

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Wilmington, Delaware 19801-3733
(302) 255-0664

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Attorney for Defendants

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**Re: State v. Jamar Wright
I.D. No. 0805009136**

Submitted: February 20, 2009
Decided: March 30, 2009

On Defendants' Motion to Withdraw Guilty Plea.
DENIED.

Dear Counsel:

Defendant, through his attorney Jerome M. Capone, Esquire, filed a "Motion to Withdraw Guilty Plea" on December 16, 2008. For the following reasons, Defendant's motion is denied.

I. FACTS AND PROCEDURAL HISTORY

On May 8, 2008, around 8:30 p.m., New Jersey State Trooper Mike Ward stopped a white 1994 Chevy Lumina on the New Jersey Turnpike for exceeding the speed limit. The vehicle was driven by Dellis Hernandez, and his front seat passenger was Jamar Wright. Hernandez did not own the car and stated that he did not know who owned the car. Trooper Ward had Hernandez exit the vehicle and allowed him to make several calls to determine the name of the car's owner, which he eventually provided. In response to Trooper Ward's questioning about their trip itinerary, Hernandez stated that he was not sure where they were headed, only that he was meeting with some friends at a hotel off Toll 3. After another phone conversation, Hernandez was able to provide the name of the hotel to which they were headed—the Howard Johnson off of Toll 3. Jamar Wright was also questioned about their itinerary and provided a Delaware Identification card, confirming his identity. Trooper Ward issued a warning for speeding and released Hernandez and Wright.

After releasing the two men, Trooper Ward contacted Detective Chris Popp of the Delaware State Police Governor's Task Force and advised him of the stop of Hernandez and Wright and provided a description of the vehicle and tag number. Communication between Trooper Ward and Detective Popp is not uncommon in these situations, as the two attended college together and communicate on a somewhat regular basis about law enforcement matters. Detective Ward was aware of Popp's status as a Detective and his role in the Delaware's Task Force and vice versa. Detective Popp advised Trooper Ward that Jamar Wright was a known narcotics dealer and active probationer who was not allowed to leave the State of Delaware as a condition of his Level 3 probation. Trooper Ward proceeded to the Howard Johnson off of Toll 3 and observed the white Chevy Lumina in the parking lot and left the area to continue his patrol. He returned within the hour, noted that the Lumina was gone, and contacted Detective Popp to advise him that the Lumina had left the Howard Johnson.

Upon receipt of this information, Detective Popp suspected that Hernandez and Wright may have been returning to Delaware. Along with other members of the Governor's Task Force, Detective Popp set up surveillance at the Delaware Memorial Bridge and, at approximately 10:30 p.m., saw the white Chevy Lumina with the same tag number occupied by Hernandez and Wright cross into Delaware. Based on the information received from Trooper Ward that Jamar Wright had been in New Jersey in the same vehicle earlier that evening, Detective Huston stopped the Lumina, recognized Jamar Wright in the passenger seat, and was advised by

Delaware State Probation and Parole Officer James Kelly to take him into custody for violating the conditions of his probation by leaving Delaware without permission and violating his 10:00 p.m. curfew.

A search incident to Wright's arrest was conducted, and a sandwich bag containing approximately 16.8 grams of crack cocaine was found in Wright's front pants pocket, seven Percocet pills in his left front pants pocket, and a digital scale in his other left front pants pocket. Hernandez was removed from the vehicle and a plastic bag was sticking out of his waistband, which was determined to contain marijuana. A .38 caliber handgun loaded with six rounds was found under the driver's seat.

One June 9, 2008, Hernandez and Wright were indicted on several felony drug and weapon charges. Wright filed a Motion to Suppress on July 17, 2008, and Hernandez eventually joined in the motion. Next, Wright filed a Motion to Allow Rule 17 Subpoenas to Issue to obtain the telephone and email records of Trooper Ward and Detective Popp, which was granted. A suppression hearing was held on October 3, 2008 and Wright's Motion to Suppress was denied.

