

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

STATE OF DELAWARE,)
)
)
v.)
) Cr. ID No. 1111000145
KEENAN ANDERSON,)
)
Defendant.)
)

Submitted: February 21, 2013
Decided: February 26, 2013

MEMORANDUM OPINION AND ORDER

Annemarie H. Puit, Esquire, Deputy Attorney General, Department of Justice, 820 N. French Street, Wilmington, Delaware, 19801, Attorney for the State.

Keenan Anderson, Howard R. Young Correctional Institution, P.O. Box 9561, Wilmington, Delaware, 19809, Pro Se.

DAVIS, J.

Defendant Keenan Anderson pled guilty to one count of Rape in the Fourth Degree on June 18, 2012. On January 11, 2013, Mr. Anderson filed a Motion to Withdraw Guilty Plea (the "Motion"). On January 23, 2013, the State of Delaware responded to the Motion through a letter brief and attachments (the "Response"). The Court has reviewed the Court's "Sentencing Colloquy" dated June 18, 2012, the record in this criminal action -- which includes the Plea Agreement and the Truth-in-Sentencing Guilty Plea Form executed by Mr. Anderson, the Motion and the Response. The Court

held a hearing on the Motion on February 21, 2013. For the reasons set forth below, the Motion is **DENIED**.

FACTUAL AND PROCEDURAL HISTORY

The State arrested Mr. Anderson on November 16, 2011, and charged him with Rape in the first degree under 11 Del. C. § 773. On June 18, 2012, Mr. Anderson signed a Plea Agreement in which he pled to one count of Rape in the fourth degree under 11 Del. C. § 770. Mr. Anderson also signed a Truth-in-Sentencing Guilty Plea Form (the “TIS Guilty Plea Form”). Raymond Armstrong, Esquire, represented Mr. Anderson at the time he agreed to and executed the Plea Agreement and TIS Guilty Plea Form.

The TIS Guilty Plea Form requires that a defendant respond to a series of questions and be provided with certain information regarding the offense, the statutory penalty, the minimum mandatory sentence (if any), the TIS Guideline sentence and the applicable amount of fine. The questions that have to be responded to indicate whether the defendant freely and voluntarily decided to plead guilty to the charges listed in his written plea agreement, that the defendant was not promised anything not stated in the written plea agreement, and that the defendant was not threatened by his attorney, the State, or anyone else to enter the plea. In addition, the TIS Guilty Plea Form lists out the various rights, trial and otherwise, that the defendant will waive by entering into a plea.

Mr. Anderson, and his attorney, executed the TIS Guilty Plea Form. Mr. Anderson answered that he was freely and voluntarily deciding to plead guilty to Rape in the fourth degree. Mr. Anderson stated that no one – his lawyer, the State or anyone else – forced him to enter into the plea agreement. Mr. Anderson also indicated that he was

satisfied with his lawyer's representation and that his lawyer fully advised him of his rights.

Additionally on June 18, 2012, the Court engaged in a sentencing colloquy (the "Colloquy"). The Colloquy lasts close to ten minutes and is very thorough. Through questioning, the Court determined the following:

- Mr. Anderson is twenty years old;
- Mr. Anderson has a tenth grade education;
- Mr. Anderson carefully reviewed the TIS Guilty Plea Form;
- Mr. Anderson reviewed the TIS Guilty Plea Form with his attorney;
- Mr. Anderson understood all the questions on the TIS Guilty Plea Form;
- The answers on the TIS Guilty Plea Form were Mr. Anderson's answers;
- Mr. Anderson signed the TIS Guilty Plea Form;
- Mr. Anderson was freely and voluntarily pleading guilty to Rape in the fourth degree;
- Mr. Anderson was not under the influence of any drugs or alcohol when he executed the TIS Guilty Plea Form;
- Mr. Anderson was not promised anything other than what was in the Plea Agreement;
- Mr. Anderson was not forced by his attorney or the State to plead guilty;
- Mr. Anderson, by pleading guilty, knew he would not have a trial and would be waiving his constitutional rights that would have been afforded him at trial;
- Mr. Anderson had not been promised what his sentence would be;
- Mr. Anderson understood that Rape in the fourth degree carries a maximum penalty of 15 years in prison;
- Mr. Anderson, as a result of the plea, knew he would have to register as a sex offender; and

- Mr. Anderson, as a convicted felon, knew he would lose the right to vote, to hold public office, to serve as a juror and the right to own or possess a deadly weapon.¹

Mr. Anderson, after direct question from the Court, then plead guilty to intentionally engaging in sexual intercourse with the victim, a child who had not yet reached her 16th birthday.² Mr. Anderson also admitted to committing that offense.³ After all of this, the Court accepts the plea and finds that Mr. Anderson knowingly, intelligently and voluntarily entered into the plea.⁴

