

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Delaware Department of Justice
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Attorney for the State

Nigel C. Sykes, *Pro Se*
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Re: State of Delaware v. Nigel C. Sykes
I.D. No. 1012000026

Submitted : November 21, 2011

Decided : February 17, 2012

On Defendant's Motion to Withdraw Guilty Plea.

DENIED.

Dear Mr. McBride and Mr. Sykes:

INTRODUCTION

Pro Se Defendant moves to withdraw his plea of guilty to Robbery 1st Degree and related offenses, asserting that he entered his plea without the benefit of his required mental health medication and thus, did not plea knowingly, voluntarily, or intelligently. Defendant's sentencing has been postponed while awaiting disposition of this Motion. Defendant has not clearly and convincingly demonstrated that the plea was involuntary or that his lack of medication impeded his ability to plea. Therefore, Defendant's Motion is **DENIED**.

I. FACTUAL AND PROCEDURAL HISTORY

Defendant was indicted on thirteen counts of Robbery First Degree and on forty-six related counts including, among others, Possession of a Firearm During the Commission of a Felony, Possession of a Firearm by a Person Prohibited, and Attempted Robbery First Degree.

On July 12, 2011, Defendant pled guilty to one count of Robbery First Degree, two counts of Possession of a Firearm during the Commission of a Felony, one count of Attempted Robbery First Degree, and one count of Possession of a Firearm by a Person Prohibited.

Prior to the plea colloquy, Defendant's counsel, Dean C. Del Collo, informed the Court that Defendant had a few legal questions related to his charges. Del Collo explained that while he had tried to answer Defendant's legal questions, he was hopeful that the Court would explain the concepts in more detail. Defendant requested an explanation regarding the substantial step component of an attempted crime, and an explanation of how a defendant can be charged with multiple counts of robbery during one event. The Court answered Defendant's questions prior to the plea colloquy and Defendant agreed that the Court satisfactorily answered all of his questions.¹

Thereafter, because of Defendant's questions for the Court and Defendant's prior indecisiveness about the plea, the Court engaged in an especially meticulous colloquy. During the colloquy, Defendant showed no signs of wavering and appropriately answered each question. In pertinent part, the plea proceeding and colloquy proceeded as follows:

- Counsel: [I]t's also noted that as a child the defendant had been a patient in a mental hospital. More than one time he was at Rockford Center. And it wasn't for anything really serious, I think it was mostly issues with ADD, and he was on medication at the time.
- Court: Any issues of competency?
- Counsel: No, no. And he is not on medication now, and he hasn't been for years.²

¹ Plea Colloquy Tr. at 8-11.

² Plea Colloquy Tr. at 16.

...

Court: Have you freely and voluntarily decided to plead guilty to the charges listed in your written plea agreement?

Defendant: Yes.

Court: Has your lawyer, the State, or anyone threatened or forced you to enter into this plea?

Defendant: No.³

...

Court: Do you believe you are knowingly, voluntarily and intelligently entering pleas of guilty to the five charges in the indictment?

Defendant: Yes.

Court: Do you understand that what's being done today is final, you will not be able to come back at some later time and seek to withdraw your guilty pleas, what you're doing today is final, do you understand that?

Defendant: Yes⁴

In addition to performing the plea colloquy, the Defendant appropriately filled out the Truth-In-Sentencing form. Therefore, the Court found Defendant's guilty plea was knowingly, voluntarily, and intelligently entered. A presentence investigation was ordered and the Court set an initial sentencing date for September 30, 2011. However, on August 26, 2011, Defendant filed this *Pro Se* Motion to Withdraw Guilty Plea pursuant to Superior Court Criminal Rule 32.

II. THE PARTIES' CONTENTIONS

In support of his Motion, Defendant states, *in toto*:

I am requesting to withdraw the plea because I am on medication but the day I signed the plea I was not on my medication. And I

³ Plea Colloquy Tr. at 17.

