

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

STATE OF DELAWARE,)	
)	
v.)	I.D. No. 0907019920
)	
KEVIN GUNTER,)	
)	
Defendant.)	
)	

Date Submitted: October 15, 2009
Date Decided: November 10, 2009

ORDER

On this 10th day of November, 2009, upon consideration of Defendant’s Motion to Withdraw Guilty Plea and review of the transcript of the plea colloquy, it appears that:

- 1) Kevin Gunter, (the “Defendant”), pled guilty to Possession with Intent to Deliver—Heroin on September 30, 2009, and sentencing is pending.
- 2) The Defendant asserts in his motion that he made a bad decision as to the plea because he was pressured, ignorant as to the law, and scared. The Defendant also alleges ineffective assistance of counsel but provides no additional facts regarding that contention.

3) “[A] motion to withdraw [a] guilty plea is governed by Superior Court Criminal Rule 32(d).”¹ And, the granting of the motion is dependant upon the Court’s discretion.² Rule 32(d) provides that where a motion to withdraw a guilty plea is made prior to sentencing, the Court may grant the motion based upon a demonstration “of any fair and just reason.”³ Furthermore, the defendant must provide clear and convincing evidence of a fair and just reason for granting the motion.⁴

4) The finding of a “fair and just reason” is determined by the following factors: 1) whether a procedural defect tainted the plea when it was taken; 2) whether the plea was made knowingly, intelligently, and voluntarily; 3) whether there are adequate grounds for an innocent plea; 4) whether adequate legal representation was available to the defendant; and 5) whether the Court would be overly inconvenienced or the state unduly prejudiced by

¹ *Albury v. State*, 551 A.2d 53, 57 (Del. 1988).

² *Raison v. State*, 469 A.2d 424, 425 (Del. 1983); *Hartman v. State*, 918 A.2d 338, 2007 WL 38401, *1 (Del. 2007).

³ Super. Ct. Crim. R. 32(d).

⁴ *Hartman*, 2007 WL 38401 at *2.

granting the motion.⁵ Moreover, a defendant's representations to the Court at the plea colloquy are presumed truthful.⁶

5) A valid claim of ineffective assistance of counsel in a motion to withdraw guilty plea must include actual assertions of attorney error and resulting prejudice—a defendant must establish that an attorney's representation did not meet an objective standard of reasonableness and that but for the attorney's errors, the defendant would have elected to have a trial instead of entering a guilty plea.⁷

6) Here, because the Defendant has moved for the withdrawal of his guilty plea prior to sentencing, Superior Court Criminal Rule 32(d) governs the motion. Therefore, in order for the motion to be granted, the Defendant must demonstrate clear and convincing evidence of a fair and just reason for the withdrawal of his plea.

7) The Defendant does not allege a procedural defect or grounds for innocence, but he does assert that his plea was not knowing and voluntary due to ignorance of the law, fear, and feeling pressured to plead guilty. However, according to the plea colloquy, the Defendant stated that he understood the

⁵ *Hartman*, 2007 WL 38401 at *1.

⁶ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997); *Hartman*, 2007 WL 38401, at *2 (denying a motion to withdraw guilty plea and finding the plea to be knowing and voluntary where the defendant stated at the plea colloquy that he was neither coerced nor under the influence of any drugs).

⁷ *Somerville*, 703 A.2d at 632; *Barnett v. State*, 2007 WL 1314664, *2 (Del.).

terms of the plea agreement and the rights he was giving up. In addition, he stated that he was not threatened or forced into the plea agreement, and that he was guilty of the charges. Furthermore, the Truth in Sentencing Guilty Plea Form signed by the Defendant on September 30, 2009, shows that the Defendant understood the rights he was relinquishing, was not coerced or threatened, and freely entered a guilty plea. Moreover, the transcript indicates that the Court explained the consequences of the plea as well as the possible length of sentence, the Court asked the Defendant if he understood these consequences, and the Defendant answered in the affirmative. Therefore, since the Defendant's representations to the Court are presumed to be truthful, the Court finds no merit to the assertions that the Defendant was pressured into pleading guilty or was ignorant of the legal consequences to the plea.

8) Regarding the allegation of ineffective assistance of counsel, the Defendant's motion is devoid of any particulars. On the other hand, the Truth in Sentencing Guilty Plea Form signed by the Defendant indicates that the Defendant was satisfied with his lawyer's representation. Thus, since the motion provides neither incidences of attorney error nor resulting prejudice to the Defendant and the Defendant's representation to the Court indicates satisfaction with defense counsel, the allegation of ineffective assistance of counsel does not stand.

9) Accordingly, the Court does not find that the Defendant has provided a clear and convincing demonstration of any fair and just reason to grant his motion.

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

IT IS SO ORDERED.

Judge John E. Babiarz, Jr.