

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DAVID DIBLASI,	:	
	:	
Appellant	:	No. 1915 EDA 2012

Appeal from the Judgment of Sentence entered on April 30, 2012 in the Court of Common Pleas of Philadelphia County, Criminal Division, No(s): CP-51-CR-0012056-2010, CP-51-CR-0013805-2009, CP-51-CR-0014936-2010

BEFORE: BOWES, GANTMAN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED MAY 08, 2013

David Diblasi (“Diblasi”) appeals from the judgment of sentence imposed following his guilty plea to possession with intent to deliver a controlled substance, aggravated assault, and simple assault. **See** 35 P.S. § 780-113(a)(30); 18 Pa.C.S.A. §§ 2702(a), 2701(a). We affirm.

The trial court has set forth the relevant underlying factual and procedural history in its Opinion, which we adopt for the purpose of this appeal. **See** Trial Court Opinion, 9/21/12, at 1-4.

On appeal, Diblasi raises the following question for our review: “Whether the trial court abused its discretion by denying [Diblasi’s] Motion to Withdraw Guilty Plea[?]” Brief for Appellant at 4.

Diblasi contends that he did not voluntarily enter his guilty plea. **Id.** at 9, 10. Diblasi argues that he was forced to enter the plea because he

would have been immediately paroled, which would allow him to care for his ailing mother. **Id.** at 9. Diblasi asserts that he wished to maintain his innocence, but did not want his mother to pass away while he was in prison. **Id.**

The trial court has set forth the relevant law, addressed Diblasi's contention, and determined that it is without merit. **See** Trial Court Opinion, 9/21/12, at 4-9; **see also** Written Plea Colloquy, 4/30/12, at 1-4¹ (wherein Diblasi stated that, *inter alia*, he understood the English language and was not under the influence of drugs or alcohol; the charges against him; the maximum penalties of the charges; that he was foregoing certain rights, waiving any possible defenses; the factual basis of the crimes in question; and admitted that he committed the crimes); N.T., 4/30/12, at 2-13. We adopt the sound reasoning of the trial court for the purpose of this appeal and conclude that Diblasi knowingly and voluntarily pled guilty. **See** Trial Court Opinion, 9/21/12, at 4-9; **see also** *Commonwealth v. Yeomans*, 24 A.3d 1044, 1047 (Pa. Super. 2011) (stating that a person who elects to plead guilty is bound by the statements he made during the plea colloquy and may not later assert grounds for withdrawing the plea which contradict those statements).

Judgment of sentence affirmed.

¹ Diblasi filled out a separate Written Plea Colloquy for each of the above-mentioned crimes.

J-S13033-13

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambitt", written over a horizontal line.

Prothonotary

Date: 5/8/2013

513033-13

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

CP-51-CR-0014936-2010 Comm. v. Diblasi, David J.
Opinion



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COMMONWEALTH OF PENNSYLVANIA

v.

DAVID DIBLASI

1915 EDA 2012

CP-51-CR-0013805-2009

CP-51-CR-0012056-2010

CP-51-CR-0014936-2010

FILED

SEP 21 2012

Criminal Appeals Unit
First Judicial District of PA

OPINION

STATEMENT OF THE CASE

Defendant is appealing the Court's denial of his Motion to withdraw his guilty pleas. On April 30, 2012, Defendant pled guilty on three separate bills of information, to the charges of possession with Intent to Deliver a Controlled Substance pursuant to 35 Pa.C.S.A. §780-113(a)(30), Aggravated Assault pursuant to 18 Pa.C.S.A. §2702(a) and Simple Assault pursuant to 18 Pa.C.S.A. §2701(a). On May 22, 2012, after a hearing, the Court denied Defendant's motion to withdraw his guilty pleas.

