NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
RODNEY SMITH	:	
Appellant	:	No. 2589 EDA 2025

Appeal from the Judgment of Sentence Entered June 16, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0000158-2023

BEFORE: LAZARUS, P.J., PANELLA, P.J.E., and STEVENS, P.J.E.*

MEMORANDUM BY STEVENS, P.J.E.: **FILED NOVEMBER 5, 2026**

Appellant, Rodney Smith, appeals from the judgment of sentence entered in the Court of Common Pleas of Philadelphia County following his negotiated guilty plea to six counts of aggravated assault, 18 Pa.C.S.A. § 2702(a)(1), and one count of possession of firearm prohibited, 18 Pa.C.S.A. § 6105(a)(1). After our careful review, we affirm.

The relevant facts and procedural history are as follows: The Commonwealth filed an Information charging Appellant with numerous crimes in connection with Appellant revving his engine and driving a minivan at high speed towards uniformed police officers, who were patrolling on bicycles on October 19, 2022, thus causing them to swerve off the road. Appellant then

---

* Former Justice specially assigned to the Superior Court.

fled in his minivan, ultimately sideswiping a black jeep and shooting the driver of the black jeep. He then fled on foot and pointed his gun at a police officer, who apprehended Appellant.

The trial court appointed Daniel Theveny, Esquire, to represent Appellant, and a jury trial was scheduled for February 12, 2024. On May 16, 2023, the Commonwealth requested a continuance of trial, and the jury trial was rescheduled to April 5, 2024. On March 15, 2024, Appellant requested a continuance to retain private counsel, and the jury trial was rescheduled for October 1, 2024. However, on July 15, 2024, due to the trial court being unavailable to sit on October 1, 2024, the jury trial was rescheduled for January 14, 2025.

On January 14, 2025, Appellant, represented by Attorney Theveny, appeared before the trial court for the commencement of trial. Prior to the prospective jurors entering the courtroom for jury selection, Appellant stated as follows to the trial court (verbatim):

> I was aware that last year around this time, I had a trial date, but I got—at the time I didn't have the funds and my family was doing little fish fries to raise the funds to obtain my lawyer. And, at that time, I wasn't sure what direction or what attorney I was going to hire. But, recently, somebody close to my family referred me to Pat Link and as of right now I do got the majority of the money to retain an attorney, and my family members have been in constant talks with him since last week, since I had an official visit with my attorney then. So, over the course of the time, me being locked up on state road, it's been hard. It's been hard for me to, like, get my point across or go to the law library because I'm constantly in and out of the hole. So, I was not in talks with my family for four months because I was in punitive time. I just recently got a chance to, like, talk to him after the

> holidays. So, they said they got some money to retain who I want to be represented by, which is Pat Link.

N.T., 1/14/25, at 3-4.

In response, the trial court indicated the following:

> All right. I certainly understand what you're saying and the challenges that you face. But, I have to take into account the whole history of the case, and the fact is that this case has been pending since October of 2022. We're now in January of 2025. You have counsel that's been appointed to represent you and is prepared to proceed with a jury trial. The Commonwealth is ready with its witnesses to proceed with a jury trial. And I think it would be unreasonable for the court to further delay the trial in this case given the history, and the circumstances, and the fact that when you made this request back in March of 2024, I granted it. We're now here approximately ten months later and in this same position. So, I don't think I can reasonably conclude that we would be in a different position if I were to push this trial out even further. I don't think it would be appropriate given all of the circumstances and the readiness of the Commonwealth. So, I do intend to proceed with the jury trial today.

Id. at 4-5.

At this point, the Assistant District Attorney ("ADA") informed the trial court that, during the last week, Appellant, as well as Attorney Theveny, had provided her with the names of three separate attorneys, whom "[Appellant] was allegedly close to hiring, which for the Commonwealth calls into question whether that's actually true." ***Id.*** at 5. Further, the ADA informed the trial court that she had knowledge that "Mr. Link is currently not trying jury trials." ***Id.*** Also, the ADA noted for the record that, in the Commonwealth's view, Appellant's request for a continuance to retain Attorney Link was unreasonable. ***Id.***

Additionally, the ADA noted that the Commonwealth had previously made a plea offer to Appellant, which included a cap of fifteen years to thirty years in prison, but the deadline for Appellant to accept the plea offer had passed. ***Id.*** The ADA noted the Commonwealth would extend an "open offer" for Appellant to plead guilty to six counts of aggravated assault and one count of possession of a firearm prohibited, and in exchange, the Commonwealth would *nolle pros* all remaining charges. ***Id.*** at 6.

