

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

TARYRON CUSTIS,)
)
Appellant-Defendant below,)
)
v.) ID No. 1002013837
)
STATE OF DELAWARE,)
)
Appellee-Plaintiff below.)

On appeal from a Decision of the Court of Common Pleas - AFFIRMED

Submitted: May 5, 2011
Decided: September 1, 2011

OPINION

Taryron Custis, Howard R. Young Correctional Center, 1301 E. 12th Street,
Wilmington, DE 19809. *Pro Se* Appellant.

J' Aime L. Walker, Esquire, Department of Justice, 820 N. French Street, 7th Floor,
Wilmington, DE 19801. Counsel for Appellee.

CARPENTER, J.

Before the Court is a *pro se* appeal by Taryron D. Custis (“the Appellant”) of his 2010 conviction by guilty plea in the Court of Common Pleas on charges of Criminal Mischief and Breach of Release. The Appellant contends that the Court violated the plea agreement by imposing a harsher sentence than was recommended by the State and that his constitutional rights were violated by the admission of a Victim Impact Statement. The Court finds each of the Appellant’s claims to be without merit, and the Appellant’s conviction will therefore be affirmed.

FACTS

The Appellant was indicted on charges of Criminal Mischief, Terroristic Threatening, and Breach of Condition of Release. These charges resulted from an incident on February 26, 2010, when the Appellant broke into the home of his former girlfriend, Latisha Reese, where she lived with her father, Douglas Reese, and her daughter, Dhemyena Reese. The Appellant had been released on bond in connection with pending Superior Court charges on the condition of no contact with Latisha Reese. The Appellant’s father was in the apartment at the time of the incident. The Appellant used his key to unlock the door and broke the chains off the door to enter the apartment. He then encountered Mr. Reese, whom he knocked to the floor and beat with a closet door. Mr. Reese, who was sixty-eight

years old at the time of the incident, sustained injuries to his head, arm and legs and was required to spend the night in the hospital.

The Appellant was scheduled for trial in the Court of Common Pleas on May 13, 2010. At that time, counsel advised the Court that the Appellant intended to accept the State's plea offer and would enter a guilty plea on one charge of criminal mischief and one count of breach of a condition of release. In exchange for the guilty plea, the State agreed to drop the other charges, and to recommend a suspended sentence of one year at Level 5 for a year of Level 2 probation on the breach of release charge and thirty days at Level 5 on the criminal mischief charge. The agreement also required that the Appellant pay \$800 in restitution to Mr. Reese, and to have no contact with any members of the Reese family.

The Court asked the Appellant whether he had consulted with his counsel and asked his counsel to address the Court on the waiver of the Appellant's rights. The Appellant's counsel stated that he had explained to the Appellant his right to trial, the possible penalties he faced, and the recommended sentence. Mr. Layton further stated that he believed the Appellant was "knowingly, intelligently, and voluntarily" offering his plea to the Court.¹ The Court then questioned the Appellant regarding the plea agreement and the rights he was waiving by the plea.

¹ Transcript of Proceedings, 4 (May 13, 2010).

Subsequently, the Court accepted his plea of guilty on the charges of criminal mischief and breach of release conditions. Before sentencing the State requested that Mr. Reese be allowed to address the Court. After Mr. Reese's presentation, Appellant's counsel addressed the Court on credit time and requested a hearing if the Court planned to impose restitution in an amount greater than the \$800 negotiated in the plea agreement. The Court agreed to a hearing and sentenced the Appellant to one year at Level 5 on the breach of release charge, to be followed by a year of Level 2 probation and 30 days at Level 5 on the criminal mischief charge.

