NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JUDY SPRANKLE,	:	
	:	
Appellant	:	No. 165 WDA 2013

Appeal from the Judgment of Sentence September 19, 2012,
Court of Common Pleas, Jefferson County,
Criminal Division at No. CP-33-CR-0000455-2011

BEFORE: DONOHUE, OTT and MUSMANNO, JJ.

MEMORANDUM BY DONOHUE, J.: **FILED JULY 2, 2014**

Judy Sprankle ("Sprankle") appeals from the judgment of sentence entered following her convictions of attempted murder in the first degree, recklessly endangering another person ("REAP"), and discharge of a firearm into an occupied structure.[1] Sprankle challenges only the sentencing court's denial of her motion seeking to withdraw her guilty pleas to the above-mentioned crimes. Following our review, we affirm.

Our review of the record reveals that on September 8, 2011, Sprankle's husband and his girlfriend arrived at the office of their local district magistrate. As they pulled up in Mr. Sprankle's vehicle, they noticed Sprankle standing outside of the magistrate's office. Sprankle approached the vehicle, stated that she wanted to kill Mr. Sprankle, and then attempted

[1] 18 Pa.C.S.A. §§ 901(a), 2501(a), 2705, 2727.1(a).

to hit Mr. Sprankle's girlfriend while she was seated in the car. As Mr. Sprankle attempted to drive away, Sprankle retrieved a handgun from her purse and shot several times at the vehicle. One bullet struck Mr. Sprankle's car. Another bullet was recovered from inside a nearby house.

Sprankle was arrested on the same day this incident occurred. She was subsequently charged with two counts each attempted homicide in the first degree, aggravated assault, and criminal mischief; three counts each of simple assault and REAP; and one count of discharge of a firearm into an occupied structure. On September 10, 2012, she entered open guilty pleas to one count each of attempted murder, REAP, and discharge of a firearm into an occupied structure. The sentencing court sentenced Sprankle to 78 months to 20 years of incarceration; six months to two years of incarceration; and 12 months to seven years of incarceration on these charges, respectively. The sentencing court ordered these sentences to run consecutively. On September 28, 2012, Sprankle filed a post-sentence motion, seeking, *inter alia*, to withdraw her guilty pleas. The sentencing court denied Sprankle's motion.

This timely appeal follows, in which Sprankle presents the following issue for our review: "Did the sentencing court err in denying [Sprankle's] post-sentence motion seeking to withdraw guilty plea where the court failed to conduct a guilty plea colloquy pursuant to Rule 590 of the Rules of Criminal Procedure?" Appellant's Brief at 2. Our standard of review for such

a claim provides that we will not disturb the sentencing court's decision absent an abuse of discretion. ***Commonwealth v. Miller***, 748 A.2d 733, 735 (Pa. Super. 2000).

"Once a guilty plea has been entered and sentence imposed, the plea may be withdrawn only upon a showing of manifest injustice, which may be established if the plea was not voluntarily or knowingly entered." ***Commonwealth v. Leidig***, 850 A.2d 743, 745 (Pa. Super. 2004), *aff'd,* 956 A.2d 399 (Pa. 2008). It is on this basis that Sprankle seeks to withdraw her guilty pleas, as she claims that the sentencing court's failure to adhere to certain requirements during her plea colloquy rendered her plea involuntary and unknowing.

Pennsylvania Rule of Criminal Procedure 590, upon which Sprankle relies, provides, in relevant part, that counsel shall state the terms of a plea agreement on the record and that "the judge shall conduct a separate inquiry of the defendant on the record to determine whether the defendant understands and voluntarily accepts the terms of the plea agreement on which the guilty plea … is based." Pa.R.Crim.P. 590(B). "A valid plea colloquy [by the sentencing court] must delve into six areas: 1) the nature of the charges, 2) the factual basis for the plea, 3) the right to a jury trial, 4) the presumption of innocence, 5) the sentencing ranges, and 6) the plea court's power to deviate from any recommended sentence."

