

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

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 0404018958
	)	
ALEM LOPEZ,	)	
	)	
Defendant.	)	

Submitted: February 1, 2007  
Decided: April 25, 2007

**MEMORANDUM OPINION**

**UPON DEFENDANT’S MOTION FOR REARGUMENT  
OF MOTION TO WITHDRAW GUILTY PLEA AND/OR  
FOR POSTCONVICTION RELIEF**

**DENIED**

Karin M. Volker, Esquire, Department of Justice, Wilmington, Delaware, Attorney  
for the State

Andrew G. Ahern, III, Esquire, Wilmington, Delaware, Attorney for Defendant

JOHNSTON, J.

Defendant was indicted on November 29, 2004 on charges of Murder in the First Degree, two counts of Possession of a Firearm During the Commission of a Felony (“PFDCF”), Possession of a Deadly Weapon by a Person Prohibited (“PDWBPP”) and Attempted Murder First Degree, for the shooting death of Jamie Romero Rojas.

Trial was scheduled to commence on September 12, 2006. On September 7, 2006, Defendant entered pleas of guilty to one count to Possession of a Firearm during Commission of a Felony and to the lesser included offense of Manslaughter.

Defendant asserts that the entry of the pleas was the result of extraordinary pressure brought to bear on him by both his own attorney and the prosecuting attorney. Defendant stated that once he was free of that overbearing influence, he wrote to his attorney and to the Court, by letter dated October 11, 2006, advising that he wished to withdraw his guilty plea. Defendant once again cited his innocence and the stress he experienced as a result of the overwhelming pressure from the attorneys.

At the sentencing on November 17, 2006, Defendant’s request to withdraw the guilty plea was denied. Defendant was sentenced.

Defendant again seeks to withdraw his guilty plea on the grounds that: (1) he is innocent; (2) there is no factual basis to support the plea; and (3) extraordinary coercive pressure was brought to bear on him.

A guilty plea must be voluntary and the Court must be satisfied that the plea is not the result of force, threats, or promises not included in the plea agreement.<sup>1</sup> Defendant maintains that his plea was not voluntary by that standard, and that he did not fully understand the elements of the offense(s) and, therefore, did not fully understand the nature of the charge(s).<sup>2</sup>

Defendant asserts that during the colloquy, when the Court asked Defendant if he had killed the victim, Defendant responded in the negative. Following additional colloquy, Defendant returned to the detention cell to discuss the plea further with his attorney. During this meeting with defense counsel, the prosecutor joined the discussion.

Defendant states that when he was returned to the courtroom, the attorneys expected that he would enter a guilty plea. However, when asked by the Court again whether he had killed the victim, Defendant answered that he had not. Defense counsel covered the microphone and, after a short discussion with Defendant, the plea colloquy continued. Defendant maintains that he did not at any time during the colloquy state that he had caused the victim's death.

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<sup>1</sup>*Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

<sup>2</sup>*See Brown v. State*, 250 A.2d 503, 505 (Del. 1969).

State's recollection of the events differs from Defendant's. The State asserts that the initial plea offer was Murder in the Second Degree and PFD CF. Early in the summer of 2006, the State learned through defense counsel that Defendant would be interested in a plea to Manslaughter, but not to Murder.

After further discussions with counsel regarding the case, the State agreed to offer the Manslaughter Plea. Counsel set up a meeting with Defendant and met with him to discuss the plea. The State was notified after the meeting by counsel that Defendant seemed interested in accepting the plea offer, but requested additional time to think about it and to speak with his mother.

The State asserts that counsel scheduled a teleconference with Defendant for September 6, 2006 and a Plea by Appointment for September 7, 2006. The State was notified on September 6, 2006 that Defendant would accept the plea offer.

Counsel met with Defendant at the courthouse on September 7, 2006. Defendant completed and signed the Plea Agreement and Truth in Sentencing Guilty Plea form.