⁴ Plea Colloquy Tr. at 23-24.

felt as I was under a lot of pressure like I had to take the plea. My public defender told me if I don't take the plea we would lose trial and I would get life in jail. And he also told me that if I take the plea to twelve years I could get out in six years. I'm not good at making good choices. I'm very easy to mislead and I still have not received my rule 16 that I have been requesting since I've been incarcerated on November 30, 2011.⁵

In response, Mr. Del Collo avers, in pertinent part:

During the initial Public Defender intake interview Mr. Sykes did not indicate that he was currently on any type of mental health medication.

During the history of the case Counsel met with Mr. Sykes numerous times to discuss his situation. Mr. Sykes made it clear to Counsel what amount of time he was willing to accept in a plea agreement. Mr. Sykes was very involved in every aspect of his case. Counsel and DAG McBride went back and forth in forming this plea agreement. Mr. Sykes was kept informed of all plea negotiations.

Counsel does not feel that Mr. Sykes' ability to make decisions was compromised during the plea process as a result of him not being on ADD medication. In fact, Mr. Sykes was granted a special plea colloquy with Your Honor to discuss his culpability in this case. Prior to the plea colloquy, Your Honor explained to Mr. Sykes, at his request, certain aspects of the law. Your Honor asked Mr. Sykes if he understood the Court's explanations of the law and Mr. Sykes responded yes. Mr. Sykes then explained on the record and in great detail the crimes he committed. Your Honor asked Mr. Sykes numerous times if he understood what he was doing and Mr. Sykes responded yes.

Mr. Sykes was not misled in anyway by Counsel. The penalties for the crimes which Mr. Sykes was charged were explained to him numerous times during the course of the case. The penalties for the crimes that Mr. Sykes pled to are clearly written on Truth and Sentencing Guilty Plea Form. These penalties were reiterated to Mr. Sykes by Your Honor during the plea colloquy.⁶

The State contends that while Defendant was incarcerated awaiting the resolution of this case, Defendant was prescribed medication that is regularly used

⁵ Def's M. to Withdraw Guilty Plea at ¶3 (All errors original).

⁶ Del Collo Affidavit at ¶ 3-5.

to treat depression.⁷ The State further argues that there is no fair and just reason to allow Defendant to withdraw his guilty plea. Furthermore, the State asserts that the record contains no evidence that defense counsel improperly coerced or induced Defendant to enter a guilty plea. Conversely, the State contends the record is ripe with evidence demonstrating Defendant's voluntariness and complete understanding of the plea.

Additionally, the State argues that no evidence supports Defendant's assertion that a lack of medication affected the Defendant's ability to knowingly and voluntarily plea. The State insists that if Defendant disagreed with his attorney's description of his mental health history, he would or should have raised his issue during the plea colloquy. The State contends that because Defendant made no objection or attempt to clarify his attorney's comments regarding his mental health history, Defendant concurred in his attorney's explanation through his silence. Despite being asked direct questions regarding medication and his mental health history, Defendant failed to mention lacking medication or an inability to understand the proceedings. The State concludes that absent clear and convincing evidence to the contrary, Defendant's answers at the colloquy are presumed accurate and must stand as knowingly, voluntarily, and intelligently proffered.

DISCUSSION

Superior Court Criminal Rule 32(d) provides that if a motion to withdraw a guilty plea is made prior to sentencing, the court may permit the plea's withdrawal for "any fair and just reason."⁸ "[A] defendant bears the burden of showing that there is a fair and just reason to permit the withdrawal."⁹ Permitting a defendant to withdraw a guilty plea is within the discretion of the trial court, provided the Court ensures that Superior Court Criminal Rule 11 is satisfied.¹⁰ Rule 11(c) requires that the Court ensure that the defendant is properly informed regarding the legal effect of the plea, the consequences of the plea, and the rights that a defendant forfeits by entering the plea.¹¹

⁷ This contention is stated in the State's Response to Defendant's Motion to Withdraw Guilty plea, but does not appear to be by any evidence in the record.

⁸ Superior Ct. Crim. R. 32(d).

⁹ *State v. Cox*, 2011 WL 5316739 *1 (Del. Super. Oct. 6, 2011).

¹⁰ *Wells v. State*, 396 A.2d 161, 162 (Del.1978) (Del.1978) (citations omitted).

