant's motion to withdraw guilty plea.

Defendant worked at McDonald's in a managerial capacity for approximately 13 years. She was charged with theft by deception, graded as a felony of the third degree.¹ She waived her preliminary hearing, which normally would also result in a waiver of her right to request habeas corpus relief. *See* Pa. R. Crim. P. 541(A)(1). The Commonwealth contended that the amount stolen was in excess of \$30,000. Defendant did not deny that she committed a theft, but she disputed the amount. In an effort to resolve this case, the Commonwealth stipulated to an extension for the filing of omnibus pretrial motions. *See* Order entered February 1, 2024. After an additional extension, Defendant filed a petition for habeas corpus on April 1, 2024, challenging the grading of the theft.

The petition for habeas corpus was heard before the Honorable Ryan Tira on or about July 22, 2024. At the hearing, Jennifer Newcomer, Director of Operations, testified regarding the evidence of theft and the amount of the theft. Andrew Kelly, the owner/operator of the McDonald's flew from New England to testify. He testified that the amount taken was at

¹ 18 Pa. C.S.A. §3922(a)(1).

least \$30,000. The Commonwealth also introduced testimony from a Pennsylvania State Trooper and exhibits including videos and register reports. On January 10, 2025, Judge Tira issued an Opinion and Order in which he denied Defendant's request for habeas corpus relief.

On June 6, 2025, Defendant knowingly, voluntarily and intelligently entered a guilty plea to theft by deception graded as a felony of the third degree, and she was scheduled for a sentencing hearing on July 29, 2025.

On July 17, 2025, through new counsel, Defendant filed a motion to withdraw her guilty plea. In the motion, Defendant was "asserting her innocence." After several continuances, the court held a hearing and argument on Defendant's motion on November 24, 2025.

Defendant was the sole witness to testify at the hearing. She admitted that she pleaded guilty and she was guilty of theft; however, she contended that she did not steal \$30,000. She wants to withdraw her guilty plea because she contends that the amount was less than that and she feels like she was discriminated against because others were caught stealing and not charged.

On cross-examination, she admitted that Jennifer Newsome and Andrew Kelly testified at the hearing before Judge Tira that the amount was at least \$30,000. She also acknowledged that she freely admitted her guilt at the guilty plea hearing and she had sufficient time to speak with her attorney prior to her guilty plea.

Defense counsel argued that Defendant should be able to withdraw her guilty plea and proceed to trial, despite the fact that she is still admitting her guilt to a theft, because she disputes the amount of the theft. Counsel asserted that merely because the amount was

litigated during an omnibus hearing for habeas corpus relief does not preclude Defendant from litigating the amount at trial. Counsel also asserted that the Commonwealth would not be prejudiced by the withdrawal of the guilty plea.

The Commonwealth argued that at most Defendant had presented a bare assertion of innocence, which is insufficient. Instead, Defendant admitted during the hearing on her motion to withdraw the plea that she was guilty of theft. The Commonwealth noted that the grading is a felony of the third degree, which is an amount in excess of \$2,000. The Commonwealth asserted that the jury only decides if Defendant stole in excess of \$2,000. The jury does not determine the specific amount stolen, which is an issue for a restitution hearing. The Commonwealth also argued that the passage of time results in staleness of witnesses and evidence, and Mr. Kelly should not be required to again fly to Pennsylvania and Ms. Newcomer should not have to leave work to testify at a trial.

DISCUSSION

Rule 591 of the Pennsylvania Rules of Criminal Procedure governs the withdrawal of guilty pleas and states:

(A) At any time before the imposition of sentence, the court may, in its discretion, permit, upon motion of the defendant, or direct, *sua sponte*, the withdrawal of a plea of guilty or nolo contendere and the substitution of a plea of not guilty.

Pa. R. Crim. P. 591(A). It is within the trial court's discretion whether to grant a pre-trial motion to withdraw a guilty plea. *See Commonwealth v. Torres*, 327 A.3d 640, 647 (Pa. Super. 2024). Case law provides that pre-sentence motions to withdraw a guilty plea should be liberally allowed when the defendant provides a fair and just reason unless the Commonwealth would be substantially prejudiced by the withdrawal. *Commonwealth v.*

Carrasquillo, 631 Pa. 692, 115 A.3d 1284, 1292 (2015). A credible assertion of innocence is a fair and just reason. *Id.* It is not the only fair and just reason. *Commonwealth v. Elia*, 83 A.3d 254, 263-64 (Pa. Super. 2013).

The court finds that Defendant has failed to show a plausible assertion of innocence or any other fair and just reason to withdraw her guilty plea. Defendant readily admitted in her testimony that she had committed a theft. While she disputed that the amount of the theft was \$30,000, she did not offer any testimony or evidence that the amount was less than \$2000. The jury does not determine the specific amount stolen, which would be an issue for a restitution hearing; it only determines whether the amount is sufficient for the grading of the offense, which in this case would be any amount in excess of \$2000. *See* 18 Pa. C.S.A. §3903 (regarding grading of theft offenses). Judge Tira determined that there was sufficient evidence for the case to proceed to a jury, and then Defendant pleaded guilty to the crime graded as a felony of the third degree. Defendant has not demonstrated in any manner that this charge was improperly graded; she has only offered a bare assertion that she did not take the total amount claimed by the Commonwealth.

Defendant also did not offer any other fair and just reason. Although she testified that she felt that she was being discriminated against because she was charged criminally and others who allegedly stole from McDonald's were not, she did not offer any basis for an assertion of discrimination or selective prosecution. There could be any number of valid reasons why others were not charged, including but not limited to they did not take as much money as Defendant, or they immediately returned any amount taken.

ORDER

AND NOW, this 24th day of November 2025, the Court DENIES

Defendant's Motion to Withdraw Guilty Plea.² Sentencing is scheduled before this court on Thursday, December 4, 2025 at 9:00 a.m. in Courtroom #1.

By The Court,

Nancy L. Butts, President Judge

cc: Eric Birth, Esquire (ADA)
Jeana Longo, Esquire
Abby Buchner, VW Coordinator
Court Scheduling
Jerri Rook

²In view of the fact that the court is leaving the bench at the end of the year and as a result may not be available to write an opinion in the event of an appeal after sentencing, the court notes that the Commonwealth failed to establish substantial prejudice. It has not shown that any witness would be unavailable or that his or her memory would be impaired as a result of the short delay between the time of Defendant's guilty plea and her motion to withdraw it. The Commonwealth and its witnesses would perhaps be inconvenienced, but it is the same inconvenience which would occur if Defendant had never pleaded guilty. *See Commonwealth v. Islas*, 156 A.3d 1185, 1192-93 (Pa. Super. 2017).