SUPERIOR COURT

OF THE

STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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WILMINGTON, DELAWARE 19801
(302) 255-0664

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Submitted: September 13, 2004
Decided: September 17, 2004

Re: *State v. Anthony L. Brown*
I.D. # 0312004556

On Defendant's "Motion to Withdraw Pleas of Guilty"
DENIED.

Dear Counsel:

Defendant, through his former attorney Jan A.T. van Amerongen, Esquire filed a "Motion to Withdraw Pleas of Guilty" on May 27, 2004. He had been scheduled for sentencing on May 14, 2004. Mr. Johnson subsequently was appointed to represent Defendant.

Defendant had entered guilty pleas to Robbery First Degree and to Possession of a Firearm By a Person Prohibited on March 15, 2004.

Defendant's motion (¶ 10) states that he "did not fully understand his trial rights and that he therefore did not make a knowing intelligent and voluntary decision to enter his guilty pleas. Specifically, Mr. Brown asserted that he did not understand that he, through his counsel, would have the ability to confront and question Wade Tucker in front of the jury." Motion at paragraph 10.

The State by letter of June 10, 2004 to the Court, suggested "that with such allegation having been made there must be an evidentiary hearing at which the testimony of Mr. van Amerongen must be presented."

The Court finally (on September 13) received a transcript of the March 15, 2004 colloquy (after having ordered it in late June). A copy of the transcript is enclosed for counsel.

When a defendant enters a guilty plea, "[t]here are numerous protections afforded to the defendant. [Citation omitted]. Prior to accepting a guilty plea, the trial judge must address the defendant in open court." *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997). 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. [Citation omitted]. 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." *Somerville*, 703 A.2d 631-632. The Delaware Supreme Court emphasized the need through "direct interrogation of the defendant," to establish a record of the factual basis for a plea of guilty, including an understanding of the consequences of his plea and that "he has discussed with his attorney *fully* the entry of his plea of guilty." *Patterson v. State*, 684 A.2d 1234, 1236 (quoting *Brown v. State*, 250 A.2d 503, 505 (Del. Super. 1969) (emphasis added).

However, after reviewing the transcript of the colloquy of the guilty plea, the Court has concluded that no sufficient showing has been made for the scheduling of an "evidentiary hearing" to explore Defendant's assertion further. Superior Court Criminal Rule 32(d) provides that this Court "may permit withdraw of the plea upon a showing by the Defendant of any fair and just reason." Rule 32(d) permits the Court, prior to the implementation of the sentence, to allow the defendant to withdraw his plea of guilty upon a showing by the defendant of "any fair and just reason." The rule contemplates that permission to withdraw a plea prior to sentencing is usually granted more liberally than after sentencing;

however, the burden is upon the defendant to show sufficient reasoning to meet the "fair and just" standard. In reviewing these motions, Courts have considered the following factors:

> (a) Was there a procedural defect in taking the plea[?];(b) Did the defendant knowingly and voluntarily consent to the plea agreement[?];(c) Does the defendant presently have a basis to assert legal innocence[?];(d) Did the defendant have adequate legal counsel throughout the proceedings[?]; and(f) Does granting the motion prejudice the State or unduly inconvenience the Court[?] *State v. Friend*, 1994 Del. Super. LEXIS 229 *3-4 (Del. Super.).

The only issue raised by Brown is the "knowingly and voluntarily" factor.

Defendant's assertion that he did not make a knowing intelligent and voluntary decision to enter his guilty pleas is not supported by the transcripts of the guilty plea colloquy:

At the beginning of the colloquy, Mr. van Amerongen stated: "I first spoke with Mr. Brown regarding the facts as we then knew them to be at the preliminary hearing in this matter. I met with him on several occasions since then. We had been employed [sic] with automatic discovery, were supplied with supplemental discovery we had requested, including six videotapes and additional police reports. We had discussed the facts of the case as well as potential defense[s] at trial. Mr. Brown has opted to accept the offer that has just been described and is now in agreement with same between himself and State. It is my belief that his intention to do so is voluntary, intelligent and knowingly made and I request that your Honor accept the plea." (Tr., p. 2, line 23; p. 3, lines 1 – 13).

- In response to the Court's question, "Have you freely and voluntarily decided to plead guilty to the charges listed in your written plea agreement?", Defendant answered A "Yes." (Tr., p. 4, lines 14 – 17).

- The Defendant acknowledged reviewing with Mr. van Amerongen "all the constitutional rights" that he had that were set forth on the Guilty Plea Form, and further that he wished "to waive or give up each and every one of those constitutional rights" and enter a plea of guilty to the two charges. (Tr., p. 5, lines 1 – 8). One of the constitutional rights there listed was Defendant's right "to hear and question the witnesses against you." He elsewhere acknowledged on the Guilty Plea from that he "had received and understood all the information contained in the [guilty plea] form."

- The Defendant stated to the Court that he believed he was knowingly, intelligently and voluntarily was entering a plea of guilty to both charges.

- Defendant further advised that he had reviewed the plea agreement with his attorney and had signed it. (Tr., p.6, lines 1-5).

- Lastly, the Court asked the Defendant: "Do you understand [that] what is being done is final, meaning you will not be able at a later time to withdraw your guilty pleas in these charges; do you understand that? To that penultimate question, Defendant answered "Yes." (Tr., p. 7, lines 19 - 23, p. 8, lines 1 – 4).

* * *

The law is clear that a mere assertion by a defendant, post-guilty plea, that the defendant did not understand a constitutional right being waived is not sufficient to allow a guilty plea to be withdrawn, (*State v. Melendez*, 2003 Del. Super. LEXIS 409 *20 (Del. Super.) (holding that "a defendant's bald statements that simply contradict what he said at his plea allocution are not sufficient grounds to withdraw the guilty plea")) much less to require this Court to take the step of holding a formal evidentiary hearing so the Defendant can explore this assertion further. *Melendez*, 2003 Del. Super. LEXIS 409 *22 (holding that Melendez was not entitled to an evidentiary hearing unless, "[he] submits specific factual allegations not directly contradicted in the record of circumstances undermining his plea").

A defendant's statements to the Superior Court during the guilty plea colloquy, with or without the witness oath, are presumed to be truthful. *Somerville*, 703 A.2d 632. Representations made by a defendant at the plea colloquy, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings." *Melendez*, 2003 Del. Super. LEXIS 409 *16 (quoting *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977)).

For the foregoing reasons, Defendant's **"**Motion to Withdraw Pleas of Guilty" is **DENIED.** Sentencing will take place on Friday, October 15, 2004 at 1:15 P.M..

IT IS SO ORDERED.

Very truly yours,

RRC/mtc
cc: Prothonotary
Jan van Amerongen, Esquire
Investigative Services