[J-31-2001][M.O. - Zappala, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 84 MAP 2000
	:	
Appellee	:	Appeal from the Order of Superior Court
	:	entered December 30, 1999, at 1032 HBG
	:	1997 affirming the Order of the Centre
v.	:	County Court of Common Pleas entered
	:	on September 20, 1997, at No. 1997-865.
	:	
ROBERT E. GUNTER,	:	
	:	
Appellant	:	SUBMITTED: January 17, 2001
	:	

DISSENTING OPINION

MR. JUSTICE SAYLOR **DECIDED: MAY 22, 2001**

In this case, Appellant does not contend that his plea was unknowing, unintelligent, or entered without an understanding of the nature of the charges or the terms of the plea agreement. Rather, Appellant claims that his plea was involuntary, specifically, his will was overborne by counsel's purported threat to withdraw from the case and refer Appellant to the public defenders office for further representation. Thus, although I agree with the majority that the plea proceeding, including the written plea colloquy, failed to comply with

the requirements of Rule of Criminal Procedure 319(A)(3), (B)(2), I do not view these defects as critical in light of the essential allegation.[1]

In determining whether a plea has been voluntarily entered, an examination of the totality of the circumstances is warranted. See Commonwealth v. Allen, 557 Pa. 135, 146, 732 A.2d 582, 588-89 (1999). Here, Appellant faced a number of serious offenses, namely, kidnapping, rape, sexual assault, simple assault (three counts), recklessly endangering another person (three counts), terroristic threats, unlawful restraint, false imprisonment, and resisting arrest. The plea agreement entered into by Appellant provided, inter alia, for the dismissal of the most serious charges, kidnapping and rape, and a term of imprisonment of three to six years.[2] Additionally, counsel testified that she recommended accepting the plea agreement based upon her assessment that the evidence against Appellant was compelling, and that he would have been convicted of a number of offenses and, as a result, faced a substantially greater prison term. It is also noteworthy that, prior to making such recommendation, counsel had conducted an extensive interview of the victim, and had met with Appellant on numerous occasions to discuss the evidence and the plea agreement. Given such circumstances, Appellant's acceptance of the agreement is a "'strong indicator' of the voluntariness of the plea." Commonwealth v. Shaffer, 498 Pa. 342, 352, 446 A.2d 591, 596 (1982) (citations omitted).

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[1] In this regard, the fact that the written colloquy erroneously indicated that Appellant was entering a guilty plea, as opposed to a plea of nolo contendere, is inconsequential, since a plea of nolo contendere is treated the same as a guilty plea, see generally Commonwealth v. Stork, 737 A.2d 789, 790 (Pa. Super. 1999), appeal denied, ___ Pa. ___, 764 A.2d 1068 (2000); moreover, counsel identified and corrected on the record certain of the errors in the written colloquy. In addition, the plea form clearly indicates Appellant's entry of a nolo contendere plea.

[2] The Commonwealth also agreed to dismiss two counts of simple assault, two counts of reckless endangerment, and the resisting arrest charge.

Moreover, although this Court has held that an attorney's threat to abandon a client may constitute grounds to withdraw a plea, see Commonwealth v. Forbes, 450 Pa. 185, 190-91, 299 A.2d 268, 271-72 (1973), the circumstances surrounding Appellant's plea are substantially different from those that were at issue in Forbes. There, the defendant was a visibly upset and confused 16-year-old juvenile, and counsel threatened to withdraw from the case without any indication that new counsel could be appointed. See id. at 188, 190, 299 A.2d at 270, 271. Of additional import, the defendant in Forbes sought to withdraw his plea prior to sentence. See id. at 190, 299 A.2d at 271. Here, Appellant is an adult, there was no suggestion that he would have to proceed without counsel, and the request to withdraw his plea is governed by the more stringent post-sentence standard. Furthermore, subsequent to jury selection Appellant advised counsel of his intention to accept the proposed plea agreement. As a result, counsel reasonably relied upon such indication and did not continue to prepare the case for trial. When Appellant changed his mind on the day set for entering his plea, counsel, understandably, told Appellant that her ability to prepare for trial was compromised by his unexpected reversal. Nevertheless, counsel advised Appellant that he did not have to enter a plea and, during the hearing to withdraw the plea, testified that she would have been prepared to proceed to trial if necessary. Viewed in this context, counsel's frustration with Appellant's indecision, as reflected in her statement that she might not be able to continue to represent him, did not render his plea involuntary.

On this record, therefore, I would conclude that Appellant has not demonstrated prejudice on the order of manifest injustice, particularly since the plea court credited counsel's testimony concerning the voluntariness of the plea. See Commonwealth v. Waddy, 463 Pa. 426, 430, 345 A.2d 179, 181 (1975) (plurality opinion).

Mr. Justice Castille and Madame Justice Newman join this dissenting opinion.