IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
	)	
v.	)	**Crim. ID. No. 1403019776**
	)	
	)	
WILLIAM O. BARKSDALE	)	

Submitted: August 24, 2015
Decided: September 14, 2015
Decision Issued: September 21, 2015

MEMORANDUM OPINION

Upon Defendant, William O. Barksdale's, Motion to Withdraw Guilty Plea, **DENIED**.

Mark A. Denney, Jr., Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, for the State of Delaware.

Michael C. Heyden, Esquire, Michael C. Heyden Law Office, Wilmington Delaware, for Defendant William Barksdale.

WALLACE, J.

I. INTRODUCTION

Defendant, William O. Barksdale, has filed a motion under Superior Court Criminal Rule 32(d) requesting that he be permitted to withdraw his guilty plea.[1] Mr. Barksdale claims he should be allowed to do so because: (1) he did not enter his plea "knowingly, willingly, and intelligently"; (2) he has a basis to assert legal innocence; and (3) his trial counsel "was ineffective and failed to adequately represent him, by coercing and rushing him into a plea."[2] For the reasons below, Mr. Barksdale's request to withdraw his guilty plea is **DENIED**.

II. FACTUAL AND PROCEDURAL BACKGROUND

Mr. Barksdale was indicted in July, 2014, on 19 felony charges: two counts of Drug Dealing-Heroin; six counts of Possession of a Firearm During the Commission of a Felony; one count of Aggravated Possession of Heroin; one count of Receiving a Stolen Firearm; one count of Possession of a Destructive Weapon; two counts of Conspiracy in the Second Degree; three counts of

[1] Mot. to Withdraw Guilty Plea and to Withdraw as Counsel, *State v. William O. Barksdale*, ID No. 1403019776 (Del. Super. Ct. May 29, 2015) (D.I. 37) (hereinafter "Def.'s Mot. to Withdraw Guilty Plea").

[2] *Id.* at Ex. B; *id.* at 5. Def.'s Ltr. to Trial Counsel, *State v. William O. Barksdale*, ID No. 1403019776 (Del. Super. Ct. May 28, 2015) (D.I. 36) (hereinafter "Def.'s Ltr. to Trial Counsel").

Possession or Control of a Firearm by a Person Prohibited; and three counts of Possession or Control of Ammunition by a Person Prohibited.[3]

The indictment was the result of an almost year-long drug investigation that culminated in the seizure of, *inter alia*, over 300 grams of heroin, three guns, and $20,000 cash.[4] Most of Mr. Barksdale's co-defendants pleaded guilty, signed cooperation agreements with the State, and agreed to testify against him.[5] The State also had DNA evidence linking Mr. Barksdale to the drugs and the apartment where a large cache of contraband was found.[6] The manager of the apartment complex where the drugs were found was set to testify he saw Mr. Barksdale coming out of the target apartment frequently, and the person whose name was on that apartment's lease was going to testify that she was there for only one day and that Mr. Barksdale occupied it and paid the rent thereafter.[7] Mr. Barksdale, if convicted of all charges, faced a minimum sentence of 122 years in prison.[8]

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[3] D.I. 4. Mr. Barksdale was one of seven co-defendants named in the 44-count indictment. *Id.*

[4] Colloquy and Plea Tr., May 5, 2015, at 4-6, 11.

[5] *Id.* at 6.

[6] *Id.* at 7.

[7] *Id.* at 8.