PROCEDURAL HISTORY

Defendant was arrested July 25, 2009 and charged with Possession with Intent to Deliver a Controlled Substance (PWID), pursuant to 35 Pa.C.S.A. §780-113(a)(30), at CP-51-CR-0013805-2009. Defendant was again arrested September 9, 2010 and charged

with, inter alia, Aggravated Assault pursuant to 18 Pa.C.S.A. §2702(a) at CP-51-CR-0012056-2010 and Simple Assault pursuant to 18 Pa.C.S.A. §2701(a) at CP-51-CR-0014936-2010. On April 30, 2012, Defendant appeared before the Court and pled guilty to each of these charges. After accepting Defendant's plea agreement the Court immediately sentenced him to two concurrent sentences of six to twenty-three months of incarceration in a county correctional facility, with immediate parole, on the charges of PWID and aggravated assault. Defendant was also sentenced to 2 concurrent periods of probation of 3 years on the charges of PWID and aggravated assault, to be served consecutively to this period of incarceration, and 2 years probation on the charge of simple assault, all probation sentences to be served concurrently. On May 8, 2012, Defendant filed a Petition For Withdrawal Of Guilty Plea which this Court denied on May 22, 2012, after a hearing.

On June 19, 2012, Defendant timely filed the instant appeal to the Superior Court of Pennsylvania. On June 25, 2012, this Court filed and served on Defendant an Order, pursuant to Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure, directing Defendant to file a Statement of Errors Complained of on Appeal, in this matter, within twenty-one days of the Court's Order. On July 13, 2012, Defendant timely filed his Statement of Errors Complained of on Appeal, raising two issues:

- “1. The guilty plea was not knowing, intelligent and voluntary;
2. The Court abused its discretion by not granting Defendant's Motion to Withdraw Guilty Plea.”

Although Defendant's Statement of Errors purports to raise two issues, the court will discuss them as one issue, namely that the Court abused its discretion in not granting his motion to withdraw his guilty pleas, because they were not knowing, intelligent and voluntary. Defendant's complaint is without merit.

EVIDENCE AT TRIAL

The evidence in this matter is clear and straightforward. As stated above, on April 30, 2012, Defendant pled guilty to a single charge on each of the three bills of information lodged against him. (N.T., 4/30/12, pg. 13) Prior to Defendant entering his guilty pleas, the Commonwealth summarized the facts it would have presented had the matter gone to trial.

As to the charge of PWID at CP-51-CR-0013805-2009, July 25, 2009, at approximately 8:00 p.m. Philadelphia Police Officers Issel and Kocher observed Defendant "engage in conversation with an unidentified male on a bike." They further observed "the defendant reach out next to a trash can, retrieve something and hand it to the person on the bike in exchange for United States currency. That person was not stopped." (N.T., 4/30/12, pg. 8) Officers Issel and Kocher then stopped Defendant "and in the trash can where he was reaching was recovered a black plastic bag with 32 pink-tinted packets with an off-white chunky substance. Those items were submitted to the chem lab. They did test positive for crack cocaine. Also recovered from the defendant was a total of \$178 United States currency." (N.T., 4/30/12, pg. 9)

As to the charge of aggravated assault at CP-51-CR-0012056-2010, on September 9, 2010, at approximately 12:4 a.m., Officer Etridge of the University of Pennsylvania

Police Department observed Defendant “going through a book bag and looking around” on University of Pennsylvania property located at 3730 Walnut Street in Philadelphia. When Defendant was stopped, he “swung with a closed fist several times at Officer Evridge” without actually hitting him. (N.T., 4/30/12, pg. 10)

As to the charge of simple assault at CP-51-CR-0014936-2010, Officer Nichols of the University of Pennsylvania Police Department observed Defendant assault Officer Evridge and came to his aid. On attempting to handcuff Defendant, Defendant bit Officer Nichols on the wrist. Fortunately Defendant bit into Officer Nichols bracelet and did not puncture his skin. (N.T., 4/30/12, pg. 10)

At the conclusion of the Commonwealth’s recitation, Defendant acknowledged that he had heard the Commonwealth’s summary and agreed to its accuracy and admitted to the charges against him. (N.T., 4/30/12, pgs. 11, 12) Defendant was then formally arraigned on each of the charges and entered pleas of guilty. As part of the negotiated guilty pleas, the Commonwealth and Defendant also negotiated an agreement as to Defendant’s sentence. After a review of the parameters of the sentencing guidelines (N.T., 4/30/12, pgs. 14-16), the Court sentenced Defendant according to the agreement as disused above. (N.T., 4/30/12, pgs. 17, 18)