The trial court then advised Appellant of all the charges listed in the Information, as well as the maximum penalties for each charge. ***Id.*** at 9-10. Specifically, the trial court indicated:

> I just want to go over what the charges are that the Commonwealth is intending to proceed on for jury trial. This is listed in the trial memorandum that the Commonwealth provided. I'm going to describe the charges and the maximum penalties that would apply if you were convicted. The Commonwealth is seeking to proceed on Attempted Murder, that's a first-degree felony and it's because the Commonwealth is alleging that it resulted in serious bodily injury, the maximum penalty could be up to 40 years of incarceration and a fine of up to $50,000.00. In addition, the Commonwealth has charged you with 6 charges of Aggravated Assault. Each of those are first-degree felonies and carry up to 20 years of incarceration on each and up to $25,000.00 in fines. In addition, you have been charged with Possession of a Firearm Without a license, and Fleeing or Attempting to Allude an Officer. Each of those are 3rd degree felonies and each are punishable up to 7 years of incarceration and a fine amount up to $15,000.00. Then you're also charged with Possession of a Firearm by a Prohibited Person. That's a first-degree felony punishable by up to 20 years of incarceration and a fine amount of up to $25,000.00. And then finally you're charged with Possession of a Firearm on the Streets of Philadelphia, a first-degree misdemeanor punishable up to 5 years of incarceration and a fine amount up to $10,000.00. If you were convicted of all of those offenses, the guidelines would be determined by the [trial] court at the

> sentencing hearing, but that's the estimate from the Commonwealth[.] The Commonwealth also estimated that if you were to get convicted of the charges at a jury trial, including the Attempted Murder, your guidelines would be 222 months up to the statutory limit, which in this case would be a sentence of 20 to 40 years of incarceration on the Attempted Murder. If you were convicted of all of those offenses, that means that the total maximum amount of punishment you could receive would be up to 199 years of incarceration and a fine amount up to $265,000.00

Id. at 8-10.

The trial court then asked Appellant if he wanted to have time to discuss the Commonwealth's plea agreement as stated *supra* with Attorney Theveny, and Appellant replied affirmatively. ***Id.*** at 11. The trial court took a brief recess.

Upon return from the recess, Attorney Theveny informed the trial court that the Commonwealth and Appellant had reached a plea agreement whereby Appellant would plead guilty to six counts of aggravated assault, 18 Pa.C.S.A. § 2702(a)(1), and one count of possession of firearm prohibited, 18 Pa.C.S.A. § 6105(a)(1). ***Id.*** Further, the parties agreed to "a maximum aggregate sentence of 20 to 40 years" in prison. ***Id.*** at 12. In exchange, the Commonwealth would *nolle pros* all remaining charges. Appellant executed a written plea agreement consistent with the oral agreement stated by Attorney Theveny.

The trial court conducted a colloquy of Appellant, including whether he was able to understand the proceedings, the written plea agreement, and the elements of the offenses. ***Id.*** at 13-14. Appellant answered affirmatively,

and he also confirmed he was entering his plea voluntarily and of his own free will. ***Id.*** at 15.

The trial court then set forth the rights Appellant was waiving by pleading guilty. ***Id.*** at 16-17. Specifically, the trial court advised Appellant that, by pleading guilty, he was giving up his right to a trial by a jury made up of twelve people, whom Appellant and his attorney would participate in choosing. ***Id.*** at 15. The trial court explained that any verdict of guilty or not guilty by the jury would have to be unanimous. ***Id.*** Appellant acknowledged that he understood these rights. ***Id.*** at 16. The ADA set forth the facts underlying Appellant's offenses. ***Id.*** at 22-23. Specifically, the ADA stated:

