

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

RICHARD R. COOCH  
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 North King Street, Suite 10400  
Wilmington, Delaware 19801-3733  
(302) 255-0664

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Department of Justice  
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Attorney for the State

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***Re: State of Delaware v. John Mayhew***  
**I.D. No. 0901008622**

Submitted: September 17, 2009  
Decided: October 13, 2009

On Defendant's Motion to Withdraw Guilty Plea.  
**DENIED.**

Dear Ms. Knoll and Mr. Mayhew:

On September 13, 2009, Defendant entered a guilty plea to charges of Robbery First Degree and Robbery Second Degree. Defendant has now filed a motion to withdraw his guilty plea alleging that he "did not fully

understand [his] plea agreement . . .” and that he was not adequately represented by counsel.

This motion to withdraw the guilty plea is controlled by Superior Court Criminal Rule 32(d). The rule states that the Court “may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason.” To determine whether Defendant has alleged a “fair and just reason,” the Court will consider the following factors:

- (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.<sup>1</sup>

After considering the factors and Defendant’s arguments based on the factors, the Court finds no “fair and just reason” to grant Defendant’s motion because the record demonstrates that Defendant entered his plea knowingly and voluntarily and understood the rights he was waiving. Additionally, Defendant’s allegation that he was not properly represented fails to meet the burden of proof required by *Strickland v. Washington*.<sup>2</sup>

Prior to entering his plea agreement, the Court engaged in a particularly thorough colloquy with Defendant:

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<sup>1</sup> *State v. Friend*, 1994 WL 234120, \*1-2 (Del. Super. May 12, 1994)

<sup>2</sup> 466 U.S. 668 (1984).

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

The Defendant: Yes, Your Honor.

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

The Defendant: Yes, Your Honor.

The Court: Do you understand that what's being done today is final? You can't come back at any later time to seek to withdraw your guilty pleas.

The Defendant: Yes, Your Honor.<sup>3</sup>

Defendant stated on the record that he understood his rights and understood that the guilty pleas were final.<sup>4</sup> Therefore, Defendant's allegation that he did not understand the plea agreement is contradicted by the record and is not a proper basis for relief.

Finally, the Court need not consider the merits of Defendant's second allegation that he was not adequately represented by counsel. Under *Strickland*, Defendant bears the burden of proof in showing that counsel's efforts "fell below an objective standard of reasonableness" and that, but for counsel's alleged error there was a reasonable probability that the outcome would have been different.<sup>5</sup> Allegations that are entirely conclusory are

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<sup>3</sup> Tr. of Jul. 13, 2009 Plea Hearing, 8, 15.

<sup>4</sup> *State v. Wright*, 2009 WL 866185, at \*5 (Del. Super. Mar. 30, 2009) (holding that Defendant could not withdraw his guilty plea because his later assertion of innocence was not a valid reason to overcome the Court's thorough plea colloquy).

<sup>5</sup> *Strickland*, 466 U.S. at 688, 694.

legally insufficient to prove ineffective assistance of counsel; the defendant must allege concrete allegations of actual prejudice and substantiate them.<sup>6</sup>

Here, Defendant's allegations are conclusory and not supported by any facts that counsel's performance fell below an objective standard of reasonableness. The Court need not consider the merits of the argument because Defendant's allegations do not meet the test set forth in *Strickland*. As such, Defendant's Motion to Withdraw Guilty Plea is **DENIED**.

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Richard R. Cooch, J.

oc: Prothonotary  
cc: Investigative Services  
Kevin O'Connell, Esquire

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<sup>6</sup> *Jordan v. State*, 1994 WL 466142 (Del.) (citing *Younger v. State*, 580 A.2d 552 (Del. 1990)).