DISCUSSION OF THE ISSUES RAISED

I. DEFENDANT’S GUILTY PLEA WAS KNOWINGLY AND INTELLIGENTLY ENTERED INTO.

As noted above, the Court will treat Defendant’s Statement of Errors as raising only one issue, that is, the Court abused its discretion in not granting his Motion to

withdraw his guilty pleas, because they were was not knowing, intelligent and voluntary. Defendant's complaint is without merit.

"It is well recognized that the guilty plea and the frequently concomitant plea bargain are valuable implements in our criminal justice system. The disposition of criminal charges by agreement between the prosecutor and the accused...is an essential component of the administration of justice. Properly administered, it is to be encouraged. In this Commonwealth, the practice of plea bargaining is generally regarded favorably, and is legitimized and governed by court rule." Furthermore, "the desirability of disposing of criminal charges through plea bargaining is based on the premise that a plea agreement is advantageous to all concerned." *Commonwealth v. Parsons*, 969 A.2d 1259, 1267 (Pa. Super. 2009) citing *Commonwealth v. Schmoyer*, 421 A.2d 786, 789 (Pa. Super. 1980) In the instant matter, being placed on immediate parole, Defendant received a significant advantage as a result of his pleas.

Pennsylvania jurisprudence provides that "a plea of guilty constitutes a waiver of all defects and defenses except those concerning the jurisdiction of the court, the legality of the sentence and the validity of the plea." *Commonwealth v. Moyer*, 497 Pa. 643; 444 A.2d 101, at 102 (Pa. 1982) Defendant, in his Statement of Errors, is only challenging the validity of the plea. A plea of guilty also constitutes an "acknowledgement by the defendant that he participated in the commission of certain acts with a criminal intent. He acknowledges the existence of the facts and intent." *Commonwealth v. Anthony*, 504 Pa. 551; 475 A.2d 1303, at 1307 (Pa. 1988) In addition, "the plea of guilt admits the facts and intent occurred, and is a confession not only of what the Commonwealth might prove, but also as to what the defendant knows to have happened." *Id.* at 1307

Once a defendant has entered a plea of guilty, it is presumed that he was aware of what he was doing, and the burden of proving involuntariness is upon him. *Commonwealth v. Moser*, 921 A.2d 526, 528, 529 (Pa. Super. 2007) The Supreme Court of Pennsylvania has long held that “disappointed expectations alone do not vitiate guilty pleas.” *Commonwealth v. Sanutti*, 454 Pa. 344, 312 A.2d 42 (Pa., 1973) Our Superior Court reiterated the long standing principal of Pennsylvania jurisprudence when it stated: “a defendant has no absolute right to withdraw a guilty plea; rather, the decision to grant such a motion lies within the sound discretion of the trial court.” *Commonwealth v. Muhammad*, 794 A.2d 378, 382 (Pa. Super. 2002) “An abuse of discretion is not merely an error judgment. Discretion is abused when ‘the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will, as shown by the evidence or the record....’” *Commonwealth v. Broaden*, 980 A.2d 124, 128 (Pa. Super 2009) quoting *Commonwealth v. Prysock*, 972 A.2d 539, 541 (Pa. Super 2009)

Muhammad also recognized that “a request made before sentencing ... should be liberally allowed.” *Muhammad*, 794 A.2d at 378, quoting *Commonwealth v. Shaffer*, 498 Pa. 342, 348, 446 A.2d 591, 593 (1982), further held: “The standard for withdrawal of a guilty plea after imposition of sentence is much higher; a ‘showing of prejudice on the order of manifest injustice is required before withdrawal is properly justified.’”