> Back on October 19th of 2022, at approximately 8:53 p.m., four Philadelphia police officers were traveling on bikes, starting with Officer Kopczynski, Officer Gaydosh, Officer Franchetti, and Officer Molina, were on marked bikes on patrol in full uniform traveling northbound on the 2800 block of Coral Street. At that time, a vehicle traveling down the block, a gray in color Chrysler minivan, bearing a Virginia tag of [***-****] turned southbound on [**] Coral Street facing the officers. The operator of the vehicle, later identified as [Appellant], continued to drive towards the officers, revved the engine, and accelerated toward the officers causing all four officers to have to move out of the way onto the curb to avoid being struck by [Appellant's] vehicle.
>
> At that time, [Appellant] then fled disregarding stop signs at Coral and Rush Streets and Frankford and Rush Streets. Officer Gaydosh was able to provide flash information over the police radio regarding the gray Chrysler minivan, which also had a US Navy emblem on the right side of the license plate.
>
> A short time later, at approximately 9:04 p.m., the same gray Chrysler minivan being operated by [Appellant] sideswiped a parked black Jeep Cherokee in the area of the 2100 block of East Lippencott Street. The complainant in this case, Manuel Molina, same spelling as [Officer] Molina, confronted [Appellant], who is his next-door neighbor, about the auto accident and an argument

ensued. Video was recovered showing the argument quickly escalating into a physical altercation at which time [Appellant] pulled out a firearm, shooting the complainant multiple times, one of which was in the neck.

Specifically, Your Honor, the certified medical records of Mr. Molina from Temple Hospital indicate that he was shot on the left side of his neck, one time. He had one gunshot wound to his left upper back. And two gunshot wounds to the left knee. They also indicated that Mr. Molina suffered serious bodily injury, specifically he had active and significant arterial bleeding from the shoulder and back wounds. Manual pressure was held to his neck by medical staff. Due to that bleeding, he was brought to the operating room and was admitted to the surgical intensive care unit, and he suffered from acute blood loss due to the gunshot wound. Mr. Molina was in the hospital for four days and was discharged on October 23, 2022.

Your Honor, following that shooting incident, several other uniform bike officers, who were working in the area, heard those gunshots. They responded to the location where they made contact with the shooting victim.

***

After the shooting incident, [Appellant] fled in the area of [**] East Lippencott Street in that same minivan and was ultimately spotted by Sergeant Stephan of the Philadelphia Police Department and, as Sergeant Stephan gave out the radio call, Tac Air was also trying to identify where exactly [Appellant] was fleeing to. Ultimately, [Appellant] crashed that minivan into a house at Emerald and Eldhart Streets. After crashing, [Appellant] exited his vehicle and began to flee on foot. During that foot pursuit, he was being chased by Philadelphia Police Officer Mills. While running, [Appellant] pointed a firearm, the same firearm he used in the shooting, with an extended magazine, at Officer Mills. [Appellant] was stopped by several officers in the area of [****] East Clearfield Street where an additional officer was able to get the firearm out of his hand.

Recovered from [Appellant] was a black in color GLOCK model 45, 9mm handgun loaded with 27 live rounds, one round in the chamber and 26 in the extended magazine. The witness to the shooting, the wife of the complainant, was transported to the area where she identified [Appellant] as the person who shot her husband. She also identified the gray minivan.

> Your Honor, an FIU report came back, and if we proceeded to trial and if I called FIU to testify, they would to the fact that the FCCs recovered from the shooting scene matched the firearm recovered from [Appellant]. Lastly, Your Honor, I would indicate that [Appellant] is prohibited by law from possessing, using, controlling, selling, transferring, manufacturing, or obtaining a license to possess a firearm because he was convicted of Aggravated Assault [in a different case].

Id. at 19-23.

The trial court asked Appellant if the facts, as stated by the ADA, were the facts upon which Appellant was basing his guilty plea. ***Id.*** at 23. Appellant responded, "Correct." ***Id.***

The trial court accepted Appellant's guilty plea to six counts of aggravated assault and one count of possession of firearm prohibited. The trial court ordered a pre-sentence investigation report, as well as a mental health evaluation.

