



Upon consideration of Defendant's Motion to Withdraw Guilty Plea, the Court makes the following findings of fact:

(1) Defendant appeared before the Court on April 9, 2012. Defendant was represented by counsel, Michael Heyden, Esquire.

(2) Mr. Heyden negotiated a resolution of the case which included a guilty plea to one count of Driving Under the Influence of Alcohol, in exchange for which the State agreed to recommend the First Offender Program and to dismiss the two remaining traffic charges, Improper Lane Change and Driving a Motor Vehicle at Slow Speed as to Impede Traffic Flow. This negotiated resolution also included a waiver by the State to possible disqualification for the First Offender Program in that Defendant participated in the First Offender Program in 1985.

(3) In addition to a colloquy on the record, Mr. Heyden presented a written waiver of constitutional trial rights signed by Defendant. Among other identified consequences, the guilty plea form specifically listed "loss of license" as a consequence of a guilty plea to Driving Under the Influence of Alcohol.

(4) Upon presentation of the negotiated plea, Mr. Heyden represented to the Court that he was satisfied with the resolution and that counsel "met with Mr. Roberson and reviewed the terms of the plea agreement and also reviewed with him the rights he is waiving and the penalties he could suffer, and the plea is being entered knowingly, intelligently, and voluntarily."

(5) The Court engaged in a colloquy with Defendant. The Court inquired whether Defendant understood that a guilty plea was being entered and that trial rights were being

waived; that there were consequences flowing from the guilty plea; and discussed the terms and conditions of probation.

(6) The Court accepted Defendant's guilty plea to one count of Driving Under the Influence of Alcohol as a knowing, intelligent, and voluntary waiver of his constitutional trial rights. The State entered a *nolle prosequi* on the two remaining traffic charges, Improper Lane Change and Driving a Motor Vehicle at Slow Speed as to Impede Traffic Flow.

(7) By Court Order dated April 9, 2012, the judgment of conviction for DUI was deferred and Defendant entered the First Offender Program.

### **DISCUSSION**

The decision to withdraw a guilty plea is within the sound discretion of the trial court.<sup>1</sup> The timing of a motion to withdraw a guilty plea is “[a]n important factor in the exercise of that discretion . . . .”<sup>2</sup> Court of Common Pleas Criminal Rule 32.1(d) provides that if a motion to withdraw a guilty plea is made prior to the “imposition or suspension of sentence or disposition without entry of a judgment of conviction,” then the Court may allow withdrawal if the defendant provides a “fair and just reason.”<sup>3</sup> Once a sentence has been imposed, however, a motion to withdraw a guilty plea must be

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<sup>1</sup> *Schofield v. State*, 38 A.3d 1255, at \*1 (Del. Feb 22, 2012) (ORDER) (citing *State v. Insley*, 141 A.3d 619, 622 (Del. 1958)).

<sup>2</sup> *Blackwell*, 736 A.2d 971, 972 (Del. 1999).

<sup>3</sup> CCP Crim. R. 32.1(d).

considered pursuant to Rule 61 as a collateral attack on the conviction.<sup>4</sup> Rule 61 requires defendant to show a higher threshold of cause compared to the showing required for Rule 32(d).<sup>5</sup> Pursuant to Court of Common Pleas Criminal Rule 61(i)(3), “[a]ny ground for relief that was not asserted in the proceedings leading to the judgment of conviction . . . is thereafter barred, unless the movant shows (A) cause for relief from the procedural default and (B) prejudice from violation of the movant’s rights.”<sup>6</sup>

In the motion presented by Defendant to the Court, Defendant has not made any presentation related to the Rule 61 standard for relief. The Court notes, first, Defendant did not file a direct appeal of the conviction and has not stated any reason for that procedural default.<sup>7</sup> Second, Defendant has not demonstrated prejudice. The twelve-month suspension period was nearly concluded by the time Defendant even filed his motion. That is, the suspension period would have been concluded if Defendant had

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<sup>4</sup> *Id.*; see also *Blackwell*, 736 A.2d at 972-73. (“After sentencing, a motion to withdraw a guilty plea constitutes a collateral attack against the conviction and is subject to the requirements of Rule 61, including its bars of procedural default. . . .”).

<sup>5</sup> *Patterson v. State*, 684 A.2d 1234, 1237 (Del. 1983). See also *McNeill v. State*, 810 A.3d 350, 2002 WL 31477132, at \*1 (Del. Nov. 4, 2002) (ORDER) (“Rule 32(d), as opposed to Rule 61, contemplates a lower threshold of cause sufficient to permit withdrawal of a guilty plea . . .”).

<sup>6</sup> *Blackwell*, 736 A.2d at 973.

<sup>7</sup> See *Jamison v. State*, 825 A.2d 238, 2003 WL 21295908, at \*2 (Del. June 3, 2003) (“To the extent he alleges that his guilty plea was involuntary due to Superior Court error, Jamison’s opening brief asserts no cause for why he did not raise these claims on direct appeal . . . . Accordingly, we conclude that Jamison’s allegations of court error are barred by Rule 61(i)(3). . . .”).

completed the DUI course mandated by statute and imposed as a condition of the DUI-FOP probation – but Defendant has not completed the DUI course.<sup>8</sup>

Defendant’s sole legal argument for the relief sought relies upon *Barkley v. State*<sup>9</sup> for the proposition that a trial judge must be certain that the defendant understands the direct consequences of pleading guilty, including revocation of driving privileges if that is a direct consequence of the guilty plea. This Court agrees. Indeed, the record makes it clear that Defendant did, in fact, understand that his driving privileges would be revoked as a result of the deal he had struck.

Although Defendant now argues that, at the time of the guilty plea, he was unaware of the direct consequence of the loss of his license, the record contradicts Defendant’s argument because the guilty plea form, signed by Defendant, states “*loss of license*” under the section entitled Minimum/Mandatory Sentence. In addition, counsel represented to the Court that he had thoroughly discussed with Defendant the plea and its consequences. The Court reviewed with Defendant his decision to plead guilty and was satisfied that Defendant had the opportunity to discuss the matter with counsel and understood the waiver of trial rights and the consequences of pleading guilty. Finally, the Court notes that Defendant is no stranger to DUI laws. He pled guilty to DUI in 1985 and entered the First Offender Program at that time. (As noted, this disqualification was

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<sup>8</sup> A Violation of Probation report dated April 4, 2013 was submitted to the Court, which alleges that Defendant failed to complete the DUI course that he was court-mandated to complete. According to Probation and Parole, Defendant was discharged “at risk” because he had failed to remain abstinent.

<sup>9</sup> *Barkley v. State*, 724 A.3d 558, 559-61 (Del. 1999).

waived by the State in 2012 when Defendant was offered the opportunity to participate in First Offender Program *again*.)

Accordingly, the Court finds that Defendant's guilty plea to Driving under the Influence of Alcohol was a knowing, intelligent, and voluntary waiver of his constitutional trial rights and that Defendant was fully aware of the consequences of loss of driving privileges.

### CONCLUSION

**Based on the findings and reasons stated herein, the Motion to Withdraw the Guilty Plea filed by Defendant is hereby DENIED.**

**IT IS SO ORDERED this 29<sup>th</sup> day of April 2013.**

*Andrea L. Rocanelli*

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**The Honorable Andrea L. Rocanelli**