

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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***Re: State of Delaware v. Christopher A. Shweda
I.D. Nos. 1203024880, 1208000889, 1209016855***

Submitted : November 5, 2013

Decided : February 4, 2014

On Defendant's Motion to Withdraw Guilty Plea.

DENIED.

Dear Counsel:

INTRODUCTION

Defendant Christopher Shweda ("Defendant") moves to withdraw his plea of guilty to Drug Dealing (3 counts), Conspiracy to Commit Racketeering, and Promoting Prison Contraband, asserting that he is "innocent of all charges."¹ Defendant's sentencing has been postponed while awaiting disposition of this

¹ Def.'s Mot. to Withdraw Guilty Plea (internal quotation marks omitted).

Motion. Defendant has not clearly and convincingly demonstrated a “fair and just reason” to permit withdrawal of his plea. Therefore, Defendant’s Motion is **DENIED**.

I. FACTUAL AND PROCEDURAL HISTORY

Defendant was indicted on May 7, 2012, September 10, 2012, and February 4, 2013 on three separate and distinct sets of charges, including, among others, Drug Dealing, Illegal Possession of a Controlled Substance, Possession of Drug Paraphernalia, Racketeering, Conspiracy, and Promoting Prison Contraband.²

On March 4, 2013, Defendant pled guilty to three counts of Drug Dealing, one count Conspiracy to Commit Racketeering, and one count Promoting Prison Contraband.³ Sentencing for these counts has yet to be scheduled.⁴

The Court conducted a plea colloquy that covered the executed plea agreement, executed Truth in Sentencing form, and any potential conflicts with Defendant’s counsel.⁵ During the colloquy, Defendant showed no signs of wavering and appropriately answered each question. In pertinent part, the plea proceeding and colloquy proceeded as follows:

Court: Do you believe you are knowingly, voluntarily, and intelligently entering a plea of guilty to these charges?

Defendant: Yes, you Honor.

Court: Do you understand what’s being done today is final? You’ll not be able to come back at some later time and seek to withdraw your guilty plea?

Defendant: Yes, your Honor.⁶

In addition to performing the plea colloquy, the Defendant appropriately signed the plea agreement and filled out the Truth-In-Sentencing form. Therefore, the Court found Defendant’s guilty plea was knowingly, voluntarily, and intelligently entered.⁷ A presentence investigation was ordered and the Court set

² St.’s Response at 2.

³ *Id.* at 2-3.

⁴ Def.’s Mot. to Withdraw at 1.

⁵ St.’s Response at 3.

⁶ Plea Colloquy Tr. at 12.

⁷ *Id.* at 13.

an initial sentencing date for May 17, 2013. However, on July 26, 2013, Defendant filed this Motion to Withdraw Guilty Plea pursuant to Superior Court Criminal Rule 32.

II. THE PARTIES' CONTENTIONS

Defendant wishes to withdraw his guilty plea on the basis that he now asserts he is "innocent of all charges."⁸ Defendant does not argue there was a procedural defect in taking the plea and admits that he did knowingly and voluntarily consent to the plea agreement.⁹ Defendant also acknowledges he had adequate legal counsel throughout the proceedings.¹⁰ Defendant's counsel defers to the State to "proffer whether the withdrawal of the guilty plea will cause prejudice or any undue inconvenience to the trial court."¹¹ Defendant's motion appears to rest entirely on his assertion of innocence.

The State contends that Defendant's assertion of innocence does not satisfy the burden required to withdraw his plea.¹² The State argues that the plea agreement was free from any procedural defects and that the oral confirmation during the plea colloquy combined with his signature on the Truth in Sentencing Form support the position that his plea was knowingly, voluntarily and intelligently given.¹³

The State also contends, in agreement with Defendant's Motion, that Defendant had adequate legal counsel throughout the proceedings.¹⁴

The State contends that Defendant does not have a basis to assert his innocence and therefore withdraw his plea.¹⁵ The State argues that Defendant has not provided any evidence to substantiate his newly claimed innocence, nor does his Motion detail what has changed since he accepted the plea.¹⁶ The State maintains that Defendant's "sudden claim of innocence" "is disingenuous at best."¹⁷ The State contends Defendant was aware of all of the evidence against him and the possible sentence and still admitted to the crimes in open court.¹⁸ The State maintains Defendant's answers at the colloquy are presumed truthful and therefore this claim should be found "meritless."¹⁹

⁸ Def.'s Mot. to Withdraw at 1 (internal quotation marks omitted).

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² St.'s Response at 4.

¹³ *Id.* at 5.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 5.

¹⁶ *Id.*

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 5-6.

The State also contends that allowing Defendant to withdraw his plea would prejudice the State and inconvenience the Court.²⁰ The State argues the Court would be inconvenienced by “the sheer amount of time it would take to try these three cases.”²¹ The State also maintains that their evidence has been weakened by the passage of time since the incidents occurred in 2012.²² The State argues their witnesses, originally prepared to testify in March 2013, will have weaker memories at this time than they would at the time of the original trial.²³ The State takes the position that this delay causes a degree of prejudice that discourages withdrawal of Defendant’s plea.