On April 10, 2025, prior to sentencing, Appellant filed a counseled motion to withdraw his guilty plea. Specifically, Appellant indicated that he cannot, "in good conscious, maintain his plea of guilty." Appellant's Pre-sentence Motion, filed 4/10/25, at 2. Appellant claimed:

> After discussions with family, [Appellant] is now asserting his innocence and wishes to withdraw his guilty plea. The above-captioned matter involves weighty and significant allegations that will, regardless of the outcome, forever alter the course of [Appellant's] life. He alleges that he entered his plea of guilty while "stressed and confused" by the process of jury selection, which had just begun, and by a colloquy regarding the potential maximum penalties that apply herein. Frightened by these procedures, [Appellant] now alleges that he entered his plea of guilty without careful consideration.

Id. at 3. Appellant claimed the Commonwealth would not be substantially prejudiced by the trial court permitting him to withdraw his guilty plea. ***Id.***

The Commonwealth filed a response in opposition to Appellant's pre-sentence motion to withdraw his guilty plea. Therein, the Commonwealth noted that, on January 14, 2025, just before jury selection, Appellant indicated a desire to plead guilty. The Commonwealth noted it was ready to proceed on January 14, 2025, with twelve witnesses, including one civilian. The Commonwealth averred that Appellant, who was bound by the statements he made during his guilty plea colloquy, failed to demonstrate a "fair and just reason" for withdrawing his guilty plea. The Commonwealth further averred that Appellant's bare assertion of innocence was insufficient to permit the withdrawal of his plea. The Commonwealth noted that any such claim would be "impossible" given the extraordinary amount of direct, circumstantial, video, physical, and forensic evidence proving Appellant's guilt beyond a reasonable doubt. The Commonwealth contended the trial court thoroughly and accurately explained the rights Appellant was waiving by pleading guilty, including his right to a jury and the maximum penalties Appellant faced if he was found guilty on all counts by a jury.

Moreover, the Commonwealth asserted it would be substantially prejudiced if Appellant was permitted to withdraw his plea. In this vein, the Commonwealth averred that there would be substantial prejudice due to the passage of time resulting from the need to set a new trial date.

On June 16, 2025, the trial court denied Appellant's pre-sentence motion to withdraw his guilty plea, and on that same date, following a hearing, the trial court sentenced Appellant to an aggregate of twenty years to forty years in prison. On June 26, 2025, Appellant filed a timely counseled post-sentence motion averring the trial court abused its discretion in imposing an excessive sentence without adequate consideration of the sentencing factors under 42 Pa.C.S.A. § 9721. The trial court denied Appellant's post-sentence motion on October 2, 2025, and this timely counseled appeal followed on October 6, 2025. All Pa.R.A.P. 1925 requirements have been met.

On appeal, Appellant presents the following issue in his "Statement of the Questions Presented" (verbatim):

> Did the lower court abuse its discretion in denying Mr. Smith's pre-sentence motion to withdraw his guilty plea where he presented a fair and just reason for the withdrawal and the Commonwealth would not have been substantially prejudiced had the motion been granted?

Appellant's Brief at 1 (suggested answer omitted).

On appeal, Appellant contends the trial court erred in denying his pre-sentence motion to withdraw his guilty plea.

"We review a trial court's ruling on a pre-sentence motion to withdraw a guilty plea for an abuse of discretion." ***Commonwealth v. Islas***, 156 A.3d 1185, 1187 (Pa.Super. 2017) (citation omitted).

Pennsylvania Rule of Criminal Procedure 591(A) provides:

> At any time before the imposition of sentence, the court may, in its discretion, permit, upon motion of the defendant, or

> direct, *sua sponte*, the withdrawal of a plea of guilty or *nolo contendere* and the substitution of a plea of not guilty.

Pa.R.Crim.P. 591(A).

> Where a defendant requests to withdraw his guilty plea before he is sentenced, the trial court has discretion to grant the withdrawal and that discretion is to be liberally exercised to permit withdrawal of the plea if two conditions are present: 1) the defendant demonstrates a "fair and just" reason for withdrawing the plea, and 2) it is not shown that withdrawal of the plea would cause substantial prejudice to the Commonwealth.