Commonwealth v. Morrison, 878 A.2d 102, 107 (Pa. Super. 2005) (en banc).

Sprankle first argues that her guilty pleas were invalid because the sentencing court failed to establish the factual basis for the pleas on the record. She relies on the case of ***Commonwealth v. Stolle***, 386 A.2d 53 (Pa. Super. 1978), in support of her claim. In ***Stolle***, when administering a colloquy to confirm that the defendant's guilty pleas were knowing and voluntary, the sentencing court stated only, "All right, Mr. Stolle, do you understand what the facts are in the two charges against you, forgery and indecent assault?" The defendant replied, "Yes, sir," and that was the extent of the sentencing court's efforts to ensure that there was a factual basis for the crimes to which the defendant was pleading. This Court concluded that this was an insufficient effort to establish a factual basis for the plea. Coupled with the sentencing court's additional failure to explain the elements of the offenses, we concluded that the plea was involuntary and unknowing. ***Id.*** at 55.

We have a different set of circumstances in the present case. The record reveals that the sentencing court directed the District Attorney to recite the facts underlying the charges to which Sprankle was pleading, while instructing Sprankle to "listen closely" to the recitation of the facts. N.T., 9/10/12, at 6. Before the District Attorney could begin, there was a discussion off the record, after which Sprankle's counsel ("Counsel") stated,

"We'll waive a reading of the information." ***Id.*** The following exchange then occurred:

> [Sentencing Court]: Your attorney has indicated that you would waive a reading of the facts. So have you had sufficient time to review the facts charged against you with [Counsel]?
>
> [Sprankle]: Yes.
>
> [Sentencing Court]: And are you satisfied with her services?
>
> [Sprankle]: Yes.
>
> [Sentencing Court]: Having reviewed those facts and understanding the charge of criminal attempt at third degree murder, how do you plead?
>
> [Sprankle]: Guilty.
>
> [Sentencing Court]: To [REAP]?
>
> [Sprankle]: Guilty.
>
> [Sentencing Court]: And to unlawful discharge of a firearm, how do you plead?
>
> [Sprankle]: Guilty.

Id. at 6-7.

The Supreme Court of Pennsylvania has held that "[a]lthough [it] has stressed its strong preference for a dialogue in colloquies with meaningful participation by the defendant throughout, there is no set manner, and no fixed terms, by which factual basis must be adduced." ***Commonwealth v.***

Flanagan, 854 A.2d 489, 500 (Pa. 2004). In this case, while there was no recitation of the facts on the record, Sprankle acknowledged the facts as contained in the criminal information. The criminal information indicates that the charge of attempted first degree murder was based on Sprankle "firing six rounds from a .22 caliber Smith and Wesson revolver at Elmer Sprankle" with the intent to kill Mr. Sprankle. Criminal Information, 10/21/11, at 1-2. It further states that the charge of REAP was based on Sprankle "firing six rounds from a .22 caliber Smith and Wesson revolver at [Sprankle]", thereby placing him in danger of death or serious bodily injury. ***Id.*** at 2. The information also states that the discharge of a firearm into an occupied structure is based upon Sprankle "discharge[ing] a Smith and Wesson .22 caliber revolver into the residence of Donna L. Keslar." ***Id.*** at 2. These assertions lay plain the alleged facts upon which each charge was based, and Sprankle affirmatively acknowledged reviewing these facts. N.T., 9/10/12, at 6.

