

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Wilmington, Delaware 19801-3733
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Re: State of Delaware v. Daniel P. Schofield
I.D. No. 0906002285

Submitted: March 7, 2011
Decided: March 14, 2011

On Defendant Daniel P. Schofield's Motion to Withdraw Guilty Pleas.
DENIED.

Dear Counsel:

INTRODUCTION

Defendant Daniel P. Schofield's ("Defendant") Motion to Withdraw Guilty Pleas arises from his January 14, 2011 pleas of guilty to charges of Murder Second Degree and Robbery First Degree. Defendant is scheduled to be sentenced, together with two codefendants, on March 16.

Upon review of the facts, the law, and the parties' submissions, Defendant's Motion to Withdraw Guilty Pleas is **DENIED**.¹

FACTS AND PROCEDURAL HISTORY

After three days of jury selection and immediately before the beginning of trial on the charges of non-capital Murder First Degree, Burglary First Degree, Robbery First Degree, Attempted Robbery First Degree, Conspiracy Second Degree, Assault Second Degree, and Possession of a Firearm During the Commission of a Felony,² the State extended its first and only plea offer to Defendant.³ Under the terms of the offer, Defendant would plead guilty to the lesser-included offense of Murder in the Second Degree and to Possession of a Firearm During the Commission of a Felony.⁴ In turn, a presentence investigation would be conducted and the State agreed to ask for no more than 35 years at Level V incarceration.⁵ Defendant's counsel, Jan A.T. Van Amerongen, Jr., Esquire and Brian J. Chapman, Esquire, relayed this offer to Defendant and conferred with Defendant about it.⁶

Prior to accepting Defendant's guilty pleas, this Court conducted a colloquy with Defendant. Under the circumstances, this Court engaged in a particularly lengthy and comprehensive colloquy with Defendant, as follows:

THE COURT:	Are you Daniel Schofield?
DEFENDANT:	Yes
THE COURT:	Have you ever been a patient in a mental hospital?
DEFENDANT:	No.
THE COURT:	Have you taken any prescription drugs in the last 24 hours?
DEFENDANT:	No.

¹ Defendant's counsel have also filed a motion to withdraw as counsel, given Defendant's allegations that counsel pressured him to accept the plea offered by the State. This Court will address this motion immediately prior to commencement of the March 16 sentencing hearing.

² Defendant was indicted on the charge of Possession of a Deadly Weapon by a Person Prohibited; this charge was severed from the above charges.

³ Def.'s Mot. to Withdraw Guilty Pleas at 1.

⁴ Transcript of First Plea Colloquy of Jan 14, 2011 at 2 [hereinafter "Tr. I at ___"]

⁵ *Id.* at 3.

⁶ Def.'s Mot. to Withdraw Guilty Pleas at 1.

THE COURT: Have you freely and voluntarily decided to plead guilty to the charges listed in your written Plea Agreement?

DEFENDANT: Yes.

THE COURT: Have you been promised anything that is not stated in your written Plea Agreement?

DEFENDANT: No.

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

DEFENDANT: No.

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

DEFENDANT: Yes.

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

DEFENDANT: Yes.

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.

THE COURT: Three, to a speedy and public trial by jury?

DEFENDANT: Yes.

THE COURT: Four, to hear and question the witnesses against you?

DEFENDANT: Yes.

THE COURT: Next, to present evidence in your defense?

DEFENDANT: Yes.

THE COURT: Next, to testify or not testify yourself?

DEFENDANT: Yes.

THE COURT: And, lastly, to appeal, if convicted, to the Delaware Supreme Court with the assistance of a lawyer?

DEFENDANT: Yes.

* * *

THE COURT: Do you understand that the total minimum mandatory Sentence that you would have to receive would be 18 years, 15 years on the Murder Second Degree charge and 3 years on the Possession of a Firearm During Commission of a Felony charge?

DEFENDANT: Yes.

