IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	)	
	)	
v.	)	
	)	I.D. Nos. 2012010059 and
GEORGE CURTIS,	)	2101003496
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER[1]

Submitted: June 2, 2026
Decided: June 9, 2026
Corrected: June 10, 2026

Upon Defendant's Motion to Withdraw Guilty Plea

DENIED

Michael B. Cooksey, Esquire, Deputy Attorney General, Department of Justice, Dover, Delaware, *Attorney for the State*

George Curtis, *Pro Se Defendant*.

Primos, J.

[1] Citations in the form of "D.I. ___" refer to docket items in DUC No. 2101003496.

Defendant George Curtis ("Curtis") moves pursuant to Superior Court Criminal Rule 32(d) to withdraw the guilty plea he entered on November 23, 2022. Curtis principally argues that his plea was not knowing, intelligent, and voluntary, and he asserts a basis for legal innocence. The State opposes the motion, arguing that the plea record forecloses Curtis's claims and that withdrawal at this late stage would substantially prejudice the prosecution and victim.

After reviewing the parties' submissions, the Court finds no "fair and just reason" under Rule 32(d) to permit withdrawal. For the reasons that follow, Curtis's motion is **DENIED.**

PROCEDURAL BACKGROUND

I. Charges, Plea, And Plea Colloquy

On November 9, 2021, Curtis was indicted across Case Nos. 2012010059 and 2101003496 with approximately 197 felony offenses arising from allegations that, beginning on September 19, 2020, he sexually assaulted a juvenile victim, photographed and recorded that conduct, and thereafter used the victim's images in numerous online prostitution-related advertisements.[2] The charged conduct included repeated online postings of the victim's photographs, communications intended to suppress reporting of the incident, and related charges that were later resolved as part of the plea agreement.[3]

On November 23, 2022, Curtis appeared before the Court and entered a plea of guilty to two counts of Sex Offender Unlawful Sexual Conduct Against a Child and two counts of Human Trafficking, Sexual Servitude, with the victim being a minor.[4] In exchange for Curtis's plea to those four offenses, the State entered a *nolle*

[2] *See* State's Resp. to Def.'s Mot. to Withdraw Guilty Plea 1–3 (D.I. 138).
[3] *Id.*
[4] Plea Agreement (D.I. 40).

prosequi on the remaining charges in the instant cases.[5]

During the plea colloquy, Curtis confirmed under oath that he was entering the plea knowingly and voluntarily because he was guilty of the offenses to which he was pleading. Curtis represented that no one had forced or threatened him to enter the plea, that he understood he was waiving his constitutional rights by entering the plea, and that the answers he provided on the Truth-in-Sentencing Guilty Plea Form ("TIS") were truthful and accurate. The TIS likewise reflected that Curtis had freely and voluntarily decided to plead guilty, that he had not been threatened or forced to do so, and that he understood the rights he was relinquishing by entering the plea.[6] Following that colloquy, the Court accepted Curtis's plea.

II. Post-Plea Proceedings

Following Curtis's entry of a guilty plea on November 23, 2022, sentencing was deferred pending preparation of a Pre-Sentence Investigation ("PSI") report. Thereafter, on May 30, 2023, Curtis, through counsel, filed a motion to withdraw guilty plea pursuant to Superior Court Criminal Rule 32(d).[7] In that motion, Curtis primarily asserted that his plea was not knowingly, intelligently, and voluntarily entered, that he had a basis to assert legal innocence, and that granting the motion would neither prejudice the State nor inconvenience the Court.[8]

On June 26, 2023, the State filed a response opposing Curtis's motion.[9] The State principally argued that the plea colloquy and TIS established that Curtis had knowingly and voluntarily entered the plea, that Curtis lacked a viable basis to assert

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[5] D.I. 21. The instant case encompasses two distinct dockets—DUC No. 2012010059 and DUC No. 2101003496. Citations in this Opinion up until this point referred to DUC No. 2101003496. From this footnote onward, all docket items are to docket entries in DUC No. 2102010059, to which the Court cites because the State's *nolle prosequi*, or formal abandonment of the remaining charges, appears on that docket.
[6] *See* Truth-In-Sentencing Guilty Plea Form.
[7] D.I. 48.
[8] Mot. to Withdraw Guilty Plea 2–4 (D.I. 48).
[9] D.I. 53.

innocence, and that withdrawal of the plea would prejudice the State and the victim.[10]

On July 5, 2023, Curtis filed a reply in further support of his motion.[11] Curtis reiterated that his plea was not knowing, intelligent, and voluntary, that he had a basis to assert legal innocence, and that granting the motion would not prejudice the State.[12]

After briefing, the matter did not proceed immediately to decision. Instead, the Court held an office conference on September 27, 2023, at which counsel advised that the pending motion would likely require an evidentiary hearing because the defense contended that Curtis suffered from a mental defect at the time of the plea.[13] Defense counsel further indicated that he wished to consult an expert regarding whether a psychological evaluation would be beneficial.[14] A second office conference was held on October 10, 2023, where the Court was advised that Curtis alleged coercion by family members, fraudulent activity, and sleep deprivation, and that an evidentiary hearing would be needed.[15]

The matter then shifted into expert-driven competency-related proceedings. On November 3, 2023, defense counsel advised the Court that Dr. Laura Cooney-Koss had evaluated Curtis and that a written report would be forthcoming.[16] On December 14, 2023, the Court held an office conference to discuss that report, and in particular Curtis's allegation, as revealed to Dr. Cooney-Koss during her evaluation, that his attorney, James M. Stiller, Esquire, had also coerced him, thus

[10] State's Resp. to Def.'s Mot. to Withdraw Guilty Plea 6–16 (D.I. 53).
[11] D.I. 55.
[12] Def.'s Reply to State's Resp. to Def.'s Mot. to Withdraw Guilty Plea 3–8 (D.I. 55).
[13] D.I. 57.
[14] *Id.*
[15] D.I. 60.
[16] D.I. 61.

raising a conflict forcing Mr. Stiller to withdraw as Curtis's counsel.[17] On December 15, 2023, Natalie Woloshin, Esquire, was substituted as counsel for Curtis.[18]

On December 27, 2023, the Court held another office conference with newly appointed counsel to discuss how the case would proceed.[19] At that conference, the State advised that it had retained Dr. Stephen Mechanick to evaluate Curtis on February 5, 2024.[20] The next day, the Court entered an order directing that Curtis undergo a psychological evaluation by Dr. Mechanick concerning competency both at the time the plea was entered and at the time of the evaluation.[21]

On January 16, 2024, Ms. Woloshin filed a motion to stay proceedings.[22] Following a January 25, 2024 office conference,[23] the Court granted the motion and stayed the matter, including Dr. Mechanick's evaluation of Curtis, for 120 days to allow defense counsel additional time to confer with Curtis.[24]