¹¹ Superior Ct. Crim. R. 11(c). In pertinent part, Rule 11(c) requires that the court ensure that the defendant understands: "The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law,

Similarly, Rule 11(d) provides:

The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney general and the defendant or the defendant's attorney.¹²

If a defendant has signed the Truth-In-Sentencing Guilty Plea Form and satisfactorily completed a guilty plea colloquy with the Court, the defendant must show by clear and convincing evidence that he did not sign the form knowingly and voluntarily.¹³ When reviewing a guilty plea, “a defendant’s statements to the Superior Court during the [] plea colloquy are presumed to be truthful” and therefore, pose a “formidable barrier to any subsequent collateral proceeding.”¹⁴

In analyzing a motion to withdraw a guilty plea, the trial court will consider:

- (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 an adequate legal basis to assert his legal innocence;
- (iv) whether the defendant had adequate legal counsel throughout the proceedings and

the fact that the court is required to consider any applicable sentencing guidelines but may depart from those guidelines under some circumstances, and, when applicable, that the court may also order the defendant to make restitution to any victim of the offense; and. . .[t]hat the defendant has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury, when applicable, and at trial the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, and the right against compelled self-incrimination; and...[t]hat if a plea of guilty or nolo contendere is accepted by the court there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial.

¹² Superior Ct. Crim. R. 11(d).

¹³ *Scarborough v. State*, 938 A.2d 644, 650 (Del. 2007)(citation omitted).

¹⁴ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

- (v) whether granting the motion will prejudice the State or unduly inconvenience the trial court.¹⁵

A trial judge should only grant a defendant's request to withdraw a guilty plea where the court finds that the plea was entered because of misapprehension or mistake as to legal rights.¹⁶ To withdraw a guilty plea by alleging attorney misconduct, a Defendant must do more than demonstrate that defense counsel recommended defendant accept the plea.¹⁷ Motions to withdraw a guilty plea have been denied previously where defendants relied upon allegations that counsel pressured a defendant into entering a guilty plea.¹⁸ In analyzing whether the alleged pressure to enter a guilty plea qualifies as a fair and just reason to withdraw a plea, the Court must analyze the claims under the ineffective assistance of counsel framework articulated in *Strickland v. Washington*.¹⁹ When performing that analysis, the Court has deemed it not ineffective assistance of counsel to recommend that a client accept a plea, but, rather, that it would constitute ineffective assistance if defense counsel did not provide professional advice regarding whether to accept a proposed plea.²⁰

Moreover, the Delaware Supreme Court has found that a motion to withdraw a guilty plea before sentencing was properly denied where a plea colloquy and Truth-In-Sentencing form were both properly effectuated regardless of Defendant's unsubstantiated allegations of pressure by counsel to plead guilty.²¹ "In the absence of clear and convincing evidence to the contrary, [the defendant] is bound by his answers on the Truth-in-Sentencing Guilty Plea Form and by his sworn testimony prior to the acceptance of the guilty plea."²² Where a defendant demonstrates understanding and assent to a guilty plea through the colloquy and Truth-in-Sentencing forms, a defendant must demonstrate by clear and convincing evidence that the forms and testimony were without knowledge and involuntary.²³

¹⁵ *Hartman v. State*, 918 A.2d 338 (Del. 2007) (TABLE) (citing *Blackwell v. State*, 736 A.2d 971, 972 (Del. 1999)).

¹⁶ *Scarborough*, 938 A.2d at 650 (quoting *State v. Insley*, 141 A.2d 619, 622 (Del.1958)).

¹⁷ *State v. Bass*, 1989 WL 124937 *2 (Del. Super. Oct. 11, 1989).

¹⁸ *State v. Schofield*, 2011 WL 882838 (Del. Super Mar. 14, 2011).

¹⁹ *Strickland v. Washington*, 466 U.S. 668 (1984).

²⁰ *Schofield*, 2011 WL 882838 *5 (Del. Super.) (citing *MacDonald v. State*, 778 A.2d 1064 (Del. 2001)).

²¹ *Hartman*, 918 A.2d 338 (Del. 2007) (TABLE).

²² *Id.*

²³ *Cox*, 2011 WL 5316739*1(Del. Super. Oct. 6, 2011).

