

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

STATE OF DELAWARE,)	
)	
v.)	ID. No.: 1109020500
)	
ANGEL ORTIZ,)	
)	
Defendant.)	

ORDER

AND NOW, TO WIT, this 23rd day of August, 2012, **IT IS HEREBY ORDERED** as follows:

Introduction

Before the Court is Defendant, Angel Ortiz’s (“Defendant”) Motion to Withdraw his Guilty Plea entered on February 10, 2012. The Court finds that the Defendant entered the plea knowingly, intelligently and voluntarily and pursuant to Super. Ct. Crim. R. 32(d), there is no fair and just reason for the withdrawal. Accordingly, the Motion is **DENIED**.

Facts

On February 10, 2012, the Defendant pleaded guilty pursuant to a written plea agreement to three charges: one count of Drug Dealing, one count of PDWDCF and one count of Aggravated Menacing. The Defendant signed a Truth-In-Sentencing Form (“TIS form”) where the Defendant indicated that he was not

under the influence of drugs or alcohol at the time of the plea. Defendant also indicated that he entered into the plea knowingly, intelligently and voluntarily.

Additionally, in accordance with Super. Ct. Crim. R. 11, the Court engaged in an extensive plea colloquy with the Defendant. During the plea colloquy, among other things, the Defendant informed the Court that: (1) the Defendant reviewed each question on the TIS form with his attorney; (2) the TIS form was complete and accurate; (3) the Defendant was not under the influence of any drugs or alcohol at the time of the plea; (4) it was Defendant's intention to enter a plea freely and voluntarily; (5) Defendant was not coerced into entering the plea; and (6) Defendant was satisfied with his legal representation. At the conclusion of the plea colloquy, the Court determined that the pleas were knowing, intelligent and voluntary and accepted the pleas. Subsequently, the Court ordered a presentence investigation and revoked bail, as Defendant pleaded guilty to a minimum mandatory sentence.

Former Defense Counsel submitted an affidavit pertaining to his interaction with the Defendant based on the plea agreement. The affidavit indicates that for weeks prior to the entry of the guilty plea, counsel had numerous conversations with the defendant about the guilty plea. The Defendant indicated that he wanted to accept the plea; the plea was scheduled on February 10, 2012. Defense Counsel met with the Defendant in his office on February 9, 2012. During this meeting,

which lasted an hour and a half, after Defense Counsel reviewed and discussed the plea agreement and the TIS form, the Defendant signed these documents. Additionally, Defense Counsel discussed multiple witnesses that would be called, in the event that Defendant wanted to proceed to trial. At the end of the meeting, Defendant believed that the plea agreement was in his best interests based on the State's evidence in one of the cases. Defense Counsel advised Defendant to arrive early to the plea by appointment calendar and that he would be taken into custody after the plea, based on the minimum mandatory time associated with the crime.

On February 10th, before the Court engaged in the plea colloquy with the Defendant, Defense Counsel again discussed the guilty plea, minimum mandatory time, and the rights he was giving up by pleading guilty. Defendant indicated that he wanted to plead guilty. Defense Counsel submits that although Defendant appeared to be nervous, he was able to understand and respond to the questions that were asked.

After the plea was entered, Defense Counsel was alerted to an issue raised by a Bailiff. The Bailiff informed Defense Counsel that the Defendant was acting disoriented and stated that he used drugs. Defense Counsel maintained his position that at the time the plea was entered, the Defendant was not under the influence of drugs. Based on the Affidavit, Defense Counsel believes that if any drugs were

ingested by the Defendant, it occurred after the entry of the plea when the Defendant had an exchange with his wife, prior to being taken into custody.

On February 17, 2012, Defense Counsel visited the Defendant at the prison in relation to his competency at the time of the entry of the plea. After the meeting, the Defendant informed Defense Counsel that he understood the consequences of entering the guilty plea, and if necessary, would come back to Court explain that he understood.

Then, on March 14, 2012, Defense Counsel again met with the Defendant to inform him of his sentencing date. Defendant informed Defense Counsel that he wanted to withdraw his guilty plea as to the case involving his ex-girlfriend, but wanted his guilty plea as to the other case to remain intact. Defendant's reasoning for withdrawing the guilty plea was based on his ex-girlfriend potentially not appearing for trial, the ex-girlfriend's intent for pressing charges, and the Defendant's belief that flaws existed in the State's case. At no time during the meeting did the Defendant state that he wanted to withdraw based on an ingestion of drugs prior to the entry of the plea. Defense Counsel explained that the Defendant would not be able to withdraw a guilty plea as to only one case and advised that it was in the Defendant's best interests to not withdraw the plea. By the end of the meeting, Defendant agreed that it was not in his best interests to withdraw the guilty plea.

Parties' Contentions

Defendant now moves for withdrawal of his guilty plea entered on February 10, 2012. Defendant argues that he did not knowingly, intelligently and voluntarily enter a guilty plea because he had ingested controlled substances prior to the entry of the plea. The State submits that, based on the Defendant's answers in the TIS form, the plea colloquy with the Court and counsel's affidavit, the plea was entered knowingly, intelligently and voluntarily.