The representation arrangement later changed again. On May 17, 2024, Ms. Woloshin moved to withdraw as counsel.[25] At a control hearing on May 28, 2024, the Court reserved decision on Ms. Woloshin's motion to give Curtis an opportunity to seek private counsel.[26] Ultimately, the Court granted Ms. Woloshin's motion on August 2, 2024, and directed that Curtis would proceed *pro se* with Ms. Woloshin as standby counsel.[27] The Court also approved the State's request to withhold the then-existing Delaware Psychiatric Center evaluation to allow a new evaluation to

[17] D.I. 62.
[18] *See* D.I. 63–64.
[19] D.I. 66.
[20] *Id.*
[21] D.I. 67.
[22] D.I. 70.
[23] D.I. 72.
[24] D.I. 73.
[25] D.I. 76.
[26] D.I. 77.
[27] D.I. 81, 83.

be completed, with both reports to be served upon Curtis when the second report was completed.[28] On August 5, 2024, the Court entered an order directing that Curtis undergo an additional psychological evaluation by Dr. Mechanick on October 7, 2024.[29]

On October 11, 2024, the State filed a letter advising the Court that, in order for Dr. Mechanick to render a complete expert opinion regarding Curtis's competency at the time the plea was entered, he needed to speak with Curtis's former counsel, James "Matt" Stiller, Esquire, concerning Curtis's allegations of coercion occurring at the time of the plea.[30] In response, the Court, following a live conference on October 29, 2024,[31] entered an order pursuant to D.R.E. 502(d)(3)[32] and Del. Lawyers' Rules of Prof'l Conduct R. 1.6(b)(5)[33] permitting Mr. Stiller to discuss attorney-client communications between him and Curtis.[34] Thereafter, on November 7, 2024, the State advised the Court that Dr. Mechanick had spoken with Mr. Stiller and completed his final report, which was filed the same day.[35]

The case then proceeded through competency and evidentiary litigation. A two-day competency hearing was held on December 10 and 11, 2024.[36] The purpose of the hearing was limited to determining whether Curtis was competent at the time he entered his guilty plea and, consistent with that limitation, the Court confined the

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[28] D.I. 82.
[29] D.I. 84.
[30] D.I. 86.
[31] D.I. 88.
[32] D.R.E. 502(d)(3) provides, in relevant part, that there is no attorney-client privilege "[a]s to a communication relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer."
[33] Del. Lawyers' Rules of Prof'l Conduct R. 1.6(b)(5) provides that a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary "to respond to allegations in any proceeding concerning the lawyer's representation of the client . . ."
[34] D.I. 89.
[35] D.I. 90.
[36] D.I. 91–92.

hearing to expert testimony from Dr. Cooney-Koss and Dr. Stephen Mechanick regarding their evaluations and opinions of Curtis. In broad terms, Dr. Cooney-Koss opined that a combination of Curtis's mental health conditions and the circumstances surrounding the plea impaired his competency at the time the plea was entered, whereas Dr. Mechanick reached the opposite conclusion and testified that it did not appear Curtis lacked the capacity to understand the proceedings or enter the plea.

On February 11, 2025, the State filed a Motion *in Limine* to Exclude Victim and Witness Testimony,[37] and Curtis responded on March 11, 2025.[38] In that motion, the State argued that testimony from the victim and Jalissa Haith, an associate of Curtis, should be excluded under D.R.E. 402, 403, and 611 because that testimony was irrelevant to the issues presented by Curtis's Motion to Withdraw Guilty Plea and, even if marginally relevant, would unfairly prejudice the victim, confuse the issues, cause undue delay, and subject the victim to harassment and embarrassment.[39] In response, Curtis argued that such testimony should be permitted because it would support his claim of legal innocence, including his assertions that the sexual conduct was consensual, that the victim had held herself out as an adult, and that the State's account of the underlying events was inaccurate.[40] On May 13, 2025, the Court heard oral argument on the State's motion *in limine* and granted it.[41]

On July 16, 2025, Curtis filed a *pro se* motion *in limine* seeking to exclude Dr. Mechanick's testimony,[42] and the state submitted its response on July 30, 2025.[43] In his motion, Curtis argued that Dr. Mechanick's competency testimony should be

[37] D.I. 97.
[38] D.I. 100.
[39] Mot. In Lim. to Exclude Victim and Witness Test. 5–9 (D.I. 97).
[40] Def. [sic] Reply to State's Mot. In Lim. to Exclude 5–6 (D.I. 100).
[41] D.I. 105–06.
[42] D.I. 115.
[43] D.I. 117.

excluded under D.R.E. 702 and *Daubert v. Merrell Dow Pharmaceuticals*[44] because, in Curtis's view, Dr. Mechanick's opinions were unreliable, rested on false or misleading assumptions, and risked misleading the Court.[45] The State responded that the motion was untimely because Curtis had not objected before or during the December 2024 hearing, and that, in any event, Dr. Mechanick's testimony satisfied Delaware's standards governing the admissibility of expert testimony.[46] The Court denied Curtis' motion *in limine* on September 16, 2025.[47] The Court then conducted a two-day evidentiary hearing on October 8 and 9, 2025.[48]

On the first day of the evidentiary hearing, Curtis called Mr. Stiller; Rajay Jones, an associate of Curtis; Kelly Jansen, the defense investigator; and himself. The testimony generally tracked the grounds raised in Curtis's motion, focusing on his allegations that he was pressured into pleading guilty and that he had a basis to assert legal innocence.

On the second day of the evidentiary hearing, the Court reconvened for the State's rebuttal case. The State called Sergeant Michael Weinstein, the primary investigating officer, who testified regarding the underlying investigation, including the victim's report, the online advertisements, and records obtained from third parties.

Following those hearings, the Court directed the parties to submit final briefing.[49] The State filed its response to Curtis's Motion to Withdraw Guilty Plea on February 17, 2026,[50] and Curtis filed a *pro se* "Closing Argument" on February

[44] 509 U.S. 579 (1993).
[45] Mot. In Lim. to Exclude Dr. Mechanick [sic] Testimony 2–4 (D.I. 115).
[46] State's Resp. to Def.'s Mot. In Lim. 3–5 (D.I. 117).
[47] D.I. 121.
[48] D.I. 129–30.
[49] D.I. 130.
[50] D.I. 138.

18, 2026.[51]

On April 30, 2026, Curtis filed an "Objection to State's Closing Argument."[52] While Curtis did not seek leave to file this document, the Court considered it given his *pro se* status. In it, Curtis broadly objects to the State's final submission as improper and returns to the same factual and legal themes previously raised. Although styled as an objection to the State's closing argument, the filing primarily reiterates Curtis's prior arguments and identifies alleged factual inconsistencies that Curtis contends support withdrawal of his plea.[53]

On June 2, 2026, again without the Court's leave, Curtis filed an "Affidavit Motion [sic] to Vacate Defective Plea Agreement."[54] Again, on account of Curtis's *pro se* status, the Court considered the document. Although the gravamen of Curtis's argument is difficult to discern, he appears to reiterate his ineffective assistance claim and argues that his plea violated the Fifth Amendment's Double Jeopardy Clause because it did not include the two sexual exploitation of a child counts from the original indictment on which, according to Curtis, the two sex offender unlawful sexual conduct against a child counts were predicated.[55]

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[51] D.I. 139.
[52] D.I. 140.
[53] *See generally id.*
[54] D.I. 141.
[55] *Id.* at 2. This argument does not require further review. The State has broad discretion in determining whom to prosecute. *Albury v. State*, 551 A.2d 53, 61 (Del. 1988) (citing *Wayte v. United States*, 470 U.S. 598, 607 (1985)). "[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision of whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." *Wayte*, 470 U.S. at 607 (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 36, *reh'g denied*, 435 U.S. 918 (1978)). That broad prosecutorial discretion also extends into the process of plea bargaining. *Bordenkircher*, 434 U.S. at 363–65. "[T]he conscious exercise of some selectivity in enforcement is not itself a federal constitutional violation" so long as "the selection was [not] deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification." *Id.* at 364–65 (quoting *Oyler v. Boles*, 368 U.S. 448, 456 (1962)). *See also Ward v. State*, 414 A.2d 499, 500 (Del. 1980); *Bailey v. State*, 450 A.2d 400, 405 (Del. 1982). Accordingly, Curtis has not identified a valid basis to conclude that the State's decision

III. Parties' Arguments

In his "Closing Argument," Curtis contends that the plea was not entered knowingly and voluntarily and asserts legal innocence.[56] He relies heavily on the opinion of Dr. Cooney-Koss, arguing that her findings support the conclusion that he was not competent to enter a plea due to mental health conditions, including Post-Traumatic Stress Disorder ("PTSD"), Bipolar Disorder ("BD"), Dissociative Identity Disorder ("DID"), anxiety, and depression.[57] Curtis maintains that these conditions, specifically the symptoms of emotional dysregulation and a "blackout" on the day of the plea colloquy, rendered him unable to think clearly or make an informed decision regarding his plea.[58]

Curtis further challenges the reliability of the state's expert, Dr. Mechanick,[59] and points to the testimony of his former counsel, Mr. Stiller, who observed Curtis "in a daze" and possessing a "sort of [b]lank stare" during the proceedings as evidence of his impaired state.[60] Regarding his claim of legal innocence, Curtis argues that the victim was untruthful and deceived him into believing she was of

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to resolve the case through a plea to certain charges, while dismissing others, implicated double jeopardy or otherwise exceeded the bounds of permissible prosecutorial discretion.

[56] Closing Arg. 1 (D.I. 139). Curtis frames his position around the three-factor test from *U.S. v. Brown*, 250 F.3d 811, 815 (3d Cir. 2001), which requires the Court to evaluate (1) Curtis's assertion of innocence, (2) whether the government would be prejudiced by the withdrawal, and (3) the strength of Curtis's reasoning for withdrawing the plea. *See id*.; Closing Arg. 1 (D.I. 139). However, the Court will not adopt a test for evaluating the withdrawal of a guilty plea that differs from the test set out by the Delaware Supreme Court in *Scarborough v. State*, 938 A.2d 644, 649 (Del. 2007). As discussed *infra*, the *Scarborough* factors include (1) whether there was a procedural defect in taking the plea; (2) whether the defendant knowingly and voluntarily consented to the plea agreement; (3) whether the defendant has a basis to assert legal innocence; (4) whether defendant had adequate legal counsel throughout the proceedings; and (5) whether granting the motion would prejudice the State or unduly inconvenience the Court. *See id.*

[57] Closing Arg. 2–5 (D.I. 139).

[58] *Id.* at 2, 4, 7.

[59] *Id.* at 5–7.

[60] *Id.* at 5.

legal age.[61] He contends that his interactions with the victim were consensual and did not involve prostitution or sexual servitude.[62] Finally, Curtis alleges that the victim was coerced by her own family members to file false allegations and that she later indicated she wanted to recant or help clear Curtis's name.[63]

The State's argument tracks the *Scarborough* factors more linearly. First, the State argues there was no procedural defect in the taking of the plea.[64] The State emphasizes that the November 23, 2022 plea transcript shows Curtis was placed under oath, confirmed he understood the proceeding, and stated that no one had threatened or coerced him into pleading guilty.[65]

Second, the State argues Curtis has not shown that the plea was unknowing or involuntary.[66] The State relies on the TIS and plea colloquy, contending that Curtis stated he was pleading guilty freely and voluntarily, that no one forced him to plead guilty, that he was not under the influence of drugs, and that he understood the rights he was waiving and the charges to which he was pleading.[67]

The State further argues that Curtis's current claim rests on information from the PSI derived from treatment at Corrections that ended in January 2020, and it emphasizes that, during the PSI interview conducted after the plea, Curtis did not claim that he failed to remember signing the plea agreement, lacked recollection of the plea, blacked out, or had pre-plea issues that prevented a knowing and voluntary plea.[68] As to Dr. Cooney-Koss, the State stresses that she did not evaluate Curtis until October 30, 2023, nearly a year after the plea; that she had evaluated him twice

[61] *Id.* at 8–10, 27.
[62] *Id.* at 8–10.
[63] Closing Arg. 9–10, 25–26 (D.I. 139).
[64] State's Resp. to Def.'s Mot. to Withdraw Guilty Plea 6 (D.I. 138).
[65] *Id.*
[66] *Id.* at 7.
[67] *Id.*
[68] *Id.* at 7–8.

in 2022 without opining that he was incompetent; and that she acknowledged she had not reviewed various records and that her opinion was ultimately incomplete.[69] The State contrasts that testimony with Dr. Mechanick's opinion that, after a full review of the records associated with the case, Curtis was competent at the time of the plea, that he saw no evidence of a blackout, and that Curtis's claims about coercion by counsel or family were malingered or falsely produced.[70] The State also relies on Mr. Stiller's testimony that Curtis said he had not slept the night before but wanted to proceed, that he appeared to be in a daze yet said he was okay and wished to move forward, and that nothing during the colloquy suggested Curtis did not hear or understand what was occurring.[71]

Third, the State argues Curtis has not provided clear and convincing evidence of a basis to assert legal innocence.[72] The State acknowledges Curtis's argument that the sexual conduct was consensual, and that the victim represented herself to be at least eighteen, but it characterizes those assertions as unsupported by specific evidence beyond Curtis's own claims.[73] The State further argues that those assertions do not address Curtis's admitted conduct in the PSI concerning the posting of nude photographs and commercial use of the victim's likeness.[74] In support of its position, the State points to hearing testimony and PSI statements reflecting that Curtis admitted having sex with the victim, videotaping the encounter, posting photos of the victim online, and using the advertisements to lure men to be robbed.[75] The State also relies on Detective Weinstein's testimony concerning the investigation, including GPS data, IP-address information, and the content and

[69] *Id*. at 8–10.
[70] State's Resp. to Def.'s Mot. to Withdraw Guilty Plea 10–12 (D.I. 138).
[71] *Id.* at 13.
[72] *Id.* at 15.
[73] *Id.*
[74] *Id.*
[75] *Id*. at 16, 18–19.

nature of the advertisements.[76] The State's position is that, at most, Curtis presented minimal evidence that could have been raised as a defense at trial, but not credible evidence establishing legal innocence.[77]

Fourth, as to adequacy of counsel, the State argues Curtis made no specific claim that he lacked adequate legal counsel and had not produced evidence showing that counsel's performance fell below an objective standard of reasonableness.[78] In that regard, the State again relies on Mr. Stiller's testimony that he reviewed the plea paperwork fully with Curtis and sought to obtain the best possible deal for him.[79]

Lastly, the State argues that allowing withdrawal would prejudice the State.[80] It asserts that, when Curtis entered the plea, the State was prepared to proceed to trial, had gathered the necessary evidence, and had prepared its witnesses.[81] The State contends that withdrawal would require substantial renewed trial preparation and re-subpoenaing witnesses, including forensic experts, law enforcement, and the victim.[82] The State also argues that it relied on the finality of the plea when communicating the disposition to the victim and witnesses and that reopening the matter would disturb that closure.[83]

LEGAL STANDARD

Under Superior Court Criminal Rule 32(d), a defendant may withdraw a guilty plea before sentencing "upon a showing by the defendant of any fair and just reason." The motion is addressed to the sound discretion of the Court.[84] In applying Rule

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[76] State's Resp. to Def.'s Mot. to Withdraw Guilty Plea 19–20 (D.I. 138).
[77] *Id.* at 20–21.
[78] *Id.* at 21–22.
[79] *Id.* at 21.
[80] *Id.* at 22.
[81] *Id*.
[82] State's Resp. to Def.'s Mot. to Withdraw Guilty Plea 22 (D.I. 138).
[83] *Id.* at 22–23
[84] *Reed v. State*, 258 A.3d 807, 830 (Del. 2021); *State v. Barksdale*, 2015 WL 5676895, at *3 (Del. Super. Sept. 21, 2015).

32(d), the Court considers five non-exclusive factors, known as the *Scarborough* factors:

> (1) Whether there was a procedural defect in taking the plea;
> (2) Whether the defendant knowingly and voluntarily entered the plea;
> (3) Whether the defendant has a basis to assert legal innocence;
> (4) Whether the defendant had adequate legal counsel; and
> (5) Whether granting the motion would prejudice the State or unduly inconvenience the Court.[85]

The defendant bears the burden of showing a "fair and just reason," and that burden "is substantial."[86] These factors are not balanced; satisfaction of any one factor may justify relief.[87] The Court will assess each of these factors in turn.

DISCUSSION

I. There Was No Procedural Defect In The Taking Of Curtis's Plea.

This factor is easily resolved. During the plea colloquy, Curtis was placed under oath and affirmed that he would answer truthfully. He confirmed that he understood the proceeding and the rights he was waiving, and that a presentence investigation would follow. He represented that he was entering the plea knowingly and voluntarily because he was guilty of the charged offenses, and that no one had forced or threatened him to do so. Those sworn representations were consistent with the TIS, on which Curtis likewise indicated that he was pleading guilty freely and voluntarily, had not been threatened or forced, and understood the rights he was relinquishing by entering the plea. On this record, the Court finds no procedural defect in the taking of Curtis' plea, and thus the first *Scarborough* factor does not

[85] *Morrison v. State*, 274 A.3d 1006 (TABLE), 2022 WL 790507, at *4 (Del. Mar. 16, 2022); *Scarborough*, 938 A.2d at 649.
[86] *Reed*, 258 A.3d at 823.
[87] *Patterson v. State*, 684 A.2d 1234, 1239 (Del. 1996); *Barksdale*, 2015 WL 5676895, at *4.

support withdrawal.

II. Curtis Knowingly And Voluntarily Entered The Plea.

The State bears the burden of proving, by a preponderance of the evidence, the defendant's present competency.[88] On a motion to withdraw a guilty plea, however, where the defendant has signed the guilty plea forms and a guilty plea colloquy has been held, the defendant bears the burden of proving, by clear and convincing evidence, that he or she was incapable of entering a knowing and voluntary plea at the time that he entered into the plea agreement, and that burden would also apply to any claim by the defendant that he or she was incompetent at the time of the plea.[89]

"Competency is a legal concept, not a medical one."[90] The Delaware Supreme Court has concluded that "the *Dusky* competence standard applies to a defendant's decision to withdraw his plea."[91] Thus, like any other competency determination, "the court must be satisfied that the defendant (1) 'has a rational as well as a factual understanding of the proceedings against him' and (2) 'has sufficient present ability

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[88] *See, e.g.*, *Diaz v. State*, 508 A.2d 861, 863 (Del. 1986) ("The prosecution must prove the defendant's competence by a preponderance of the evidence."); *Smith v. State*, 918 A.2d 1144, 1148 (Del. 2007) ("The prosecution bears the burden of proving a defendant's legal competency by a preponderance of the evidence.").

[89] *See Benn v. State*, 108 A.3d 1224 (TABLE), 2015 WL 304257, at *2 (Del. Jan. 23, 2015) ("There is no clear and convincing evidence that [the defendant]'s mental health or prescription medications made him incapable of entering a knowing, intelligent, and voluntary guilty plea. We therefore conclude that the Superior Court did not err in denying [the defendant]'s motion to withdraw his guilty plea."); *but see State v. Rodgers*¸ 1994 WL 164573, at *5 (Del. Super. Apr. 14, 1994) ("[W]hen a defendant seeks to withdraw a guilty plea on the grounds of incompetency at the time of entry of the guilty plea, the burden of proof still rests with the State to establish a defendant's competency by a preponderance of the evidence.").

[90] *State v. Silvils*, 2022 WL 17494203, at *4 (Del. Super. Dec. 8, 2022) (citing *Feliciano v. State*, 157 A.3d 1235 (TABLE), 2017 WL 897421, at *13 (Del. Mar. 3, 2017) (reproducing a Superior Court order and affirming for the reasons stated therein)).

[91] *Taylor v. State*, 213 A.3d 560, 570 (Del. 2019). While the plea in *Taylor* had not yet been accepted by the trial court when the defendant sought to withdraw it, this distinction does not affect the underlying rationale, which is that the defendant should be able to understand, and consult with his attorney about, the legal ramifications of withdrawing his plea.

to consult with his lawyer with a reasonable degree of understanding.'"[92] It is also required that the defendant be able to assist in preparing his defense.[93] This competency test is codified.[94]

The legal standard for competency is not a high threshold.[95] The defendant need not "understand every legal nuance in order to be considered competent[,]"[96] or possess "the intelligence or legal sophistication to participate actively in [his or her] own defense[.]"[97] The defendant's understanding must be compared to that of an average criminal defendant rather than that of a reasonable person.[98] Mere lack of intelligence, or an attorney's having to break down complex topics for a defendant to better understand, is not enough to establish incompetency.[99]

Determining competency requires a "fact-specific inquiry that takes into

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[92] *Id.* (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)). *See also State v, Shields*¸ 593 A.2d 986, 1010 (Del. Super. 1990); *State v. Reyes*, 2000 WL 703158, at *3 (Del. Super. Apr. 28, 2000); *State v. Serra*, 2002 WL 519910, at *6 (Del. Super. Apr. 1, 2002); *State v. Irving*¸ 2003 WL 21357601, at *2 (Del. Super. May 27, 2003); *State v. Simmons*, 2005 WL 3007808, at *1 (Del. Super. Aug. 31, 2005).

[93] *Reyes*, 2000 WL 703158, at *3 (citing *Drope v. Missouri*, 420 U.S. 162 (1975)).

[94] 11 *Del. C.* § 404(a).

[95] *See Shields*, 593 A.2d at 1012 ("[F]rom a legal standpoint, the competency threshold is quite low."); *see also Feliciano*, 2017 WL 897421, at *13 ([L]egal competency is not an exacting standard.").

[96] *Reyes*, 2000 WL 703158, at *3. *See also Shields*, 593 A.2d at 1005; *State v. Wright*, 1994 WL 555556, at *9 (Del. Super. Oct. 5, 1994) ("Nowhere does the law provide that competence means that a defendant must take an ideal or complete role in the preparation of his case."), *aff'd*, 676 A.2d 909 (TABLE), 1996 WL 21034 (Del. Jan. 4, 1996); *Irving*, 2003 WL 21357601, at *2; *State v. Leatherberry*, 2018 WL 2733367, at *4 (Del. Super. May 1, 2018) ("The fact that [the defendant] may not understand all of the various nuances associated with pleading guilty or testifying at trial is the very reason he has counsel to advise him—it does not mean he is not competent to stand trial."); *Silvils*, 2022 WL 17494203, at *5.

[97] *Silvils*, 2022 WL 17494203, at *5.

[98] *Shields*, 593 A.2d at 1012–13; *Reyes*, 2000 WL 703158, at *3; *see also Feliciano*, 2017 WL 897421, at *13 ("Competency is, to some extent a relative matter arrived at by taking into account the average level of ability of criminal defendants.") (citations omitted).

[99] *See Feliciano*, 2017 WL 897421, at *13 ("We cannot, however, exclude from trial all persons who lack the intelligence or legal sophistication to participate actively in their own defense.") (citations omitted).

account the totality of the circumstances and does not necessarily turn upon the existence or nonexistence of any one factor."[100] The Court must consider the facts of the particular case and must not rely on generalized concepts or theories.[101]

Delaware courts have identified two different sets of criteria that are instructive in making a competency determination: the McGarry factors[102] and the *Guatney* factors.[103] These tests "evaluate a defendant's *basic* knowledge of the

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[100] *Feliciano*, 2017 WL 897421, at *13; *see also Irving*, 2003 WL 21357601, at *2 ("Determining a defendant's mental competency to stand trial is a very fact-intensive endeavor.").

[101] *Reyes*, 2000 WL 703158, at *3.

[102] *See Silvils*, 2022 WL 17494203, at *5. The McGarry factors are also known as the "Competency to Stand Trial Instrument." *Id.* The McGarry factors look at:

> (1) The defendant's ability to appraise the legal defenses available; (2) the defendant's ability to plan a legal strategy; (3) level of manageable behavior; (4) quality of relating to his or her attorneys; (5) ability to appraise the participants in the courtroom; (6) understanding of court procedures; (7) appreciation of the charges; (8) appreciation of the range and nature of the penalties; (9) ability to appraise the evidence and likely outcome; (10) capacity to disclose to his or her attorneys available pertinent facts surrounding the offense; (11) capacity to challenge prosecution witnesses realistically; (12) capacity to present relevant testimony; and (13) motivation for a positive outcome.

Id. at *7.

[103] *Id.* at *5 n.30 (citing *State v. Guatney*, 299 N.W.2d 538 (Neb. 1980)). The *Guatney* factors overlap with the McGarry factors but are somewhat more specific:

> (1) That the defendant has sufficient mental capacity to appreciate his presence in relation to time, place, and things; (2) that his elementary mental processes are such that he understands that he is in a court of law charged with a criminal offense; (3) that he realizes there is a judge on the bench; (4) that he understands that there is a prosecutor present who will try to convict him of a criminal charge; (5) that he has a lawyer who will undertake to defend him against the charge; (6) that he knows that he will be expected to tell his lawyer all he knows or remembers about the events involved in the alleged crime; (7) that he understands that there will be a jury present to pass upon evidence in determining his guilt or innocence; (8) that he has sufficient memory to relate answers to the questions posed to him; (9) that he has established rapport with his lawyer; (10) that he can follow the testimony reasonably well; (11) that he has the ability to meet stresses without his rationality or judgment breaking down; (12) that he has at least minimal contact with reality; (13) that he has the minimum intelligence necessary to grasp the events taking place; (14) that he can confer coherently with some appreciation of proceedings; (15) that he can both give and receive advice from his attorneys; (16) that he can divulge facts

process and his or her ability to participate in his or her defense."[104]

a. Curtis' competency-related argument does not overcome the plea record.

The Court is not called upon to determine, in the abstract, whether Curtis has a history of mental health issues. Rather, the issue is whether the record establishes that, at the time he entered his plea on November 23, 2022, Curtis lacked the present ability to understand the proceedings, consult with counsel, and make a knowing, intelligent, and voluntary choice to enter his plea. On that question, Curtis has not carried his burden.

The plea record strongly supports the conclusion that Curtis understood the nature and consequences of the proceeding and entered the plea voluntarily. During the plea colloquy, Curtis was placed under oath and affirmed that he was entering the plea knowingly and voluntarily because he was guilty of the offenses to which he was pleading.[105] He further represented that no one had forced or threatened him to plead guilty,[106] that he understood the constitutional rights he was waiving,[107] and that the answers he provided on the TIS were truthful and accurate.[108] The TIS likewise reflects that Curtis freely and voluntarily decided to plead guilty, had not been threatened or forced to do so, and understood the rights he was relinquishing by entering the plea. Those sworn representations are presumed truthful[109] and create a "formidable barrier" to a later claim that the plea was not knowing, intelligent, and

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> without paranoid distress; (17) that he can decide upon a plea; (18) that he can testify, if necessary; (19) that he can make simple decisions; and (20) that he has a desire for justice rather than undeserved punishment.

Id.

[104] *Id.* at *5 (emphasis supplied).
[105] Plea 7:14–21, 9:9–15, 12:4–8 (D.I. 51).
[106] *Id.* at 10:7–9.
[107] *Id.* at 10:21–11:2.
[108] *Id.* at 10:10–20.
[109] *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

voluntary.[110]

The expert testimony concerning competency does not overcome that plea record. Dr. Cooney-Koss opined that Curtis was not competent at the time of the plea, relying on a combination of reported mental health conditions, Curtis's account of the events surrounding the plea, and her retrospective assessment that his functioning was impaired.[111] Dr. Mechanick reached the opposite conclusion. After reviewing the broader body of material before the Court—including the plea transcript, guilty plea paperwork, recordings of Curtis's calls with family members, correctional and related records, mitigation materials, and information obtained from former counsel—and after interviewing Curtis, Dr. Mechanick opined that Curtis was competent at the time of the plea and that nothing in the record demonstrated a lack of capacity to understand the proceeding or enter the plea.[112]

The Court, as it is entitled to do,[113] finds Dr. Mechanick's opinion more persuasive. Dr. Mechanick's assessment was grounded in a more comprehensive review of contemporaneous and near-contemporaneous materials, and it accounted for information that contradicted Curtis's present account of events. By contrast, Dr. Cooney-Koss conceded that her opinion was incomplete and could change if additional information were considered.[114] In the Court's view, that concession significantly diminishes the weight of Dr. Cooney-Koss's retrospective conclusion.

Nor do the diagnoses or possible diagnoses identified by Curtis establish incompetence by themselves. The existence of mental health conditions does not alone demonstrate that a defendant was incapable of understanding a plea colloquy

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[110] *Id.* (quoting *Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977).
[111] Competency Hr'g A 29:6–31:21 (D.I. 132).
[112] *See* Competency Hr'g B 223:23–224:12 (D.I. 133).
[113] *See Johnson v. State*, 929 A.2d 784 (TABLE), 2007 WL 1575229 (Del. 2007) ("[I]t is entirely appropriate for the trial judge to exercise his discretion by accepting one witness's testimony and rejecting the conflicting testimony of the same witness or that of other witnesses.").
[114] Competency Hr'g A 149:17–152:2, 174:11–176:1 (D.I. 132).

or making a voluntary and informed decision.[115] At most, Curtis's motion and supporting materials show a history of mental health issues. Curtis's allegations that he suffered some sort of "blackout" when entering the plea, when weighed against the contrary evidence before the Court, does not establish that he lacked the ability to understand the proceedings or to make a knowing, intelligent, and voluntary choice to enter the plea.

The temporal weakness in Curtis's position is particularly significant. Curtis's competency claim depends heavily on materials and opinions developed after the plea was entered, most notably the mitigation materials and Dr. Cooney-Koss's later evaluation. However, the relevant inquiry is Curtis's mental state on November 23, 2022. On that point, Curtis fails to identify persuasive contemporaneous evidence showing that he was unable to understand the proceeding that day. Notably, and as recognized by the State, the PSI was completed soon after the plea was entered, yet Curtis did not report to the PSI investigator that he failed to remember signing the plea agreement, blacked out during the plea, or otherwise lacked the capacity to understand what had occurred.[116] The Court finds that those observations are difficult to reconcile with Curtis's narrative of experiencing a dissociative state and manic episode to the point of blacking out while entering the plea.[117]

Curtis also points to a lack of sleep before the plea as a basis to question his competency.[118] That allegation, however, remains conclusory. The record does not contain evidence clearly demonstrating that Curtis's purported fatigue rose to a level

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[115] *See, e.g.*, *State v. Johnson*, 2020 WL 4746541, at *4 (Del. Super. Aug. 17, 2020), *aff'd*, 267 A.3d 370 (Del. 2021); *State v. Dryburgh*, 2019 WL 1940708, at *3 (Del. Super. Apr. 30, 2019); *State v. Spady*, 2019 WL 6717044, at *4 (Del. Super. Dec. 10, 2019), *aff'd*, 242 A.3d 787 (Del. 2020).
[116] *See* State's Resp. to Def.'s Mot. to Withdraw Guilty Plea 8 (D.I. 138).
[117] *See* Closing Arg. 15, 18 (D.I. 139).
[118] *Id.* at 16.

that impaired his ability to understand the plea colloquy, communicate with counsel, or make rational decisions. At most, the evidence suggests that Curtis may have been tired. That is insufficient to establish by clear and convincing evidence that his plea was not knowing, intelligent, and voluntary.

b. Curtis has not shown that alleged pressure from family or counsel rendered his plea involuntary.

Curtis's allegations that he was pressured by family members or by counsel do not establish the type of coercion that would render a plea involuntary. A guilty plea may be considered involuntary if it is induced by threats, misrepresentation, or improper promises.[119] Acts like misrepresentation by the State or grave prosecutorial misconduct, in particular, may justify the withdrawal of a guilty plea.[120]

In the criminal context, pleas are often entered against the backdrop of strained family relationships, fear of trial, and the harsh realities of sentencing exposure. That a defendant feels compelled by circumstances to make a difficult choice does not, without more, mean that the choice was legally coerced. The same is true of advice from counsel. An attorney's candid discussion of the risks of trial, the strength of the State's evidence, or the benefits of a plea agreement may be forceful and unwelcome, but it is not coercion merely because it influences the defendant's decision. Indeed, in *State v. Parker*, the Superior Court rejected a similar argument where the defendant claimed that pressure from counsel and the prosecutor, together with an alleged dissociative episode while signing the plea

[119] *See, e.g., State v. Coverdale*, 2017 WL 1405815, at *8 (Del. Super. Apr. 18, 2017) (finding a plea involuntary where the State affirmatively misrepresented the absence of *Brady* material); *Aricidiacono v. State*, 125 A.3d 677, 679 (Del. 2015) (citing *Brady v. U.S.*, 397 U.S. 742, 755 (1970)).
[120] *See Scarborough*, 945 A.2d at 1116; *Chavous v. State*, 953 A.2d 282, 287 (Del. 2008).

paperwork, rendered his plea involuntary.[121] A plea is not invalid because a defendant, after consultation with counsel and in light of family pressure or strategic realities, concludes that pleading guilty is the optimal decision.

Unless there is clear and convincing evidence to the contrary, Curtis is bound by the written and oral representations he made during his acceptance of the guilty plea.[122] Upon conducting an extensive colloquy with Curtis in open court, reviewing the record, and evaluating Curtis's assertions, the Court finds that Curtis fails to carry that burden, and that the plea was entered knowingly, intelligently, and voluntarily.

III. Curtis Has No Basis To Assert Legal Innocence.

Curtis also fails to establish the third *Scarborough* factor. To assert a basis for legal innocence after entering a guilty plea, a defendant must point to specific evidence that forms the basis of that claim.[123] Here, Curtis advances a series of unsupported assertions: that his sexual conduct with the victim was consensual;[124] that he believed the victim was at least eighteen based on her purportedly showing him a fake ID and the circumstances in which they met;[125] that the online postings were intended only to market photos, videos, and other content rather than commercial sex;[126] and that the victim later made statements inconsistent with the State's account or indicating the allegations were false.[127]

The Court first addresses Curtis's innocence claims as they relate to the two

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[121] 2015 WL 13697747, at *1–9 (Del. Super. Nov. 24, 2015).
[122] *See Barksdale*, 2015 WL 5676895, at *5 (citing *Sommerville v. State*, 703 A.2d 629, 632 (Del. 1997)).
[123] *Smith v. State*¸ 2025 WL 466968, at *4 (Del. Super. Feb. 11, 2025) (citing *State v. Capobianco*, 2014 WL 890946, at *2 (Del. Super. Mar. 5, 2014)).
[124] *See* Closing Arg. 9, 10, 25 (D.I. 139).
[125] *Id.* at 9, 20, 27.
[126] *Id.* at 10.
[127] *Id.*

counts of Human Trafficking, Sexual Servitude under 11 *Del. C.* § 787(b)(3).[128] Those claims fail as a matter of law to the extent they rest on consent or mistake of age. Section 787(b)(3)(c) expressly provides that "[i]t is not a defense in a prosecution [brought under § 787(b)(3)] that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult."[129] Accordingly, Curtis's assertions that the victim consented or that he believed she was eighteen do not provide a basis for legal innocence as to the sexual servitude counts. The Court is likewise unpersuaded by Curtis's attempt to characterize the postings as advertisements for photos, videos, or other content rather than commercial sex. That assertion is contradicted by Curtis's admissions during the PSI that he had used advertisements for prostitution to lure males to his home in order to "scam" them.[130]

Turning to Curtis's innocence claims as they relate to the two counts of Sex Offender Unlawful Sexual Conduct Against a Child under 11 *Del. C.* § 777A(a),[131] that provision states that "[a] sex offender who knowingly commits any sexual offense against a child is guilty of sex offender unlawful sexual conduct against a child."[132] The predicate offenses for each of the Unlawful Sexual Conduct offenses, Sexual Exploitation of a Child under 11 *Del. C.* § 1109(1), provides that a person is guilty of that offense when "[t]he person knowingly, [sic] photographs or films a child engaging in a prohibited sexual act or in the simulation of such an act, or otherwise knowingly creates a visual depiction of a child engaging in a prohibited

[128] *See* Counts 17 and 25 of indictment (D.I. 9).
[129] 11 *Del. C.* § 787(b)(3)(c).
[130] PSI report at 17.
[131] *See* Counts 10 and 12 of indictment (D.I.9).
[132] 11 *Del. C.* § 777A(a). Under 11 *Del. C.* § 231(c)(1), a person acts "knowingly" with respect to an element involving "the nature of the person's conduct or the attendant circumstances" when "the person is aware that the conduct is of that nature or that such circumstances exist."

sexual act or in the simulation of such an act . . . ."[133]

11 *Del. C.* § 252, provides that "[w]hen a statute defining an offense prescribes the state of mind that is sufficient for the commission of the offense, without distinguishing among the elements thereof, the provision shall apply to all elements of the offense, unless a contrary legislative purpose plainly appears."[134] This statutory provision would seem, at first glance, to indicate that the term "knowingly" applies to all of the elements of the offenses that Sections 777A(a) and 1108(1) describe, including whether the victim was a child at the time of the offense.[135] However, 11 *Del. C.* § 454 supplies the contrary legislative purpose for which Section 252 provides:

> it is no defense for an offense . . . which has as an element of such offense . . . the age of the victim that the accused did not know the age of the victim or reasonably believed the person to be of an age which would not meet the element of such offense . . . unless the statute defining such offense . . . expressly provides that knowledge of the victim's age is an element of the offense or that lack of such knowledge is a defense.

While Sections 777A(a) and 1108(1), to quote the language of Section 454, "[have] as an element of such offense" the age of the victim, neither section "expressly provides that knowledge of the victim's age is an element of the offense or that lack of such knowledge is a defense." Therefore, Curtis's assertion that he

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[133] 11 *Del. C.* § 1108(1).
[134] Emphasis added.
[135] In considering the application of Section 252, the Court's discussion of that provision in *State v. Reeves,* 316 A.3d 408, 427–28 (Del. Super. 2024) (Clark, R.J.), *abrogated on other grounds by Jewell v. State*, 340 A.3d 562 (Del. 2025), is instructive. There, the State argued that Section 252 required the term "knowingly" in Delaware's stalking statute to apply not only to the defendant's act of engaging in a course of conduct, but also to the statute's result element. *Id.* The Court used Section 252 as the starting point for assessing whether the term "knowingly" in Delaware's stalking statute applied beyond the conduct element. *Id.* Ultimately, the Court determined that the General Assembly plainly demonstrated a contrary intent by assigning different mental-state requirements to different elements of the stalking offense within the statute itself. *Id.*

believed the victim was eighteen does not provide a basis for legal innocence as to the two counts of Sex Offender Unlawful Sexual Conduct Against a Child.

Even if Curtis could raise consent or mistaken belief of age as a defense, his allegations concerning legal innocence are insufficient to overcome his sworn statements from the plea colloquy. "Conclusory allegations of innocence are not sufficient to require withdrawal of a guilty plea, especially when the defendant had admitted his guilt in the plea colloquy."[136] Rather, the "defendant must present credible evidence to assert a basis for legal innocence—'[m]ere assertions of innocence unfounded on 'specific evidence' do not constitute a fair and just reason to withdraw a guilty plea.'"[137] However, as stated previously, unless there is clear and convincing evidence to the contrary, Curtis is bound by the written and oral representations he made during his acceptance of the guilty plea.[138]

The record contains several reasons to view Curtis's innocence narrative with skepticism. Curtis's mistake-of-age claim rests primarily on his assertion that the victim displayed identification indicating she was at least eighteen years old and that he met her in an adult establishment. That showing, however, does not constitute clear and convincing evidence of legal innocence, particularly in light of the testimony of one of Curtis's witnesses at the evidentiary hearing, Rajay Jones, that the establishment in question did not always ask for identification to enter, and Curtis's own admission at the hearing that he had a "red flag" about the victim's age that prompted him to ask to see her ID.[139] The record reflects, at most, disputed facts that could have been explored at trial.

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[136] *Russell v. State*, 734 A.2d 160 (TABLE), 1999 WL 507303, at *2 (Del. June 2, 1999) (citing *U.S. v. Morrison*¸ 967 F.2d 264, 268 (8th Cir. 1992).
[137] *Barksdale*¸ 2015 WL 5676895, at *5 (alteration in original) (quoting *U.S. v. Cannistraro*, 734 F.Supp. 1110, 1121 (D.N.J. 1990)).
[138] *See Barksdale*, 2015 WL 5676895, at *5 (citing *Sommerville v. State*, 703 A.2d 629, 632 (Del. 1997)).
[139] *See* Evidentiary Hr'g A 131:4–132:7, 216:1–23 (D.I. 134).

Accordingly, the third *Scarborough* factor does not support withdrawal.

IV. Curtis Had Adequate Legal Counsel.

Curtis also fails to show that he lacked adequate counsel during the proceedings. To prevail on a claim of ineffective assistance of counsel, the movant must satisfy the two-pronged standard set forth in *Strickland v. Washington*.[140] Under *Strickland*, the movant must prove that (1) his trial counsel's performance was objectively unreasonable; and (2) his defense was prejudiced as a result.[141] "To satisfy the second prong of *Strickland* in the plea withdrawal context, [the defendant] must show a reasonable probability that, but for his counsel's error, he would have insisted on going to trial and the trial court would have granted his motion to withdraw [his] plea."[142]

In alleging that Mr. Stiller's representation was inadequate, Curtis alleges, for example, that he expressed to Mr. Stiller he did not want to accept the plea agreement, and Mr. Stiller "refus[ed] to let [Curtis] have his day at trial . . . ."[143] Curtis's allegation, however, is directly contradicted by his sworn statements during the plea colloquy, which included the following exchanges:

> MR. STILLER: I've gone over each of these offenses with Mr. Curtis, and he understands the offenses and all the elements included in each offense . . . [h]e understands that the State has agreed to enter a *nolle prosequi* on all remaining charges in this case in exchange for him entering this plea today . . . I've gone over [the TIS] with Mr. Curtis. He understands the valuable trial and Constitutional rights he'll be giving up as a result of entering this plea . . . [g]iven that, I believe he is making his decision today in a knowing, informed, and voluntary manner[.][144]
> [. . .]
> THE COURT: Mr. Curtis, did you hear everything that Mr. Stiller said

[140] 466 U.S. 668, 687 (1984).
[141] *Id.* at 687–88, 691–92.
[142] *Reed*, 258 A.3d at 829–30.
[143] Closing Arg. 15 (D.I. 139).
[144] Plea 5:11–20, 6:22–7:6 (D.I. 51).

on your behalf, sir?
THE DEFENDANT: Yes, Your Honor.
THE COURT: And was everything he said accurate?
THE DEFENDANT: Yes, Your Honor.
THE COURT: You understand, sir, that you've got the right to a speedy trial with his help?
THE DEFENDANT: Yes, Your Honor.
THE COURT: And you understand sir, that you're giving up that right by offering to enter into the plea if the plea is accepted?
THE DEFENDANT: Yes, Your Honor.[145]

As another example, Curtis alleges that "[he] was coerced into accepting the plea by Mr. Stiller," that "[he] was forced and not mentally stable," and that "[he] was coerced to take a plea offer moments before the plea colloquy . . . ."[146] These allegations are, again, contradicted by the plea colloquy:

THE COURT: [H]as anyone threatened you or coerced you in any way to take the plea?
THE DEFENDANT: No, Your Honor.[147]

Given those inconsistencies the Court does not credit Curtis's allegations that Mr. Stiller coerced him or otherwise rendered constitutionally deficient representation. The record instead reflects that Mr. Stiller represented Curtis in a constitutionally adequate manner in a serious felony case. Mr. Stiller testified that he evaluated the State's evidence, discussed that evaluation with Curtis, reviewed the plea paperwork with him, advised him regarding his sentencing exposure and the risks of trial, and attempted to secure the best resolution available under the circumstances.[148] That advice may have been direct, and it may have required Curtis to confront the consequences of rejecting the plea offer, but candid advice about the risks of trial and sentencing exposure is not deficient performance.

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[145] *Id.* at 7:23–8:11.
[146] Closing Arg. 16 (D.I. 139).
[147] Plea 10:7–9 (D.I. 51).
[148] *See* Evidentiary Hr'g A 99:18–100:3 (D.I. 134).

Curtis also fails to show a reasonable probability that, but for any alleged deficiency by counsel, he would have insisted on proceeding to trial and would have been entitled to withdraw his plea. This is especially so given Curtis's representations during the plea colloquy and on the TIS, which do not indicate any sort of dissatisfaction with counsel's performance. Nothing in the record indicates that Mr. Stiller overrode Curtis's decision of whether or not to enter a plea, misrepresented the plea, or otherwise deprived Curtis of the ability to make decisions for himself.

V. Granting The Motion Would Prejudice The State And Unduly Inconvenience The Court.

The fifth *Scarborough* factor also weighs against withdrawal. This case is serious in both the nature of the offenses and in the practical consequences of reopening the prosecution. Curtis was originally indicted across two cases on approximately 197 felony offenses arising from allegations that he sexually assaulted a juvenile victim, photographed and recorded that conduct, and thereafter used the victim's images in numerous online prostitution-related advertisements. He ultimately pleaded guilty to two counts of Sex Offender Unlawful Sexual Conduct with a Child and two counts of Human Trafficking, Sexual Servitude, with the victim being a minor. Granting withdrawal at this juncture would reopen a prosecution involving a juvenile victim, sexual abuse, alleged exploitation of the victim's likeness, and a large number of charges that were resolved only because Curtis entered his plea.

The State also represents that, when Curtis entered his plea, it was prepared to proceed to trial, had gathered the necessary evidence, and had prepared its witnesses.[149] According to the State, allowing withdrawal now would require

[149] State's Resp. to Def.'s Mot. to Withdraw Guilty Plea 22–23 (D.I. 138).

renewed trial preparation and the re-subpoenaing of witnesses, including forensic experts, local law enforcement, and the victim.[150] The Court credits those representations.

Indeed, Delaware courts recognize that prejudice in the form of time spent preparing for trial and re-subpoenaing witnesses across multiple fields is "well-recognized as a factor against allowing plea withdrawal."[151] The Court also finds persuasive the State's position that requiring the victim to lose the closure afforded by Curtis's plea and to once again prepare for trial by reviewing and reliving the sexual abuse and trauma associated with Curtis's actions constitutes a unique form of prejudice entitled to additional weight.[152]

In any event, the State need not demonstrate prejudice where the defendant has failed to establish any of the other factors supporting withdrawal under Rule 32(d),[153] and the Court finds that to be the case here.

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[150] *Id.*

[151] *Barksdale*¸ 2015 WL 5676895, at *7 (citing *State v. Drake*, 1995 WL 654131, at *6 (Del. Super. Nov. 1, 1995); *State v. Friend*¸ 1994 WL 234120, at *4 (Del. Super. May 14, 1994)).

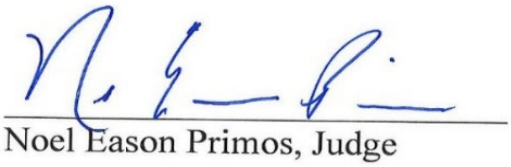
[152] State's Resp. to Def.'s Mot. to Withdraw Guilty Plea 23 (D.I. 138). *See also Drake*¸ 1995 WL 654131, at *6 ("[a]lthough it is important in all cases for the victims to know there is closure, it is most important in sexual abuse cases.").

[153] *Barksdale*, 2015 WL 5676895, at *6 (citing *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003); *Cannistraro*, 734 F. Supp. at 1123).

CONCLUSION

For these reasons, the Court finds that Defendant has not established any fair and just reason under Superior Court Rule 32(d) to warrant withdrawal of his guilty plea. Accordingly, Defendant's Motion to Withdraw Guilty Plea is **DENIED.**

IT IS SO ORDERED.



Noel Eason Primos, Judge

Via Email and State Mail
oc: Prothonotary
cc: Michael B. Cooksey, Esquire, DAG
George Curtis, *Pro Se*
Natalie S. Woloshin, Esquire, Standby Counsel