

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

STATE OF DELAWARE)	
)	
v.)	I.D. No. 1104023078
)	
THOMAS W. WHITE, II,)	
)	
Defendant.)	

UPON CONSIDERATION OF DEFENDANT’S MOTION TO
WITHDRAW GUILTY PLEA
DENIED

Submitted: December 2, 2011
Decided: January 19, 2012

This 19th day of January, 2012, it appears to the Court that:

1. On December 6, 2011, Defendant pled guilty pursuant to a sentencing agreement to one count of Identity Theft. In a signed Truth-in-Sentencing Guilty Plea Form and at his plea colloquy, White asserted that his plea was knowing, willing, and voluntary.¹ White now moves to have his guilty plea withdrawn, asserting that he did not realize at the time he accepted the plea that he could be subject to up to eight years in prison.²

¹ Docket 17.

² Docket 19.

White claims that his counsel represented to him that he would receive probation if he accepted the plea.³

2. Superior Court Criminal Rule 32 governs a defendant's request to withdraw his guilty plea. Under Rule 32(d), prior to the implementation of sentence, the Court may permit a defendant to withdraw his guilty plea upon the showing of "any fair and just reason." The decision to permit a defendant to withdraw his guilty plea rests in the sound discretion of the Court.⁴ The defendant has the burden to establish that the plea was "[n]ot voluntarily entered or was entered because of misapprehension or mistake as to . . . [the defendant's] legal rights."⁵

3. In *State v. Friend*,⁶ the Court enunciated five factors considered upon motion to vacate a guilty plea:

- (a) Whether there was a procedural defect in taking the plea;
- (b) Whether the defendant knowingly and voluntarily consented to the plea agreement;
- (c) Whether the defendant presently has a basis to assert legal innocence;
- (d) Whether the defendant received adequate legal counsel throughout the proceedings; and
- (f) Whether granting the motion would prejudice the State or unduly inconvenience the Court.⁷

³ *Id.*

⁴ *State v. Phillips*, 2007 WL 3105749, at *1 (Del. Super. Sept. 20, 2007) (citing *Brown v. State*, 250 A.2d 503, 504 (Del. 1969)).

⁵ *Id.* (quoting *State v. Drake*, 1995 WL 654131, at *2 (Del. Super. Nov. 1, 1995)).

⁶ *State v. Friend*, 1994 WL 234120, at *1-2 (Del. Super. May 12, 1994), *aff'd*, 683 A.2d 59, 1996 WL 526005 (Del. Aug. 16, 1996) (TABLE).

4. White has failed to satisfy his burden in demonstrating that his plea was involuntary or the result of a mistake or misapprehension as to his rights. Although White asserts that he feels that his attorney misled him as to the possible consequences of a plea, he identifies no procedural error in the taking of the plea. Indeed, the transcript of White's plea colloquy reflects an extended discussion among the Court, White, and his counsel over whether White understood that the charge of identity theft carries a maximum sentence of eight years in prison. The Court did not proceed with the plea colloquy until White acknowledged that he understood the maximum possible sentence and what a presentence investigation is. White's counsel also assured the Court that he would explain these matters again to his client.

5. White subsequently advised the Court that his plea was knowing and voluntary. White's contention that he believed he would only be sentenced to probation if he accepted the plea and would have gone to trial if he had known otherwise is essentially conclusory at this stage of the proceedings and insufficient to merit withdrawal of his plea. White has not offered an argument as to legal innocence. He

⁷ *Phillips*, 2007 WL 3105749, at *1 (citing *Friend*, 1994 WL 234120, at *1-2).

was represented by counsel at the time of the plea colloquy. His signed guilty plea form and statements at the guilty plea colloquy belie his assertion that counsel misled him about the consequences of entering a guilty plea. When entering his plea, White expressed that he was satisfied with his attorney's representation, had been fully advised of his rights, and was aware of the potential range of sentences and other consequences of entering his plea.⁸ There is thus no basis in law for withdrawing White's guilty plea.

6. For the foregoing reasons, White's motion to withdraw his guilty plea is hereby **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

⁸ *State v. White*, Case No. 1104023078 (Del. Super. Dec. 6, 2011) (ROUGH TRANSCRIPT).