

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 99-11,284

VS :

JOSEPH JENNINGS :

OPINION IN SUPPORT OF ORDER  
IN COMPLIANCE WITH RULE 1925(A)  
OF THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court's Order dated January 23, 2001, wherein the Defendant was sentenced to undergo incarceration for a minimum of fifteen (15) months and a maximum of thirty (30) months. Defendant was additionally sentenced to four (4) years of probation under the supervision of the Pennsylvania Board of Probation and Parole, consecutive to the sentence of incarceration. This sentence was imposed after the Defendant pled guilty on November 13, 2000 to the charge of conspiracy to deliver a controlled substance, and pled no contest to two counts of delivery of a controlled substance. On January 12, 2000, Defendant's attorney filed a motion to withdraw his pleas. On January 19, 2000, Defendant filed a *pro se* motion to withdraw his pleas. The motions to withdraw the pleas were denied following a hearing held on January 23, 2001.

On appeal, Defendant argues that the Court erred in denying his request to withdraw his plea. [Rule 320 of the Pennsylvania Rules of Criminal Procedure](#) governs the withdrawal of guilty pleas and provides as follows: At any time before sentence, the

court may, in its discretion, permit or direct a plea of guilty to be withdrawn and a plea of not guilty substituted. A request to withdraw a guilty plea has to meet both prongs of the following two-part test. First, a withdrawal cannot be granted if to do so would substantially prejudice the prosecution. [Commonwealth v. Rish](#), 414 Pa.Super. 220, 606 A.2d 946 (1992), *citing* [Commonwealth v. Turiano](#), 411 Pa.Super. 391, 601 A.2d 846, 849-850 (1992); [Commonwealth v. Anthony](#), 504 Pa. 551, 561, 475 A.2d 1303, 1308-1309 (1984); [Commonwealth v. Forbes](#), 450 Pa. 185, 191, 299 A.2d 268, 271 (1973). Second, a withdrawal request made prior to sentencing should be granted for any "fair and just" reason. [Anthony, supra](#), 504 Pa. at 561, 475 A.2d at 1308-1309; [Forbes, supra](#), 450 Pa. at 192, 299 A.2d at 271.

In the instant case, the Commonwealth alleged, and the Court found, that allowing the plea to be withdrawn would have substantially handicapped the Commonwealth's case. The Commonwealth argued that nearly four years have passed since the offense occurred. The Commonwealth argued that the case was initially postponed with the promise that the Defendant would cooperate with the Commonwealth. Charges were eventually filed against the Defendant over two years after the offense occurred due to the Defendant's lack of cooperation. Although the Commonwealth's primary witness was still able to be located, the Commonwealth argued that memories do fade over the course of several years, and that this was yet another tactic of the Defense to delay the trial. The Court found that the delays had substantially handicapped the Commonwealth's case, and denied Defendant's request to withdraw his plea.

Even if the Commonwealth's case had not been substantially handicapped, the Court would find that the Defendant did not present a fair and just reason for the withdraw of his plea. After freely admitting his guilt to the charge of conspiracy, and alleging that he was unable to recall any of the events surrounding the deliveries, the Defendant alleged that after the Court took his pleas he was suddenly able to recall that he had not participated in the transactions. The Defendant alleged that he had suddenly learned of a witness who was able to refresh his recollection with regard to the transactions. The Court found this sudden recollection of a witness, nearly four years after the offense was committed to be not credible. Having found no fair and just reason for withdraw of Defendant's plea, the Court denied the Defendant's motion.

Dated:

By The Court,

Nancy L. Butts, Judge

xc: Eric Linhardt, Esquire  
Kenneth Osokow, Esquire  
Honorable Nancy L. Butts  
Law Clerk  
Gary Weber, Esquire  
Judges