

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ROCHESTER WILLIAMS

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1545 WDA 2013

Appeal from the Judgment of Sentence entered June 12, 2013  
In the Court of Common Pleas of Westmoreland County  
Criminal Division at No(s): 1649 C 2013

BEFORE: PANELLA, MUNDY, and STABILE, JJ.

MEMORANDUM BY STABILE, J.:

FILED: May 30, 2014

Appellant, Rochester Williams, appeals from the June 12, 2013 judgment of sentence<sup>1</sup> imposing one to three months of incarceration for concealment of the whereabouts of a child.<sup>2</sup> We vacate and remand.

The record reveals Appellant pled guilty to the aforementioned offense at a June 12, 2013 hearing. The trial court imposed sentence at the end of that hearing. More than one month later, on July 18, 2013, Appellant filed a

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<sup>1</sup> Appellant styled this appeal as an appeal from the denial of his petition to withdraw his guilty plea. The judgment of sentence is the final order for purposes of a direct criminal appeal. ***Commonwealth v. Preacher***, 827 A.2d 1235, 1236 (Pa. Super. 2003). We therefore treat the appeal as arising from the June 12, 2013 judgment of sentence rather than the September 3, 2013 order denying Appellant's motion to withdraw his guilty plea. We have corrected the caption accordingly.

<sup>2</sup> 18 Pa.C.S.A. § 2909(a).

post-sentence motion to withdraw his guilty plea. The trial court held a hearing on the motion on August 19, 2013 and entered an order denying the motion on September 3, 2013. Appellant filed this appeal on September 25, 2013.

Before turning to the merits, we must address the timeliness of this appeal. This Court lacks jurisdiction to entertain an untimely appeal, and we may raise a jurisdictional issue *sua sponte*. ***Commonwealth v. Green***, 862 A.2d 613, 615 (Pa. Super. 2004) (*en banc*), *appeal denied*, 882 A.2d 477 (Pa. 2005). The Pennsylvania Rules of Criminal Procedure require a defendant to file a post-sentence motion within 10 days of the entry of judgment of sentence. Pa.R.Crim.P. 720(A)(1). Where the defendant files a timely post-sentence motion, the defendant must file a notice of appeal within 30 days of the order deciding the motion. Pa.R.Crim.P. 720(A)(2)(a). Absent a timely post-sentence motion, the defendant must appeal within 30 days of the imposition of sentence. Pa.R.Crim.P. 720(A)(3). The trial court must determine on the record that the defendant has been advised of these deadlines. Pa.R.Crim.P. 704(C)(3)(a). A defendant's failure to file a timely post-sentence motion and appeal will be excused where the trial court fails to comply with Rule 704, as that failure results in a breakdown in the court system. ***Commonwealth v. Coolbaugh***, 770 A.2d 788, 791 (Pa. Super. 2001).

As explained above, Appellant's post-sentence motion was untimely and he filed his notice of appeal more than three months after the imposition of sentence. Thus, the motion and the notice of appeal are facially untimely. We have reviewed the June 12, 2013 transcript, however, and determined that the trial court failed to advise Appellant of his post-sentence and appeal rights at that hearing. In the written sentencing order, the trial court checked a box marked "appeal rights given." Nonetheless, the record fails to reflect the trial court's compliance with Rule 704. The record contains a written guilty plea petition explaining Appellant's post-sentence and appeal rights but, as the trial court acknowledges, Appellant did not sign the form. N.T. Guilty Plea Withdrawal Hearing, 8/19/13, at 25-26. Despite the foregoing, Appellant testified he was aware of the ten-day deadline for filing a post-sentence motion. *Id.* at 11. He claimed he was unable to meet it due to medical problems and an inability to get in touch with his attorney. *Id.* at 10-11.

On these facts, we decline to quash the appeal for lack of jurisdiction. Notwithstanding Appellant's admitted knowledge of the 10-day deadline for filing a post-sentence motion, the trial court failed to discharge its mandatory Rule 704 obligation. *See Commonwealth v. Patterson*, 940 A.2d 493, 499 (Pa. Super. 2007) (noting the trial court "shall determine on the record that the defendant has been advised" of the time for filing a post-sentence motion and appeal) (quoting Pa.R.Crim.P. 704(C)(3)(a); emphasis

added in ***Patterson***), *appeal denied*, 960 A.2d 838 (Pa. 2008). Furthermore, nothing in the record indicates Appellant was informed or aware he needed to file an appeal within 30 days of imposition of sentence given his untimely post-sentence motion.<sup>3</sup> Where the record is silent on a defendant's knowledge of his appellate rights, the Commonwealth bears the burden of proving that the defendant knowingly waived or abandoned those rights. ***Commonwealth v. Rush***, 421 A.2d 1163, 1164 (Pa. Super. 1980). Since the Commonwealth has not proven that Appellant waived or abandoned his rights in this case, we will address the merits.

Appellant argues the trial court erred in denying his post-sentence motion to withdraw his guilty plea because the plea was not knowing, intentional, and voluntary. “[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. Pantalion***, 957 A.2d 1267, 1271 (Pa. Super. 2008). “A plea rises to the level of manifest injustice when it was entered into involuntarily, unknowingly, or unintelligently.” ***Id.***

“In order for a guilty plea to be constitutionally valid, the guilty plea colloquy must affirmatively show that the defendant understood what the plea connoted and its consequences.” ***Commonwealth v. Yeomans***, 24

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<sup>3</sup> We observe Appellant filed his notice of appeal within 30 days of the order denying his untimely post-sentence motion.