Commonwealth v. Jamison, 284 A.3d 501, 505 (Pa.Super. 2022) (citations omitted). Determining whether the Commonwealth would be substantially prejudiced by the withdrawal of the plea is only necessary if the defendant demonstrates a "fair and just" reason for the withdrawal. ***See Islas***, 156 A.3d at 1192-93 (analyzing whether the withdrawal of the plea would have substantially prejudiced the Commonwealth after first determining that the defendant established a fair and just reason for withdrawing his plea).

As to what constitutes a "fair and just" reason, our Supreme Court has held that "a bare assertion of innocence is **not**, in and of itself, a sufficient reason" to grant a defendant's motion to withdraw a guilty plea. ***Commonwealth v. Carrasquillo***, 115 A.3d 1284, 1285 (Pa. 2015) (emphasis added). "[On the other hand, a] plausible claim of innocence, supported by some facts or evidence in the record, constitutes a fair and just reason for allowing pre-sentence withdrawal of a guilty plea." ***Id.*** (citations omitted). "Where, however, the defendant merely makes a bare assertion that he is innocent without any proffer of any supporting basis for that claim, the

trial court in its discretion may deny withdrawal on the ground that the defendant has not shown a fair and just reason for withdrawal of the plea." ***Id.*** (citations omitted). "[B]oth the timing and the nature of the innocence claim, along with the relationship of that claim to the strength of the government's evidence, are relevant." ***Islas***, 156 A.3d at 1190 (footnote omitted).

In the case *sub judice*, in denying Appellant's pre-sentence motion to withdraw his guilty plea, the trial court stated the following:

> [Appellant's] case was scheduled for trial back on April 9, 2024. That was a trial date that had been scheduled, and the Defenders Association of Philadelphia was—had been previously appointed to represent [Appellant]. During a status hearing held about three weeks prior to the jury trial on March 15, 2024, the defense requested a continuance based on [Appellant's] assertion that [Appellant] wanted to retain private counsel.
>
> Based on that assertion, the [trial] court granted the defense request and scheduled a new jury trial to take place on January 14, 2025, which was over 9 months after the original jury trial date. A trial readiness conference was held on January 10, 2025, at which the Commonwealth stated that it would be ready to proceed with trial, and the defense made a continuance request at that time based, once again, on [Appellant's] desire to retain private counsel.
>
> At that time, the [trial] court denied the request, and the jury trial date of January 14, 2025, remained. On the morning of January 14, 2025, [Appellant] again asked for a continuance because he wanted to retain private counsel. During the nine-month period prior to the trial date and the January—the January trial date of January 14, 2025, no private attorneys had entered their appearances to represent [Appellant].
>
> [Appellant] still had not retained private counsel on the date of trial. And I will just note that there is no evidence on the record that [Appellant] hired Pat Link or reasonably had any expectation that Pat Link would be present for his trial or that Mr. Link failed to appear for his trial.

> Mr. Link was never—had never entered an appearance to represent [Appellant], has never appeared for a single court listing in this case, and has made no communications to the [trial] court indicating that he was representing [Appellant] or was in the process of representing [Appellant] or entering his appearance of anything of that sort.
>
> Noting that the [trial] court had already granted a nine-month continuance to give [Appellant] an opportunity to proceed with retained counsel, the [trial] court denied [Appellant's] request for a continuance. A jury panel was assembled, and jury selection was about to begin; however, the [trial] court then conducted a…colloquy with [Appellant] regarding any plea offers made by the Commonwealth.
>
> During the colloquy, the [trial] court described the charges faced by [Appellant], as well as the maximum penalties for those charges under the law. The [trial] court also asked [whether] [Appellant] had been aware of a prior offer made by the Commonwealth and described by [ADA] Wood during the colloquy. [Appellant] stated that he was not aware of the offer and indicated he would like to discuss the offer with his attorney.
>
> The [trial] court then took a recess to permit [Appellant] to meet privately with his attorney. And after that recess, [Appellant's counsel] indicated that [Appellant] had decided to proceed with an open guilty plea with the understanding that the Commonwealth would *nolle pros* the attempted murder charge and agree to recommend that the aggregate maximum sentence be capped at 20 to 40 years' incarceration.
>
> The [trial] court then conducted a plea hearing as reflected in the notes of testimony for January 14, 2025, which [the trial court] incorporates into these findings of fact. As reflected in the notes, [ADA] Wood made a detailed proffer of the evidence in this case that would form a sufficient factual basis for [Appellant's] guilty plea.
>
> As part of that proffer, she identified four Philadelphia police officers by name who were traveling on bikes during the evening of October 19, 2022, when [Appellant] drove towards them, revved his engine, and accelerated in the direction of the officers, causing all four of them to have to move out of the way onto the curb to avoid being struck by [Appellant's] minivan.
>
> ADA Wood describes how one of the officers, Officer Gaydosh, was able to provide flash information on his police radio