The Court conducted a plea colloquy, as required by Superior Court Criminal Rule 11(c)(1). Defendant answered all of the Court's questions until it was time to admit to the conduct the State alleged in its indictment. The Court then asked

Defendant if he would like additional time to speak to his attorney. The defendant answered “Yes.”<sup>3</sup>

Defendant was returned to the holding area so that he could meet with his attorney. At that time Defendant also spoke to the prosecutor and asked for a better plea. Defendant asked to be permitted to plea to Criminally Negligent Homicide. The State refused to change the offer and left the holding area. The prosecutor returned to the courtroom. After several minutes, counsel informed the State that Defendant wished to accept the plea offer.

The Court again addressed Defendant to ensure he understood the nature of the charges to which the plea was offered, and to insure Defendant was satisfied with his legal representation. Defendant responded that he was satisfied and understood the charges. Defendant pled guilty to Manslaughter and Possession of a Firearm during the Commission of a Felony. A presentence investigation was ordered.

Sentencing was scheduled for November 17, 2006. On November 17, 2006, Defendant appeared for sentencing and stated that he wished to withdraw his guilty plea. The Court denied his request. Defendant was sentenced to serve a total of 35 years of incarceration suspended after 33 years for 2 of years probation.

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<sup>3</sup>The transcript of the plea colloquy is attached hereto.

The Court finds that Defendant's plea was knowing, intelligent and voluntary. He signed the guilty plea forms and stated that he understood that he was waiving his right to trial, to be presumed innocent and his right to appeal. Defendant was informed that he had the right to go to trial and confront the witnesses the State intended to call to testify.

At the time of sentencing, Defendant asked to withdraw his guilty plea because he was "forced into it." He stated: "I don't want this plea." When the Court questioned Defendant further, he stated that he was told he was only going to get 10 years and that he "didn't kill the victim." Defendant could not point to a procedural defect amounting to cognizable prejudice suffered as a result of his plea.

From the outset, Defendant and his counsel sought to secure the most beneficial plea for Defendant. Defendant was made aware of the evidence against him that the State intended to present at trial. During his plea colloquy, Defendant acknowledged that he was pleading guilty because it was in his best interest to do so.

Defendant was made aware of the minimum mandatory penalties and the other possible outcomes. At no time was he promised a definite sentence. At the time of the plea colloquy, Defendant stated that he had not been pressured or coerced into entering a plea and at no time was he promised a specific sentence. It is clear from the record and Defendant's own statements that he is not happy with his plea because

it is not the plea he requested. However, Defendant's dissatisfaction with the plea he knowingly and voluntarily accepted during his plea colloquy does not amount to coercion or force.

After sentencing, "a plea may be set aside only by motion under Rule 61."<sup>4</sup> Where a defendant moves to withdraw a guilty plea post-sentence, the burden of proving manifest injustice is on the defendant.<sup>5</sup>

Defendant indicated both in his Truth-in-Sentencing Guilty Plea form, and in the Rule 11 colloquy, that he had reviewed the plea agreement thoroughly and carefully with his attorney before signing it, and that he was entering a plea of guilty knowingly, voluntarily and intelligently. In collaterally attacking these facts, Defendant has the burden to show that the plea was not voluntarily entered.<sup>6</sup> Defendant has not met that burden.

Defendant was well apprised of the facts surrounding this case prior to entering his plea of guilty. His counsel informed him of his legal right to a trial and Defendant indicated that he understood the rights that he was giving up by pleading guilty. Defendant offers no specific factual or legal support for his argument of coercion.

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<sup>4</sup>Super. Ct. Crim. R. 32(d).

<sup>5</sup>*State v. Insley*, 141 A.2d 619, 622 (Del. 1958); *State v. Smith*, 451 A.2d 837, 839 (Del. 1982).

<sup>6</sup>*See Insley*, 141 A.2d at 622.

The Court finds that Defendant voluntarily, intelligently and knowingly pled guilty. There were no threats, promises or other inducements, and no evidence of manifest injustice.

**THEREFORE,** Defendant's Motion to Withdraw Guilty Plea is hereby **DENIED.**

**IT IS SO ORDERED.**

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The Honorable Mary M. Johnston

ORIGINAL: PROTHONOTARY'S OFFICE - CRIMINAL DIV.