NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. ANDRE L. MASON, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 987 MDA 2012

Appeal from the Judgment of Sentence entered April 5, 2012,
in the Court of Common Pleas of Schuylkill County,
Criminal Division, at No(s): CP-54-CR-0001087-2011

BEFORE: FORD ELLIOTT, P.J.E., PANELLA, and ALLEN, JJ.

MEMORANDUM BY ALLEN, J.: Filed: March 8, 2013

Andre L. Mason, ("Appellant"), appeals from the judgment of sentence entered following his negotiated guilty plea to possession of weapons or implements of escape.[1] We affirm.

The pertinent facts and procedural history are summarized as follows: On May 25, 2011, while Appellant was serving a sentence at the State Correctional Institution–Mahanoy, in Schuylkill, Pennsylvania, the Department of Corrections ("DOC") staff learned that Appellant was in possession of a weapon. DOC staff conducted a search of Appellant in his cell, in the course of which Appellant retrieved a weapon from his waistband and threw it out of his cell. Staff members retrieved the weapon, a

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[1] 18 Pa.C.S.A. § 5122(a)(2).

sharpened 7" Colgate toothbrush handle. Appellant was subsequently charged with possession of weapons or implements of escape. On April 5, 2012, the day jury selection was to commence, Appellant opted to plead guilty. Affidavit of Probable Cause, 6/4/11 at 1; Trial Court Order, 4/5/12, at 1 (unnumbered). The trial court accepted the guilty plea and sentenced Appellant that same day to six to twelve months of imprisonment.

On April 12, 2012, Appellant filed a post-sentence motion to withdraw his guilty plea. The trial court denied Appellant's motion on May 4, 2012, without a hearing. Appellant filed a timely notice of appeal. On June 1, 2012, the trial court directed Appellant to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Appellant did not comply. On January 7, 2013, this Court filed a memorandum opinion and order directing Appellant to comply with Pa.R.A.P. 1925. Appellant complied and on January 31, 2013, the trial court issued an order pursuant to Pa.R.A.P. 1925(a), attaching its May 4, 2012 order in lieu of a trial court opinion.

Appellant raises the following issue for our review:

> DID THE TRIAL COURT ERR IN NOT ALLOWING [APPELLANT] TO WITHDRAW HIS GUILTY PLEA AFTER SENTENCING?

Appellant's Brief at 4.

We find no merit to Appellant's claim. With regard to the validity of guilty pleas, our Court has recently reiterated:

> Pennsylvania has constructed its guilty plea procedures in a way designed to guarantee assurance that guilty pleas are voluntarily and understandingly tendered. The entry of a guilty plea is a protracted and comprehensive proceeding wherein the court is obliged to make a specific determination after extensive colloquy on the record that a plea is voluntarily and understandingly tendered.

Commonwealth v. Yeomans, 24 A.3d 1044 (Pa. Super. 2011) (***citing Commonwealth v. Fluharty***, 632 A.2d 312, 314 (Pa. Super. 1993)).

Rule 590 of the Pennsylvania Rules of Criminal Procedure delineates the trial court's acceptance of a guilty plea. It first requires that a guilty plea be offered in open court. The rule then provides a procedure to determine whether the plea is voluntarily, knowingly, and intelligently entered. The Comment to Rule 590 requires, at a minimum, that the trial court 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?; (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?; and (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?[2] Our review

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[2] The Comment also includes a seventh proposed question that is only applicable when a defendant pleads guilty to murder generally.

of the record in this case indicates that the trial court complied with the foregoing requirements. See N.T., 4/5/12, 2-6; Written Guilty Plea, 4/5/12 at 1-5.

With regard to post-sentence motions to withdraw guilty pleas, we have explained:

> [P]ost-sentence motions for withdrawal are subject to higher scrutiny since courts strive to discourage entry of guilty pleas as sentence-testing devices. A defendant must demonstrate that manifest injustice would result if the court were to deny his post-sentence motion to withdraw a guilty plea. Manifest injustice may be established if the plea was not tendered knowingly, intelligently, and voluntarily. In determining whether a plea is valid, the court must examine the totality of circumstances surrounding the plea. A deficient plea does not per se establish prejudice on the order of manifest injustice.

