SUPERIOR COURT
OF THE STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801
(302) 255-0669

STATE OF DELAWARE	)	
	)	
v.	)	ID#: 9806006617
	)	
DANIEL MERCADO,	)	
A/K/A, ANTONIO MERCADO,	)	
	)	
Defendant.	)	

Submitted: June 17, 2003
Decided: September 30, 2003

ORDER

Upon Defendant's Motion to Withdraw His Guilty Plea – ***GRANTED***

Defendant seeks leave, under Superior Court Criminal Rule 32(d), to withdraw the guilty plea he entered on the day he could have gone to trial, April 13, 1999. The time lapse between the guilty plea's entry and this decision only hints at how unusual this proceeding is.

Mercado pleaded guilty to Possession with Intent to Deliver Heroin. The problems started when the State presented Defendant to the court as Daniel Antonio Mercado, a first offender. Actually, Defendant is Daniel's brother, Anthony. And unlike Daniel, Defendant is a repeat offender. How Defendant managed to fool the

police about his true identity is unknown. Nevertheless, he fooled the authorities. Thus, unwittingly the State misled the court about who was pleading guilty and about his record.

During the plea colloquy, the court asked Defendant, "Do you have any prior convictions on your record?" Just as he lied about his name, Defendant answered, "No." Concerned that Defendant might be dishonest or mistaken about his past record, the court cautioned Defendant:

> You know better than anyone whether you've been in front of a judge pleading guilty to an offense. I need to point out to you that the penalties for possession with intent to deliver heroin are different if you have a record or do not have a record. If it turns out that you have a record, you will be sentenced like a person who has a record.

If the court had left it at that, perhaps Defendant could be forced to suffer the consequences of his deceptions.[1] The court, however, then misstated the penalties Defendant faced. The prosecutor interjected, but he only confused the record further. In large measure, the errors arose because the penalty for possession with intent to deliver heroin is different depending on whether the crime is a first offense, follows a conviction for simple possession, or is a second possession with intent.

The problems with the plea colloquy were compounded when Defendant failed to appear for sentencing on June 11, 1999 and remained at large for almost two

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[1] See *Moore v. State*, 540 A.2d 1088 (Del. 1988).

years. He was returned to custody on April 17, 2002. On July 3, 2002, over two years after he pleaded guilty but still before sentencing, Defendant filed this motion to withdraw his guilty plea.

After reviewing the initial paperwork, the court eventually held a hearing on December 2, 2002, to establish a better record about what happened during the April 1999 plea colloquy. The hearing was aborted when the State threatened to prosecute Defendant and use his testimony at the hearing against him. That precipitated supplemental submissions.

In reaching its holding here, the court is mindful of Defendant's deception. If he had been honest about his name and his record, everyone would have been more attentive to the penalty he was facing. The fact that he was so deceptive about his identity, coupled with his history, suggests he had a good idea as to the prospective penalty. And the court does not like to let a litigant, especially a criminal defendant, pull a fast one. Nevertheless, this plea will not stand.

The criminal justice system is not an honors program. Some criminal defendants are shifty. In part, that is why some of them are criminal defendants. The State and the courts have to deal with that. In the first instance, the police must identify accurately the people they arrest, even if some of those people are dishonest. By the same token, the prosecutor's office must ensure that it is presenting defendants for indictment, trial or plea, and sentencing under their true names, with their actual

criminal records. Finally, the court must recite the prospective penalties accurately.[2]

When most defendants try to outsmart the criminal justice system they simply will outsmart themselves, and they will be accountable. In this case, the State has offered no explanation for how it indicted Defendant and let him plead guilty to a felony under an assumed name. In any event, the court appreciated that Defendant could have been lying or mistaken about his record and its recitation of the penalties was inaccurate. Both the State and the court, especially the court, should have done better.

For the foregoing reasons, Defendant's July 3, 2002 motion to withdraw guilty plea is **GRANTED.** The Prothonotary shall schedule this matter for trial as soon as defense counsel's calendar permits. Meanwhile, the court attributes to Defendant the delay from April 13,1999 when Defendant chose to plead guilty under false pretenses instead of going to trial, the years he was a fugitive, and the time it took to sort out the mess he made.

IT IS SO ORDERED.

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Judge

oc: Prothonotary
Eugene Maurer, Esquire
Stuart Sklut, Deputy Attorney General

[2] *Wells v. State*, 396 A.2d 161, 162 (Del. 1978). See DEL. SUPER. CT. CRIM. R. 11(c)(1).