[8] *Id.* at 3-5. Mr. Barksdale is also subject to sentencing as a habitual criminal. *See* DEL. CODE ANN. tit. 11, § 4214(a) (2014) (providing that a person who has been thrice previously convicted of a felony and is thereafter convicted of another felony may be declared an habitual

Because of the complexity of the case and the anticipated length of its trial, the case was specially assigned to and managed through its pretrial proceedings by the undersigned.[9] The two-week trial was scheduled to begin May 11, 2015; jury selection was to occur the preceding week, on May 6, 2015, with a specially-summoned venire panel.[10]

Mr. Barksdale's final case review was conducted on May 4, 2015. He rejected the then-pending plea offer and his counsel filed his proposed supplement *voir dire* questions for jury selection.[11]

The Court conducted a final status conference the next day, May 5, 2015 – the day before jury selection – to address any remaining logistics related to jury selection and trial.[12] Mr. Barksdale's trial counsel, Patrick J. Collins, Esquire, outlined the evidence against his client and the State's then-pending plea offer.[13] The plea offer, which was the result of extended negotiations, called for Mr. Barksdale to plead guilty to one count of Drug Dealing-Heroin and one count of

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criminal offender; the Court may then, in its discretion, impose a sentence of up to life imprisonment for that or any subsequent felony).

9 D.I. 8 (Order of Assignment).

10 D.I. 12 (Scheduling Memorandum Order).

11 D.I. 27 and 28.

12 *See* Colloquy and Plea Tr., May 5, 2015, at 2, 20.

13 *Id.* at 2-11 (outline of evidence); *id.* at 16-18 (explaining changes in plea agreements offered during plea negotiations and timing of last offer).

Possession of a Firearm by a Person Prohibited. The State would enter a *nolle prosequi* on the remaining charges. The State also agreed to forgo prosecution of certain potential charges that had arisen or been discovered during the course of the State's ongoing investigation of Mr. Barksdale. Most importantly, the State agreed to charges that called for just a minimum of 12 years of incarceration and to recommend no more than 20 years at the time of sentencing.[14]

At the parties' request, the Court engaged in a colloquy with Mr. Barksdale to insure that he understood the terms of the plea agreement offered and the potential risks of rejecting that offer. During that colloquy, Mr. Barksdale requested an opportunity to further consider the plea offer and discuss it with his counsel.[15] The Court recessed to allow Mr. Barksdale the opportunity to do so.[16]

The status conference resumed later that afternoon when the Court was informed that Mr. Barksdale wished to enter a guilty plea; he had executed the plea agreement and the guilty plea form during the recess.[17]

During his guilty plea colloquy, Mr. Barksdale confirmed that the plea as outlined by the parties' counsel was correct and that he understood that by entering

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14 *Id.* at 16-18. *See* Ex. A to Def.'s Mot. to Withdraw Guilty Plea.

15 Colloquy and Plea Tr., May 5, 2015, at 15-19.

16 *Id.* at 17-19; *id.* at 19-20 (the Court also made arrangements allowing Mr. Barksdale to speak with his mother who was present at the proceeding).

17 *Id.* at 20-23.

a plea, he would not go to trial.[18] Mr. Barksdale told the Court that it was his choice to plead guilty and to waive his rights associated with a trial.[19] He also acknowledged that he had entered prior guilty pleas and understood what a waiver of trial entailed.[20] Mr. Barksdale then pleaded guilty to one count of Drug Dealing-Heroin, pleaded guilty to one count of Possession of a Firearm by a Person Prohibited, and confirmed that he understood the sentencing parameters and enhancements applicable in his case.[21] Mr. Barksdale stated that he did commit the acts to which he pled guilty.[22] He assured the Court that he had reviewed the plea paperwork thoroughly with Mr. Collins, and he fully understood what was being asked and the answers he was giving.[23] He also verified that he had had enough time to discuss his case with his counsel, that he was satisfied with Mr. Collins'

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18 *Id.* at 25-26.

19 *Id.* at 26-27.

20 *Id.* at 27-28.

21 *Id.* at 30-34.

22 *Id.* at 31.

> THE COURT: First of all, are you pleading guilty to both of those charges because you did, in fact, commit the acts that we just discussed?
>
> MR. BARKSDALE: Yes.

