

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
GERALD LEE BOJANAC	:	
	:	
Appellant	:	No. 69 MDA 2026

Appeal from the Judgment of Sentence Entered December 19, 2025
In the Court of Common Pleas of Northumberland County
Criminal Division at No(s): CP-49-CR-0001140-2023

BEFORE: PANELLA, P.J.E., DUBOW, J., and SULLIVAN, J.

MEMORANDUM BY PANELLA, P.J.E.:

FILED: OCTOBER 13, 2026

Gerald Lee Bojanac appeals from the judgment of sentence entered in the Court of Common Pleas of Northumberland County for his conviction of indecent assault without consent, 18 Pa.C.S.A. § 3126(a)(1). Bojanac argues that the trial court erred in denying his pre-sentence motion to withdraw his *nolo contendere* plea because he asserted his innocence and the Commonwealth failed to establish substantial prejudice. After careful review, we affirm.

We glean the following from our independent review of the certified record.¹ On the evening of November 26, 2022, Bojanac and his co-worker

¹ The certified record provided to the Court in this matter does not contain a transcript of the plea hearing, or the transcript from the November 21, 2025, sentencing hearing at which Bojanac made an oral motion to withdraw his
(Footnote Continued Next Page)

were closing at Subway. During this time, Bojanac grabbed and smacked his co-worker's buttocks. Bojanac gave her a ride home during which she agreed to go to Bojanac's house to see a dog that Bojanac claimed he was watching for his roommate. They went into the house up to the second-floor bedroom when the victim realized there was no dog in the house. Bojanac pushed the victim on the bed and pulled her pants and underwear off. She tried to get up multiple times, but Bojanac held her down. Bojanac proceeded to perform oral sex on her and penetrated her vagina with his penis which caused her to bleed. The ordeal lasted about ten to fifteen minutes. Afterwards, Bojanac gave the victim a ride home and told her to keep the incident a secret. Within a couple hours, the victim went to the emergency room to have a rape kit performed.

A couple months later, police interviewed Bojanac during which he provided a DNA sample. Notably, Bojanac did not claim that the victim consented but instead claimed he never had any sexual contact with her. The DNA test results suggested otherwise. Bojanac's DNA matched sperm samples collected around the victim's vagina.

Bojanac was charged with rape–forcible compulsion, involuntary deviate sexual intercourse–forcible compulsion, sexual assault, aggravated indecent

plea. We remind Bojanac that it was his burden to provide this Court with a complete record, as we may generally only review documents that are part of the certified record. **See** Pa.R.A.P. 1921; **Commonwealth v. Ulysse**, 359 A.3d 9, 22 n.11 (Pa. Super. 2026). However, because the lack of the transcripts does not impede our meaningful appellate review, we decline to find waiver.

assault–forcible compulsion, and indecent assault–forcible compulsion.² On May 12, 2025, the date scheduled for jury selection, Bojanac entered a *nolo contendere* plea to indecent assault without consent, a second-degree misdemeanor, and the Commonwealth withdrew all other charges. “At the plea hearing, the court conducted an on-the-record colloquy with [Bojanac] and the court accepted the plea as knowing and voluntarily made by [Bojanac].” Trial Court Opinion, 4/6/26, at 1. Additionally, Bojanac completed a written plea colloquy form and a sex offender registration colloquy form. Thereafter, a pre-sentence investigation report was completed and the Sexual Offender Assessment Board found that Bojanac was not a sexually violent predator.

On November 21, 2025, the date scheduled for sentencing, Bojanac made an oral motion to withdraw his *nolo contendere* plea and sentencing was continued. On December 1, 2025, Bojanac filed a written motion to withdraw his *nolo contendere* plea. Therein, he generally asserted that he is innocent and stated that the Commonwealth would not be substantially prejudiced because the victim is available to testify. **See** Motion, 12/1/25, at ¶¶ 4-6.

At the sentencing hearing on December 19, 2025, the parties argued the motion. Defense counsel argued that the Commonwealth would not be

² 18 Pa.C.S.A. § 3121(a)(1), 18 Pa.C.S.A. § 3123(a)(1), 18 Pa.C.S.A. § 3124.1, 18 Pa.C.S.A. § 3125(a)(2), and 18 Pa.C.S.A. § 3126(a)(2), respectively. Each offense is a felony, other than indecent assault–forcible compulsion, which is a first-degree misdemeanor.

prejudiced by the court granting the motion because the victim was still available to testify and “the fair and just reason is Mr. Bojanac is telling me he’s not guilty of the offense[.]” N.T., 12/19/25, at 3-4. The Commonwealth argued that Bojanac’s assertion in the written motion was merely a bare assertion of innocence, despite Bojanac’s claim that he was “not involved, there are DNA results that are attributable to the DNA sample for Mr. Bojanac that was located on the external part of the victim’s vagina,” and the Commonwealth would be substantially prejudiced because two and a half years had passed. ***Id.*** at 4-5. The trial court denied the motion. ***See id.*** at 5. Prior to being sentenced, Bojanac proclaimed

I can’t believe we’re sitting here right now. I’m sorry. . . . I’m not what that says I am. I’m not that kind of person at all. I wish everybody in here knew me and knew what kind of person and knew more about this situation than . . . [what] is just written on a piece of paper ‘cause there’s so much more to this than that, and . . . I think I’m a very good person, sir. . . . I did not do this. I’m sure the [c]ourt will do what they’re going to need to do, but I just . . . want you to know I did not do this.

Id. at 6-7.

The trial court proceeded to sentence Bojanac to 6 to 23 months incarceration in the county jail and fifteen years of sex offender registration. ***See id.*** at 7-8. Bojanac timely appealed. Both Bojanac and the trial court complied with Pennsylvania Rule of Appellate Procedure 1925. ***See*** Pa.R.A.P. 1925(a)-(b).

Bojanac raises the following issue for our review. “Did the trial court err in denying [Bojanac’s] motion to withdraw his [*nolo contendere*] plea prior to

sentencing when he gave a fair and just reason to withdraw his plea and there would be no substantial prejudice to the Commonwealth if he was allowed to withdraw his plea?" Appellant's Brief, at 6 (unnecessary capitalization omitted).

"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). For these purposes, "a plea of *nolo contendere* is equivalent to a plea of guilty." **Commonwealth v. Norton**, 201 A.3d 112, 114 n.1 (Pa 2019) (citation omitted).

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).

"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).

The trial court stated that it denied Bojanac’s motion because he only made a bare assertion of innocence. **See** Trial Court Opinion, 4/6/26, at 3. We discern no abuse of discretion. Bojanac raised his motion to withdraw his plea six months after it was entered. In his motion and at the hearing, he merely made a bare assertion of innocence. He offered no support for his assertion. Further, he was connected to the crime through DNA evidence samples from the victim’s rape kit, which contradicted his statements to police that he never had any sexual contact with the victim. Such a bare assertion of innocence does not amount to a fair and just reason to withdraw a plea. **See Commonwealth v. Williams**, 198 A.3d 1181, 1186 (Pa. Super. 2018) (holding that a rape defendant’s bare assertion of innocence was not plausible considering his DNA was found in rape kit samples taken from the victim); **see also Norton**, 201 A.3d at 121. Accordingly, Bojanac is not entitled to relief and we affirm.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a solid horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/13/2026