

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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April 21, 2016

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RE: State of Delaware v. Keith Campbell
ID No. 1411008699

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

Dear Counsel:

Presently before the Court are two motions relating to Defendant Keith Campbell's ("Defendant") plea which was entered on October 6, 2015. Defendant pled guilty to Assault First Degree, Assault Second Degree, Conspiracy Second Degree, and Possession of a Firearm by a Person Prohibited. The plea reflected reduced charges for two Attempted Murder First Degree offenses and related charges regarding a shooting which occurred on November 7, 2014.

Defendant now requests that he be allowed to withdraw his plea and also argues that the State has failed to establish the prerequisite offenses to enhance his sentence for the Possession of a Firearm by a Person Prohibited charge to a ten-year minimum mandatory. For the reasons set forth below, Defendant's Motion to Withdraw Guilty Plea will be denied, but the Court will reduce the minimum mandatory for Possession of a Firearm by a Person Prohibited charge to five years.

The Court first notes that Defendant's handwritten letter to Mr. Goff, which was submitted in support of this Motion, merely expresses his dissatisfaction with his counsel. His complaints include lack of communication with counsel, confusion he experienced throughout the plea process, differences between the plea he signed and a previous plea, and counsel's handling of his suppression and *Franks* motions. There is nothing in the letter to reflect that Defendant was unclear as to the terms of the plea agreement, that his mental or physical condition rendered his plea involuntary, or that he was mistaken with regard to his legal rights. It is clear that Defendant's arguments are centered around his dissatisfaction with Mr. Goff's representation and nothing more. While perhaps relevant to the Court's decision on a motion filed pursuant to Superior Court Criminal Rule 61, allegations of ineffective assistance are not germane to a request to withdraw a plea unless they affect Defendant's fundamental rights such that it would be unjust to continue the plea. Clearly Defendant's assertions here do not meet that threshold.

Despite Defendant's allegations to the contrary, counsel in this case has aggressively pursued Defendant's legal position, both in terms of seeking to suppress certain evidence and urging the Court to hold a *Franks* hearing. This led to a 22-page opinion issued by the Court addressing these issues. While Defendant may now regret his decision to accept his plea, the Court would emphasize that the agreement substantially reduced his exposure given that, if he was convicted at trial, he would likely be spending the rest of his life incarcerated. Defendant's decision was made on the morning of trial, and the State was prepared to proceed forward. The plea agreement resulted in a significant benefit for Defendant and was accepted by the Court after an extensive colloquy regarding the rights he was giving up and the plea agreement he was accepting. The Court recalls no hesitation or "confusion" on behalf of Defendant and finds simply no basis upon which to withdraw his plea in this matter.

Next, Defendant asserts that since his two previous violent convictions were pled and sentenced at the same time, they should be treated as one and the enhancement found in 11 *Del. C.* § 1448(e)(1)(c) should not be applied. The previous charges at issue here include:

- 1) Robbery First Degree - ID 0312008392
 - Arrested January 7, 2004
 - Pled August 10, 2004
 - Sentenced April 15, 2005

- 2) Attempted Robbery First Degree - ID 0312008380
 - Arrested December 12, 2003
 - Pled August 10, 2004
 - Sentenced April 15, 2005

There appears to be no dispute that these offenses stem from two separate and distinct criminal acts. However, the cases were indicted on the same day (February 9, 2004) and it appears they were joined together to be tried on the same day (August 10, 2004). Defendant pled guilty to the offenses contained in both indictments on a single plea agreement and the sentence imposed on April 15, 2005 was contained in a single sentence order.

The above fact pattern distinguishes this case from *Ross v. State*.¹ In *Ross*, the convictions were separated in time but their arrest overlapped and the argument was that there was no “opportunity for rehabilitation” similar to that required under the habitual offender statute. The Supreme Court rejected this argument and found that the Possession of a Firearm by a Person Prohibited statute simply mandated a conviction of two violent offenses on separate occasions. The question here, rather, is whether Mr. Campbell has been *convicted* on two *separate occasions*. Defendant points out that “conviction” is defined in Title 11 *Del. C.* § 222 as “a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or plea of nolo contendere accepted by the court.” When the Court applies this definition to the facts here, it must conclude that, while Defendant committed two separate crimes on different days, his conviction for those offenses occurred on one occasion. The statute requires convictions on two separate occasions, not conviction resulting from crimes committed on two separate days. While it is unlikely the nuances of this distinction were not intended or considered by the legislature, the Court finds the statute is not ambiguous as written. As such, Defendant is only exposed to the five-year minimum mandatory.

¹ *Ross v. State*, 990 A.2d 424 (Del. 2010).

Having made this decision, the next question is whether this would justify allowing Defendant to withdraw his plea. Under the circumstances here, the answer is no. The Court's decision in this letter regarding the minimum mandatory sentence actually benefits Defendant. Significantly, he entered the plea believing he would face a ten-year minimum mandatory sentence on the Possession of a Firearm by a Person Prohibited charge. Both the TIS guilty plea form and the plea agreement reflected this belief. Directly adjacent to the Possession of a Firearm by a Person Prohibited offense, the plea agreement provided "(2 prior Felony Convictions - 11 *Del. C.* § 1448(e)(2)(c); *Ross v. State* 990 A.2d 424 (Del. 2010)." Any suggestion that the Court's decision today, *reducing* the minimum mandatory sentence faced by Defendant from ten to five years, could have caused Defendant to instead proceed to trial is utterly without merit. Defendant's original charges included two counts of Attempted Murder First Degree and Possession of a Firearm During the Commission of a Felony, for which he was facing at least 40 years of incarceration. There is no prejudice to Defendant here, especially given that he now faces only seven years of mandatory time versus the twelve he bargained for. The Court also notes the seven-year sentence is seven times less than the minimum mandatory sentence he would have faced had he proceeded to trial. Simply put, Defendant would not have foregone his decision to plead guilty as a result of this change in the minimum mandatory sentence and there is no basis to allow his plea to be withdrawn.

As a result, Defendant's request to withdraw his plea is hereby denied and the minimum mandatory to be imposed for the Possession of a Firearm by a Person Prohibited offense will be reduced to five years.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Prothonotary