Trial for both of the defendants was scheduled for November 12, 2008, but Hernandez entered a guilty plea and agreed to testify truthfully in Wright's trial. On the morning of trial, Wright initially rejected a plea agreement. A jury was selected and the case was scheduled to proceed to trial after a lunch break. Defense counsel requested that the State's plea offer be left open during the lunch recess so he could discuss it with his client and the State agreed. After reconvening following the lunch recess, Wright accepted the plea offer and it was entered. Sentencing was set for January 23, 2009, however, Defendant notified his counsel by letter that he wished to withdraw his guilty plea.¹ Consequently, the instant motion was filed on December 16, 2008.

¹ Defendant's letter to his counsel states, in its entirety:

I would like to withdraw my plea. I really don't think its right that I plea to something I haven't done this doesn't sit right with me or my family. That's a lot of time for something that I haven't done. And then you talk about how much stuff you done for me you didn't do nothing you should of found out if those cops really went to school together because the case was never about my co-dee, it was all about me it was a set up. Just like I said from the jump my co-dee told everybody how the A.G. Just wanted me they didn't care what he got find [*sic*, found] with it didn't matter that's why he couldn't sign his plea into the out come of my case. I've talk to him in he's a no good bitch made nigga who turned he's back on a friend. I now [*sic*, know] I have 30 days to withdraw my plea and I letting you know (I want to withdraw it).

Mot. to Withdraw Guilty Plea, Docket Item ("D.I.") 23, Ex. B.

II. THE PARTIES' CONTENTIONS

Defendant contends that the Court may withdraw a guilty plea for “any fair and just reason.” Defendant asserts that he is not guilty and seeks to withdraw his guilty plea so that he may retain his appeal rights.

In response, the State contends that the guilty plea should not be withdrawn because (1) there was no procedural defect in taking the plea; (2) the plea was intelligent, knowing and voluntary; (3) Defendant does not have a basis to assert legal innocence; (4) Defendant had adequate legal counsel throughout the proceedings; and (5) the State would be prejudiced if Defendant were to withdraw his guilty plea.

III. STANDARD OF REVIEW

The withdrawal of a guilty plea prior to sentencing is governed by Superior Court Criminal Rule 32(d):

Plea withdrawal. If a motion for withdrawal of a plea of guilty or nolo contendere is made before imposition or suspension of sentence or disposition without entry of a judgment of conviction, the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. At any later time, a plea may be set aside only by motion under Rule 61.²

IV. DISCUSSION

When a defendant enters a guilty plea, “[t]here are numerous protections afforded to the defendant. Prior to accepting a guilty plea, the trial judge must address the defendant in open court.”³ During the guilty plea colloquy, “[t]he judge must determine that the defendant understands the nature of the charges and penalties provided for each of the offenses. The record must reflect that the defendant understands that the guilty plea constitutes a waiver of a trial on the charges and a waiver of the constitutional rights to which he or she would have

² Del. Super. Ct. Crim. R. 32(d).

³ *Somerville v. State*, 703 A.2d 629, 631 (Del.1997).

been entitled to exercise at a trial.”⁴ The Delaware Supreme Court has stressed the importance of establishing a factual basis for a guilty plea through “direct interrogation of the defendant” after the defendant and his counsel have fully discussed the entry of a guilty plea.⁵ In this instant case, this Court engaged in a thorough and comprehensive colloquy with Defendant:

The Court: Are you Jamar Wright?

Defendant: Yes, Your Honor.

The Court: Are you under the influence of any kind of drugs at this time?

Defendant: No, Your Honor.

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

Defendant: Yes, Your Honor.

The Court: Did you sign this guilty plea form after reviewing it carefully with your attorney, Mr. Capone?

Defendant: Yes, Your Honor.

The Court: Have you been promised anything that is not stated in your plea agreement?

Defendant: No, Your Honor.

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

Defendant: No, Your Honor.

The Court: Do you understand that because you are pleading guilty you will not have a trial, and that you, therefore, waive or give up certain constitutional rights?

Defendant: Yes, Your Honor.

The Court: Do you understand those constitutional rights include the following: One, to have a lawyer represent you at trial. Do you understand that?

Defendant: Yes, Your Honor.

The Court: Two, to be presumed innocent until the State can prove each and every part of the charges against you beyond a reasonable doubt.