23 *Id.* at 34-35.

representation, and that no one forced him to plead guilty.[24] The Court found that Mr. Barksdale entered his plea knowingly, intelligently, and voluntarily, with a full understanding of the plea agreement's charges and consequences. And so, the Court accepted the guilty plea.[25]

Mr. Barksdale's first discontent with his guilty plea was exhibited on May 15, 2015, when he filed a *pro se* motion and letter seeking to withdraw it.[26] Those filings were referred to Mr. Collins.[27] Mr. Collins, after consultation with Mr. Barksdale (and at Mr. Barksdale and of certain of his family members' insistence), filed the pending Motion to Withdraw Guilty Plea on Mr. Barksdale's behalf on May 28, 2015. Mr. Collins also filed a motion to withdraw as counsel; that was granted and Michael C. Heyden, Esquire, was appointed to represent Mr. Barksdale. After giving both parties an opportunity to supplement their filings on the motion to withdraw, the Court heard argument on August 24, 2015.

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[24] *Id.* at 36-37.

[25] *Id.* at 37-38.

[26] D.I. 33 and 36.

[27] Super. Ct. Crim. R. 47 ("The court will not consider pro se applications by defendants who are represented by counsel unless the defendant has been granted permission to participate with counsel in the defense.").

III. STANDARD OF REVIEW

A motion to withdraw a guilty plea is addressed to the sound discretion of this Court.[28] Under Superior Court Criminal Rule 32(d), if a motion to withdraw a plea of guilty "is made before imposition . . . of sentence . . . the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason."[29] The defendant bears the burden to show, under this rule, that there is a fair and just reason to permit the withdrawal;[30] "and that burden is substantial."[31]

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[28] *McNeill v. State*, 2002 WL 31477132, at *1 (Del. Nov. 4, 2002); *Brown v. State*, 250 A.2d 503, 504 (Del. 1969).

[29] Superior Court Criminal Rule 32(d) substantively mirrors and is modeled after Federal Rule of Criminal Procedure 11(d)(2)(B). *Compare* Super. Ct. Crim. R. 32(d), *with* Fed. R. Crim. P. 11(d)(2)(B) ("A defendant may withdraw a plea of guilty or nolo contendere . . . after the court accepts the plea, but before it imposes sentence if . . . the defendant can show a fair and just reason for requesting the withdrawal."). *See* Fed. R. Crim. P. 32, Advisory Committee Notes, 2002 Amendment (guilty plea withdrawal provisions moved from Rule 32 to Rule 11); *id.* at 1983 Amendment (amending then-extant Federal Rule 32(d) to incorporate the "fair and just" standard which the federal courts had consistently applied to presentence motions); *see also* Super. Ct. Crim. R. 32(d) (1987) (ORDER) (amending then-extant Superior Court Rule 32(d) to incorporate the "fair and just" standard to be applied to presentence motions). In turn, decisions interpreting the federal rule can be of great persuasive weight in the construction of Delaware's parallel rule. *See Bradshaw v. State*, 806 A.2d 131, 135 (Del. 2002); *Ross v. Ross*, 1994 WL 590494, at *2 (Del. Oct. 11, 1994); *Canaday v. Superior Court*, 119 A.2d 347, 352 (Del. 1955).

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

[31] *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003).

IV. DISCUSSION

While Rule 32(d) "contemplates a lower threshold of cause sufficient to permit withdrawal of a guilty plea" before sentencing has occurred,[32] "withdrawal of a guilty plea is not an absolute right."[33] Rather, a defendant is required to demonstrate that there exists a fair and just reason for withdrawing his plea of guilty.[34] To determine if there is a fair and just reason to permit Mr. Barksdale to withdraw his guilty plea, the Court must address the following:

> (a) Was there a procedural defect in taking the plea;
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> (b) Did the defendant knowingly and voluntarily consent to the plea agreement;
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> (c) Does the defendant presently have a basis to assert legal innocence;
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> (d) Did the defendant have adequate legal counsel throughout the proceedings; and

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[32] *Patterson v. State*, 684 A.2d 1234, 1237 (Del. 1996).