THE COURT: Do you understand that the total consecutive maximum penalty you could receive would be life imprisonment under the statute?

DEFENDANT: Yes.

THE COURT: Has anyone promised you what your sentence will be?

DEFENDANT: No.

* * *

THE COURT: Are you satisfied with both attorneys' representation of you and that they have fully advised you of your rights?

DEFENDANT: Yes.

THE COURT: Have you read and understood all the information in this form?

DEFENDANT: Yes.

THE COURT: Are all your answers truthful?

DEFENDANT: Yes.

THE COURT: The plea agreement was read into the record by the Deputy Attorney General, discussed by your attorney. Is that your understanding of how this case is to be resolved?

DEFENDANT: Yes.

THE COURT: Did you review the document thoroughly and carefully with your attorney?

DEFENDANT: Yes.

* * *

THE COURT: Do you believe you are knowingly, voluntarily, and intelligently entering a plea of guilty to these two charges?

DEFENDANT: Yes.

THE COURT: **Do you understand that what's being done today is final, meaning you will not be able to come back at any later time and seek to withdraw these guilty pleas?**

DEFENDANT: **Yes.**

THE COURT: Do you understand that by pleading guilty, you forever waive or give up all defenses, all legal positions, any legal defenses that you may have had to the prosecution of these charges?

DEFENDANT: Yes.

THE COURT: Again, do you believe that you are knowingly, voluntarily, and intelligently entering a plea of guilty to these two charges?

DEFENDANT: Yes.

THE COURT: I find the guilty pleas to be knowingly, voluntarily, and intelligently offered, they are accepted.⁷

However, immediately after the plea, and after the jury was dismissed, counsel for the State and for Defendant realized that “all parties had made an error with respect to [Defendant’s] prior convictions and the exposure he faced under his plea to Possession of a Firearm During the Commission of a Felony.”⁸ After discussion among counsel, an amended plea was offered to Defendant, with the Possession of a Firearm During the Commission of a Felony charge being replaced by a Robbery First Degree charge, thereby maintaining the parties’ original intention of a minimum mandatory of three years up to a possible maximum of 25 years.⁹ In turn, Defendant orally moved to withdraw his original pleas pursuant to Superior Court Criminal Rule 32(d), asserting that his misapprehensions as to the minimum mandatory sentence for a Possession of a Firearm During the Commission of a Felony charge was a “fair and just reason” to permit the withdrawal of his guilty pleas; the State did not oppose Defendant’s motion.¹⁰

This Court permitted Defendant to withdraw his original guilty pleas and engaged Defendant in a second plea colloquy a few hours after the first plea colloquy and prior to accepting Defendant’s guilty pleas under the amended plea agreement:

THE COURT: Are you Daniel Schofield?
DEFENDANT: Yes.
THE COURT: Did you sign this second Guilty Plea Form that I have before me?
DEFENDANT: Yes.
THE COURT: Did you review it carefully with your attorneys?
DEFENDANT: Yes.

⁷ Tr. I at 5-12 (emphasis added).

⁸ Transcript of Second Plea Colloquy of Jan. 14, 2011 at 1 [hereinafter “Tr. II at ___”]. Apparently Defendant’s prior criminal record would have mandated a five year minimum sentence for Possession of a Firearm During the Commission of a Felony, rather than the three year minimum mandatory sentence anticipated by the parties. *Id.* at 5. The Court was not advised of Defendant’s criminal record prior to accepting the guilty pleas. The State was at that time represented by different prosecutors than counsel presently assigned to this case.

⁹ *Id.*

¹⁰ *Id.* at 3.

THE COURT: Have you ever been a patient in a mental hospital?

DEFENDANT: No.

THE COURT: Have you taken any prescription drugs in the last 24 hours?

DEFENDANT: No.

THE COURT: Have you freely and voluntarily decided to plead guilty to the charges listed in your written plea agreement?

DEFENDANT: Yes.

