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IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

<p>NICHOLE RUIZ-AYALA Plaintiff/Appellee</p> <p>vs.</p> <p>WILLIAM BROWN, JR., Defendant/Appellant</p>	<p>: No. CP-41-FC-2021-20701-AB</p> <p>: CP-41-MD-0000296-2021</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>: 1925(a) Opinion</p>
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FILED
 LYCOMING COUNTY
 2021-08-17 - 2 PM 2:18
 CLERK OF COURTS

OPINION IN COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE

By way of background, on August 8, 2021, the plaintiff, Nichole Ruiz-Ayala, obtained an emergency Protection From Abuse (PFA) order against the defendant, William Brown, Jr., from Magisterial District Judge (MDJ) Gary Whiteman. In the order, MDJ Whiteman directed the defendant to refrain from abusing the plaintiff and to refrain from contacting the plaintiff. He also evicted the defendant from the parties' apartment.

On August 9, 2021, the Williamsport police charged the defendant with indirect criminal contempt for violating the emergency PFA order by allegedly making calls and sending messages to the plaintiff. The contempt hearing was scheduled for August 13, 2021.

On August 13, 2021, the defendant entered an *Alford* plea to the indirect criminal contempt in exchange for an agreed upon sentence of 30 days' incarceration and a \$300 fine. The court accepted the *Alford* plea and sentenced the defendant in accordance with the agreement. The court awarded the defendant credit for time served from August 9, 2020 through August 12, 2021. The court noted the defendant had an outstanding parole

detainer to which he would be released once he served the 30 days.

In a letter dated August 16, 2021, the defendant wrote to the court requesting reconsideration. He asserted that his lawyer misled him about parole and “how it would work” if he took a deal.

The court treated the defendant’s letter as a motion to withdraw his guilty plea¹ and scheduled a hearing for September 1, 2021. Following the hearing, the court entered an order denying the defendant’s motion.²

On October 1, 2021, the defendant filed a notice of appeal. The court directed the defendant to file a concise statement of errors on appeal, and he complied. The sole issue asserted by the defendant is that the court erred by denying the defendant’s motion to withdraw his counseled Alford admission to an indirect criminal contempt.

Upon review of the transcript of the proceedings and further reflection, the court agrees that it erred. The court finds that it unduly focused on the terminology utilized by the defendant and counsel rather than the ultimate effect that the defendant’s plea would have on his parole and counsel’s advice regarding such.

At the hearing, the defendant testified that he would not have taken the plea for 30 days if he had known it was a misdemeanor. He testified that counsel told him that state parole would not give him a hit if he pled guilty to the contempt charge. Counsel told him that the PFA was civil and it wasn’t criminal. He testified that after his plea, parole told

¹ The Clerk of Courts docketed the letter on August 27, 2021.

² There is a typographical error in the order. The order states: “AND NOW, this 1st day of August, 2021....” The order was actually dictated to the court reporter on September 1, 2021 at the close of the contempt hearing.

him that they would be violating him for a new criminal conviction. He clarified that he did not receive new criminal charges for the underlying conduct; rather, parole was violating him for the contempt conviction, which counsel told him would not result in a violation. He testified that parole told him “you took a plea; this changes everything.”

Counsel testified that there was never a discussion of an *Alford* plea prior to the start of the hearing; those discussions came in the middle of the process. He testified that he explained to the defendant that a PFA is a civil matter and that a violation is an indirect criminal contempt. To his knowledge, “it’s not like the defendant caught new charges.” He testified that he would not have guaranteed him that state parole wouldn’t or couldn’t hit him because he and the defendant were already discussing the fact that parole had initiated an action based on the allegation of assaultive behavior. Counsel also testified that he saved the plea to avoid the defendant’s contempt hearing being delayed and proceeding in another courtroom where he believed the defendant would receive more time than discussed in the plea. However, counsel also testified that he “bulldozed over” the defendant’s own wishes, which included potentially having a hearing on this matter.

Unfortunately, the hearing and the court’s decision unduly focused on the labels for the proceedings and the term “misdemeanor,” rather than the consequences that a plea would have on the defendant’s parole. In the focus on the civil nature of the PFA and the use of the term “misdemeanor,” both the court and counsel failed to recognize that the effect of the guilty plea to contempt was, in fact, like the defendant was convicted of new charges.

In *Dunkleberger v. Pa. Bd. of Prob. & Parole*, 593 A.2d 8 (Pa. Commw.

1991), the Commonwealth Court affirmed the petitioner's parole revocation based on a PFA contempt. The Court found that criminal contempt is a crime. Thus, the finding of criminal contempt constituted a conviction for which the Board could recommit the petitioner as a convicted parole violator.

Here, counsel's advice misled the defendant to believe that, while he would still be facing technical parole violations, his plea would not result in the defendant being treated as a convicted parole violator. Based on *Dunkleberger*, this advice was patently incorrect. Therefore, the court should have permitted the defendant to withdraw his guilty plea. *Commonwealth v. Barndt*, 74 A.3d 185 (Pa. Super. 2013)(denial of PCRA reversed and remanded for withdrawal of guilty plea where plea was based on erroneous legal advice by counsel regarding the consequences of a plea on his parole).

DATE: 11-2-21

By The Court,



Marc F. Lovecchio, Judge

cc: Kirsten Gardner, Esquire (ADA)
Jessica Feese, Esquire (APD)
Judge Marc F. Lovecchio
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)