Defendant: Yes, Your Honor.

The Court: Three, to a speedy and public trial by jury.

Defendant: Yes.

The Court: Four, to hear and question the witness against you.

⁴ *Somerville*, 703 A.2d 631-632.

⁵ *Patterson v. State*, 684 A.2d 1234, 1236 (Del. 1996).

Defendant: Yes, Your Honor.

The Court: Next, to present evidence in your defense.

Defendant: Yes, Your Honor.

The Court: To testify or not testify yourself.

Defendant: Yes, Your Honor.

The Court: And to appeal, if convicted, to the Delaware Supreme Court with the assistance of a lawyer.

Defendant: Yes, Your Honor.

The Court: Do you wish to waive or give up all those rights and enter pleas of guilty to Trafficking in Cocaine and Possession With Intent to Deliver Cocaine?

Defendant: Yes, Your Honor.

The Court: Do you understand that Trafficking in Cocaine has a minimum mandatory sentence of two years, and because you are habitual offender eligible, the maximum sentence is life imprisonment. Do you understand that?

Defendant: Yes, Your Honor.

The Court: And do you understand that there—there is a fine of up to a \$50,000 on that charge?

Defendant: Yes, Your Honor.

The Court: With respect to the Possession with Intent to Deliver Cocaine, because of your prior record, do you understand that charge has a three-year minimum mandatory sentence, and because you are habitual offender eligible, a maximum sentence of life imprisonment?

Defendant: Yes, Your Honor.

The Court: Do you understand, then, that the minimum sentence you could receive would be five years, that's required by law, and cannot be suspended by a Judge, and the maximum sentence you could receive would be life imprisonment. Do you understand that?

Defendant: Yes, Your Honor.

The Court: And do you understand that there's a fine of up to \$15,000 for the Possession with Intent to Deliver Cocaine charge?

Defendant: Yes, Your Honor.

The Court: Do you understand that, because of your plea, your driver's license or driving privileges will be revoked for three years?

Defendant: Yes, Your Honor.

The Court: Has anyone promised you what your sentence will be?

Defendant: No, Your Honor.

The Court: Do you understand that even though the State has agreed to cap its recommendation of jail time to seven years, the sentencing judge will be free to impose anything from five years to life imprisonment?

Defendant: Yes, Your Honor.

The Court: Do you understand you were on probation or parole at the time of this offense?

Defendant: Yes, Your Honor.

The Court: Do you understand that a guilty plea may constitute a violation of that probation or parole?

Defendant: Yes, Your Honor.

The Court: Are you satisfied with Mr. Capone's representation of you and that he has fully advised you of your rights?

Defendant: Yes, Your Honor.

The Court: Have you read and understood all of the information in this form?

Defendant: Yes, Your Honor.

The Court: Are all of your answers truthful?

Defendant: Yes, Your Honor.

The Court: The plea agreement was read into the record by Mr. Barber, and then discussed by Mr. Capone. Did you sign that plea agreement document after reviewing it, also, carefully with Mr. Capone?

Defendant: Yes, Your Honor.

The Court: Does it summarize your understanding of how this case is to be resolved?

Defendant: Yes, Your Honor.

The Court: Do you understand that these are the parts of the plea agreement: One, that you plea guilty to Trafficking in Cocaine. Two, that you plea guilty to Possession with Intent to Deliver Cocaine. The State agrees to nulle pros or drop all of the remaining charges in this case. Both the State and Defendant request a presentence investigation. And, as it says—I just want to go through it with you—quote, “Open sentencing, the State and the defendant agree that the defendant is eligible to be sentenced as an habitual offender, pursuant to 11 *Del. C.* § 4214(a). The State will seek to have the Court sentence the defendant as an habitual offender under that statute in regards to Counts 1 and 2 of the indictment, The State and the defendant agree that a minimum sentence of three years incarceration for Count 2 must be imposed, pursuant to 16 *Del. C.* § 4763(a)(2)(a), due to your—due to the defendant's prior conviction of Possession with Intent to Deliver a Narcotic, on or about December 4, 2003.” And that an additional two years of incarceration must be imposed for Count 1, that's the trafficking charge, pursuant to 16 *Del. C.* § 4753(a)(a)(2). And, as written in handwriting, “the State will not seek a jail sentence in excess of seven years at time of sentencing.” Lastly, you agree to

forfeit the firearm to the Delaware State Police. Is that your understanding of the plea agreement?

