

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
LEONARD SMITH,		
Appellant		No. 628 WDA 2012

Appeal from the Judgment of Sentence February 28, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0006079-2008

BEFORE: FORD ELLIOTT, P.J.E., BOWES, & DONOHUE, JJ.

MEMORANDUM BY BOWES, J.:

Filed: February 19, 2013

Leonard Smith appeals from the judgment of sentence of sixty days imprisonment followed by one year probation that was imposed after he entered a guilty plea to false identification to a law enforcement officer and driving with a suspended license—DUI related. We reject his allegation that his guilty plea is infirm as lacking in a factual basis and affirm.

On February 28, 2012, Appellant pled guilty to the two described offenses pursuant to a negotiated plea. Under the proposed arrangement, Appellant was to receive a one-year probationary term for providing a false identification to a police officer and the mandatory sentence of anywhere from sixty to 160 days imprisonment for driving with a suspended license—DUI related. The Commonwealth also agreed that the jail term could “run

concurrent with a current four to eight year sentence that the defendant [was] serving.” N.T. Guilty Plea, 2/28/12, at 2.

In connection with entry of the plea, Appellant executed an extensive, sixty-eight paragraph written explanation regarding the guilty plea and its ramifications. Before the plea court, Appellant stated that he understood and signed that document, represented that no promises or threats were made to obtain the guilty plea, and indicated that he was satisfied with counsel’s representations and explanation of the elements of the crimes.

The Commonwealth set forth a factual basis for the guilty plea:

[H]ad the case proceeded to trial, the Commonwealth would have called Marion Matthews as well as Sergeant Larry Scarotto, S-c-a-r-o-t-t-o, from the City of Pittsburgh Police.

On January 23, 2008, they conducted a vehicle stop on an automobile that had been observed in a suspected narcotics transaction. At that time, the defendant was the driver. He gave an incorrect name as well as an age to the responding officer. Upon further questioning, investigation he finally did give the correct name of Leonard Smith and the correct birth date of April 25, 1965.

Furthermore, during the time he was operating that vehicle his licensing privileges were suspended by virtue of a DUI suspension. That would complete the summary.

Id. at 4-5. Appellant had no corrections or additions to that recitation. *Id.* at 5. The court thereafter accepted the guilty plea and sentenced Appellant in accordance with the terms of the negotiated guilty plea, imposing a sixty-day term of imprisonment as well as a one-year probation. Both the jail

term and probation were concurrent to the sentence Appellant was then serving.

On March 9, 2012, Appellant filed a timely motion to withdraw his guilty plea, which was denied by order dated March 15, 2012. This timely appeal followed, and Appellant raises this claim: "Did the court err in denying [Appellant's] request to withdraw his plea where he demonstrated that his plea was not knowingly, intelligently and voluntarily entered when the Commonwealth failed to place sufficient evidence on the record during the plea colloquy factual recitation for the crimes charged?" Appellant's brief at 4.

Our standard of review is as follows. "A defendant who attempts to withdraw a guilty plea after sentencing must demonstrate prejudice on the order of manifest injustice before withdrawal is justified. A showing of manifest injustice may be established if the plea was entered into involuntarily, unknowingly, or unintelligently." ***Commonwealth v. Yeomans***, 24 A.3d 1044, 1046 (Pa.Super. 2011) (citation omitted). Furthermore, the defendant has the burden of proving that the guilty plea was infirm. ***Id.***

Pa.R.Crim.P. 590¹ requires that a guilty plea be entered in court, and sets forth the minimum that a trial court should elicit in order to ensure that

¹ That rule, governing pleas and plea agreements, provides in relevant part:

(A) Generally

(1) Pleas shall be taken in open court.

(2) A defendant may plead not guilty, guilty, or, with the consent of the judge, *nolo contendere*. If the defendant refuses to plead, the judge shall enter a plea of not guilty on the defendant's behalf.