Discussion

Pursuant to Super. Ct. Crim. R. 32(d), a motion for withdrawal of a guilty plea made before imposition of a sentence, may be set aside by this Court upon defendant showing a "fair and just reason."¹ The decision to withdraw the entry of a guilty plea rests within the sound discretion of the trial court and is only reviewable under an abuse of discretion standard.² In determining whether a fair and just reason is present warranting the withdrawal of a guilty plea, the following factors are considered:

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

¹ Super. Ct. Crim. R. 32(d).

² *State v. Insley*, 141 A.2d 619, 622 (Del. 1958).

the motion will prejudice the State or unduly inconvenience the trial court.³

Based on the issue presented in the Defendant's motion for withdrawal of the guilty plea, the issue is precisely whether the defendant knowingly and voluntarily consented to the plea agreement. An unsubstantiated assertion that the defendant was under the influence of drugs or alcohol at the time of the entry of the plea, is not enough to establish that the defendant did not knowingly or voluntarily consent to the plea.⁴

In *Teel v. State*, the Supreme Court of Delaware held that this Court properly denied the defendant's request to withdraw his guilty plea.⁵ In *Teel*, the defendant argued before sentencing that his plea was not voluntary because at the time the plea was entered, he was under the influence of drugs.⁶ A transcript of the plea colloquy "clearly" reflected that the defendant was not under the influence of drugs at the time the plea was entered.⁷ The Court held that the defendant did not meet his burden of showing that the plea was not voluntary or his legal rights were misapprehended.⁸ Thus, the Court determined that there were no grounds to

³ *Hartman v. State*, 918 A.2d 338, at *1 (Del. 2007) (TABLE) (citing *Patterson v. State*, 684 A.2d 1234, 1238 (Del. 1996)).

⁴ *Hartman v. State*, 918 A.2d 338, at *1 (Del. 2007) (TABLE).

⁵ 959 A.2d 28, at *3 (Del. 2008) (TABLE).

⁶ *Id.* at *2.

⁷ *Id.*

⁸ *Id.*

support the withdrawal of the guilty plea, as the plea colloquy reflected that the plea was voluntarily entered.⁹

Similarly, in *Hartman v. State*, the Supreme Court of Delaware held that this Court did not abuse its discretion in denying the defendant's motion to withdraw his guilty plea.¹⁰ Among other arguments, the defendant argued that he ingested medication prior to the plea colloquy.¹¹ As in *Teel*, during the plea colloquy with this Court, the defendant indicated that he was not under the influence of drugs or alcohol.¹² The Court affirmed this Court's decision denying the defendant's motion to withdraw.¹³ In holding that there was nothing in the record to support the defendant's argument that his guilty plea was not entered knowingly, intelligently, or voluntarily, the Court noted that, "[i]n the absence of clear and convincing evidence to the contrary, [defendant] is bound by the answers he provided under oath during his guilty plea colloquy."¹⁴

Here, like in *Hartman*, there is not clear and convincing evidence to the contrary suggesting that the Court should disregard the Defendant's answers at the plea colloquy. The Defendant knowingly and voluntarily consented to the plea agreement entered on February 10, 2012. Here, like in *Teel* and *Hartman*, the

⁹ *Id.*

¹⁰ 918 A.2d 338, at *1 (Del. 2007) (TABLE).

¹¹ *Id.*

¹² *Id.* at *2

¹³ *Id.*

¹⁴ *Id.*

Defendant signed the TIS form which indicated that he was not under the influence of drugs or alcohol. Also, during the plea colloquy with the Court, the Defendant indicated that he was not under the influence of drugs or alcohol. Furthermore, Defense Counsel's affidavit indicates that Defendant knew the consequences of entering the guilty plea and it was his desire to do so. Defense Counsel had numerous conversations about the Defendant's intention to enter this plea. When the Defendant initially brought up withdrawing his guilty plea, his reasoning was not based on the ingestion of controlled substances. A guilty plea may not be used to test the "severity of a sentence."¹⁵

Defendant merely asserts unsubstantiated allegations that he was under the influence of drugs at the time of the plea and does not meet his burden necessary of withdrawing the plea pursuant to Super. Ct. Crim. R. 32(d). "The plea colloquy and the Truth-In-Sentencing Form would be utterly meaningless if defendants were not held to the answers that they give."¹⁶ Therefore, the Court finds that based on the signed TIS form, the plea colloquy and former Defense Counsel's affidavit, the plea was knowing and voluntary, and thus, withdrawing the guilty plea is not warranted. Accordingly, the Motion to Withdraw the guilty plea entered on February 10, 2012 is **DENIED**.

¹⁵ *Smith v. State*, 451 A.2d 837, 839 (Del. 1982).

¹⁶ *State v. Hartman*, 2004 WL 2419162, at *3 (Del. Super. Oct. 6, 2004) *aff'd* *Hartman v. State*, 918 A.2d 338 (Del. 2007) (TABLE).

Conclusion

Based on the foregoing, the Defendant's Motion to Withdraw the Guilty Plea is **DENIED**.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.