Defendant: Yes, Your Honor.

The Court: The charges against you read as follows: Count one, Trafficking in Cocaine. It reads that you on or about May 7, 2008, in this county and State, you did knowingly and unlawfully possess more than 10 grams but less than 50 grams of a mixture containing cocaine, a narcotic Schedule II controlled substance, as classified under 16 *Del. C.* § 4716(b)(4). Did you commit that offense?

Defendant: Yes, Your Honor.

The Court: Count 2 is Possession with Intent to Deliver a Narcotic Schedule II controlled substance. And it reads that you on or about that same date and place did knowingly and unlawfully possess cocaine, a narcotic Schedule II controlled substance, as classified under 16 *Del. C.* § 4716(b). Did you commit that offense?

Defendant: Yes, Your Honor.

The Court: Do you understand that by pleading guilty all defenses that you might have had at trial, including a later appeal of the suppression hearing, which was ruled against you, are forever waived or given up? Do you understand that?

Defendant: Yes, Your Honor.

The Court: Is one of the reasons that you decided to accept the State's plea offer to avoid the risk of being convicted and being sentenced, or the State seeking a longer sentence against you than the seven years that it's willing to recommend?

Defendant: Yes, Your Honor.

The Court: Do you understand that what's being done today is final, you will not be able to come back at any later time to seek to withdraw this guilty plea?

Defendant: Yes, Your Honor.

The Court: Do you believe you have had significant time to discuss this with Mr. Capone?

Defendant: Yes, Your Honor.

The Court: Do you believe you're knowingly, voluntarily, and intelligently entering a plea of guilty to the two charges?

Defendant: Yes, Your Honor.⁶

Superior Court Criminal Rule 32(d) permits the Court, prior to the implementation of the sentence, to allow a defendant to withdraw his plea of guilty upon a showing by the defendant of "any fair and just reason." On a motion to withdraw a guilty plea, the Court is guided by the following considerations:

⁶ Tr. at 5:18-14:12.

(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; (e) Did the defendant have legal adequate legal counsel throughout the proceedings; and (f) Does granting the motion prejudice the State or unduly inconvenience the Court.⁷

The only issue raised by Brown is that he wants to withdraw his guilty plea because he is not guilty, which implicates the third factor dealing with legal innocence.

During the plea colloquy, Defendant admitted to the offenses to which he pled guilty. “After admitting to an offense at the time of the plea, a defendant cannot later assert innocence in the absence of some other support.”⁸ A defendant is bound by his statements given during the plea colloquy unless there is “clear and convincing evidence that the defendant did not understand the plea agreement, that he was forced to accept the plea or that he was not satisfied with Trial Counsel’s representation.”⁹ An assertion of legal innocence must be substantiated by “specific evidence.”¹⁰ Defendant alleges that he is not guilty, but has failed to submit any support for his contention. Defendant’s unsubstantiated representation of innocence after his explicit admission of guilt during the plea colloquy does not warrant withdrawal of his guilty plea.

V. CONCLUSION

For the foregoing reasons, Defendant's “Motion to Withdraw Pleas of Guilty” is DENIED. Sentencing will take place on Friday, June 5, 2009 at 9:30 a.m. IT IS SO ORDERED.

Richard R. Cooch

oc: Prothonotary
cc: John A. Barber, Esquire
Jerome M. Capone, Esquire

⁷ *State v. Friend*, 1994 WL 234120, *1-2 (Del. Super), *aff'd*, 683 A.2d 59 (Del. 1996) (Table).

⁸ *State v. McNeill*, 2001 WL 392465, *3 (Del.).

⁹ *State v. Harden*, 1998 WL 735879, *5 (Del. Super.).

¹⁰ *Id.* (citing *U.S. v. Cannistrano*, 734 F.Supp. 1110, 1121 (D.N.J. 1990)).