

2013 PA Super 323

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JAMES ANTHONY ELIA,	:	
	:	
Appellant	:	No. 1518 EDA 2012

Appeal from the Judgment of Sentence Entered April 25, 2012,
 In the Court of Common Pleas of Montgomery County,
 Criminal Division, at No. CP-46-CR-0009201-2010.

BEFORE: SHOGAN, WECHT and COLVILLE*, JJ.

CONCURRING OPINION BY SHOGAN, J.: **FILED DECEMBER 24, 2013**

The learned majority presents a thorough and thoughtful analysis of the issues raised in this appeal. However, this Court has previously held that “the bald assertion of innocence” does not *per se* constitute a fair and just reason for allowing a defendant to withdraw his guilty plea. ***Commonwealth v. Cole***, 564 A.2d 203, 206 (Pa. Super. 1989) (*en banc*). Instead, a trial court should consider the totality of the circumstances. ***Id.*** at 208 (Judge McEwen, Concurring Opinion). Similarly, I conclude that a defendant’s bald contention that the evidence is insufficient does not constitute a fair and just reason to permit the withdrawal of a guilty plea. Thus, I respectfully disagree with the majority that this contention constituted a fair and just reason to permit Appellant to withdraw his plea in

*Retired Senior Judge assigned to the Superior Court.

this case. **See** Majority Opinion at 14. Instead, I would rely upon Appellant's specific assertion that he was not guilty, through the uncontested statement of his plea counsel, in concluding that this issue lacks merit on direct appeal. **See *Commonwealth v. Johnson***, 961 A.2d 877 (Pa. Super. 2008) (stating that counsel represent their clients and their admissions are *prima facie* the admissions of their clients). Furthermore, I would decline to address the voluntariness of the withdrawal because this argument was not presented by Appellant. In all other respects, I join the majority's opinion.