On January 11, 2013, Mr. Anderson filed the Motion presently before the Court. In the Motion, Mr. Anderson asserts that his guilty plea is tainted on the basis that he did not commit the crime underlying his guilty plea and only signed the plea agreement because he was pressured to do so. In both the Motion and at argument on the hearing, Mr. Anderson stated that his family and his attorney pressured him to plead guilty, and that he relied upon a recommendation by the State that he be sentenced to serve three years. However, beyond a claim that he was “cussed at” by his attorney, Mr. Anderson does not provide the Court with any specific instances or examples of how he was pressured by his family or his attorney. Moreover, upon questioning of the Court, Mr. Anderson admits that he had “buyer’s remorse” after entering into the plea.

The State submitted a Response to Mr. Anderson’s Motion and presented argument at the hearing on the Motion. The State contends that Mr. Anderson’s guilty plea was entered voluntarily and with no mistake or misapprehension as to his legal rights. The State argues that granting Mr. Anderson his requested relief would prejudice the State’s ability to prosecute the case, as the victim, who was approximately six years

¹ Sentencing Colloquy at 3-6.

² *Id.* at 6.

³ *Id.* at 7.

⁴ *Id.*

old during the commission of the crime, is less able to recall the events with accuracy as time goes on. The State additionally argues it would incur prejudice in having to essentially re-victimize the child, who has been informed by now that the case is over.

ANALYSIS

Mr. Anderson's Motion invokes Superior Court Criminal Rule 32(d), which provides that a defendant may withdraw a plea of guilty by motion before imposition or suspension of a sentence upon a showing by clear and convincing evidence⁵ of "any fair and just reason."⁶ The Court "should permit withdrawal of a plea only if the judge determines that 'the plea was not voluntarily entered or was entered because of misapprehension or mistake of defendant as to his legal rights.'"⁷ A plea is involuntary where the defendant can show duress, coercion, or error by his trial counsel.⁸ This Court considers the following factors upon a motion to withdraw a guilty plea:

- (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
- (e) Does granting the motion prejudice the State or unduly inconvenience the Court.⁹

⁵ See *Collins v. State*, 2012 WL 3984545, *2, 53 A.3d 301 (Del. Sept. 11, 2012); *State v. Bonaparte*, 2012 WL 6945113, *6 (Del. Super. Sept. 17, 2012).

⁶ Super. Ct. Crim. R. 32(d) (2012).

⁷ *Collins v. State*, 2012 WL 3984545, *2, 53 A.3d 301 (table) (Del. Sept. 11, 2012) (quoting *Scarborough v. State*, 938 A.2d 644, 650 (Del. 2007)).

⁸ See *Collins v. State*, 2012 WL 3984545, *3, 53 A.3d 301 (Del. Sept. 11, 2012).

⁹ *State v. Friend*, 1994 WL 234120, *2 (Del. Super. May 12, 1994).

The Court holds that Mr. Anderson has not demonstrated by clear and convincing evidence a fair and just reason for the Court to withdraw his guilty plea. Before accepting Mr. Anderson's plea of guilty, the Court conducted a meaningful and thorough colloquy. Mr. Anderson indicated during that colloquy and in executing his plea agreement and TIS Guilty Plea Form that he committed the offense with which he was charged, and that he pled guilty freely, voluntarily, and without threat or force from the State, his attorney, or anyone else. He acknowledged that no sentence was promised to him. Mr. Anderson affirmed at the colloquy that he was satisfied with his attorney's representation of him. Mr. Anderson asserted no meaningful or factually supported argument that his counsel's conduct fell below an objective standard of reasonableness or prejudiced the outcome of any proceedings.¹⁰ The Court is satisfied that Mr. Anderson entered his guilty plea voluntarily and without misapprehension or mistake as to his legal rights.

Finally, the State submitted to the Court – by way of representation -- that it would suffer prejudice in working with the victim in this case. Here, the victim is a child who may be unable to accurately recall the events of the offense and may be emotionally vulnerable during the process of moving forward toward a trial.

¹⁰ *Albury v. State*, 551 A.2d 53, 58 (Del. 1988) (“In order to prevail under the Sixth Amendment on the grounds of ineffective assistance of counsel, ‘the defendant must show that counsel's representation fell below an objective standard of reasonableness,’ and ‘that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.’”) (quoting *Strickland v. Washington*, 466 U.S. 668, 688 (1984)).

CONCLUSION

For the reasons stated above, Mr. Anderson has not shown by clear and convincing evidence that a fair and just reason exists for the Court to withdraw his guilty plea. Therefore, Mr. Anderson's Motion is **DENIED**.

IT IS SO ORDERED.

Eric M. Davis

Eric M. Davis
Judge