NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JOHN M. CAPOBIANCO	:	
Appellant	:	No. 1967 EDA 2025

Appeal from the Judgment of Sentence Entered May 6, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0008644-2022

BEFORE: McLAUGHLIN, J., KING, J., and BECK, J.

MEMORANDUM BY BECK, J.: **FILED NOVEMBER 16, 2026**

John M. Capobianco ("Capobianco") appeals from the judgment of sentence entered by the Philadelphia County Court of Common Pleas ("trial court") following his guilty plea to one count each of simple assault and criminal mischief.[1] Capobianco argues that his plea was not knowingly entered. After careful review, we affirm.

On March 2, 2022, the police arrested Capobianco after he shot a pellet gun at Melanie Morrison and her vehicle. The Commonwealth charged him with aggravated assault, terroristic threats, possession of an instrument of crime, simple assault, reckless endangerment, and criminal mischief.

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[1] 18 Pa.C.S. §§ 2701(a)(1), 3304(a)(5).

Following a protracted procedural history not relevant to this appeal, the trial court scheduled trial for May 6, 2024. On that date, Capobianco agreed to plead guilty to simple assault and criminal mischief in exchange for the Commonwealth nol prossing the remaining charges and an aggregate sentence of 3 years of probation.[2] The trial court accepted the plea and imposed the negotiated sentence that same day.

On May 10, 2024, Capobianco filed a motion to withdraw his plea. In the motion, he contended that the trial court should apply the presentence standard for plea withdrawal and argued that he was innocent and the Commonwealth would not be prejudiced if the trial court permitted him to withdraw his plea. The Commonwealth filed a response, arguing that the post-sentence standard for withdrawing a plea applied and that Capobianco failed to meet this heightened burden because his guilty plea was entered knowingly, intelligently, and voluntarily. The trial court denied Capobianco's motion. Capobianco did not file an appeal.

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[2] Capobianco completed an oral and written guilty plea colloquy. Following the filing of the instant appeal, the Commonwealth filed a motion to correct the record, indicating the written plea colloquy had not been included in the certified record. This Court granted the motion and directed the trial court to transmit a supplemental record with the written plea colloquy. Order, 6/22/2026 (per curiam). Subsequently, the trial court sent a response, stating that the written plea colloquy had been lost. Letter, 7/30/2026.

On September 18, 2024, Capobianco filed a timely petition for relief pursuant to the Post Conviction Relief Act ("PCRA"),[3] seeking, inter alia, the reinstatement of his direct appeal rights. The PCRA court granted Capobianco's motion to reinstate his appellate rights. He then filed a notice of appeal nunc pro tunc and a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b).

Capobianco's appeal presents the following issue: "Whether Capobianco's guilty plea was entered knowingly, intelligently, and voluntarily[?]" Capobianco's Brief at 7.

Capobianco argues that he did not knowingly and voluntarily enter his guilty plea. ***Id.*** at 11, 15. He contends that in the absence of the written colloquy, the trial court's oral colloquy failed to conduct an adequate inquiry into five of the six questions that establish his understanding of the consequences of entering the plea. ***Id.*** at 11, 12-13. He asserts that he did not understand the elements of the charges to which he pled guilty; the factual basis for his plea was "exceedingly short and did not specify the act performed"; the colloquy did not specify Capobianco's right to a jury trial, only that he had an absolute right to have a trial; the correct maximum possible sentence he could face; and that the trial court is not bound by the terms of his plea agreement. ***Id.*** at 13-14. Capobianco further claims that the trial

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[3] 42 Pa.C.S. §§ 9541-9546.

court and plea counsel should have ensured he understood that any attempt to withdraw the plea after sentencing under the manifest injustice standard would be significantly more difficult than before sentencing. ***Id.*** at 14, 15.

The Commonwealth argues that Capobianco waived his appellate claim because his post-sentence motion to withdraw his guilty plea only asserted his innocence under a presentence standard to withdraw a plea, and he did not challenge the allegedly unknowing, involuntary, and unintelligent nature of the plea. Commonwealth's Brief at 7-9.

"Pennsylvania law makes clear that by entering a plea of guilty, a defendant waives his right to challenge on direct appeal all nonjurisdictional defects except the legality of the sentence and the validity of the plea." ***Commonwealth v. Monjaras-Amaya***, 163 A.3d 466, 468 (Pa. Super. 2017). There are two different standards to be applied to a motion to withdraw a guilty plea based upon whether the request is made pre- or post-sentencing. A defendant who attempts to withdraw a guilty plea after sentencing must demonstrate prejudice on the order of manifest injustice before withdrawal is justified. ***Commonwealth v. Muhammad***, 794 A.2d 378, 383 (Pa. Super. 2002). "A plea rises to the level of manifest injustice when it was entered into involuntarily, unknowingly, or unintelligently." ***Id.*** (citation omitted). On the other hand, "the proper inquiry on consideration of [] a [presentence] withdrawal motion is whether the accused has made some colorable demonstration, under the circumstances, such that permitting

withdrawal of the plea would promote fairness and justice[,]" unless withdrawal would substantially prejudice the Commonwealth. ***Commonwealth v. Norton***, 201 A.3d 112, 120-21 (Pa. 2019) (citation omitted). "A fair and just reason exists where the defendant makes claim of innocence that is at least plausible." ***Commonwealth v. Garcia***, 280 A.3d 1019, 1023 (Pa. Super. 2022).

The record reflects that in Capobianco's post-sentence motion to withdraw his plea, he raised his claim under the standard governing "the decision to grant or deny a **presentence** motion to withdraw a plea." Motion to Withdraw Guilty Plea, 5/10/2024, ¶ 7 (emphasis added). In support, Capobianco asserted "his actual innocence," and that there would be "no prejudice to the Commonwealth" by granting his motion. ***Id.*** ¶¶ 5, 8. He never raised the post-sentence standard for withdrawing his plea—manifest injustice—or challenged the voluntariness of his plea before the court below.

We therefore conclude that Capobianco waived the argument he now raises on appeal. ***See Commonwealth v. Baez***, 169 A.3d 35, 41 (Pa. Super. 2017) (concluding appellant waived issues not raised in his motion to withdraw the guilty plea); ***see also Commonwealth v. Jabbie***, 200 A.3d 500, 506 (Pa. Super. 2018) ("[A] request to withdraw a guilty plea on the grounds that it was involuntary is one of the claims that must be raised by motion in the trial court in order to be reviewed on direct appeal.") (citation omitted). That Capobianco challenged the voluntariness of his guilty plea in his Pa.R.A.P.

1925(b) statement does not preserve it for appeal. ***See Monjaras-Amaya***, 163 A.3d at 469 (concluding that the appellant waived a challenge to his guilty plea when he raised this issue for the first time in a Rule 1925(b) statement).[4]

Judgment of sentence affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/16/2026

[4] To the extent Capobianco contends that plea counsel provided ineffective assistance, our Supreme Court has held that "claims of ineffective assistance of counsel are to be deferred to PCRA review; trial courts should not entertain claims of ineffectiveness upon post-verdict motions; and such claims should not be reviewed upon direct appeal." ***Commonwealth v. Holmes***, 79 A.3d 562, 576 (Pa. 2013) (footnote omitted).