THE COURT: Have you been promised anything that is not stated in your written Plea Agreement?

DEFENDANT: No.

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

DEFENDANT: No.

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

DEFENDANT: Yes.

THE COURT: Do you understand those constitutional rights include the following: One, to have a lawyer represent you at trial?

DEFENDANT: Yes.

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.

THE COURT: Three, to a speedy and public trial by jury?

DEFENDANT: Yes.

THE COURT: Four, to hear and question the witnesses against you?

DEFENDANT: Yes.

THE COURT: Next, to present evidence in your defense?

DEFENDANT: Yes.

THE COURT: Next, to testify or not testify yourself?

DEFENDANT: Yes.

THE COURT: And to appeal, if convicted, to the Delaware Supreme Court with the assistance of a lawyer?

DEFENDANT: Yes.

* * *

THE COURT: Are you satisfied with your attorneys' representation of you and that they have fully advised you of your rights?

DEFENDANT: Yes.
THE COURT: Have you read and [understood] all the information in this form?
DEFENDANT: Yes.
THE COURT: Are all your answers truthful?
DEFENDANT: Yes.
* * *
THE COURT: Do you believe you are knowingly, voluntarily, and intelligently entering a plea of guilty to [these charges]?
DEFENDANT: Yes.
THE COURT: **Do you understand that what's being done is final, you'll not be able to come back at a later time to seek to withdraw your guilty plea?**
DEFENDANT: **Yes.**
THE COURT: I should just comment that I did say that earlier this morning, if there's a constitutional error of some kind, just as, you know, the circumstances in this case, you know, it was allowed, but this recites the- this Plea Agreement recites correctly the minimum mandatory sentence you are subject to. Do you understand that whatever defenses you may have had in this case, what evidentiary objections or legal defenses you may have had are forever gone or waived because of this plea?
DEFENDANT: Yes.
THE COURT: I [] observed the demeanor of the defendant through four days of jury selection when I was with him, and this morning, as well as right now, and I am fully satisfied the defendant is knowingly, voluntarily and intelligently entering a plea of guilty to the two charges.¹¹

Defendant now contends that his guilty pleas were not knowing, intelligent, and voluntary.¹² Defendant alleges that his counsel “pressured” him into accepting the plea by convincing him that he had “no chance of acquittal at trial and no choice but to accept the plea,” that counsel “played on’ his emotions to coerce him into entering the plea,” and that he did not have sufficient time to consider the plea offer.¹³

¹¹ Tr. II at 5-14 (emphasis added).

¹² Def.’s Mot. to Withdraw Guilty Pleas at 1.

¹³ *Id.*

The State opposes Defendant's Motion to Withdraw Guilty Pleas.¹⁴ It does not oppose Defendant's counsel's Motion to Withdraw.¹⁵

STANDARD OF REVIEW

A defendant's motion to withdraw a guilty plea prior to sentencing is controlled by Superior Court Criminal Rule 32(d), which provides: "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." The defendant bears the burden of demonstrating a "fair and just" reason to permit the withdrawal of a guilty plea.¹⁶

The decision to permit the withdrawal of a guilty plea is within the sound discretion of the trial court, provided the Court ensures that Superior Court Criminal Rule 11 is satisfied;¹⁷ Rule 11(c) provides, *inter alia*, as follows:

Before accepting a plea of guilty or nolo contendere to a felony or a class A misdemeanor, or to any other offense for which a sentence of imprisonment will be imposed, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, the fact that the court is required to consider any applicable sentencing guidelines but may depart from those guidelines under some circumstances, and, when applicable, that the court may also order the defendant to make restitution to any victim of the offense; and

(2) If the defendant is not represented by an attorney, that the defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent the defendant; and

¹⁴ State's Response of March 7, 2011.

¹⁵ *Id.*

¹⁶ *Scarborough v. State*, 938 A.2d 644, 649 (Del. 2007).

