

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-349

COMMONWEALTH

vs.

RICCARDO D'ORSAINVILLE.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant appeals from an order denying his motion to withdraw a guilty plea. As the basis for his appeal, the defendant argues that, due to ineffective assistance of counsel, his guilty plea was not made voluntarily and intelligently. The defendant additionally claims that the judge impermissibly imposed a condition prohibiting him from accessing Internet-based dating websites during the period of his probation. We affirm.

Standard of review. We treat a motion to withdraw a guilty plea like a motion for a new trial pursuant to Mass. R. Crim. P. 30 (b), as appearing in 435 Mass. 1501 (2001). See Commonwealth v. Lastowski, 478 Mass. 572, 575 (2018). A motion for a new trial is "addressed to the sound discretion of the judge," and we review "only to determine whether there has been a

significant error of law or other abuse of discretion" (citation omitted). Commonwealth v. Cavitt, 460 Mass. 617, 625 (2011). Substantial deference is afforded to the judge's decision when the motion judge, as is the case here, was also the plea judge. Commonwealth v. Grant, 426 Mass. 667, 672 (1998), S.C., 440 Mass. 1001 (2003).

Discussion. Ineffective assistance. The defendant argues that both his original trial counsel and his standby counsel were ineffective for failing to fully investigate his case and caused him to accept a plea deal under the mistaken belief that the Commonwealth's case against him was strong. Therefore, he argues, his plea was unintelligent and involuntary.

The defendant's ineffective assistance claims are without merit because the defendant waived his right to counsel and represented himself. A defendant has no constitutional right to represent himself and have counsel. McKaskle v. Wiggins, 465 U.S. 168, 183 (1984). See Commonwealth v. Brown, 378 Mass. 165, 176 (1979). Moreover, the Supreme Judicial Court has rejected the proposition that there is a constitutional right to a minimum level of assistance from standby counsel. See Commonwealth v. Molino, 411 Mass. 149, 152 (1991). A defendant who chooses to represent himself may not later raise a claim of ineffective assistance of counsel. Commonwealth v. Jackson, 419 Mass. 716, 720 (1995).

To the extent that the defendant claims that counsel performed deficiently during earlier parts of the case in which he was fully represented, he has failed to explain why he could not and did not remedy that assertedly deficient performance once he began to represent himself. He suggests no reason why he could not have performed further investigation of his case, moved to dismiss certain charges, or filed what in his view could have been a better-supported motion to suppress. Nor has the defendant filed, or explained the absence of, affidavits from his former counsel, explaining their strategic decisions during the time they represented him. See Commonwealth v. Goodreau, 442 Mass. 341, 354 (2004); Commonwealth v. Alvarez, 62 Mass. App. Ct. 866, 870 (2005). In these circumstances, and particularly where the defendant subsequently pleaded guilty, see note 1 infra, any claim of ineffective assistance of counsel has been waived.

Intelligent and voluntary plea. "A defendant's plea is intelligent when made with understanding of the nature of the charges (understanding of the law in relation to the facts) and the consequences of his plea (the legal consequences and constitutional rights he foregoes by pleading guilty rather than proceeding to trial); it is voluntary when free from coercion, duress, or improper inducements." Commonwealth v. Hiskin, 68 Mass App. Ct. 633, 638 (2007).

In his findings, the judge noted that during the plea colloquy the defendant confirmed he understood he was giving up his right to trial and that he had not been forced to give up that right. The defendant further understood that he was pleading guilty to three crimes, that the poisoning charge carried a potential life sentence, and that he was waiving any right to appeal any legal issue or ruling other than the sentence. Additionally, the defendant signed a waiver where he represented that "he freely and voluntarily was pleading guilty." The defendant acted as his own counsel in the case for a year and "submitted . . . extensive and detailed written motions and supporting memoranda to [the] [c]ourt on numerous occasions, which unequivocally demonstrate[d] that he understands the facts and issues raised in this case." He also "demonstrated a commendable awareness of the legal process and assiduously advocated for his rights."

The judge conducted a "real probe of the defendant's mind" before finding that his plea was intelligent. Hiskin, 68 Mass. App. Ct. at 638, quoting Commonwealth v. Foster, 368 Mass. 100, 107 (1975). The judge was entitled to rely on the defendant's sworn responses to his "informed questions made in the solemnity of [the] formal plea proceeding," which the defendant initiated by his tender. Hiskin, supra. See Commonwealth v. Williams, 71 Mass. App. Ct. 348, 355 (2008) ("The plea proceeding is not some

frivolous exercise, where words have no meaning and answers are of no consequence"). We find no error or abuse of discretion in the judge's rejection of the defendant's claim that his plea was not intelligent and voluntary.

Condition of probation. The defendant argues that the judge impermissibly imposed a probation condition as part his sentence, prohibiting the defendant from accessing any dating-related Internet sites during the term of his probation.

"Judges are permitted 'great latitude' in imposing conditions of probation and may place restrictions on probationers' freedoms that would be unconstitutional if applied to the general public" (quotation and citation omitted). Commonwealth v. Pike, 428 Mass. 393, 402 (1998). "Even where a condition of probation affects a constitutional right, it is valid if it is 'reasonably related' to the goals of sentencing and probation, in light of the defendant's underlying crime and [his] particular circumstances." Commonwealth v. Eldred, 480 Mass. 90, 96 (2018).

Given the history of the defendant's current conviction, and the evidence that he used an Internet dating site to lure men, the probation condition prohibiting him from accessing such sites was reasonably related to the goal of preventing the

defendant from reoffending and does not constitute an error of law or abuse of discretion.<sup>1</sup>

Based on all that is before us, we see no error and no abuse of discretion in the judge's decision to deny the defendant's rule 30 (b) motion.

Order denying motion to  
withdraw guilty plea and  
for new trial affirmed.

By the Court (Blake, Sacks &  
D'Angelo, JJ.<sup>2</sup>),

Clerk

Entered: June 21, 2022.

---

<sup>1</sup> The defendant's remaining arguments, regarding supposed defects in the grand jury proceedings and the sufficiency of the evidence, are waived. "A guilty plea, once accepted, leads to a final judgment of conviction; like a verdict of guilty, it is conclusive." Commonwealth v. Cabrera, 449 Mass. 825, 830 (2007), citing Kuklis v. Commonwealth, 361 Mass. 302, 305 (1972). Moreover, a plea of guilty by its terms waives all nonjurisdictional defects. Id.

<sup>2</sup> The panelists are listed in order of seniority.