regarding the minivan, and how, a short time later, Complainant Manual Molina, who was a neighbor of [Appellant], got into a confrontation with [Appellant] after [Appellant] had sideswiped a black Jeep Cherokee with his minivan that he had been driving.

Video showed that the argument between Mr. Molina and [Appellant] quickly escalated into a physical altercation, during which [Appellant] pulled out a firearm and shot Mr. Molina multiple times, including in the neck. ADA Wood described Mr. Molina's certified medical records from Temple Hospital, which showed that Mr. Molina had been shot on the left side of his neck, on his left upper side, and twice on his left knee.

The record further shows that Mr. Molina suffered anterior bleeding from shoulder and back wounds, and that he had to be admitted to the Surgical Intensive Care Unit after suffering from acute blood loss. ADA Wood further described how [Appellant] was spotted in his minivan after the shooting by Sergeant Steffon, and [Appellant] ultimately crashed the minivan into a house at Emerald and Eldhart Streets. [Appellant] fled from the minivan on foot and was pursued by Officer Mills.

During the foot pursuit, [Appellant] pointed a firearm with an extended magazine at Officer Mills. [Appellant] was then stopped by officers in the area of [2**4] E. Clearfield Street where an officer removed the firearm from [Appellant's] hand.

Mr. Molina's wife, who was a witness to the shooting, was taken to the area where [Appellant] was apprehended and positively identified [Appellant] as the person who shot her husband. She also identified the gray minivan. Moreover, ADA Wood described how an FIU report showed that the FCCs recovered from the shooting scene matched the firearm recovered from [Appellant's] hand.

ADA Wood further proffered that [Appellant] was prohibited from possessing a firearm at that time because of his prior conviction for aggravated assault from a case docketed in 2012.

After agreeing that the facts described by [ADA] Wood were the facts upon which [Appellant] was basing his guilty plea, [Appellant] pled guilty to six counts of aggravated assault and one count of possession of a firearm by a prohibited person. At the conclusion of the hearing, the defense indicated that it would waive speedy sentencing to permit a sentencing date on April 11, 2025, in order to have time to put together mitigating evidence.

> And the [trial] court scheduled the sentencing date on April 11, 2025.
>
> One day before the scheduled sentencing hearing, which was 86 days after [Appellant] had pled guilty, [Appellant] filed his motion to withdraw his plea. [Appellant's] motion incorrectly states that sentencing had been scheduled for March 14th and continued by the [trial] court to April 11th because the mental health evaluation had not been completed; however, as the transcript from January 14, 2025, shows, the original sentencing date scheduled by the Court at the time of the plea was April 11, 2025. Again, in part, because the defense indicated it wanted more time to put together a mitigation package.
>
> The motion states—the motion to withdraw states that after discussions with family, [Appellant] is now asserting his innocence. He further alleges in the motion that he entered his plea of guilty while, quote, stressed and confused, unquote, by the process of jury selection which had just begun, and by a colloquy regarding the potential maximum penalties that would apply.
>
> [Appellant] further asserts in the motion that, frightened by these procedures, [Appellant] now alleges that he entered his guilty plea without careful consideration. In its response and opposition to the motion to withdraw the plea, the Commonwealth contends that [Appellant] has failed to demonstrate a fair and just reason for withdrawing his guilty plea, and that he makes nothing more than a bare assertion of innocence.
>
> The Commonwealth further notes that a claim of innocence would be impossible to support given the extraordinary amount of direct, circumstantial, video, physical, and forensic evidence of [Appellant's] guilt. The Commonwealth asserts that [Appellant] is trying to game the system. The Commonwealth further contends that it would be substantially prejudiced due to the passage of time since the prior jury trial date given that a new jury trial would likely not take place until eight or more months from now. A trial would take place three years after the alleged crimes were committed.
>
> Now, I will issue my conclusions of law. Rule 591(A) of the Rules of Criminal Procedure provide, in relevant part, that at any time before the imposition of sentence, the [trial] court may, in its discretion, permit upon motion of [Appellant] the withdrawal of the plea of guilty. The official comment to Rule 591 notes that, after the attorney for the Commonwealth has had an opportunity