¹⁷ *Wells v. State*, 396 A.2d 161, 162 (Del. 1978) (Del. 1978) (citations omitted).

(3) That the defendant has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury, when applicable, and at trial the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, and the right against compelled self-incrimination; and

(4) That if a plea of guilty or nolo contendere is accepted by the court there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial. . . .

Similarly, Rule 11(d) states:

The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney general and the defendant or the defendant's attorney.

If a defendant has signed the Truth-In-Sentencing Guilty Plea Forms and satisfactorily completed a guilty plea colloquy with the Court, the defendant must show by clear and convincing evidence that he did not sign the forms knowingly and voluntarily.¹⁸ A defendant's statements made during a plea colloquy are presumed to be truthful.¹⁹ Only those cases in which the Court determines that "the plea was not voluntarily entered or was entered because of misapprehension or mistake of defendant as to his legal rights should the judge grant the defendant's request to withdraw his guilty plea."²⁰

DISCUSSION

During the guilty plea colloquies, Defendant represented that he reviewed the plea agreement "thoroughly and carefully" with his attorney, was satisfied by his attorneys' representation, was fully advised of his rights, read and understood all information in the Truth-In-Sentencing Form, and entered the guilty pleas knowingly, voluntarily, and intelligently.²¹ Defendant's

¹⁸ *Scarborough*, 938 A.2d at 650 (citation omitted).

¹⁹ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997) (citations omitted).

²⁰ *Scarborough*, 938 A.2d at 650 (quoting *State v. Insley*, 141 A.2d 619, 622 (Del. 1958).

²¹ Tr. I at 8-12; Tr. II at 9-13. Of course, given the undisputed misunderstanding as to the applicable minimum mandatory sentence pursuant to Defendant's initial guilty pleas and

statements during this colloquy are presumed to be truthful, and it is his burden to prove, by clear and convincing evidence, that he did not sign the Truth-In-Sentencing Forms knowingly and voluntarily.²²

In this case, Defendant has merely made the unsubstantiated claims that his counsel “pressured him into accepting the plea by causing him to believe that he had no chance of acquittal at trial,” that “counsel ‘played on’ his emotions to coerce him into entering the plea,” and that he did not have sufficient time to consider the plea offer.²³ In essence, Defendant asserts that the ineffective assistance of his counsel is a sufficiently “fair and just” reason to permit him to withdraw his guilty plea.

Under certain circumstances, the ineffective assistance of counsel is a “fair and just” reason for the withdrawal of a guilty plea.²⁴ However, to justify the withdrawal of a guilty plea under Superior Court Criminal Rule 32(d), the alleged ineffective assistance of counsel must satisfy the test articulated in *Strickland v. Washington*;²⁵ *Strickland* requires a two pronged analysis: “(i) whether ‘counsel’s representation fell below an objective standard of reasonableness’ and (ii) whether ‘there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’”²⁶ In the context of a defendant’s Rule 32(d) motion to withdraw a guilty plea, “to establish that [trial counsel] was ineffective and, thereby, a ‘fair and just reason’ to warrant withdrawal of a plea, [the defendant] must show that (a) counsels’ actions fell below an objective standard of reasonableness and (b) there exists a reasonable probability that, but for counsels’ unprofessional errors, [the defendant] would have chosen to proceed to trial.”²⁷

Defendant’s unopposed motion to withdraw his initial guilty pleas, the Court’s first plea colloquy with Defendant does not control the disposition of the instant motion; rather, the first plea colloquy is factually significant in that it further undermines Defendant’s allegations that his counsel “pressured” him into pleading guilty.

²² See *supra* text accompanying note 18.

²³ Def’s Mot. to Withdraw Guilty Pleas at 1.

²⁴ See, e.g., *MacDonald v. State*, 778 A.2d 1064 (Del. 2001) (holding that defense counsels’ failure to investigate the facts underlying the charges against defendant and their admission that they did not offer the defendant professional advice as to whether he should accept the plea offer precluded the possibility that the defendant’s plea was intelligent and voluntary.).