Commonwealth v. Broaden, 980 A.2d 124 (Pa. Super. 2009) (internal citations and quotations marks omitted).

Here, the trial court provided the following explanation for its denial of Appellant's post-sentence motion to withdraw his guilty plea as follows:

> On April 5, 2012, the day of jury selection in the above matter, [Appellant], with the advice and representation of counsel, decided to plead guilty to the charge that while an inmate … [Appellant] had in his possession a weapon, tool or implement that could be used for escape. [Appellant] admitted that he had a weapon, a shank consisting of a sharpened 7" Colgate toothbrush handle, in his possession. [Appellant] stated on the record that he was pleading guilty of his own free will, that no one had threatened him, including any prison guards, and that he knew exactly what it meant to plead guilty and that he had no question for this Court or his counsel. [The trial court] observed [Appellant] while making these statements and accepted his plea, after [Appellant] had the benefit of time to review the guilty plea paperwork and complete it with the

> assistance of counsel. The guilty plea was knowingly, voluntarily, and understandingly made by [Appellant].
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> During the entire colloquy, [Appellant] appeared relaxed, self-assured, lucid, and confident. He did not appear nervous, scared, or indecisive. Prior to his decision to plead guilty, [Appellant] had the opportunity to speak with a public defender. The [trial court] then spoke to [Appellant] off the record, before the jury selection began, while the jury was sitting in another courtroom, and [Appellant] informed the [trial court] that instead of picking a jury, he wished to speak with the public defender about pleading guilty to the offense. The [trial court] then told [Appellant] to take as much time as he needed to do so, and reconvened on the record, out of the hearing of the jury, after [Appellant] indicated that he was ready to proceed with the guilty plea. [Appellant] then agreed to have the public defender represent him, and entered his guilty plea having had the advice and representation of counsel.
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> [Appellant] has now, through counsel, filed this jarring post-sentence motion to withdraw his guilty plea, not even one week after entering the guilty plea, on the ground that he was allegedly threatened by a state prison corrections officer into doing so. The motion indicates that it was filed by counsel at the request of [Appellant], a request made on April 10, 2012, 5 days after the guilty plea. [The trial court] views such a motion and such a recantation as entirely suspect. … In fact, [the trial court] find[s] this assertion to be not credible, given [Appellant's] prior statements on the record specifically denying that he had been so threatened.

Trial Court Order, 5/4/12, at 1-3.

We find no error in the trial court's determination that Appellant entered his guilty plea knowingly, voluntarily, and intelligently. At the guilty plea hearing, the trial court expressly discussed the voluntariness of the plea with Appellant. In particular, the trial court asked Appellant "are you doing this of your own free will," to which Appellant responded affirmatively. N.T., 4/5/12, at 3. The trial court also asked Appellant "has anyone threatened

you, your lawyer, the district attorney, the court administrator, the sheriff, the prison guards, anybody like that?" to which Appellant responded "no." *Id*. At no time during the colloquy did Appellant give any indication that his plea was not being entered of his own volition. Rather, Appellant consistently responded in the affirmative to all questions posed by the trial court regarding the voluntariness of his plea. The trial court, which had the opportunity to view Appellant's demeanor, observed nothing to indicate that Appellant's answers were coerced, but rather was convinced that Appellant's plea was valid. Moreover, in his written guilty plea colloquy, Appellant indicated that it was his decision to plead guilty and his plea was being given freely and voluntarily without any force, threats, pressure, or intimidation. Written Guilty Plea, 4/5/12, at 1-5. As we made clear in ***Yeomans***, ***supra***, "[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." ***Yeomans***, 24 A.3d at 1047.

Appellant argues that the trial court erred in failing to hold a hearing on his motion to withdraw his plea. Given the fact that the trial court conducted a thorough guilty plea colloquy during which it had the opportunity to observe Appellant, and was assured that his plea was valid, together with the fact that Appellant's claim of being threatened directly contradicts his own assertions contained in the plea colloquy, we find no

abuse of discretion in the trial court's decision not to hold a hearing on Appellant's post-sentence motion to withdraw. ***See*** Pa.R.Crim.P. Rule 720 (B)(2)(b) (The judge shall determine whether a hearing or argument on the motion is required).

For the foregoing reasons, we affirm the judgment of sentence.

Judgment of sentence affirmed.