

This matter having come before this Court on a Motion to Withdraw Guilty Plea dated May 18, 2011; and this Court having reviewed the transcript of the plea colloquy and the submission of the parties; and having considered the matter carefully, I find as follows:

1. On January 31, 2011, Defendant, Charleston S. Williams, entered a Plea Agreement, completed a Guilty Plea Form in the Kent County Superior Court and pled guilty to Attempted Murder First Degree and Possession of a Deadly Weapon During the Commission of a Felony.

2. The Defendant was subjected to a plea colloquy pursuant to Delaware Superior Court Rule 11(c)(1) and *Brown v. State*¹.

3. “The decision whether or not to permit a defendant to withdraw his guilty plea is within the sound discretion of the trial court.”² The Court may grant a motion to withdraw a guilty plea if the defendant demonstrates any fair and just reason.³ The defendant bears the burden to prove that his plea was “[n]ot voluntarily entered or was entered because of misapprehension or mistake as to . . . [defendant’s]

¹250 A.2d 503, 505 (Del. 1969)

²*Brown* at 504.

³Super. Ct. Crim. R., Rule 32.

legal rights.”^{4,5} Rule 32(d) suggests, and Delaware Superior Court has consistently held, that motions to withdraw guilty pleas are typically granted more liberally prior to sentencing than after sentencing.⁶ In reviewing these motions, Courts have considered the following factors:

- (a) Was there a procedural defect in taking the plea;
- (b) Did the defendant knowingly and voluntarily consent to the plea agreement;
- (c) Does the defendant presently have a basis to assert legal innocence;
- (d) Did the defendant have adequate legal counsel throughout the proceedings; and
- (f) Does granting the motion prejudice the State or unduly inconvenience the Court.⁷

⁴*State v. Drake*, 1995 WL 654131, *2 (Del. Super., 1995) *citing State v. Insley*, 141 A.2d 619, 622 (Del. 1958).

⁵We start with the presumption that since the Defendant took a Guilty Plea Colloquy, he is bound by his statements given. The courts have assumed that a defendant’s statements during the colloquy are truthful. *Somerville v. State*, 703 A.2d 629, 632 (Del. Supr., 1997) (*citing Voytik v. United States*, 8th Cir., 778 F.2d 1306, 1308 (1985) (*quoting Blackledge v. Allison*, 431 U.S. 63, 74 (1977))). Only by clear and convincing evidence may the defendant be unbound by his colloquy statements. *Fullman v. State*, 1989 WL 27739, *2 (Del., 1989). Whether Defendant spoke truthfully at his Plea Colloquy is not at issue.

⁶*State v. Friend*, 1994 WL 234120, *1-2 (Del. Super., 1994). *See State v. Barnett*, 2006 WL 3308211, *1 (Del. Super., 2006); *State v. Cabrera*, 891 A.2d 1066, 1069-1070 (Del. Super., 2005); *State v. Adkins*, 2005 WL 1384307, *1 (Del. Super., 2005).

⁷*Friend* at *1-2.

4. Given the fact that the Defendant has been sentenced, under Superior Court Criminal Rule 32(d), the plea may now only be set aside by a motion under Rule 61.

5. The Defendant raises the following in his motion:

a. “Thee (sp) defendant was mistaken as to his legal rights in relation to a trial in that the defendant was given to understand that a jury of reasonable men could find him guilty of the charges;

b. After an investigation of the facts in this matter, it is clear to the defendant that a jury would not find him guilty of the above captioned charges;

c. The plea was not entered in a voluntary and knowing basis by the defendant; and

d. The prosecution could not uphold its commitment thereby breaching the promise on which the plea agreement was based. Both judicial and prosecutorial discretion was abused when the court allowed the State to promise a recommendation in a separate case, in another county, in which it had no jurisdiction.”

6. The grounds listed as ‘a’ through ‘c’ appear to be “boiler plate” issues which are all clearly disposed of by a review of the plea colloquy. The Court conducted a plea colloquy to ensue that Defendant was knowingly, voluntarily and intelligently entering the guilty plea.⁸

7. The focus of the Defendant’s concern in Paragraph ‘c’ is that he does not believe the Prosecution could uphold a commitment to seek probation on a pending

⁸*State v. Lewis*, 2007 WL 2230946, *2 (Del. Super., 2007).

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criminal matter in New Castle County. The Court need not address this since there is no claim that the State did not follow through with this commitment.

8. Finally, the proper way for a sentenced defendant to address and seek a withdrawal of a guilty plea is by a properly filed post-conviction motion for release through Superior Court Rule 61.

Wherefore, the motion to withdraw guilty plea is *denied*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

oc: Prothonotary
xc: R. David Favata, Esquire
Mr. Charleston S. Williams, JTVCC
File