[33] *United States v. Wilson*, 429 F.3d 455, 458 (3d Cir. 2005); *United States v. Martinez*, 785 F.2d 111, 113 (3d Cir. 1986) ("We have consistently recognized that a criminal defendant has no absolute right to withdraw a guilty plea under Rule 32(d)."). *See also United States v. Brown*, 250 F.3d 811, 815 (3d Cir. 2001) ("Once accepted, a guilty plea may not automatically be withdrawn at the defendant's whim.") .

[34] *See* Super. Ct. Crim. R. 32(d); *Chavous v. State*, 953 A.2d 282, 285 (Del. 2007) ("Under Superior Court Criminal Rule 32(d), the defendant bears the burden to show that there is a fair and just reason to allow the withdrawal of a plea.").

(e) Does granting the motion prejudice the State or unduly inconvenience the Court.[35]

The Court does not balance these factors; "[c]ertain of the factors, standing alone, will themselves justify relief."[36]

a) There was no procedural defect in taking the plea.

When he 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."[37] 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 been entitled to exercise at a trial."[38] The Court, aware that Mr. Barksdale had, at least once before, rejected the plea about which he now complains, engaged in an extensive and careful plea colloquy with Mr. Barksdale before finally accepting his guilty

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35 *Scarborough*, 938 A.2d at 649; *State v. Friend*, 1994 WL 234120, at *1-2 (Del. Super. Ct. May 12, 1994).

36 *Patterson*, 684 A.2d at 1239.

37 *Sommerville v. State*, 703 A.2d 629, 631 (Del. 1997).

38 *Id.* at 631-32.

plea.[39] That hearing included all requirements under this Court's rules governing the acceptance of guilty pleas.[40] And Mr. Barksdale now admits that there was no procedural defect in taking his plea.[41]

b) Mr. Barksdale knowingly and voluntarily consented to the plea agreement.

Mr. Barksdale's chief claim is that he was coerced into taking the plea by his counsel and the State.[42] But the record belies this. During the initial colloquy regarding rejection of the plea offered, Mr. Barksdale requested more time to consider the plea and discuss it with Mr. Collins.[43] The Court recessed the proceedings to afford Mr. Barksdale more time to discuss the plea agreement not only with his counsel, but also with his mother. Mr. Barksdale, of his own volition,[44] agreed to accept the State's offer and enter the guilty plea following that

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39 Colloquy and Plea Tr., May 5, 2015, at 21-38.

40 *See* Super. Ct. Crim. R. 11.

41 Def.'s Mot. to Withdraw Guilty Plea, at 4 ("There is no basis to assert that there was a procedural defect in taking the plea.").

42 Def.'s Mot. to Withdraw Guilty Plea, at 3 ("I was coerced by the State threatening to prosecute me for other offenses I did not commit; I was hurried, pressured and coerced by my counsel; I wasn't in the right state of mind when I took the plea and was not thinking rationally."); Def.'s Ltr. to Trial Counsel, at 2 ("I have thought about how this plea was presented to me which was hurried and pressured by you and [the prosecutor] which by the way was inadvertently coercing me to sign the plea. . . . You can argue that it was not 'knowingly, willingly, nor intelligently['] in the grounds of being coerce which made my decision Ardous [sic].").

43 Colloquy and Plea Tr., May 5, 2015, at 16-19.

44 *Id.* at 26.

recess.[45] Mr. Barksdale's counsel then represented that Mr. Barksdale understood the evidence in his case, the terms of the plea, his constitutional rights, and the penalties that he faced.[46] Mr. Barksdale himself verified that no one forced him to take the plea[47] and that he committed the crimes to which he pled guilty. [48]

Unless there is clear and convincing evidence to the contrary, Mr. Barksdale is bound by the written and oral representations he made during his acceptance of the guilty plea.[49] Having engaged Mr. Barksdale in open court, and having

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> THE COURT: You also understand the decision to pleading guilty here today is yours and yours alone? No matter what the advice you were given by your counsel, no matter what conversations you had with any family member, it's you decision and yours alone?
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> MR. BARKSDALE: Yes.
>
> THE COURT: And it is your choice, individually, to plead guilty here today?
>
> MR. BARKSDALE: Yes.

