

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-10,695

VS :

SHYNNELL ISAAC WALKER :

OPINION AND ORDER

Before the Court is Defendant's Motion to Withdraw his Plea of No Contest. Defendant has been charged with aggravated assault (two counts), simple assault (three counts), possessing instruments of crime, and recklessly endangering another person, as a result of an incident that occurred on October 24, 1999. On that date it is alleged that the Defendant struck an individual on the right side of his face with a baseball bat or similar object. The individual suffered a fractured jaw, requiring surgery. Defendant pled no contest to one count of aggravated assault on December 7, 2000, in exchange for an agreement to have the remaining charges dismissed, and to be made eligible for boot-camp. The Commonwealth also agreed not to challenge the right of the Defendant to ask for credit at a juvenile facility.

On February 20, 2001, the date scheduled for sentencing, Defendant, through new counsel, filed the instant motion alleging that his plea should be withdrawn because he is innocent of the charges. At the hearing on the motion, Defendant stated that he decided to plead guilty because Ms. Eddinger stated that if he pled guilty, he would be going home that day with his family.<sup>1</sup> Defendant stated that he was not truthful when he

---

<sup>1</sup> In response to the guilty plea colloquy question of why he wished to plead guilty, Defendant wrote "to get home to my family and go to school."

relayed what had occurred on the date of the incident.<sup>2</sup> He testified that he told the Court what Ms. Eddinger told him to say about the events that occurred.<sup>3</sup> He stated that he made up the instrument with which he struck the victim.

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provides that “at any time before sentence, the court may, in its discretion, permit or direct a plea of guilty to be withdrawn and a plea of not guilty substituted.”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). In the instant case, the Defendant has asserted his innocence as the reason for the withdrawal of his plea. The Courts have held that a mere assertion of innocence is a fair and just reason for withdrawal of a guilty plea prior to sentencing, Commonwealth v. Rish, 414 Pa.Super. 220, 606 A.2d 946 (1992), *citing* Commonwealth v. Forbes, *supra*. Under the Forbes standard, this Court would find that Defendant’s assertion of innocence, however incredulous as it may be, would be considered a fair and just reason for the withdrawal of his plea.

Having found a fair and just reason, the Court must next determine whether allowing the request for the withdrawal of the plea would substantially prejudice the prosecution. “A withdrawal cannot be granted if to do so would substantially prejudice

---

<sup>2</sup> Upon taking the Defendant’s plea, the Court had asked the Defendant what occurred at the time of the incident. The Defendant stated “we was at a party and a fight broke out. The guy – one of the guys was standing there and I thought he was going to hit somebody. I struck him in the face.” (N.T. 12/7/00, p 5) The Defendant stated that the object that he used was a pipe.

<sup>3</sup> Ms. Colleen Eddinger, Defendant’s attorney at the time of the plea testified that she discussed the elements of the charges with the Defendant, but she never had a conversation with the Defendant discussing what he would say about the incident.

the prosecution.” Rish, supra, at 947, *citing Commonwealth v. Anthony*, 504 Pa. 551, 561, 475 A.2d 1303, 1308-1309 (1984) (*citation omitted*). At the time of the hearing on the Defendant’s motion, the Commonwealth requested, and Defense counsel agreed, to a continuance to determine the availability of the Commonwealth’s witnesses.

ORDER

AND NOW, this \_\_\_\_\_ day of July, 2001, in light of the foregoing Opinion, it is ORDERED AND DIRECTED that this matter be rescheduled for a brief argument on whether the Commonwealth’s case would be substantially handicapped should the Court grant the Defendant’s motion.

By The Court,

Nancy L. Butts, Judge

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