A.3d 1044, 1047 (Pa. Super. 2011). “This determination is to be made by examining the totality of the circumstances surrounding the entry of the plea.”

Thus, even though there is an omission or defect in the guilty plea colloquy, a plea of guilty will not be deemed invalid if the circumstances surrounding the entry of the plea disclose that the defendant had a full understanding of the nature and consequences of his plea and that he knowingly and voluntarily decided to enter the plea.

**Id.** We presume that a defendant who pled guilty understood what he was doing, and the defendant bears the burden of proving otherwise. **Id.**

Rule 590 of the Pennsylvania Rules of Criminal Procedure governs entry of a guilty plea. The Rule requires the trial court to conduct an on-the-record inquiry to ensure that the defendant’s plea is “voluntarily and understandingly tendered.” Pa.R.Crim.P. 590(A)(3). The comment to Rule 590 provides that the trial court should, “**at a minimum,**” ascertain the following:

(1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or *nolo contendere*?

(2) Is there a factual basis for the plea?

(3) Does the defendant understand that he or she has the right to trial by jury?

(4) Does the defendant understand that he or she is presumed innocent until found guilty?

(5) Is the defendant aware of the permissible range 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?

Pa. R. Crim. P. 590, *Comment* (emphasis added).

The June 12, 2013 transcript reflects a wholesale failure on the part of the trial court to conduct the required inquiry. The record contains no explanation of the § 2909 charge. Likewise, the record does not contain a factual basis for the plea, and this Court is largely unable to discern the underlying facts. The only discussion of the facts at the plea hearing came from Appellant, who explained he came to Pennsylvania from his home in Florida to help his daughter because she had an injured shoulder and he believed her mother and other relatives in Pennsylvania were not caring for her. N.T., Guilty Plea, 6/12/13, at 4-5. At the conclusion of Appellant's statement, the following exchange occurred:

THE COURT: Well, do you still want to plead guilty to this, or --

[Appellant:] I'm just, I'm just so frustrated.

***Id.*** at 5.

Thereafter, the following occurred:

THE COURT: Now, just so you understand, if you plead guilty you'll be getting out of jail today.<sup>[4]</sup>

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<sup>4</sup> The Commonwealth initially agreed to immediate parole. ***Id.*** at 6. In order to permit Appellant to return immediately to Florida, the trial court sentenced Appellant to time served. ***Id.*** at 7-9.

[Appellant:] Okay. I want to, sir. And I want somebody to check on this child and see if she's eating or what because, um --

**Id.** The trial court informed Appellant he would not be allowed contact with his daughter, and that he should file a complaint with the Children's Bureau.

**Id.** at 7. Appellant stated he had contacted the Children's Bureau, and that he believed his daughter was still being mistreated by her caretakers. **Id.** at 7.

Without expressing any opinion on the veracity of Appellant's statements about his concern for his daughter, which are not entirely coherent, we observe that § 2909 does not apply if concealment of a child is a "reasonable response to domestic violence or child abuse[.]" 18 Pa.C.S.A. § 2909(a). In any event, the record contains no factual admission of guilt from Appellant.

We observe:

The longstanding rule of Pennsylvania law is that a defendant may not challenge his guilty plea by asserting that he lied while under oath, even if he avers that counsel induced the lies. 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. [...] [A] defendant who elects to plead guilty has a duty to answer questions truthfully.

**Yeomans**, 24 A.3d at 1047.

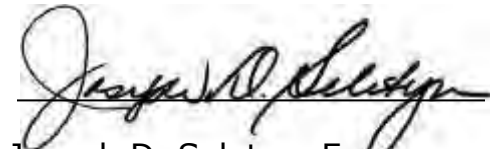
Instantly, the record contains no evidence Appellant lied under oath, as the prosecutor provided no factual recitation or explanation of the

offense. Appellant's statements, summarized above, appeared to be more in the nature of a defense than an admission of guilt. The written guilty plea petition is of no assistance because Appellant did not sign it and the record fails to confirm he ever read the petition or had it explained to him.

In summary, the record affords no basis for concluding Appellant's guilty plea was knowing, intentional, and voluntary.<sup>5</sup> As such, the record reflects manifest injustice, and we conclude the trial court erred in denying Appellant's post-sentence motion to withdraw his guilty plea. Accordingly, we vacate the judgment of sentence and remand for further proceedings.

Judgment of sentence vacated. Case remanded. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

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<sup>5</sup> The trial court offered four bases for denying Appellant's motion: (1) it was untimely; (2) the plea was knowing, intelligent, and voluntary; (3) Appellant received the benefit of a time-served sentence; and (4) permitting withdrawal would be unfair to the Commonwealth. Trial Court Order, 9/3/13. The trial court did not substantiate its reasoning. We have addressed the timeliness and voluntariness in the main text. The wisdom of Appellant's decision to seek withdrawal after receiving a sentence of time served is beyond our review. The fairness, or lack thereof, to the Commonwealth cannot alter the result given the total absence of evidence that Appellant entered a knowing, intelligent, and voluntary guilty plea.



J-S13041-14

Date: 5/30/2014