J-S29014-13

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
TERRENCE VERNELL BROWN,	:	
	:	
Appellant	:	No. 1564 EDA 2012

Appeal from the Judgment of Sentence January 24, 2012,
Court of Common Pleas, Delaware County,
Criminal Division at No. CP-23-CR-0001238-2011

BEFORE: DONOHUE, MUNDY and OLSON, JJ.

MEMORANDUM BY DONOHUE, J.: **FILED DECEMBER 04, 2013**

Terrence Vernell Brown ("Brown") appeals from the judgment of sentence entered on January 24, 2012, by the Court of Common Pleas, Delaware County. Upon review, we affirm.

We previously summarized the factual and procedural histories of this case as follows:

> On March 31, 2011, the Commonwealth filed a criminal information charging Brown with multiple crimes related to an armed robbery and burglary he committed with two other men on January 2, 2011. The trial court appointed Attorney Daniel J. Donohue to represent Brown on April 7, 2011. On January 24, 2012, Brown pled guilty pursuant to a negotiated plea agreement to robbery, conspiracy to commit robbery, and possessing an instrument of crime. The trial court sentenced him to 10 to 20 years of imprisonment.
>
> There is no indication in the record that Attorney Donohue sought or was granted permission to

> withdraw as counsel. Nonetheless, on January 31, 2012, Brown filed a *pro se* motion to withdraw his guilty plea. The clerk of courts did not forward Brown's *pro se* motion to Attorney Donohue as required by Rule of Criminal Procedure 576(A)(4), and Brown's certificate of service reflects that he did not serve Attorney Donohue with a copy of his motion. The trial court ruled upon Brown's *pro se* motion, denying it on May 9, 2012.
>
> On June 1, 2012, Brown filed a *pro se* notice of appeal. Although the record reflects that Attorney Donohue continued to be counsel of record, on June 8, 2012, the trial court issued an order to Brown for Brown to file a concise statement of matters complained of on appeal within 21 days pursuant to Pa.R.A.P. 1925(b). The docket reflects that the trial court's order was mailed to Brown, not to Attorney Donohue, on June 18, 2012, 10 days after the issuance of the order.
>
> On September 20, 2012, the trial court filed a written opinion pursuant to Pa.R.A.P. 1925(a), finding all issues waived because Brown failed to file a 1925(b) statement. The trial court stated that Brown 'submitted written statements to the court which complained that the 1925(b) [o]rder was received by him too late to comply[.]' Trial Court Opinion, 9/20/12, at unnumbered 2. The trial court disregarded this claim, as it found Brown 'has had more than ample time subsequent to his acknowledged receipt of the 1925(b) [o]rder to comply and [Brown] failed to do so.' ***Id.***

Commonwealth v. Brown, 1564 EDA 2012, 1-3 (Pa. Super. June 24, 2013) (unpublished memorandum) (footnotes omitted).

When this case initially came before this Court, Attorney Donohue filed an ***Anders***[1] brief and a motion to withdraw, stating that the appeal was wholly frivolous based upon Brown's failure to file the ordered Pa.R.A.P. 1925(b) statement, having waived all issues for appellate review. This Court found that Brown was denied his constitutional right to a direct appeal and to be represented by counsel on direct appeal "because of various breakdowns in the operations of the court and Attorney Donohue's abrogation of his responsibilities." ***Brown***, 1564 EDA 2012, at 6-7. We therefore remanded the case for the appointment of new counsel or for Brown to represent himself following a ***Grazier***[2] hearing; a new 1925(b) order; and a new briefing schedule.

The trial court timely complied with our Order. Upon discerning from Brown that he wished to be represented by counsel on appeal, the trial court appointed new counsel on July 23, 2013, and issued a new Pa.R.A.P. 1925(b) order. New counsel timely filed a Pa.R.A.P. 1925(b) statement, and the trial court issued a responsive opinion pursuant to Pa.R.A.P. 1925(a) on September 3, 2013. New counsel then filed an advocate's brief on Brown's behalf, raising one issue for our review:

> Whether the guilty plea offered by [] Brown on January 24, 2012 before the Honorable James P.

---

[1] ***Anders v. California***, 386 U.S. 738 (1967); ***Commonwealth v. Santiago***, 602 Pa. 159, 978 A.2d 349 (2009).

[2] ***Commonwealth v. Grazier***, 552 Pa. 9, 713 A.2d 81 (1998).

> Bradley was entered knowingly, voluntarily and/or intelligently in that it was never explained to him by his attorney nor was he colloquied by the court as to the ramifications of said guilty plea in reference to violation of open back cases to which he was under supervision at the time of his plea?

Brown's Brief at 3.