to respond to a request to withdraw a plea made before sentencing should be liberally allowed. And our Supreme Court reiterated in ***Commonwealth v. Forbes***,[1] a case from 1973, 299 A.2d 268, that a request to withdraw a plea prior to sentencing should be liberally allowed.

Our Supreme Court in ***Forbes*** further explained that the test to be applied by trial courts is fairness and justice. If the trial court finds, one, any fair and just reason, the withdrawal of the plea before sentence should be freely permitted unless the prosecution has been substantially prejudiced.

In ***Carrasquillo***, [***supra***], our…Pennsylvania Supreme Court provided further guidance on the proper exercise of discretion in the context of pre-sentence requests to withdraw guilty pleas.

The Court in that case made clear that, quote, a bare assertion of innocence is not in and of itself a sufficient reason to grant [Appellant's] motion to withdraw a guilty plea. The Court stated that a mere bare or non-colorable assertion of innocence is insufficient in and of itself to support the withdrawal of a plea. The Court further explained, quote, a defendant's innocence claim must be at least plausible to demonstrate in and of itself a fair and just reason for pre-sentence withdraw of a plea. More broadly, the proper inquiry on consideration of such a 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.

Other relevant factors from ***Carrasquillo***, include the timing of the assertion of innocence, whether the Commonwealth made a strong evidentiary proffer, and whether the Commonwealth made a strong evidentiary proffer at the plea hearing. In ***Commonwealth v. Blango***,[2] our Superior Court held that because [the appellant] in that case had not made a plausible claim of innocence, the trial court did not abuse its discretion in declining to permit withdrawal of [the appellant's] guilty plea on that ground.

Another relevant factor cited by the Superior Court in ***Blango*** was whether [the appellant] was attempting to

---

[1] ***Commonwealth v. Forbes***, 299 A.2d 268 (Pa. 1973).

[2] ***Commonwealth v. Blango***, 150 A.3d 45 (Pa.Super. 2016).

manipulate the system. And the Superior Court noted in ***Islas***, [***supra***], that the question of whether an accused had an ulterior or elicit motive for the motion to withdraw may also be a relevant factor.

After considering the history of this case, the facts that I have cited, as well as the applicable legal standards which I have cited, this Court concludes that [Appellant] has failed to make more than a mere bare or non-colorable assertion of innocence. [Appellant's] claim that he was stressed and confused by the jury selection process is unexplained. [Appellant] offers no explanation for how or why the jury selection process confused him or why such confusion would have caused him to plead guilty.

He further asserts that he was stressed and confused by the Court's explanation of the maximum possible penalties he could face under the law if convicted of the charged offenses, but, again, he fails to explain in any meaningful way how he was confused by that explanation.

While he may have felt stressed, it goes without saying that facing serious felony charges, including attempted murder and aggravated assault, in a criminal case is likely a stressful experience for the vast majority of criminal defendants. His feeling of stress in and of itself does not provide a fair and just reason to permit withdrawal of his plea. And, moreover, none of [Appellant's] claims of confusion and stress speak to his assertion of innocence which remains bare and non-colorable.

Another relevant factor is the timing of [Appellant's] assertion of innocence. Although [Appellant] pled guilty on January 14, 2024, he waited until the day before his [initially scheduled] sentencing hearing to file his motion to withdraw, which was 86 days after his guilty plea hearing. He offers no explanation for why he waited so long. His claim that he pled guilty as a result of stress and confusion on the day of his plea hearing is undercut by the fact that he failed to take any action to withdraw his guilty plea until 86 days had passed since the date of his plea hearing.