Defendant apparently claims that he did not knowingly or voluntarily consent to the guilty plea because he was unmedicated and because he felt pressured to accept the plea by his attorney. Defendant cannot meet the clear and convincing standard required for demonstrating a fair and just reason to permit withdrawal of the plea. Defendant's statements at the plea colloquy must be presumed as truthful and as such, Defendant's statements at the colloquy directly negate his attempt to presently withdraw his plea.

The plea colloquy exceeded the requirements provided in Superior Court Criminal Rule 11(d). The plea was conducted in open court with careful consideration regarding the Defendant's voluntariness and knowledge. The Court went the extra step of explaining to Defendant the legal intricacies that confused him. There was no procedural defect to Defendant's plea. Defendant attested that he was pleading knowingly and voluntarily, a fact supported by the Court's careful explanation and Defendant's extensive discussion with counsel.

Defendant does not provide any basis from which he can assert his legal innocence. Rather, the Motion focuses entirely on the plea circumstances itself. Defendant first claims that his plea should be withdrawn because he was not on his necessary mental health medication. The record does not support Defendant's contention. While the record does provide that Defendant was previously a patient in a mental institution, his counsel characterized it as attention deficit disorder and explained that while he was once prescribed medication for it, he had not taken that medication in years. Defendant's counsel attested to Defendant's competence and explained Defendant's mental health history in Court. Defendant was present and never corrected his attorney's statements or spoke with his attorney regarding any disagreement. Further, the undersigned judge observed the defendant carefully while taking the plea and saw no indication that Defendant's plea was not voluntary, knowingly, and intelligently proffered.²⁴

In Response, the State contends (but without apparent record support) that Defendant at some point after the plea, was prescribed medicine for depression. Even though it may be possible that a need for mental health medication existed at the time of plea, Defendant has not demonstrated by clear and convincing evidence that without medication he could not knowingly, intelligently or voluntarily

²⁴ *Scarborough*, 938 A.2d at 650 (quoting *State v. Insley*, 141 A.2d 619, 622 (Del.1958))(judge bears responsibility for determining whether a defendant is properly entering a plea and that a defendant's demeanor at time of plea can be considered in that analysis.)

understand the consequences of his action. A possible need for mental health medication is not itself sufficient clear and convincing evidence of a plea's ineffectiveness. Furthermore, it is equally possible that at the time of the plea, no need for mental health medication existed, because the attention deficit disorder was allegedly resolved previously, and the apparent depression medication prescribed later.

Similarly, Defendant has also not sufficiently demonstrated that his legal counsel was inadequate. Defendant simply contends that his counsel recommended that he accept the offered plea. An attorney's encouragement of a Defendant to accept a plea is not valid grounds to withdraw a plea. Conversely, it would constitute ineffective assistance of counsel if an attorney failed to provide professional advice regarding whether to accept a proposed plea.

Defendant's contention is that his attorney suggested it was in Defendant's best interest to accept the plea. However, it is entirely appropriate for Defendant's counsel to explain that if the offered plea was rejected, Defendant was unlikely to be successful at trial and could receive a possible life sentence. If counsel were to do more than simply suggest Defendant take a plea, such as to force the plea upon Defendant, it would be inappropriate and validate withdrawal of the plea. However, no such force is alleged by Defendant. Furthermore, at the plea colloquy, Defendant expressly denied that his attorney or anyone else forced the plea upon him. It is understandable that Defendant felt some pressure, when Defendant was considering whether to accept the plea or pursue a jury trial, but such "pressure" is inevitable in the criminal justice system. However, the inherent pressure of a stressful situation combined with his attorney's plea advice fall short of the threshold required for plea withdrawal.

By failing to proffer sufficient clear and convincing evidence to the contrary, Defendant is bound to his responses at the plea colloquy and his answers on the Truth-in-Sentencing forms.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Withdraw Guilty Plea is **DENIED**. Defendant's Sentencing will be held on **Friday, April 13, 2012 at 1:15 P.M.**

IT IS SO ORDERED.

Richard R. Cooch, R.J.

cc: Prothonotary
Dean C. Del Collo, Esquire
Investigative Services