

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

STATE OF DELAWARE,)	
)	
V.)	DEF. I.D.: 0303005982
)	
JIMMIE FRENCH,)	
)	
Defendant.)	

Date Submitted: April 6, 2004
Date Decided: April 16, 2004

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

ORDER

The Court having been presented with Defendant's Motion to Withdraw Guilty Plea, it appears to the Court that:

1. The defendant entered a plea of guilty to the charge of Assault in the First Degree on January 29, 2004. On March 4, 2004, the defendant addressed a handwritten letter to Resident Judge Richard R. Cooch in which, as best as the Court can discern, the defendant requested that Judge Cooch allow him to withdraw his guilty plea. The letter was forwarded to the judge who presided over the defendant's change of plea hearing for disposition. Defendant's sentencing has been deferred pending resolution of the motion *sub judice*.

2. The Court has reviewed the transcript of the Court's plea colloquy with the defendant. The Court also has reviewed the file, including the Plea Agreement and

the Truth-in-Sentencing Guilty Plea form, both of which were executed by the defendant. Upon review of this information, the Court concludes that the Defendant's Motion to Withdraw Guilty Plea must be DENIED.

3. A motion to withdraw guilty plea is controlled by Superior Court Criminal Rule 32(d). This rule provides that a defendant may withdraw his guilty plea prior to sentencing "for any fair and just reason." It is well settled in Delaware that the disposition of a motion to withdraw a guilty plea is within the sound discretion of the court.¹ Such an application will be granted only if the Court finds that "the guilty plea was not voluntarily made, or that it was entered by reason of mistake of the defendant as to his legal rights."² The burden is upon the defendant to articulate sufficient bases to meet the "fair and just" standard.³

4. Defendant argues that he should be permitted to withdraw his guilty plea because his lawyer did not adequately represent him in preparation for trial. Specifically, the defendant contends that his lawyer failed properly to investigate the case by failing, *inter alia*, to interview witnesses and to explore contradictions in the statements given by the State's primary witnesses. Defendant's contentions are unfounded. First and foremost, the Court must observe that the defendant admitted during the plea colloquy that he committed the offense of Assault in the First Degree. His admission was clear and unequivocal.⁴ He also indicated that he discussed his Plea Agreement and the Truth-in-Sentencing Guilty Plea form with his attorney and

¹*Brown v. State*, 250 A.2d 503, 504 (Del. 1969).

²*Id.*

³*State v. Insley*, 141 A.2d 619, 622 (Del. 1958).

⁴*Tr. of Guilty Plea* at 9-10.

that his attorney answered all of the defendant's questions about the documents to his satisfaction.⁵ The defendant answered affirmatively to the question on the Truth-in-Sentencing Guilty Plea form: "Are you satisfied with your lawyer's representation of you and that your lawyer has fully advised you of your rights and of your guilty plea?" Defendant answered in the negative to the Court's question: "Has anyone threatened you or coerced you to accept this guilty plea?"⁶ Finally, he answered affirmatively to the Court's question: "Are you [entering this plea] of your own free will because you believe it is in your best interest to do so?"⁷ The defendant was by no means a "new comer" to the criminal justice system; he knew his rights and exercised them voluntarily.

5. Based on the foregoing, the Court is satisfied that the defendant entered a knowing, intelligent and voluntary plea of guilty to the charge of Assault in the First Degree. Having "second thoughts about accepting a plea agreement does not constitute a fair and just reason for withdrawing a guilty plea."⁸

6. Defendant's Motion to Withdraw his Guilty Plea is **DENIED**. Sentencing will take place on June 18, 2004 at 1:15 p.m.

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to Prothonotary

cc: Mr. Jimmie French; Maria Knoll, Esquire; Robert M. Goff, Esquire;
Investigative Services Office

⁵*Id.* at 5.

⁶Tr. at 8.

⁷*Id.*

⁸*State v. Smith*, 1997 Del. Super. LEXIS 534, at * 5 (denying defendant's motion to withdraw a guilty plea before sentencing upon concluding that defendant's criticisms of his attorney's investigation of the case were unfounded)(citation omitted).