IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
v.)) ID No. 1202018860
MICHAEL SELBY,)
Defendant.)

ORDER

Upon Defendant's Motion to Withdraw Guilty Plea Defense Counsel's Motion to Withdraw as Counsel DENIED

- 1. On December 11, 2012, Defendant was scheduled to go to trial for attempted first degree murder, robbery first degree, related weapons and conspiracy charges. Instead, Defendant pleaded guilty to assault first degree and possession of a firearm during the commission of a felony.
- 2. Before accepting Defendant's plea, the Court conducted an extensive colloquy with Defendant. Among other things, Defendant told the Court that he was pleading guilty because he was guilty. Not only that, Defendant specifically admitted, "I shot a man," and he knew he was shooting him.
- 3. Defendant also told the Court that he had enough time to discuss the facts, charges, defenses, and consequences with his attorney. Defendant also assured the Court, orally and in writing, that he was satisfied with his lawyer's

representation and that his lawyer had represented him to the best of the lawyer's ability.

- 4. After the extensive colloquy, the Court specifically found that the plea was knowing, voluntary and intelligent. The jury panel was sent away.

 Sentencing was deferred until March 1, 2013, pending a presentence investigation.

 It is not clear why sentencing was further delayed. In any event, on March 8,

 2013, Defendant's counsel filed the above-captioned motion.
- 5. Defendant offers five reasons why he should be allowed to withdraw his guilty plea:
 - a. Defendant felt pressured and threatened because his counsel said that he would be convicted at trial;
 - b. Defendant's counsel refused to file motions on his behalf;
 - c. Defendant's counsel was not properly prepared for trial;
 - d. Defendant is actually innocent of the charges; and
 - e. Defendant's counsel forced him to accept the plea.
- 6. As presented above, each of the reasons offered in support of the motion to withdraw guilty plea is directly refuted by Defendant's own statements to the Court. Defendant's motion does not suggest, in the slightest, why Defendant repeatedly lied to the judge. Moreover, the motion to withdraw guilty plea does not point to a procedural defect in taking the plea.

- 7. The Court accepted a plea to a lesser-included offense, which is administratively disfavored, but to Defendant's favor. Defendant points to no defect in the plea colloquy. Accordingly, there is no basis offered by Defendant to justify granting the motion to withdraw guilty plea, which Defendant filed three months after the day of trial.
- 8. Counsel's motion to withdraw states that Defendant is dissatisfied with counsel's efforts, setting up a "built-in irreconcilable rift in the attorney-client relationship." This rift renders counsel "unable to make arguments in furtherance of the motion to withdraw the plea." The Court is not persuaded. Were defendants able to trigger appointment of new counsel simply by alleging ineffective assistance due to alleged pressure or unpreparedness, there would be no end to it. Buyer's remorse is not uncommon and, absent special circumstances which are not alleged here, counsel must be prepared to address it. In order to conduct its business, the Court must be able to rely on its officers, and to accept the defendants' statements during the plea colloquy. Again, defense counsel proffered the plea as knowing, voluntary and intelligent and Defendant personally assured the Court that was true.
- 9. Meanwhile, counsel is presumed to be effective and Defendant's counsel does not agree that any of Defendant's accusations are true. The fact that

Defendant's counsel disagrees with Defendant about counsel's preparedness does not create a reason to allow counsel's withdrawal, much less does it justify appointing new counsel at taxpayers expense.

10. Counsel's reliance on *Bultron*¹ is misplaced. There, counsel was allowed to withdraw because of Bultron's threats toward counsel. Moreover, the Court declined to appoint new counsel after Bultron's court-appointed attorney was allowed to withdraw.

For the foregoing reasons, Defendant's Motion to Withdraw Guilty Plea and Defense Counsel's Motion to Withdraw as Counsel are hereby **DENIED**.

Sentencing will go forward, as scheduled, on April 26, 2013.

IT IS SO ORDERED this 24th day of April, 2013.



oc: Prothonotary (Criminal)

pc: Andrew J. Vella, Deputy Attorney General Gregory M. Johnson, Esquire

*Criminal Administrative Judge for the year 2013.

¹ State v. Bultron, 2005 WL 159619, at *5, aff'd, 897 A.2d 758 (Del. 2006) (citing McKee v. Harris, 649 F.2d 927 (2d Cir. 1981)).