Defendant has demonstrated no such manifest injustice necessitating the withdrawal of his guilty plea. As part of the plea agreement, Defendant requested that he be released on immediate parole so that he could secure employment and see to his ailing mother. (N.T., 4/30/12, pg. 14) Prior to pronouncing sentence, the Court asked

Defendant if he had anything further to say, to which he replied: "No, sir." (N.T., 4/30/12, pg. 17) In his Motion to withdraw, Defendant simply asserts that he "would not have pled guilty" but for his "extreme mental anguish concerning his mother's health and desire to be released from incarceration in order assist in her care." At the hearing held on his motion, Defendant presented no evidence regarding his mental state at the time he entered his pleas three weeks earlier. (N.T., 5/22/12, pgs. 2, 3) Instead, counsel simply represented that Defendant's mother was seriously ill in South Carolina and that he wanted to "spend time with her before she expired." (N.T., 5/22/12, pg. 2) The Court pointed out that his parole was not an impediment and that all he had to do was to arrange it with "his probation, or parole officer or whoever is supervising him." (N.T., 5/22/12, pgs. 2, 3) Although Defendant may "be disappointed in his expectations", he has utterly failed to establish "a showing of prejudice on the order of manifest injustice" sufficient to justify withdrawal of his guilty pleas. Furthermore: "The mere fact that a defendant was "under pressure" at the time he entered a guilty plea will not invalidate the plea, absent proof that he was incompetent at the time the plea was entered." *Commonwealth v. Myers*, 642 A.2d 1103, 1107 (Pa. Super. 1994)

"Determining whether a defendant understood the connotations of his plea and its consequences requires an examination of the totality of the circumstances surrounding the plea" "All that is required is that [appellant's] decision to plead guilty be knowingly, voluntarily and intelligently made." (Citations omitted.) "In order to determine the voluntariness of the plea and whether the defendant acted knowingly and intelligently, the trial court must, at a minimum, inquire into the following six areas: (1) Does the defendant understand the nature of the charges to which he is pleading guilty? (2) Is there

a factual basis for the plea? (3) Does the defendant understand that he has a right to trial by jury? (4) Does the defendant understand that he is presumed innocent until he is found guilty? (5) Is the defendant aware of the permissible ranges of sentences and/or fines for the offenses charged? (6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?" "Moreover, the examination does not have to be solely oral. Nothing precludes the use of a written colloquy that is read, completed, and signed by the defendant, made part of the record, and supplemented by some on-the-record oral examination." *Moser*, 921 A.2d at 529

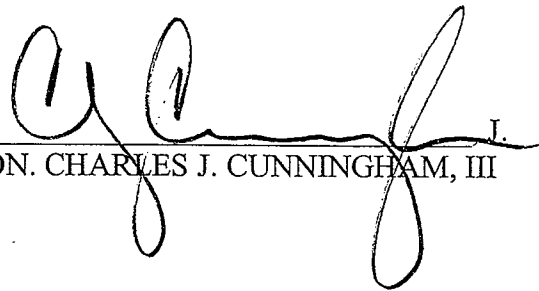
Prior to accepting Defendant's pleas, the Court engaged him in a colloquy to satisfy itself that Defendant had had an opportunity to review and discuss the terms of the written guilty plea colloquies with counsel. (N.T., 4/30/12, pg. 2) The Court then engaged Defendant in a supplemental oral colloquy making specific inquiries into each of the *Moser* elements bearing on the validity and voluntariness of the Defendant's guilty plea. (N.T., 4/30/12, pgs. 3-6). The court further advised Defendant of his appellate rights. (N.T., 4/30/12, pgs. 6-7) After the Commonwealth summarized the evidence on each of the charges it would have presented had Defendant gone to trial, the Court accepted Defendant's guilty pleas. (N.T., 4/30/12, pgs. 8-13)

CONCLUSION

In examining the totality of the record, it is clear the Defendant has utterly failed to establish that the Court's acceptance of his guilty pleas amounted to manifest injustice necessitating their withdrawal. Furthermore, the Court finds Defendant knowingly,

intelligently and voluntarily entered his guilty pleas and that the sentences agreed to by Defendant were appropriate under the circumstances.

BY THE COURT:

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HON. CHARLES J. CUNNINGHAM, III

September 21, 2012