

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

DANA ROSENBERGER

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 845 WDA 2014

Appeal from the Judgment of Sentence February 5, 2014

In the Court of Common Pleas of Washington County
Criminal Division at No(s): CP-63-CR-0001432-2009

BEFORE: PANELLA, J., SHOGAN, J., and OTT, J.

MEMORANDUM BY OTT, J.:

FILED AUGUST 04, 2015

Dana Rosenberger appeals, *nunc pro tunc*, from the judgment of sentence entered in the Court of Common Pleas of Washington County, on February 5, 2010, pursuant to a negotiated guilty plea to the charges of corruption of minors and indecent assault.¹ Rosenberger was sentenced to an agreed upon aggregate term of two and one-half to ten years' incarceration. Rosenberger's direct appeal rights were reinstated after a panel of our Court, on February 7, 2014 vacated the dismissal of Rosenberger's Post Conviction Relief Act (PCRA) petition and remanded the case to the PCRA court for an evidentiary hearing. **Commonwealth v.**

¹ 18 Pa.C.S. §§ 6301(a)(1) and 3126(a)(7), respectively.

Rosenberger, 97 A.3d 792 (Pa. Super. 2014) (unpublished memorandum).²

In this timely, counseled, appeal, Rosenberger raises five issues, none of which is meritorious. Accordingly, we affirm Rosenberger's judgment of sentence.

As noted above, on February 5, 2010, Rosenberger pled guilty to two crimes regarding his inappropriate touching of a girl under the age of 13 who was spending the night at a sleep over with Rosenberger's daughter. This guilty plea represented Rosenberger's second conviction for such criminal activity. Rosenberger was sentenced on that same date. On February 18, 2010, Rosenberger contacted the Public Defender's Office, asking counsel to file a motion to withdraw his guilty plea. That motion was filed on February 19, 2010 and was subsequently denied as being untimely.³ **See** Order, 2/22/2010. Thereafter, counsel failed to file a requested direct appeal and

² There were two orders entered by the trial court on April 25, 2014. The first formally reinstated Rosenberger's direct appellate rights and the second denied Rosenberger's motion to dismiss. Rosenberger had claimed a number of technical problems with Pennsylvania law, including the failure of relevant statutes to have an enacting clause and the failure of relevant statutes to be properly titled. Those claims were denied by the trial court and are not a part of this appeal. **See also, Commonwealth v. Stultz**, 114 A.3d 865, 879 (Pa. Super. 2015), discussing the criminal code and enacting clauses.

³ **See** Pa.R.Crim.P. 720(B)(1)(a)(i). A defendant has ten days from date of sentence to challenge the validity of a guilty plea. February 15, 2010 was a holiday; therefore, Rosenberger had until February 16, 2010 to file a timely motion to withdraw.

Rosenberger's direct appellate rights were subsequently reinstated through a PCRA petition. This appeal follows.

We begin by noting,

[a]fter a defendant has entered a plea of guilty, the only matters that may be raised on appeal are the jurisdiction of the court, the validity of the guilty plea and the legality of the sentence. **Commonwealth v. Hines**, 496 Pa. 555, 569, 437 A.2d 1180, 1187 (1981); **Commonwealth v. Vealey**, 398 Pa. Super. 449, 581 A.2d 217, 219 (1990).

Commonwealth v. Fogel, 741 A.2d 767, 769 (Pa. Super. 1999).

Rosenberger has raised five issues herein. Specifically, he contends the trial court erred in: (1) improperly denying his motion to withdraw his guilty plea, (2) failing to dispose of his Rule 600 motion for bail reduction, (3) failing to convene a grand jury, (4) allowing the Commonwealth to amend the information, and (5) denying him his right to a jury trial.⁴ Only the first of these issues is cognizable.

In his appellant's brief, Rosenberger argues the trial court improperly denied his motion to withdraw his guilty plea. He asserts, without proof, that he requested counsel withdraw his plea, but that a snowstorm over the February 6, 2010 weekend, which closed the courts on February 8, 2010, prevented the timely filing of his request. The trial court has noted that

⁴ We have taken these issues from the body of Rosenberger's appellant's brief. These are the issues as argued, and they do not necessarily correspond to the issues as listed in the statement of questions involved.

nothing prevented the filing of the request at any time after February 8, 2010. Moreover, the trial court noted he did not contact counsel until February 18, 2010, two days after the motion was due. **See** Trial Court Opinion, 7/15/2014, at 7.⁵ Accordingly, the trial court did not err in denying his motion as untimely.

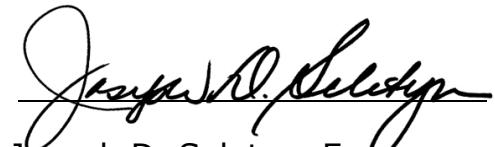
We also note that even if the motion was not untimely, Rosenberger would not have been entitled to withdraw his guilty plea. Rosenberger currently asserts his plea was involuntary in that he did not have time to properly consult with his attorney and that he felt intimidated and pressured into pleading guilty. However, Rosenberger specifically denied both of these current claims in the guilty plea colloquy. **See** N.T. Guilty Plea, 2/5/2010, at 2-6. It is well-settled that a "defendant is bound by statements he makes during plea colloquy, and may not assert grounds for withdrawing plea that contradict statements made when he pleaded guilty." **Commonwealth v. Reid**, ___ A.3d ___, at *4 (Pa. Super. 2015) (citation omitted). Accordingly, Rosenberg is not entitled to relief on this claim.

⁵ The February 18, 2010 letter to counsel was attached to the February 19, 2010 motion to withdraw guilty plea. This letter refers to a February 16, 2010 communication with counsel regarding "Albert's Law." We have no idea what "Albert's Law" refers to. A Westlaw search for that term reveals no matches. He might have been referring to an "Alford plea" which is a *nolo contendere* plea while still asserting innocence. However, that is inapplicable herein.

Rosenberger's remaining claims are not cognizable on appellate review of a guilty plea. In any event, had these claims not been waived by entry of the guilty plea, we would deny Rosenberger relief based upon the analysis found in the trial court opinion of the Honorable Gary Gilman, dated July 15, 2014.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 8/4/2015