

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-10,958

VS :

RANDY JAY WILSON :

OPINION AND ORDER

Before the Court is Defendant's Motion to Withdraw his Guilty Plea. Defendant has been charged with two counts of aggravated indecent assault, involuntary deviate sexual intercourse, aggravated assault, simple assault, criminal trespass and recklessly endangering another person, as a result of an incident that occurred on May 8, 2000. On that date it is alleged that the Defendant entered the residence of the victim, a former girlfriend, at approximately 3:40 a.m., while she was sleeping. After accusing the victim of being with another man, the Defendant choked the victim and repeatedly punched her in the stomach. The Defendant removed the victim's clothing, and continued to punch and kick her as she lay on the floor. While on the floor the Defendant forced his fist into the victim's rectum and vagina, and continued punching her in the genital area. Later that day, the victim underwent emergency surgery for her injuries, which included: pancreatitis, renal hematoma, retroperitoneal hematoma, multiple soft tissue contusions, anal tears, and anal hematoma. On February 8, 2001, Defendant pled guilty to one count of aggravated assault, and two counts of aggravated indecent assault in exchange for an agreement to have the remaining charges dismissed.

On May 14, 2001, the date scheduled for sentencing, Defendant, asserted that he wished to withdraw his plea. His attorney filed the instant motion on June 28, 2001.

In his petition, Defendant alleges that his plea should be withdrawn for the following reasons: before his plea he did not have an opportunity to review all of the discovery materials<sup>1</sup>; at the time of the plea he was under stress<sup>2</sup>; at the time of the plea he did not realize that Megan's Law would apply to his case; after his plea he discovered inconsistencies in the victim's statements.

Pa.R.Crim.P. Rule 591 provides that "at any time before sentence, the court may, in its discretion, permit or direct a plea of guilty to be withdrawn and a plea of not guilty substituted." In determining whether to grant the request to withdraw a guilty plea the Court must determine whether the Defendant has provided a "fair and just reason," for the withdrawal of the plea. When a Defendant asserts a fair and just reason, the withdrawal should be freely permitted, unless the prosecution has been "substantially prejudiced." Commonwealth v. Forbes, 450 Pa. 185, 299 A.2d 268 (1973). The Commonwealth asserted at the hearing that they will not be substantially prejudiced if the Defendant withdraws his plea. The sole issue before this Court is whether the Defendant has asserted a fair and just reason for the withdrawal of his plea. The Court finds that he has not.

In analyzing what is "fair and just," the Pennsylvania Supreme Court has held that "a knowing and intelligent guilty plea will not be abrogated by a subsequent assertion of a speculative right where such purported right does not call into question the factual basis for the plea and/or the voluntariness of the plea." Commonwealth v. Kerbacher, 527 Pa. 545, 594 A.2d 655 (1991), *citing* Commonwealth v. Anthony, 504

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<sup>1</sup> At the hearing on the motion, Defendant stated that although his attorney visited him on multiple occasions to discuss his case, he thought that they could have discussed the case "more thoroughly."

<sup>2</sup> Defendant stated that he under stress, in part, because his attorney's paralegal had stated that if the jury saw the photos depicting the victim's injuries, he would be "finished."

Pa. 551, 475 A.2d 1303 (1984). After a review of Defendant's guilty plea colloquy and the transcript of the proceedings at the time of the plea, the Court finds that Defendant's plea was knowingly and voluntarily entered. The Defendant completed an extensive colloquy indicating that he thoroughly discussed with his attorney the facts and circumstances surrounding the charges, and that he was giving his plea freely and voluntarily without force, threats, pressure, or intimidation. (G.P. colloquy at p. 6) Additionally, at the time of the plea, the Court carefully reviewed the elements of the charges, and the maximums associated with the charges. (N.T. 2/8/02, pp.2-4) The Defendant was informed at that time that Megan's Law applied to his case, and that a sexually violent predator assessment would be ordered. (Id. p. 4)

Additionally, at the time of the plea, the Defendant admitted that he had assaulted the victim and stated that he "stuck" his hand up the victim's vagina. He also admitted that he punched and kicked the victim in the stomach and genital area, to the point that she was having difficulty breathing. Based on the review of these materials, the Court is satisfied that the Defendant was aware of the consequences of his plea, and understood that he was admitting that he was guilty of the offenses. The Court is additionally satisfied that the Defendant gave his plea voluntarily after admitting that he had committed the offenses. The Defendant has neither asserted his innocence, nor asserted that he has since discovered exculpatory evidence. Having found that the Defendant proffered a knowing, intelligent, and voluntary plea, the Court denies the Defendant's request.

ORDER

AND NOW, this \_\_\_\_\_day of August, 2001, based upon the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's motion to dismiss his Guilty Plea is DENIED.

By The Court,

Nancy L. Butts, Judge

cc: CA  
James Protasio, Esquire  
Kenneth Osokow, Esquire  
Honorable Nancy L. Butts  
Judges  
Law Clerk  
Court Scheduling Technician  
Gary Weber, Esquire