DISCUSSION

Superior Court Criminal Rule 32(d) provides that if a motion to withdraw a guilty plea is made prior to sentencing, the court may permit the plea’s withdrawal for “any fair and just reason.”²⁴ “[A] defendant bears the burden of showing that there is a fair and just reason to permit the withdrawal.”²⁵ Permitting a defendant to withdraw a guilty plea is within the discretion of the trial court, provided the Court ensures that Superior Court Criminal Rule 11 is satisfied.²⁶ Rule 11(c) requires that the Court ensure that the defendant is properly informed regarding the legal effect of the plea, the consequences of the plea, and the rights that a defendant forfeits by entering the plea.²⁷

Similarly, Rule 11(d) provides:

The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court,

²⁰ *Id.* at 6.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 7.

²⁴ Super. Ct. Crim. R. 32(d).

²⁵ *State v. Cox*, 2011 WL 5316739, at *1 (Del. Super. Oct. 6, 2011).

²⁶ *Wells v. State*, 396 A.2d 161, 162 (Del.1978) (citations omitted).

²⁷ Super. Ct. Crim. R. 11(c). In pertinent part, Rule 11(c) requires that the court ensure that the defendant understands: “The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, the fact that the court is required to consider any applicable sentencing guidelines but may depart from those guidelines under some circumstances, and, when applicable, that the court may also order the defendant to make restitution to any victim of the offense; and. . .[t]hat the defendant has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury, when applicable, and at trial the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, and the right against compelled self-incrimination; and. . .[t]hat if a plea of guilty or nolo contendere is accepted by the court there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial.

determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney general and the defendant or the defendant's attorney.²⁸

If a defendant has signed the Truth–In–Sentencing Guilty Plea Form and satisfactorily completed a guilty plea colloquy with the Court, the defendant must show by clear and convincing evidence that he did not sign the form knowingly and voluntarily.²⁹ When reviewing a guilty plea, “a defendant’s statements to the Superior Court during the [] plea colloquy are presumed to be truthful” and therefore, pose a “formidable barrier to any subsequent collateral proceeding.”³⁰

In analyzing a motion to withdraw a guilty plea, the trial court will consider:

- (i) whether there was a procedural defect in taking the plea;
- (ii) whether the defendant knowingly and voluntarily consented to the plea agreement;
- (iii) whether the defendant has an adequate basis to assert his legal innocence;
- (iv) whether the defendant had adequate legal counsel throughout the proceedings and
- (v) whether granting the motion will prejudice the State or unduly inconvenience the trial court.³¹

A trial judge should only grant a defendant’s request to withdraw a guilty plea where the court finds that the plea was not voluntarily entered or entered because of misapprehension or mistake as to legal rights.³² “In the absence of clear and convincing evidence to the contrary, [the defendant] 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.”³³ Where a defendant demonstrates understanding and assent to a guilty plea through the colloquy and Truth-in-

²⁸ Super. Ct. Crim. R. 11(d).

²⁹ *Scarborough v. State*, 938 A.2d 644, 650 (Del. 2007).

³⁰ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

³¹ *Hartman v. State*, 918 A.2d 338, at *1 (Del. 2007) (TABLE) (citing *Patterson v. State*, 684 A.2d 1234, 1238 (Del. 1996)).

³² *Scarborough*, 938 A.2d at 650 (quoting *State v. Insley*, 141 A.2d 619, 622 (Del.1958)).

³³ *Id.*

Sentencing forms, a defendant must demonstrate by clear and convincing evidence that the forms and testimony were without knowledge and involuntary.³⁴

Defendant's Motion rests on "whether [he] has an adequate basis to assert his legal innocence." Defendant now states that he is innocent but provides no adequate basis to assert such, nor does he provide any information as to why he admitted to crimes he now claims he did not commit during the plea colloquy. He also fails to show clear and convincing evidence that he signed the plea agreement involuntarily or due to misapprehension or mistake.

This Court finds that the plea colloquy was thorough. Defendant answered yes to all questions demonstrating that he understood and assented to the guilty plea. Those statements must be presumed as truthful, as Defendant has not provided any clear and convincing evidence to the contrary. He was even informed that the plea was final, and that he could not come back at a later date and change his mind. That is exactly what Defendant is trying to do now. By failing to proffer sufficient clear and convincing evidence to the contrary, Defendant is bound to his responses at the plea colloquy and his answers on the Truth-in-Sentencing forms. Defendant's plea was entered knowingly, willingly, and intelligently and he fails to show "any fair and just reason" why it should be withdrawn.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Withdraw Guilty Plea is **DENIED**. Defendant's Sentencing will be held at 9:30 a.m. on April 11, 2014.

IT IS SO ORDERED.

Richard R. Cooch, R.J.

cc: Prothonotary
Investigative Services

³⁴ *Cox*, 2011 WL 5316739, at*1.