Sprankle also argues that her pleas were invalid because the sentencing court did not explain the elements of attempted first degree murder. Appellant's Brief at 13-14. The record reveals that during the plea colloquy, the sentencing court addressed each crime and explained to Sprankle what the Commonwealth would have to prove to establish her guilt thereof. N.T., 9/1/0/12, at 5-6. However, when addressing the attempted homicide charge, the sentencing court stated, "[T]he attempt would mean

you would have taken a substantial step toward committing third degree murder, which would not be a specific intentional killing, but you would have to know the consequences of your action in attempting to use a weapon on a person. Do you understand that?" ***Id.*** at 5-6. Thereafter, the District Attorney pointed out that the charge was attempted ***first*** degree murder. The sentencing court responded with the following:

> [Sentencing Court]: I guess it doesn't matter. Essentially, it's an attempt at homicide. I would say, I – the Commonwealth is saying you intended to kill him, Mr. Sprankle. Do you understand that? … I should have said that you specifically wanted to kill him. Does that change your mind in any way on your plea?"
>
> [Sprankle]: No.

Id. at 7-8.

The determination of whether a sentencing court has adequately explained the elements of the crimes to which a defendant is pleading is determined by examining the totality of the circumstances. ***Commonwealth v. Morrison***, 878 A.2d 102, 107 (Pa. Super. 2005) ("Whether notice of the nature of the charges has been adequately imparted may be determined from the totality of the circumstances attendant upon the plea.").

In ***Commonwealth v. Flanagan***, ***supra***, as in the present case, the sentencing court erred when explaining the law to the defendant. In ***Flanagan***, the sentencing court was required to explain accomplice liability

to the defendant in connection with his pleas to murder and robbery. During the plea colloquy, the sentencing court made a "materially erroneous statement of controlling law" in advising the defendant that his status as an accomplice makes him vicariously liable for any crimes committed by the principle.[2] ***Flanagan***, 854 A.2d at 501. At no point did the sentencing court correct its mistake and advise the defendant as to the correct state of the law. The Supreme Court found that this error rendered the colloquy defective, stating that "it is difficult to hypothesize a more concrete example of a facially defective colloquy, and correspondingly legally unknowing plea, than a circumstance in which the plea court causes the defendant to affirm a materially erroneous understanding of the substantive law establishing criminal liability on the offenses charged." ***Id.*** at 502.

We find the present case distinguishable from the situation in ***Flanagan*** and conclude that the totality of the circumstances here establish that the sentencing court adequately apprised Sprankle of the elements of attempted first degree murder. First degree murder is distinguished from third degree murder in that it requires the specific intent to kill. ***See*** 18 Pa.C.S.A. § 2502(a),(c). Although the sentencing court initially outlined the elements for attempted third degree murder, it subsequently explained that the Commonwealth would have to prove that Sprankle intended to kill her

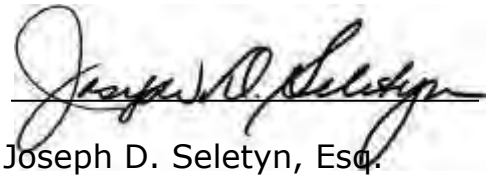
[2] This was incorrect because a person must act with the requisite *mens rea* to be convicted as an accomplice. ***Flanagan***, 854 A.2d at 501; 18 Pa.C.S.A. § 306(d).

husband and took a step toward achieving that objective when it clarified its prior statement. Accordingly, we do not find the colloquy deficient in this regard.[3]

Because we find that the record contains evidence of an adequate factual basis for Sprankle's plea and that the sentencing court properly informed Sprankle of the elements of first degree murder, we find no merit to her claims and affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/2/2014

[3] Sprankle argues that the absence of any explanation of the elements of a crime charges is a fatal defect and that this defect alone renders a guilty plea involuntary and unknowing. Appellant's Brief at 13-14 (citing ***Commonwealth v. Belleman***, 446 A.2d 304 (Pa. Super. 1982)). Sprankle is incorrect. As discussed above, we look to a "totality of the circumstances" test to determine whether a plea was knowingly and voluntarily entered. This standard evolved following the decision in ***Belleman***. ***See, e.g., Morrison***, 878 A.2d at 107; ***Commonwealth v. Schultz***, 477 A.2d 1328 (Pa. 1984).