[45] *See, e.g.*, *Brown v. State*, 250 A.2d 503, 504 (Del. 1969) (finding defendant entered into plea voluntarily where defendant conferred with attorney to discuss plea for thirty minutes).

[46] *See* Colloquy and Plea Tr., May 5, 2015, at 24-25.

[47] *Id.* at 36-37.

> THE COURT: Has anyone – anyone at all – forced you or threatened you to make you plead guilty here today?
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> MR. BARKSDALE: No.

[48] *Id.* at 28-31.

[49] *Sommerville v. State*, 703 A.2d 629, 632 (Del. 1997).

engaged in a careful review of the plea colloquy and documents supporting Mr. Barksdale's guilty plea, the Court finds that he knowingly and voluntarily entered the plea.

c) Mr. Barksdale does not have a basis to assert legal innocence.

Included in Mr. Barksdale's filings are blanket assertions of "both his factual and legal innocence" and attempts to reassert his right to trial.[50] But "[c]onclusory allegations of innocence are not sufficient to require withdrawal of a guilty plea, especially when the defendant has admitted his guilt in the plea colloquy."[51] Instead, a defendant must present credible evidence to assert a basis for legal innocence—"[m]ere assertions of innocence unfounded on 'specific evidence' do not constitute a fair and just reason to withdraw a guilty plea."[52]

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[50] *See* Def.'s Mot. to Withdraw Guilty Plea, Ex. B. *See also* Def.'s Mot. to Withdraw Guilty Plea, at 3 ("I want to assert my right to trial."); *id.* at 5 ("Mr. Barksdale believes he has a basis to assert his innocence and have the State attempt to meet its burden of proof as to all charges."); Def.'s Ltr. to Trial Counsel, at 2 ("I want to go to trial with an impartial jury and exercise every constitution [sic] that I'm guaranteed protected [sic] under . . . I choose to have a fair and impartial jury trial.").

[51] *Russell v. State*, 1999 WL 507303, at *2 (Del. June 2, 1999). *See United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003) ("Bald assertions of innocence are insufficient to permit a defendant to withdraw his guilty plea.").

[52] *See United States v. Cannistraro*, 734 F. Supp. 1110, 1121 (D.N.J. 1990); *see also State v. McNeill*, 2001 WL 392465, at *3 (Del. Super. Ct. Apr. 5, 2001) (citing *Russell*, 1999 WL 507303, at *2) ("After admitting to an offense at the time of the plea, a defendant cannot later assert innocence in the absence of some other support.").

Mr. Barksdale's only allusion to evidentiary support for his claim of legal innocence is found in his letter to his counsel: "My decision for this action is based on multiple inconsistencies in the State's case in chief."[53] This knowledge of the prosecution's case was, no doubt, held by Mr. Barksdale ten days earlier when he entered his plea and does not constitute a "sufficient reason[] to explain why contradictory positions were taken before th[is] [] [C]ourt and why permission should be given to withdraw the guilty plea and reclaim the right to trial."[54] And so this factor, neither alone, nor with the others, justifies relief under Rule 32(d).

d) Mr. Barksdale had adequate legal counsel throughout the proceedings.

Mr. Barksdale now asserts that his trial counsel, Mr. Collins, "was ineffective and failed to adequately represent him, by coercing and rushing him into a plea."[55] Again, the record supports no such claim.

