

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ASHOKKUMAR GURU

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 160 EDA 2013

Appeal from the PCRA Order December 13, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0000107-2010

BEFORE: ALLEN, J., MUNDY, J., and FITZGERALD, J.*

DISSENTING STATEMENT BY FITZGERALD, J. **FILED DECEMBER 10, 2013**

I agree that there is no absolute right to a PCRA evidentiary hearing and that a defendant may not later contradict sworn statements he made during the guilty plea colloquy. Instantly, however, Appellant asserted that he was unable to understand English and that his native language is Hindi. The record further indicated that counsel, as well as the trial court, relied on a Punjabi translator when performing the written and oral guilty plea colloquies. This discrepancy—and the attendant possibility of a language barrier despite the presence of a translator—gave rise to a question of fact

* Former Justice specially assigned to the Superior Court.

regarding Appellant's ability to understand the proceedings and the nature of his statements to counsel and the court. Therefore, I would conclude that Appellant was entitled to an evidentiary hearing to determine whether the variance between Hindi and Punjabi affected his understanding of the colloquy. If so, the court would then be required to consider whether counsel took adequate measures to ensure that Appellant was aware of the nature of the proceedings against him and whether any prejudice inured.

Thus, I respectfully dissent.