

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-10,695

VS :

SHYNNELL ISAAC WALKER :

OPINION AND ORDER

In this Court's Order of July 17, 2001, this Court found that the Defendant, by asserting his innocence, had set forth a fair and just reason for the withdrawal of his plea of no contest to the charge of aggravated assault. The Court noted in its Opinion and Order that 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). On September 25, 2001, the Court scheduled an additional hearing to give the Commonwealth an opportunity to present argument relevant to whether withdrawal of the plea would substantially prejudice the prosecution.

At the hearing the Commonwealth asserted that their witnesses, who had appeared and had been available at the earlier stages of this proceeding, including the preliminary hearing and the hearing in juvenile court, were released in reliance on the Defendant's plea. To date, the Commonwealth has been unable to locate two of the witnesses, and one of the key witnesses is out of state in basic training for the Army. The Commonwealth argued that even if that witness would be permitted leave from the Army, in light of the current situation following the September 11, 2001 terrorist attack, bringing her back for trial would be at great expense to the Commonwealth. Instantly, the Court finds that where the Commonwealth has released a key witness in reliance on the plea, they have shown substantial prejudice. See Commonwealth v. Ross, 498 Pa.

512, 447 A.2d 943 (1982). Although Defense Counsel would agree to allow this key witness to testify by telephone, the Court rejects the contention of the Defense that this would cure the prejudice to the Commonwealth here.

ORDER

AND NOW, this _____ day of September, 2001, the Commonwealth having established that they will suffer substantial prejudice from the withdrawal of Defendant's Guilty Plea, it is ORDERED and DIRECTED that the Defendant's Motion to Withdraw his Plea is DENIED, and this case is scheduled for sentencing on October 30, 2001, at 1:30 p.m. in Courtroom #4.

By The Court,

Nancy L. Butts, Judge

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