Mr. Collins demonstrated a clear understanding of the State's case when he outlined the evidence, his preparation for trial, and his communication of those to Mr. Barksdale during the colloquy. Because, in his estimation "the State's case against Mr. Barksdale is quite strong," Mr. Collins, as required, both prepared for trial and also engaged in active negotiations to obtain the best plea offer he could

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53 Def.'s Ltr. to Trial Counsel, at 1.

54 *Jones*, 336 F.3d at 253.

55 Def.'s Mot. to Withdraw Guilty Plea, at 5; Def.'s Ltr. to Trial Counsel, at 2.

for his client.[56] Mr. Collins provided the case discovery to Mr. Barksdale and the two had fully discussed the evidence, any available defenses and Mr. Barksdale's rights.[57] Mr. Barksdale confirmed this.[58]

Mr. Collins was able to obtain a significant reduction in the sentencing risks for Mr. Barksdale; Mr. Barksdale was facing a minimum 122 years in prison if convicted and the possibility of incurring multiple life sentences.[59] His plea agreement reduced his exposure to a 12-year minimum, with the State's affirmative agreement to cap its recommendation at 20 years imprisonment.

During his plea colloquy, Mr. Barksdale acknowledged that he and Mr. Collins fully discussed the case, and that he was satisfied with Mr. Collins'

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[56] Colloquy and Plea Tr., May 5, 2015, at 2-9 (counsel's outline of evidence); *id.* at 16-18 (explaining plea negotiations). *See Missouri v. Frye*, 132 S. Ct. 1399, 1407 (2012) ("The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages.").

[57] Colloquy and Plea Tr., May 5, 2015, at 9, 25.

[58] *Id.* at 15-16, 36.

[59] *See, e.g.,* DEL. CODE ANN. tit. 16, § 4752(1) (drug dealing a Tier 4 quantity is a class B felony); *id.* at § 4752(3) (aggravated possession of a Tier 5 quantity is a class B felony); DEL. CODE ANN. tit. 11, § 1447A (possession of a firearm during commission of a felony is a class B felony); *id.* at § 4205 (the term of incarceration for a class B felony not less than 2 years up and up to 25 years.); *id.* at § 1448 (possession of firearm by a person prohibited carries a minimum sentence of ten years imprisonment if the person has been convicted on two or more separate occasions of any violent felony); *id.* at § 4214(a) (any person sentenced under 11 *Del. C.* § 4214(a) must receive a minimum sentence of not less than the statutory maximum penalty otherwise provided for any fourth or subsequent title 11 violent felony which forms the basis of the State's habitual criminal petition).

representation.[60] Mr. Barksdale noted on his Truth in Sentencing form that he was satisfied with Mr. Collins's representation and Mr. Collins fully advised him of his rights.[61]

Though he now argues otherwise, the record evidence demonstrates clearly that Mr. Barksdale had far more than just "adequate" legal counsel when he entered his guilty plea.

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60 *Id.* at 36.

> THE COURT: Do you believe that you've had enough time to discuss this case fully with Mr. Collins so you fully understood what you're doing here today?
>
> MR. BARKSDALE: Yes.
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> THE COURT: Did you discuss your evidence with him, any defenses you believe you may have had and ask him any questions so that you fully understood the plea that you're entering today?
>
> MR. BARKSDALE: Yes.
>
> THE COURT: Do you believe that he's done all he can reasonably do for you in relation to the charges that you faced?
>
> MR. BARKSDALE: Yes.
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> THE COURT: Are you satisfied with his representation of you?
>
> MR. BARKSDALE: Yes.

61 *See* Def.'s Mot. to Withdraw Guilty Plea, Ex. A.

e) Granting withdrawal of the guilty plea would prejudice the State and unduly inconvenience the Court.

The State "need not show . . . prejudice when a defendant has failed to demonstrate that the other factors support a withdrawal of the plea."[62] In turn, even an absence of a showing of prejudice will have no effect on Mr. Barksdale's Rule 32(d) motion unless it is found first that he has demonstrated sufficient grounds for withdrawing his plea.[63] Mr. Barksdale has not argued that the State will not be prejudiced, nor the Court inconvenienced if withdrawal of his guilty plea is allowed. Yet the record demonstrates that both will occur.