Also relevant is the strength of the Commonwealth's evidentiary proffer at the plea hearing. In this case, the evidentiary proffer was overwhelmingly strong. Law enforcement officers were both victims and witnesses to [Appellant's] attempt to hit them with his minivan. An eyewitness positively identified [Appellant] in the shooting of Mr. Molina. The shooting is caught on video. [Appellant] is chased on foot and apprehended by

officers with a gun in his hand, which an officer saw [Appellant] point at him. The forensic evidence shows that the FCCs from the scene of the shooting of Mr. Molina matches the gun recovered by police from [Appellant's] hand.

This and other evidence described by [ADA] Wood during the plea hearing is simply overwhelming evidence of guilt, and [Appellant] has not addressed or sought to address any of that evidence or offered any explanation for how or why he is innocent in light of the proffered evidence.

Based on the record in this case, the Court further concludes that [Appellant's] motion to withdraw the plea reflects an attempt by [Appellant] to manipulate the system. [Appellant] successfully obtained a continuance of nine months from the first jury trial date set in this case based on his claim that he was in the process of retaining private counsel. Nine months later, [Appellant] again sought a continuance of his jury trial claiming that he still wanted to retain private counsel even though he had failed to do so in the past nine months. The Court denied the defense request for a continuance, both at the pretrial conference on January 11, 2025, and on the morning of trial on January 14, 2025.

With the Commonwealth and its witnesses ready to proceed to trial and a jury panel assembled and ready to begin jury selection, [Appellant] then indicated for the first time that he wanted to plead guilty, thus averting a jury trial. The defense asked for a long sentencing date to have more time to put together a mitigation package, and then [Appellant] waited until the day before that sentencing hearing to file a motion to withdraw his plea.

If [Appellant was] successful in withdrawing his plea, he would essentially be getting the continuance that [the trial] court denied repeatedly. And based on the full record and circumstances of this case, the [trial] court concludes that [Appellant's] course of action reflects an attempt to manipulate the judicial system based on an ulterior motive of further delaying his jury trial.

Based on the totality of the circumstances and the record in this case, the [trial] court concludes that [Appellant] has failed to make a colorable demonstration under the circumstances such that permitting withdrawal of the plea would promote fairness and justice. There is no fair and just reason from this record to permit [Appellant] to withdraw his guilty plea. And, accordingly, [the trial court denied] [Appellant's] motion to withdraw his guilty plea[.]

N.T., 6/16/25, at 13-30 (footnotes added).

We agree with the trial court's sound reasoning and find no abuse of discretion. ***Islas***, ***supra***. We agree that Appellant presents a bare assertion of innocence. ***See id.*** Although he now baldly claims he was "stressed and confused" by the jury selection process, he confirmed during the guilty plea colloquy that he understood the proceedings, was entering his plea voluntarily, understood that he was giving up the right to a trial made up of twelve people whom he and his attorney would participate in choosing, and understood that the jury's verdict would need to be unanimous. N.T., 1/14/25 at 13-16. Appellant is bound by his affirmative statements, which he made during the colloquy. ***See Commonwealth v. McCauley***, 797 A.2d 920, 922 (Pa.Super. 2001) (holding a defendant is bound by statements he makes during a plea colloquy, and he may not assert grounds for withdrawing the plea that contradict these statements).

Moreover, Appellant now baldly claims he was "stressed and confused" by the trial court's recitation of the potential maximum penalties he faced if he proceeded to trial and was convicted of all charges. However, as the trial court indicated in denying Appellant's pre-sentence motion to withdraw his plea, beyond this bare assertion, Appellant has not explained how he was confused.

Simply put, we agree with the trial court that Appellant did not set forth a "fair and just reason" for the withdrawal of his guilty plea, and, therefore,

the trial court did not abuse its discretion in denying Appellant's pre-sentence motion related thereto.[3] ***See Jamison***, ***supra***.

For all of the foregoing reasons, we affirm.

Judgment of sentence affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/5/2026

[3] Having so found, we note it is unnecessary to determine whether withdrawal of Appellant's plea would cause substantial prejudice to the Commonwealth. ***Jamison***, ***supra***.