

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

STATE OF DELAWARE)	
)	ID No: 0110022680
v.)	0108018065
)	
MATTHEW BROWN)	

Date Submitted: February 27, 2004
Date Decided: April 8, 2004

Upon Defendant's Motion to Withdraw his Guilty Plea:
SUMMARILY DISMISSED.

ORDER

On September 16 2003, Defendant filed a *pro se* motion respectfully requesting that the Court allow him to withdraw his plea of guilty that was entered on February 20, 2003. In its entirety, Defendant's motion is a single page document stating the following verbatim arguments in support of his motion:

1. Defendant was mistaken as to his legal rights in relation to a trial in that the defendant was given to understand that a jury of reasonable men could find him guilty of the charges. After an investigation of the facts in this matter, it is clear to the defendant that a jury of reasonable men would not find him guilty of the above-captioned charges.
2. The plea was not entered on a voluntary basis by the defendant. Wherefore, to prevent manifest injustice, the defendant requests that the guilty plea be withdrawn.

Defendant was charged by the grand jury for the following offenses: stalking; non-compliance with bond conditions (9 counts); sexual harassment (9 counts); aggravated

harassment; and, misuse of prisoner mail (4 counts). On February 20, 2003, Defendant pled guilty to stalking, one count of non-compliance with bond, aggravated harassment, and two counts of sexual harassment. A presentence investigation was ordered to include a complete mental health evaluation at the Delaware Psychiatric Center. Defendant was sentenced on June 13, 2003, to a total of seven years and sixty days at Level V incarceration.

Defendant reviewed and signed the plea agreement on November 18, 2002 and executed the Truth-in-Sentencing guilty plea form on February 20, 2003. The transcript confirms Defendant's written responses indicated on his guilty plea form. Despite Defendant's apparent mental health issues, it is clear from the transcript that defense counsel was extremely thorough in his representation and communication with his client.

Superior Court Criminal Rule 32(d) governs motions for plea withdraw.¹ At any time after imposition of sentence, a plea may only be set aside by motion under Rule 61.² Where a defendant moves to withdraw a guilty plea post-sentence, the burden of proving manifest injustice is on the defendant.³ Because Defendant's instant motion to withdraw his guilty plea was filed post-sentence, the Court will consider it under the provisions of Rule 61.

The Delaware Supreme Court has held that in reviewing motions for postconviction relief, this Court must first determine whether a defendant's claims are procedurally barred prior

¹DEL. SUPER. CT. CRIM. R. 32(d) provides, in pertinent part, that: "[i]f a motion for withdrawal of a guilty plea or nolo contendere is made before imposition or suspension of sentence..., the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason."

²*Id.*

³*State v. Insley* 141 A.2d 619 (Del. 1958); *State v. Smith*, 451 A.2d 837 (Del. 1982).

to considering them on their merits.⁴ Pursuant to Rule 61(i), claims for relief must be brought within three years of the conviction becoming final.⁵ Any ground for relief asserted in a Rule 61 motion that was not asserted in a the proceedings leading to the judgment of conviction is barred unless the movant demonstrates cause for relief from the procedural default and prejudice from violation of his rights.⁶ Furthermore, any ground for relief that was formerly adjudicated, whether in a proceeding leading to the judgment of conviction, in an appeal, or in a postconviction proceeding, is thereafter barred, unless reconsideration of the movant's claim is warranted in the interest of justice.⁷ Because Defendant failed to file a direct appeal challenging the validity of his guilty plea, his claim is procedurally barred unless he can establish cause and prejudice, as previously mentioned under Rule 61(i)(3).⁸

This Court will not address Rule 61 claims that are conclusory and unsubstantiated.⁹ Defendant's first ground for relief states that he was mistaken as to his legal rights in relation to a trial and upon an investigation of the facts, it is clear that a jury of reasonable men would not find him guilty of the above mentioned charges. Defendant was well apprized of the facts surrounding this case prior to entering his plea of guilty. His counsel informed him of his legal

⁴*Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991); *Flamer v. State*, 585 A.2d 736, 747 (Del. 1990).

⁵DEL. SUPER. CT. CRIM. R. 61(i)(1).

⁶DEL. SUPER. CT. CRIM. R. 61(i)(3).

⁷DEL. SUPER. CT. CRIM. R. 61(i)(4).

⁸*See Blackwell v. State*, 736 A.2d 971 (Del. 1999).

⁹*See Younger v State*, 580 A.2d 552, 555 (Del. 1990); *State v. Conlow*, Del. Super., Cr.A. No. IN78-09-0985R 1, Herlihy, J. (Oct. 5, 1990) at 5; *State v. Gallo*, Del. Super., Cr.A.No. IN87-03-0589-0594, Gebelein, J. (Sept. 2, 1988) at 10.

right to a trial and Defendant indicated that he understood the rights that he was giving up by pleading guilty. The Court disagrees with Defendant's new discovered clarity that a jury of reasonable men would not find him guilty. Defendant offers no specific factual or legal support for his argument. The record in this case includes letters written by the Defendant and an admission that he was obsessed with the victim in this case. He further indicated that he had no intention of curtailing his behavior in the future.

It is well established under Delaware law that prior to acceptance of a guilty plea, the court must be satisfied that the defendant has entered the agreement knowingly and voluntarily.¹⁰ To ensure a plea is knowingly and voluntarily entered, a trial judge must be certain the defendant understands the direct consequences of pleading guilty.¹¹ On the Truth-In-Sentencing guilty plea form, Defendant indicated that: (1) he had freely and voluntarily decided to plead guilty to the charges listed in his written plea agreement; (2) his attorney, the State, or anyone else had not threatened or forced him to enter his plea; and, (3) he was satisfied with his lawyer's representation and that he had fully advised him of his rights and of his guilty plea. This Court has held that in the absence of clear and convincing evidence to the contrary, a defendant is bound by his signed statement on a guilty plea form.¹² The Court also conducted a thorough colloquy in open court prior to accepting Defendant's guilty plea. During the colloquy, the Court discussed Defendant's mental health history and confirmed that he understood the proceeding and the trial rights he was giving up by pleading guilty but mentally ill. The Court found

¹⁰*Barkley v. State*, 724 A.2d 558, 559 (Del. 1999); *State v. Thomas*, 2002 WL 970474 (Del. Supr.).

¹¹*Barkley*, 724 A.2d at 559 (citing *Brady v. United States*, 397 U.S. 742, 755 (1970)).

¹²*State v. Britt*, Del. Super., Cr. A. No. IN92-04-0542R1, Goldstein, J. (Sept. 26, 1995) (ORDER).

Defendant's plea to be knowingly, voluntarily and intelligently made. Consequently Defendant's contention that he was coerced into taking State's plea offer is without merit. Defendant has not established cause for relief and prejudice from violation of his rights.¹³

For the above stated reasons, Defendant's motion for postconviction relief to withdraw his plea of guilty but mentally ill is **SUMMARILY DISMISSED.**

IT IS SO ORDERED.

/s/
The Honorable Richard S. Gebelein

Orig: Prothonotary
cc: Matthew Brown, DCC

¹³See DEL. SUPER. CT. CRIM. R. 61(i)(3).