²⁵ 466 U.S. 668 (1984).

²⁶ *MacDonald*, 778 A.2d at 1075 (quoting *Strickland*, 466 U.S. at 694).

²⁷ *Barnett v. State*, 925 A.2d 503, *2 (Del. 2007) (citations omitted); see also *State v. Gunter*, 2009 WL 3765505 (Del. Super. Ct. 2009) (“A valid claim of ineffective

Again, the burden of proof is on the defendant to establish that his counsel was ineffective.²⁸

Defendant's guilty pleas were offered contemporaneously with the commencement of his trial, after three days of jury selection.²⁹ Thus, Defendant was provided with ample opportunity to consider the proceedings against him and the prospects of being convicted after trial. Likewise, Defendant was provided an opportunity to discuss the merits of the State's plea offer and the risks of proceeding through trial with his attorneys. Significantly, Defendant twice completed a plea colloquy with this Court; after this Court permitted Defendant to withdraw his pleas of guilty to Second Degree Murder and Possession of a Firearm During the Commission of a Felony due to a misunderstanding as the applicable minimum mandatory sentence, Defendant nonetheless promptly entered guilty pleas to Second Degree Murder and First Degree Robbery. The amended plea offer was extended by the State and accepted by Defendant with the explicit objective of preserving the "original intention" of the anticipated minimum mandatory sentence; this anticipated minimum mandatory was discussed with Defendant during his first plea colloquy.³⁰ Consequently, Defendant was, albeit unintentionally, afforded additional time to contemplate the implications of his guilty pleas and withdraw his initial guilty pleas, and he nonetheless elected to accept the State's amended offer and again plead guilty, subjecting himself to the same minimum mandatory sentence that he mistakenly expected would result from his initial guilty pleas.

In this case, all of Defendant's allegations are belied by his unequivocal statements during the guilty plea colloquies and his signature on the Truth-In-Sentencing Form. Specifically, during the colloquies, Defendant twice confirmed that he reviewed the forms "thoroughly and carefully" with his attorneys, that he was satisfied with his attorneys' representation, that he understood the finality his guilty pleas, and that he was offering the guilty pleas

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.") (citations omitted).

²⁸ *MacDonald*, 778 A.2d at 1075.

²⁹ Jury selection began on January 11, 2011 and was completed on January 14, 2011.

³⁰ Tr. II at 1.

knowingly, intelligently, and voluntarily.³¹ Other than Defendant's conclusory allegations that he was "pressured" into accepting the plea by his counsel and that his counsel "played on" his emotions to coerce him into accepting the State's plea offer, the record is devoid of any evidence that would rebut Defendant's answers during the colloquies or his signature on the Truth-In-Sentencing Forms.³² Indeed, Defendant has adduced no evidence that would contradict his statements during the plea colloquy and his signature on the Truth-In-Sentencing Forms, much less the requisite "clear and convincing" evidence. Thus, the presumption that Defendant's statements during the colloquies were truthful stands.³³

For the reasons stated above, Defendant has not established a "fair and just"³⁴ reason to permit him to withdraw his guilty pleas. Accordingly, Defendant's motion to withdraw guilty pleas is **DENIED**.

Richard R. Cooch

cc: Prothonotary

³¹ Tr. I at 8-11; Tr. II at 9-13.

³² See also *Hartman v. State*, 918 A.2d 338 (Del. 2007) (holding that the Superior Court properly denied the defendant's presentence motion to withdraw guilty plea when the defendant satisfactorily completed a colloquy with the Court and signed the Truth-In-Sentencing Forms, notwithstanding Defendant's unsubstantiated allegations that, *inter alia*, he was pressured by his attorney and his family to plead guilty).

³³ See *Somerville*, 703 A.2d at 632 (citations omitted).

³⁴ Superior Court Crim. Rule 32(d).