

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

KIENAN WADE KENNEDY

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 428 MDA 2014

Appeal from the Judgment of Sentence September 27, 2013  
In the Court of Common Pleas of Lebanon County  
Criminal Division at No(s): CP-38-CR-0001235-2012

BEFORE: GANTMAN, P.J., JENKINS, J., and MUSMANNO, J.

CONCURRING AND DISSENTING STATEMENT BY JENKINS, J.:

**FILED FEBRUARY 23, 2015**

I agree with my distinguished colleagues that Appellant's second claim – that the trial court improperly denied his post-sentence motion to withdraw his guilty plea because Appellant had insufficient time to consider the Commonwealth's plea offer – is without merit.

I respectfully disagree, however, with the majority's determination regarding Appellant's first claim. Under the circumstances presented in this case, I would find that the trial court abused its discretion in refusing to allow Appellant to withdraw his guilty plea where he claimed actual innocence and the only prejudice the Commonwealth would suffer as a result of the plea withdrawal would be that the Commonwealth would be forced to prosecute its case against Appellant.

Thus, I would reverse the trial court's order denying Appellant's post-sentence motion to withdraw his guilty plea and remand for further proceedings.