(3) The judge may refuse to accept a plea of guilty or *nolo contendere*, and shall not accept it unless the judge determines after inquiry of the defendant that the plea is voluntarily and understandingly tendered. Such inquiry shall appear on the record.

The comment to Rule 590 indicates that the “purpose of paragraph (A)(2) is to codify the requirement that the judge, on the record, ascertain from the defendant that the guilty plea or plea of *nolo contendere* is voluntarily and understandingly tendered.” That comment continues that it is “difficult to formulate a comprehensive list of questions a judge must ask of a defendant in determining whether the judge should accept the plea of guilty” but states that:

At a minimum the judge should ask questions to elicit the following information:

(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?

(Footnote Continued Next Page)

a plea is voluntarily, knowingly, and intelligently entered. *Id.* That rule mandates that the record establish a factual basis for the guilty plea.

In this case, Appellant pled guilty to 18 Pa.C.S. § 4914(a), false identification to law enforcement authorities, which occurs when a person “furnishes law enforcement authorities with false information about his identity after being informed by a law enforcement officer who is in uniform or who has identified himself as a law enforcement officer that the person is the subject of an official investigation of a violation of law.” Appellant posits that there was an insufficient factual basis for acceptance of his plea to this crime because the Commonwealth failed to indicate that, when police stopped Appellant, they identified themselves as police officers and told

(Footnote Continued) _____

(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?

(7) Does the defendant understand that the Commonwealth has a right to have a jury decide the degree of guilt if the defendant pleads guilty to murder generally?

Pa.R.Crim.P. Rule 590.

Appellant that he was the subject of an official investigation of a violation of the law.²

We reject Appellant's position. The Commonwealth indicated that Appellant was subjected to an interdiction by two police officers after he was observed conducting a narcotics transaction. The vehicle that he was driving was stopped, and he was asked for identification. Based on these facts, it can be inferred that the officers were identified as such and offered Appellant a reason as to why the interdiction was being conducted and he was being asked to produce identification.

Initially, we observe that we are not reviewing the sufficiency of the evidence to support a conviction, as in the case upon which Appellant relies, *In re D.S.*, 39 A.3d 968 (Pa. 2012). Rather, we are examining whether the outlined proof supported a finding that Appellant committed the crime in question. Further, when reviewing the adequacy of a factual basis for a guilty plea, we are permitted to make inferences based on the recited proof. *Commonwealth v. Scott*, 414 A.2d 388, 391 (Pa.Super. 1979). The facts were that police saw Appellant commit a narcotics transaction, stopped Appellant while he was operating a car, and demanded his name and date of

² We note that Appellant suggests that he gave police his middle name and then quickly thereafter gave them his first name and correct date of birth. Appellant's brief at 8. However, these are not the facts as outlined by the Commonwealth, which clearly delineated that Appellant gave police both an incorrect name and age and that Appellant corrected that information only after being further questioned by police.

birth. The reasonable inference is that Appellant was told he was being investigated by police for a violation of the law, and we conclude that there was a sufficient factual basis for the plea to that offense.

Next, Appellant claims that the factual basis for the guilty plea to driving with a suspended license-DUI related is infirm since the Commonwealth failed to introduce into evidence a certified copy of his driving record and to prove that he was aware of the suspension. In this case, the Commonwealth stated that the suspension was DUI-related, and Appellant admitted that these facts were correct. Hence, he is bound by that concession. *Yeomans, supra*. There is no requirement that the Commonwealth produce a driving record for purposes of establishing a factual basis for a guilty plea. *Commonwealth v. Watson*, 835 A.2d 786, 797 (Pa.Super. 2003) (“By pleading guilty, [a defendant] acknowledge[s] the facts and the necessary intent, regardless of the Commonwealth's ability to prove them and how it might do so.”). Hence, we reject Appellant’s challenge to his guilty plea to driving with a suspended license-DUI related.

Judgment of sentence affirmed.