The State has set forth the prejudice it would suffer in having to re-invest the "substantial time [that] went into putting [its] case together," and to re-marshall its "large number of witnesses," "forensic experts, local and federal law enforcement agencies and cooperating co-defendants."[64] Such prejudice is well-recognized as a factor against allowing plea withdrawal.[65] The undue inconvenience to the Court is obvious from the forgoing explanation of the extraordinary efforts exerted to

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62 *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003); *United States v. Cannistraro*, 734 F. Supp. 1110, 1123 (D.N.J. 1990) ("There is no burden on the Government to come forth with a showing of prejudice, absent the production by the defendant of a fair and just reason to withdraw his guilty plea.").

63 *United States v. Martinez*, 785 F.2d 111, 116 (3d Cir. 1986).

64 State's Resp. to Mot. to Withdraw Guilty Plea, at 5.

65 *See, e.g., State v. Drake*, 1995 WL 654131, at *6 (Del. Super. Ct. Nov. 1, 1995) (finding State would be prejudiced by withdrawal of guilty plea because State was prepared for trial when plea reached); *State v. Friend*, 1994 WL 234120, at *4 (Del. Super. Ct. May 12, 1994) (same).

have this case fully set to be tried when the plea was finally entered, *i.e.*, the eleventh hour before jury selection.

V. CONCLUSION

The Court finds that Mr. Barksdale has failed to carry his substantial burden of showing that a fair and just reason entitles him to withdraw his guilty plea. He has not shown there was a procedural defect in the taking of his plea; that his plea was entered involuntarily or unknowingly; that he has a basis for a claim of legal innocence; that his legal counsel was inadequate; or that there would be no prejudice to the State or undue inconvenience to the Court if his motion was granted.

Striking Mr. Barksdale's guilty plea for a trial now – based not on a fair and just reason informed by at least one of these salient considerations, but instead solely on Mr. Barksdale's latest misgivings about the plea – is not permitted under Rule 32(d).[66] Mr. Barksdale may now regret having entered his plea agreement,

[66] *See United States v. Brown*, 250 F.3d 811, 815 (3d Cir. 2001) ("A shift in defense tactics, a change of mind, or the fear of punishment are not adequate reasons to impose on the government the expense, difficulty, and risk of trying a defendant who has already acknowledged his guilt by pleading guilty.") (internal quotations omitted); *State v. Anderson*, 2013 WL 1091211, at *2-3 (Del. Super. Ct. Feb. 26, 2013) (withdrawal of a plea is not appropriate where a defendant merely experiences "buyer's remorse," but only where "the plea was not voluntarily entered or was entered because of misapprehension or mistake of [a] defendant as to his legal rights"); *see also State v. Stallings*, 2014 WL 4948261, at *1-2 (Del. Super. Ct. Aug. 25, 2014) (recognizing defendant's motion showed "buyer's remorse" where defendant made multiple written and oral assurances that his plea was voluntary); *State v. Williams*, 2013 WL 3409414, at *2 (Del. Super. Ct. June 27, 2013) (finding motion was only "buyer's remorse" where defendant admitted wrongdoing and had no claim of legal innocence).

"but his second thoughts about pleading guilty do not provide a basis for withdrawing his plea."[67]

Mr. Barksdale's Motion to Withdraw Guilty Plea must therefore be **DENIED.**

IT IS SO ORDERED.

/s/ Paul R. Wallace
Paul R. Wallace, Judge

Original to Prothonotary
cc: Mark A. Denney, Jr., Esquire
James K. McCloskey, Esquire
Michael C. Heyden, Esquire
Patrick J. Collins, Esquire

[67] *Russell v. State*, 1999 WL 507303, at *2 (Del. June 2, 1999).