Brown challenges the validity of his guilty plea. "A defendant who attempts to withdraw a guilty plea after sentencing must demonstrate prejudice on the order of manifest injustice before withdrawal is justified." ***Commonwealth v. Yeomans***, 24 A.3d 1044, 1046 (Pa. Super. 2011) (citation omitted). "A showing of manifest injustice may be established if the plea was entered into involuntarily, unknowingly, or unintelligently." ***Id.***

Brown asserts that his guilty plea was not knowing, voluntary and intelligent, as "there is nothing on the record as to the consequences of the guilty plea entered in reference to the open cases to which [Brown] was under supervision at that time." Brown's Brief at 8. According to Brown, his plea could not have been knowingly and voluntarily entered without information regarding the back sentence that he faced on his preexisting cases as a result of pleading guilty to the charges at issue. ***Id.***

The plea court states that even if Brown was not informed of the consequences of his guilty plea on other cases for which he was on parole or probation, this does not affect the validity of his plea. Trial Court Opinion, 9/3/13, at 2-3. However, the plea court indicates that the written guilty

plea colloquy, which Brown acknowledged reviewing, specifically states that pleading guilty to the crimes at issue could result in jail time for any crimes for which Brown was on probation or parole. The plea court thus concluded that Brown's claim is devoid of merit. ***Id.*** at 3-4.

Our review of the record comports with that of the plea court. Paragraph 20 of Brown's written guilty plea colloquy states the following:

> If I was on probation or parole at the time the crimes to which I am pleading guilty or nolo contendre were committed, my pleas in this case mean that I have violated my probation or parole and I can be sentenced to jail for that violation in addition to any sentences which I may receive as a result of these pleas.

Guilty Plea Statement, 1/24/12, at ¶ 20. Brown's initials appear on the line next to that paragraph and both he and his counsel signed and dated the written colloquy. The transcript of his oral colloquy reflects that Brown acknowledged reading and understanding the content of the written colloquy.[3] N.T., 1/24/12, at 21, 23-24. "A person who elects to plead guilty is bound by the statements he makes in open court while under oath and may not later assert grounds for withdrawing the plea which contradict the statements he made at his plea colloquy." ***Commonwealth v. Yeomans***,

[3] Indeed, it appears that Brown was well aware of its content, as he identified a specific provision of the negotiated plea – requiring him to pay $500 in restitution to the victim – that the Commonwealth stated on the record at the guilty plea hearing that was not contained in the written colloquy. Brown specifically inquired of the plea court whether the provision could be removed because he "didn't sign for it[.]" N.T., 1/24/12, at 21.

24 A.3d 1044, 1047 (Pa. Super. 2011). Thus, Brown was informed of the consequences of pleading guilty as it relates to cases for which he was already under supervision.

To the extent Brown argues that the plea court or plea counsel was required to inform him of such information during his oral colloquy, he is incorrect. It is true that the Rules of Criminal Procedure require that a defendant tender a guilty plea on the record in open court. Pa.R.Crim.P. 590(A)(1). However, "nothing in the rule [] preclude[s] the use of a written colloquy that is read, completed, signed by the defendant, and made part of the record of the plea proceedings," as long as the written colloquy is "supplemented by some on-the-record oral examination." Pa.R.Crim.P. 590 (Comment).

Moreover, if the trial court did in fact fail to inform him of the consequences his guilty plea would have on other cases for which he was under supervision, it would not affect the validity of his plea, as the possibility of parole or probation revocation is considered a "collateral consequence" of a guilty plea. ***Commonwealth v. Brown***, 680 A.2d 884, 887 (Pa. Super. 1996); ***Commonwealth v. Barndt***, 74 A.3d 185, 195 (Pa. Super. 2013).

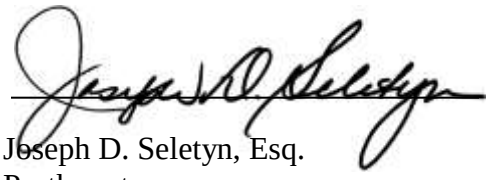
> [A] defendant's lack of knowledge of the collateral consequences of pleading guilty does not undermine the validity of his guilty plea. The collateral consequences of pleading guilty are both numerous and remote. Most importantly, they are irrelevant to

> the determination of whether a guilty plea was entered voluntarily and knowingly.

Barndt, 74 A.3d at 193 (quoting ***Commonwealth v. Frometa***, 520 Pa. 552, 555 A.2d 92, 93 (1989), *abrogated in part,* ***Padilla v. Kentucky***, 559 U.S. 356 (2010))[4] (internal formatting omitted). Therefore, Brown's claim that the plea court or plea counsel was required to inform him on the record of the consequences of his plea as it relates to cases for which he was already on probation or parole is meritless.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/4/2013

[4] The United States Supreme Court in ***Padilla*** found that plea counsel has an obligation to advise a defendant if a conviction subjects him or her to deportation. ***Padilla***, 599 U.S. at 360. Finding that ***Padilla*** addressed only the narrow issue of deportation, our Supreme Court in ***Commonwealth v. Abraham***, __ Pa. __, 62 A.3d 343 (2012), found that the holding did not abrogate the direct vs. collateral consequence analysis established in ***Frometa***. ***Id.*** at __, 62 A.3d at 350.