DISCUSSION

The Appellant first challenges his conviction on the ground that the Court imposed a significantly harsher sentence than what he believed he bargained for in the plea agreement and thereby violated the plea agreement. While it is true that a sentence beyond that contemplated by the plea agreement was imposed, it does not provide a basis to now overturn his conviction or to allow him to withdraw his plea. It is well-settled that the Court is not bound by the State's sentencing recommendation when accepting a guilty plea.² While the Court will give

² See, e.g., *Fisher v. State*, 817 A.2d 804, 2003 WL 423449, at *1 (Del. Feb. 19, 2003) ("The plea agreement did not promise a particular sentence, and the Superior Court was not bound by the parties' recommendation of immediate sentencing to a one-year probationary sentence."). See also *Selby v. State*, 840 A.2d 642, 2004 WL 65330, at *1 (Del. Jan. 12, 2004) ("The record in this case unequivocally reflects [the defendant's] understanding that the Superior Court was not bound by the State's sentencing recommendation and that the sentencing judge could impose

significant weight to the recommendations that have been made by the State and the defendant, the Court is free to impose a sentence the judge believes is fair and appropriate so long as that sentence does not exceed the maximum penalties for that offense. While perhaps unexpected by the Appellant, the Court of Common Pleas sentence is not illegal nor does it provide a basis to withdraw his plea.

Furthermore, the Appellant has not presented clear and convincing evidence to suggest that his plea was not entered knowingly, intelligently, and voluntarily.³ The Appellant was represented by experienced counsel at the time of his guilty plea, and before the Court accepted the Appellant's plea of guilty, the Appellant acknowledged that his counsel had reviewed the maximum penalties for the offenses and the terms and conditions of the plea agreement with him.⁴ The Appellant has not presented any evidence to suggest that his plea was not, as his counsel represented to the Court, entered knowingly, voluntarily, and intelligently. He is simply unhappy that the Court exceeded the recommendation in the plea agreement. Accordingly, the Appellant has not met the required burden for reversing his conviction.

more than five years' imprisonment."); *State v. Denston*, 2002 WL 338069, at *2 (Del. Super. Feb. 28, 2002) (“[T]he defendant’s contention that this Court did not honor the State’s sentencing recommendation has no merit, as this Court was not required to adhere to that recommendation.”).

³ *Miller v. State*, 840 A.2d 1229, 1231 (Del. 2003).

⁴ Transcript of Proceedings at 4.

The Appellant also contends that the Court violated his constitutional right to confront his accuser by allowing Douglas Reese to testify since he did not appear on the probable cause arrest affidavit. While a voluntary guilty plea normally waives claims based on errors or defects in the plea proceeding,⁵ here Mr. Reese as a victim of the crimes had a statutory right to address the Court.⁶

Rule 32(a)(D) of the Court of Common Pleas Rules of Criminal Procedure state:

Before imposing sentence, the Court shall [...] [a]fford the victim, if present, an opportunity to offer prior comment on the sentencing of a defendant, including the submission of a written or oral victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim's family for any offense enumerated in 11 *Del. C.* §9401(1), or, with the court's discretion, any other offense. The Attorney General shall have an equivalent opportunity to speak to the Court. Upon a motion that is jointly filed by the defendant and the Attorney General, the Court may hear in camera such a statement by the defendant, counsel for the defendant, or the Attorney General.

While the Appellant's dispute with the Reese family may have been directed at Mr. Reese's daughter, clearly the father was also victimized by the Appellant's conduct on February 26, and it was appropriate for him to personally address the Court regarding the effect the crime had on him and his family. The Appellant and his counsel had an opportunity to address the Court after Mr. Reese's presentation and if there was an area of dispute with the victim's comments, he could have

⁵ *Miller*, 840 A.2d at 1232.

⁶ 11 *Del. C.* § 4331.

presented it to the Court at that time. It appears that the only objection related to restitution, which the Court agreed to address at a later hearing. As a result, victim's comments did not violate the Appellant's rights nor do they provide a basis to overturn the conviction.

The Appellant has presented no meritorious basis for challenging his guilty plea in the Court of Common Pleas. Accordingly, the Appellant's conviction is hereby affirmed.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.