

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEO R. MADDOX,	§	
	§	No. 490, 2011
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	ID No. 0910000469
	§	0910003680
Plaintiff Below-	§	
Appellee.	§	

Submitted: December 15, 2011

Decided: February 6, 2012

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 6th day of February 2012, it appears to the Court that:

(1) Defendant-Below/Appellant Leo Maddox appeals from a Superior Court decision denying Maddox's *pro se* motion to withdraw his guilty plea. Maddox raises one argument on appeal. Maddox contends that the Superior Court abused its discretion by refusing to allow him to withdraw his plea on grounds that Maddox lacked adequate representation by counsel, had a basis to assert legal innocence, and did not enter the plea voluntarily. We find no merit to Maddox's appeal and affirm.

(2) Maddox was indicted by a grand jury on twenty offenses, including eleven felony charges. After multiple continuances and just prior to trial, Maddox

pled guilty to two felony charges of Possession of a Firearm by a Person Prohibited (“PFBPP”). In exchange, the State agreed to *nolle prosequere* all of Maddox’s remaining charges. During the plea colloquy, Maddox affirmed that he was satisfied with his attorney’s representation and that he entered the plea freely and voluntarily. The Superior Court judge accepted the plea after finding that it was made voluntarily and with an understanding of the nature of the charges and the consequences of the plea. A presentence investigation was ordered.

(3) Prior to sentencing, Maddox filed a *pro se* motion to withdraw his guilty plea and requested new counsel, contending that his plea was involuntary, that his counsel was ineffective, and that he had a basis to assert legal innocence. The Superior Court denied the motion after a hearing where Maddox was represented by new counsel. Maddox was sentenced to five years at Level V, given credit for time served, and the balance of the sentence was suspended for probation. This appeal followed.

(4) “We review the denial of a request to withdraw a guilty plea for abuse of discretion.”¹ Superior Court Criminal Rule 32(d) states:

If a motion for withdrawal of a plea of guilty or *nolo contendere* is made before imposition or suspension of sentence or disposition without entry of a judgment of conviction, the court may permit withdrawal of the plea upon a showing by the

¹ *Chavous v. State*, 953 A.2d 282, 285 (Del. 2008).

defendant of any fair and just reason. At any later time, a plea may be set aside only by motion under Rule 61.²

Thus, the defendant has the burden to show a fair and just reason for the withdrawal. The Superior Court undertakes a five-part inquiry in determining whether to permit withdrawal:

- (1) Was there a procedural defect in taking the plea;
- (2) Did [defendant] knowingly and voluntarily consent to the plea agreement;
- (3) Does [defendant] presently have a basis to assert legal innocence;
- (4) Did [defendant] have adequate legal counsel throughout the proceedings; and,
- (5) Does granting the motion prejudice the State or unduly inconvenience the Court.³

These factors are not balanced, and some factors may justify relief on their own.⁴

(5) Maddox's claims were contradicted by his sworn testimony at the plea colloquy. During the colloquy, Maddox admitted his guilt, stated that he was satisfied with his attorney's representation, and confirmed that he entered the plea freely and voluntarily with an understanding of the nature of the charges and the consequences of the plea. These statements are presumptively truthful.⁵ Maddox

² Del. Super. Ct. Crim. R. 32(d).

³ *Scarborough v. State*, 938 A.2d 644, 649 (Del. 2007).

⁴ *Id.*

⁵ *See Somerville v. State*, 703 A.2d 629, 632 (Del. 1997) (holding statements of defendant during plea colloquy are presumptively truthful and pose a formidable barrier in any subsequent collateral proceeding) (internal citations omitted).

also completed the Truth-In-Sentencing Guilty Plea Form and acknowledged that he gave correct answers to all of the questions on the Form. Absent clear and convincing evidence to the contrary, Maddox “is bound by his answers on the Truth-in-Sentencing Guilty Plea Form and by his sworn testimony prior to the acceptance of the guilty plea.”⁶ Maddox failed to demonstrate that his plea was not entered knowingly or voluntarily.

(6) Nor did Maddox provide sufficient evidence for a finding of inadequate representation. Maddox alleged a “deteriorating relationship” with counsel below regarding whether Maddox had an underlying felony conviction in Virginia to support the PFBPP charge. But, counsel relied on a certified report from the National Crime Information Center—provided to the State in connection with the Delaware charges—that indicated Maddox had a felony conviction from Albemarle County, Virginia. Maddox’s counsel properly relied on this certified record when Maddox failed to provide any contrary evidence that the felony had been expunged. Similarly, Maddox did not produce a basis for legal innocence sufficient to call his plea into question. He produced only a letter from a different county in Virginia stating that there is no record of a felony conviction in that county. We find no abuse of discretion by the Superior Court in denying Maddox’s motion to withdraw his guilty plea.

⁶ *Id.*

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice