



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEONTA CARNEY,)
)
Defendant-Below,)
Appellant,)
)
v.)
)
STATE OF DELAWARE,)
)
Plaintiff-Below,)
Appellee.)

No. 28, 2023

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

STATE'S ANSWERING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

On November 25, 2019, a New Castle County Grand Jury indicted Deonta Carney (“Carney”) on the following charges (Case No. 1910002022): Robbery First Degree, Conspiracy Second Degree, Possession of a Firearm During the Commission of a Felony (“PFDCF”), Possession of a Firearm/Ammunition by a Person Prohibited (“PFBPP”), and Drug Dealing with an Aggravating Factor. A7. On the same date, the Grand Jury also indicted Carney in a separate case on the following charges (Case No. 1910011637A): Robbery First Degree, PFDCF, PFBPP, Carrying a Concealed Deadly Weapon (“CCDW”), and Conspiracy Second Degree. A1. On October 5, 2020, the Grand Jury indicted Carney in another case on the following charges (Case No. 2009010583): Gang Participation, Conspiracy Second Degree, Disorderly Conduct, and Conspiracy Third Degree. A13.

At the final case review on July 12, 2021, Carney rejected a plea offer in Case Number 1910011637A, which would have resolved the three cases listed

above in addition to a violation of probation in an earlier case (Case No. 1611010891).¹ The plea offer provided that:

Carney was to plead guilty plea to five charges – two counts of Robbery Second Degree (as lesser included offenses of Robbery First Degree), two counts of Possession of a Firearm by a Person Prohibited (“PFBPP”), and Illegal Gang Participation and to admit to a violation of probation. In exchange, the State agreed to enter a *nolle prosequi* on all remaining charges, recommend the minimum mandatory sentence at Level V (10 years), and agreed that the “VOP be reimposed with no additional unsuspended level five time.”²

The case proceeded to trial, and, on July 19, 2021, the jury was selected but not sworn. DI 14.³ On July 20, 2021, “before opening statements and upon learning the State's out-of-state ‘critical civilian witness’ was present, Carney informed the State through counsel that he wished to plead guilty.”⁴ The State offered the same agreement, with the exception that the State’s cap on recommended sentence was removed.⁵ Carney accepted the plea offer, and the Court ordered a presentence investigation (“PSI”). DI 15, 16.

¹ See *State v. Carney*, 2022 WL 17087057, at *1 & n.1 (Del. Super. Ct. Nov. 18, 2022).

² *Id.* at *1 (cleaned up).

³ “DI_” refers to docket item numbers in *State v. Carney*, No. 1910011637A, found in Amended App’x to Op. Brf. at A1-6.

⁴ *Carney*, 2022 WL 17087057, at *1 (footnote omitted).

⁵ *Id.*

On October 21, 2021, Carney, through counsel, moved to withdraw his guilty plea. DI 20. The State filed its response in opposition on February 7, 2022. DI 23. The Superior Court directed the Office of Defense Services to appoint new counsel for Carney, and permitted trial counsel to withdraw. DI 24. On July 14, 2022, Carney's new counsel filed a supplemental brief in support of Carney's motion to withdraw his guilty plea. DI 26. The State filed a response on August 1, 2022. DI 27. On November 18, 2022, the Superior Court issued its written decision denying Carney's motion to withdraw his guilty plea.⁶

On January 6, 2023, after receiving sentencing memoranda from both parties (DI 28, 29), the Superior Court sentenced Carney, effective October 18, 2019, to an aggregate of twenty-three years at Level V incarceration, suspended after thirteen years for two and a half years at decreasing levels of supervision. *See* A21-26.

On January 26, 2023, Carney filed a timely notice of appeal from the Superior Court's sentencing order, and subsequently filed an amended opening brief and appendix. This is the State's answering brief.

⁶ *Carney*, 2022 WL 17087057, at *7.

SUMMARY OF THE ARGUMENT

I. Appellant's claim is denied. The trial court did not abuse its discretion or otherwise err in denying Carney's motion to withdraw his guilty plea. The Superior Court: held a hearing on Carney's motion at which his prior counsel testified; ordered discovery be provided to his new counsel appointed to handle his motion to withdraw his guilty plea; received and considered briefing from the parties; and conducted the correct analysis by applying the proper standards under Criminal Rule 32(d) and addressing the *Scarborough*⁷ factors. The Superior Court did not abuse its discretion in finding that Carney failed to establish a fair and just reason for withdrawal of his guilty plea.

⁷ *Scarborough v. State*, 938 A.2d 644, 649 (Del. 2007).

STATEMENT OF FACTS⁸

On August 22, 2019, Angelo Flores met with a person identifying himself as “Dirt Bike Rob” on the Offer Up application. They had agreed to exchange dirt bikes. Flores had a blue and white Yamaha dirt bike, while Dirt Bike Rob had a white and black dirt bike with red around the seat to offer in exchange. When he went to the arranged location at 1200 North East Boulevard in Wilmington, Flores noted that the profile picture of Dirt Bike Rob appeared to be a thirty-year-old white male while the persons who arrived at the meet site were two juvenile black males. The two males requested a change of location to 1121 Thacker Street at the Marion T. Academy Charter School. One of the two encouraged Flores to test ride the black and white dirt bike, which he did. After the test ride, the male wearing a black shirt and orange/red pants brandished a silver semi-automatic handgun. He pointed the gun at Flores and stated that he was taking both dirt bikes. The other male, who Flores later identified from a picture as Carney, told his cohort to “Just shoot him.” No shots were fired, and Carney and the unidentified juvenile left with both dirt bikes.⁹

⁸ The facts underlying the charges included in his plea agreement are taken from the arrest warrant applications in those cases. *See* B3–4, 9–10.

⁹ Case No. 1910011637.

On September 21, 2019, Timothy Hartman traveled to Wilmington to meet with a potential buyer for his green and white Kawasaki dirt bike that he had posted for sale on Craigslist.com. When he arrived at the planned meeting site in the 1100 block of East 7th Street, Hartman was approached by two black males who stated they were there to purchase his dirt bike. After Hartman started the bike to demonstrate it was in working order, the two males told him to get off the bike. One of the males lifted his short and displayed a black firearm in his waistband. Hartman complied with the demand and returned to his vehicle. The males then demanded his cellphone, which he provided before leaving the area. Hartman later identified Carney as the male with the firearm in his waistband when his dirt bike and cellphone were taken.¹⁰

¹⁰ Case No. 1910002022.

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY DENYING CARNEY’S MOTION TO WITHDRAW HIS GUILTY PLEA.

Question Presented

Whether the trial court abused its discretion by denying Carney’s motion to withdraw his guilty plea after considering the factors enumerated in *Scarborough v. State*¹¹ as those factors appropriate to determination of whether the movant had a “fair and just” reason for withdrawal of his guilty plea.

Standard and Scope of Review

“A motion to withdraw a guilty plea is addressed to the sound discretion of the trial court.”¹² “The denial of such a motion is generally reviewable only for abuse of discretion.”¹³ “Although the decision to permit the withdrawal of a guilty plea under Superior Court Criminal Rule 32(d) lies within the sound discretion of the Trial Court, . . . that discretion is governed by Superior Court Criminal Rule 11.”¹⁴ “Only where the judge determines that ‘the plea was not voluntarily entered

¹¹ *Scarborough v. State*, 938 A.2d 644, 649 (Del. 2007).

¹² *Patterson v. State*, 684 A.2d 1234, 1237 (Del. 1996) (citing *Brown v. State*, 250 A.2d 503, 504 (Del. 1969)). *Accord Scarborough*, 938 A.2d at 649 (quoting *Blackwell v. State*, 736 A.2d 971, 972 (Del. 1999)).

¹³ *Id.* (citing *Raison v. State*, 469 A.2d 424, 425 (Del. 1983)).

¹⁴ *Scarborough*, 938 A.2d at 649 (quoting *Wells v. State*, 396 A.2d 161, 162 (Del. 1978)) (internal citation and quotation marks omitted).

or was entered because of misapprehension or mistake of defendant as to his legal rights' should the judge grant the defendant's request to withdraw his guilty plea."¹⁵

Merits of the Argument

Carney asserts that: "In weighing the *Scarborough* factors, most specifically third factor as to legal innocence, the trial Court abused its discretion in its findings of fact and conclusions of law."¹⁶ Carney contends that the Superior Court erred in determining that Carney constructively possessed the firearm, when the witness statement reveals that Carney's unknown accomplice was the individual who possessed the handgun during the robbery.¹⁷ Carney alleges that he should be granted relief because he "is legally innocent of the charge of PFBPP alleged to have occurred in August of 2019."¹⁸ Finally, he claims that he had ineffective assistance of counsel who should have known that Carney was innocent of the PFBPP charge.¹⁹ His claims are unavailing.

¹⁵ *Id.* at 649-650 (quoting *State v. Insley*, 141 A.2d 619, 622 (Del. 1958)).

¹⁶ Corr. Op. Brf. at 9.

¹⁷ Corr. Op. Brf. at 10-11.

¹⁸ Corr. Op. Brf. at 12.

¹⁹ Corr. Op. Brf. at 12-13.

Under Criminal Rule 32(d), the trial court “may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason.” The decision lies within the sound discretion of the court.²⁰ When evaluating whether there is any fair and just reason for the plea withdrawal, the court considers five *Scarborough* factors: (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 a basis to assert legal innocence; (vi) whether the defendant had adequate legal counsel throughout the proceedings; and (v) whether permitting the plea withdrawal would prejudice the State or unduly inconvenience the court.²¹ The court must consider each factor but need not weigh them equally.²² Some may justify relief on their own.²³

The Superior Court considered each of these factors and determined that none weighed in favor of granting a plea-withdrawal in this case. First, the Superior Court found there were no procedural defects in taking the plea.²⁴ Carney

²⁰ *Scarborough*, 938 A.2d at 649.

²¹ *Id.*

²² *Id.*; see also *Reed v. State*, 258 A.3d 807, 830 (Del. 2021).

²³ See *Patterson*, 684 A.2d at 1239; *Scarborough*, 938 A.2d at 649.

²⁴ *Carney*, 2022 WL 17087057, at *3.

does not challenge that finding.²⁵ Thus, the Superior Court did not abuse its discretion in discounting this factor.

Second, the Superior Court found that Carney knowingly, intelligently, and voluntarily entered his plea.²⁶ Carney challenges this finding, contending that he “did not have adequate legal counsel during the proceedings, and did not knowingly enter into the plea.”²⁷ Carney explains that “[a] youthful defendant cannot be expected to have an understanding of the intricacies of what constitutes an element of a crime or legal distinctions which create or refute a finding of constructive possession.”²⁸ Thus, in his view, Carney’s plea was not knowing because his counsel failed to inform him that he was legally innocent of one of the charges of PFBPP, i.e., the charge where his accomplice was identified as the person holding the gun during the robbery.²⁹ As discussed below, the Superior Court properly found that Carney’s bad advice allegations were without merit and the plea colloquy does not support this claim.³⁰

²⁵ See Corr. Op. Brf. at 5, 8-15.

²⁶ *Carney*, 2022 WL 17087057, at *3.

²⁷ Corr. Op. Brf. at 12.

²⁸ *Id.*

²⁹ *Id.* at 12-13.

³⁰ See *Carney*, 2022 WL 17087057, at *3-4.

Third, the Superior Court found that Carney had no basis to assert legal innocence.³¹ Carney challenges this conclusion, arguing that because his accomplice had the firearm and failed to shoot when directed to do so, the State would not be able to prove constructive possession of the weapon by Carney.³² The Superior Court correctly found that the facts as found in the police report supported a finding of constructive possession, thus precluding a finding of legal innocence:

The Court finds that there was sufficient factual basis to convict Carney of PFBPP in the August, 2019 incident as described in Det. Hayman's report. The relevant portion of the report reads, "The victim stated that the unknown black male accomplice was in possession of the silver handgun. During the incident S1 (Deonta Carney BMN and DOB: []2000) was stating to the younger black male suspect, 'Just shoot him.' However, during the incident, no shots were fired." In order to establish constructive possession, the State must show that Carney: (1) knew the location of the firearm; (2) had the ability and the intention, at the time, to exercise dominion and control over it; and (3) intended to guide its destiny. Circumstantial evidence may prove constructive possession. The Court finds all three elements of constructive possession are established in the quoted portion of Det. Hayman's report. Carney knew the location of the firearm and appeared to have the ability and intention to exercise control over it and to guide its destiny when he commanded his accomplice to "Just shoot him." The fact that the accomplice disobeyed Carney's command does not alter this conclusion,

³¹ *Id.* at *4.

³² Corr. Op. Brf. at 10-12.

particularly in light of Carney’s admission that he committed the offense when the Court questioned him.³³

The Superior Court was correct. As this Court explained in *Lecates v. State*, Delaware “appl[ies] a more limited definition of possession to [Possession of a Deadly Weapon During the Commission of a Felony (“PDWDCF”)] than [Possession of a Deadly Weapon by a Person Prohibited (“PDWPP”)] because, unlike establishing PDWPP, establishing PDWDCF requires evidence of physical availability and accessibility.”³⁴ The *Lecates* Court explained that in person prohibited cases, “[p]hysical availability and accessibility are not essential” to establishing possession.³⁵ To establish constructive possession for Carney’s PFBPP charge, the State would need to present sufficient evidence that Carney “(1) knew the location of the gun; (2) had the ability to exercise dominion and control over the gun; and intended to guide the destiny of the gun.”³⁶ Constructive possession may be proven with circumstantial evidence.³⁷ “Establishing PFBPP

³³ *Carney*, 2022 WL 17087057, at *5 (footnotes omitted).

³⁴ 987 A.2d 413, 418 (Del. 2009).

³⁵ *Id.* at 421.

³⁶ *Id.* at 426.

³⁷ *Id.*

does not require evidence that the weapon was physically available and accessible to the defendant at the time of arrest.”³⁸

Here, according to a police report, a witness could testify that Carney was acting with an accomplice during the robbery at issue; the accomplice was brandishing a firearm; and Carney was directing the accomplice to fire the weapon. After reciting the correct law governing constructive possession, the Superior Court found that “Carney knew the location of the firearm and appeared to have the ability and intention to exercise control over it and to guide its destiny when he commanded his accomplice to ‘Just shoot him.’”³⁹ Considering these facts in conjunction with Carney’s acknowledgement in open court that he “did knowingly possess or control a firearm” as charged, the Superior Court did not err in finding that the State had a sufficient basis to charge Carney with PFBPP.⁴⁰ Accordingly, the Superior Court properly concluded that Carney had not established that he had a basis to assert legal innocence.

³⁸ *Bessicks v. State*, 2017 WL 1383760, at *2 (Del. Apr. 13, 2017) (citing *Lecates*, 987 A.2d at 420-21).

³⁹ *Carney*, 2022 WL 17087057, at *5.

⁴⁰ *See id.*

Fourth, the Superior Court found that Carney had effective legal counsel throughout the proceedings.⁴¹ Carney challenges this conclusion, asserting that counsel advised him “to plead guilty to a crime for which he was factually innocent [which] corroborates [his] assertion that he felt forced to enter into a plea, rather than proceed to trial with unprepared counsel.”⁴² Below, Carney complained that his counsel pressured him into pleading guilty because of their dire predictions of a bad outcome at trial if the eye-witness testified consistently with the police reports.⁴³ All the claims of ineffective assistance of counsel are unavailing.

The Superior Court found Carney’s claims to be without merit, noting: “A lawyer is not a cheerleader, and the fact that a lawyer gives a client a realistic assessment of the evidence does not preclude the lawyer from zealously advocating for the client at trial.”⁴⁴ Further, the court found that Carney’s representations at his plea colloquy belied his claims:

. . . Carney expressly acknowledged that he had “freely and voluntarily decided to plead guilty to the charges in the plea

⁴¹ *See id.* at *5-6.

⁴² Corr. Op. Brf. at 13.

⁴³ *See Carney*, 2022 WL 17087057, at *6.

⁴⁴ *Id.*

agreement.” He disavowed that “[Defense counsel], the State, or anybody threatened or forced him to plead guilty.” [Carney] further told the Court that he was satisfied with Defense counsel’s representation of him and that Defense counsel had fully advised him of his rights. Defense counsel informed the Court that he was prepared to proceed with trial, but that after seeing the out-of-state victim/witness, Carney decided to plead guilty. Even before trial, Defense counsel’s filings demonstrate that he was actively engaged in the advocacy process by filing a discovery request, moving for bail to be reduced, and submitting proposed *voir dire* questions.⁴⁵

The Superior Court properly analyzed Carney’s ineffective assistance of trial counsel claims under *Strickland v. Washington*⁴⁶ and *Hill v. Lockhart*.⁴⁷ Carney cannot overcome the strong presumption that his counsel acted within the bounds of reasonable representation by advising him of the risks in going to trial based on the evidence against him. Moreover, Carney is bound by his statements to the court at his plea colloquy, regardless of his age.⁴⁸ The record does not support his claim that he was coerced to plead guilty by his counsel. The Superior Court properly found this factor did not support withdrawal of Carney’s guilty plea.

⁴⁵ *Id.* (cites to the record omitted).

⁴⁶ 466 U.S. 668 (1984).

⁴⁷ 474 U.S. 52 (1985).

⁴⁸ *See Somerville v. State*, 703 A.2d 629, 632 (Del. 1997) (“With or without the witness oath, a defendant’s statements to the Superior Court during the guilty plea colloquy are presumed to be truthful.”).

Fifth, the Superior Court found that granting Carney’s request to withdraw his guilty plea “would prejudice the State and unduly inconvenience the Court.”⁴⁹ The court specifically found: “Carney’s decision to plead guilty was calculated – he intended to proceed with trial if the victim did not appear, anticipating the charges would be dropped, and would accept a plea offer if the victim did appear.”⁵⁰ Thus, the Superior Court concluded that “[a]llowing Carney to withdraw his plea . . . only would reward his gamesmanship.”⁵¹ Carney counters that because the State’s case requires “only one eye-witness and a simple fact pattern” that there would be no prejudice to the State.⁵² But Carney fails to acknowledge that the plea agreement covered multiple cases and would have required multiple trials. The Superior Court did not abuse its discretion in finding that this factor did not lend support to provide a fair and just reason to permit withdrawal of Carney’s guilty plea.

⁴⁹ *Carney*, 2022 WL 17087057, at *7.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Corr. Op. Brf. at 14.

Because no factor weighed in favor of allowing Carney to withdraw his plea, the Superior Court appropriately denied the motion to withdraw his guilty plea.⁵³

⁵³ *Carney*, 2022 WL 17087057, at *7.

CONCLUSION

For the foregoing reasons, the judgment of the Superior Court should be affirmed.

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Dated: May 31, 2023

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