

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
)
)
 v.) I.D. NO. 0002019767
)
)
 GERRON LINDSEY,)
)
)
 Defendant.)

Date Submitted: May 6, 2002

Date Decided: May 21, 2002

MEMORANDUM OPINION

**UPON DEFENDANT'S
MOTION TO WITHDRAW GUILTY PLEA**

DENIED

Anthony A. Figliola, Esq. and Sheryl Rush-Milstead, Esq. of Wilmington, Delaware,
Attorneys for Defendant.

Stuart Sklut, Esq. and Donald Roberts, Esq. of Wilmington, Delaware, Attorneys for the
State of Delaware.

On this 21st day of May 2002, upon consideration of Defendant's Motion to Withdraw Guilty Plea and the record in this case, it appears to the Court that:

(1) Defendant Gerron Lindsey ("Defendant") was arrested and charged with two counts Murder First Degree: one for intentional murder and one for felony-murder, five counts Possession of a Firearm during the Commission of a Felony, Attempted Murder First Degree, Attempted Robbery First Degree, two counts of Possession of a Deadly Weapon by Person Prohibited and Robbery First Degree.

(2) On April 9, 2002, Defendant accepted a guilty plea offer by the State, which specified that Defendant would plea guilty but mentally ill to Murder First Degree. The State specified that it would not seek the death penalty. The remainder of the charges were to be nolle prossed. On the same date, the Court accepted Defendant's guilty plea and ordered a presentence investigation and an evidentiary hearing to establish the foundation for the Defendant's plea of guilty but mentally ill. During the guilty plea proceedings, Anthony Figliola and Sheryl Rush-Milstead represented the Defendant.

(3) Defendant has now filed a motion to withdraw his guilty plea. Pursuant to Superior Court Criminal Rule 32(d), "the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason." Permission to grant this

withdrawal is within the sound discretion of the trial court. *Brown v. State*, 250 A.2d 503, 504 (Del. 1969).

(4) There are five factors that should be considered by the court in determining whether a defendant should be permitted to withdraw a guilty plea: whether there was a procedural defect in taking the plea; whether the defendant knowingly and voluntarily consented to the plea; whether the defendant has a basis to assert legal innocence; whether the defendant had adequate legal counsel throughout the proceedings; and whether granting the motion would prejudice the State or unduly inconvenience the court. *State v. Friend*, Cr. A. No. 93-08-0361, 1994 WL 234120 (Del. Super. May 12, 1994), *aff'd*, 683 A.2d 59 (Del. 1996).

(5) Defendant argues in his motion that at the time the guilty plea was entered, Defendant was a patient at the Delaware State Hospital and was receiving medication which effected his ability to understand what he was doing. Thus, it can be argued that Defendant is asserting that he did not knowingly and voluntarily enter into the plea.

(6) On the guilty plea form, Defendant indicated that he freely and voluntarily decided to plead guilty to the charge listed in the plea agreement. Most importantly, when asked, Defendant indicated that he was not under the influence of alcohol or drugs at the time he signed the guilty plea form that affected his ability to know and to understand the charge against him. Moreover, Defendant also indicated that he

understood that the minimum mandatory penalty for the charge he was pleading guilty to would be life imprisonment without the benefit of probation or parole.

(7) Defendant further indicated that he understood, by pleading guilty, that he was waiving the constitutional rights listed on the guilty plea form.

(8) In addition, his attorney indicated that he had extensive conversations with Defendant about the plea. Prior to the plea colloquy Defendant was sworn. Defendant, under oath, stated that he was taking medications for depression and sleep. He further indicated that he was able to understand that he was pleading guilty to Murder in the First Degree and by pleading guilty would be sentenced to life imprisonment. Defendant acknowledged his signatures on the Truth in Sentencing Guilty Plea Form and the Plea Agreement, which in fact indicate that there is a possibility of the death penalty. His attorney stated on the record that Defendant read the questions for himself and wrote his answers himself. Further, the Court was able to witness Defendant's demeanor during the plea colloquy and found him to be alert and that he verbally answered the questions in an appropriate manner.

(9) After careful review of documents supporting Defendant's guilty plea and the plea colloquy, the Court finds that Defendant knowingly and voluntarily consented to the plea agreement. Defendant has merely changed his mind and this Court will not

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vacate the guilty plea based on that reason. *State v. Marks*, I.D. No. 9408013769, 1999
WL 161 1338 (Del. Super. Mar. 22, 1999).

For the forgoing reasons, Defendant's Motion to Withdraw his Guilty Plea is
hereby **DENIED**.

IT IS SO ORDERED.

ALFORD, J.

Prothonotary's Office - Criminal Div.