IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	I.D. 0306012643
	)	
GLEN HARTMAN,	)	
Defendant.	)	

Submitted: September 24, 2004
Decided: October 6, 2004

UPON DEFENDANT'S MOTION TO
WITHDRAW GUILTY PLEA
DENIED.

Allison L. Texter, Esquire, Deputy Attorney General, Attorney for State

Joseph A. Gabay, Esquire, Swartz Campbell & Detweiler, Wilmington, DE, Attorney for Defendant

ABLEMAN, JUDGE

ORDER

Upon consideration, this Court has decided that Defendant's Motion to Withdraw his Guilty Plea must be **DENIED**. It appears to the Court that:

1. On January 21, 2004, Defendant Glen Hartman entered a plea of guilty to five counts of Rape Third. Hartman admitted to repeatedly raping two children over a six-month period. Hartman stood in a position of trust with both of the children; the first victim was his niece and goddaughter, and the second was the daughter of a longtime family friend. Hartman's plea allowed him to avoid trial on ten counts of Rape Second, five counts of Unlawful Sexual Contact Second, and one count of First Degree Indecent Exposure. The State also agreed to a sentencing recommendation of no more than 15 years at Level V.

2. This Court conducted Defendant's plea hearing, including an extensive colloquy to ensure that Hartman entered his plea knowingly, intelligently, and voluntarily. The transcript of that hearing does not reveal any irregularity in Defendant's answers or behavior, and the Court recalls none. The transcript does reveal that Hartman had plenty of time to consider the plea. His attorney, Assistant Public Defender David Facciolo, apparently gave Hartman the plea agreement on January 14, 2004, and told him to think it over. Hartman signed the plea agreement a week later, on January 21, 2004.[1]

[1] Tr. of Plea Colloquy Proc. (*hereinafter* "Tr.") at 4.

The Truth-In-Sentencing Form that Hartman completed is also not remarkable or defective in any way; all of the answers are precisely what one would expect from a defendant confessing to a crime. Hartman consistently indicated, both in his colloquy and on the sentencing form, that he was satisfied with his counsel's representation, that he was not under the influence of drugs or alcohol, and that no one forced him to enter his guilty plea.[2]

3. Like many criminal defendants, Hartman began to second-guess his decision a few weeks after pleading guilty. Hartman filed a *pro se* motion to withdraw his plea on February 9, 2004, alleging three grounds for relief: (1) Mr. Facciolo advised him not to take the case to trial as he would likely lose and receive a sentence amounting to life imprisonment; (2) Mr. Malik, a private attorney briefly retained by Hartman before Mr. Facciolo was appointed, had waived his pretrial hearing; and (3) the State refused to provide him with certain statements that he (mistakenly) believed to be discoverable pursuant to Superior Court Criminal Rule 16. Hartman also complained that Mr. Facciolo was "treating him as if he were guilty of the charges" to which he had confessed by pleading guilty.[3]

Hartman sent several letters to Mr. Facciolo, demanding that he represent him on his motion. The record does not indicate any response. Defendant then

[2] Tr. at 7, 8, 12; Truth-In-Sentencing Form questions 2, 5, and 14.

filed a second *pro se* motion to withdraw his guilty plea. There Hartman broadened his allegations to claim that: (1) his family and attorney pressured him into taking the plea; (2) he was unaware of his surroundings during the colloquy because he had taken pain medication; and (3) Mr. Facciolo refused his demands to offer (inadmissible) character evidence from various witnesses.

4. The Court appointed new counsel to represent the defendant and heard the Motion on September 24, 2004. Hartman testified that Mr. Facciolo did not adequately explain why the evidence he wanted fell outside the scope of Rule 16, and why his character witnesses would not be permitted to testify. Interestingly, when Hartman's new counsel described, during direct examination, why Mr. Facciolo's views on those matters were legally correct, Hartman seemed to understand and accept the explanation. Hartman also testified that he had taken pain medication before the plea hearing, although he could not remember what kind or how much.

Mr. Facciolo also gave detailed testimony about his representation of Hartman. Mr. Facciolo discussed how he had attempted to explain the evidentiary problems that Hartman faced, but tried to do so in a general way. Mr. Facciolo noted that Hartman possessed an 11th grade education and easily becomes agitated, and that he did not want to give him a detailed lecture on the rules of evidence

[3] Defendant's Motion To Withdraw Guilty Plea of February 9, 2004 ("Motion I") at ¶ 6.

because it might seem as if he was talking down to or insulting him. Mr. Facciolo also testified that he carefully reviewed the taped statements of the two child victims, and that they corroborated each other and seemed, based on his experience gleaned from trying approximately 700 cases, to be insurmountably credible. Mr. Facciolo further testified that he explained this in detail to Hartman during five meetings that they had had, and that the statements were the primary reason that he recommended the guilty plea. Finally, Mr. Facciolo explained how he had negotiated the plea agreement, down from the State's initial offer of a minimum of 50 years imprisonment, to the 15-year recommendation that Hartman ultimately accepted.

5. Superior Court Criminal Rule 32(d) permits a court, in its discretion, to allow a defendant to withdraw a guilty plea "upon a showing by the defendant of any fair and just reason." The "fair and just reason" standard is commonly articulated as requiring 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."[4] Hartman has not met this burden, and his motion must therefore be **DENIED**.

Hartman's allegations are uniformly insubstantial. Defendant claims that he was "stressed" by the fact that both his family and Mr. Facciolo advised him to take the plea deal because he would almost surely lose at trial. There is no record

evidence of what the family may have said, but Mr. Facciolo's advice is certainly not a basis for relief. It was readily apparent from his testimony that Mr. Facciolo took commendable care to represent Hartman to the fullest, and that he genuinely empathized with Hartman's plight as few attorneys, and even fewer members of society, would. Mr. Facciolo's candid explanation to Hartman that he would probably lose at trial, and that the plea deal was the best he could hope for, should be cause for thanks, rather than rebuke and accusation.

Defendant's evidentiary assertions and vague, unsubstantiated claims of drug-induced incompetence are also not compelling. All involved, including the defendant, now seem to accept that Mr. Facciolo's opinions on the evidentiary questions were correct, and thus provide no basis for relief.[5] On the issue of drug use, the only medication Hartman could specifically remember taking the day that he entered his plea was Prilosec©, a heartburn medication. Nothing indicates that this medicine causes the mental incompetence that Defendant describes. Hartman's assertion that he took other drugs but cannot remember specifically what they are falls far short of the burden he bears to convince the Court to withdraw his plea.

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[4] *State v. French*, 2004 WL 838849 (Del. Super. 2004), *citing Brown v. State*, 250 A.2d 503 (Del. 1969).

[5] Also irrelevant is Defendant's complaint that Mr. Malik waved his pre-hearing, a procedural issue of no importance in this context. Since Defendant dropped this issue from his second motion, I assume he has abandoned it.

Finally, all of the defendant's claims directly contradict the answers that he gave during his plea colloquy and on the Truth-In-Sentencing Form. Specifically, Hartman indicated that he was satisfied with Mr. Facciolo's representation, that no one forced him to take the plea, and that he was not under the influence of drugs or alcohol.[6] The plea colloquy and the Truth-In-Sentencing Form would be utterly meaningless if defendants were not held to the answers that they give.

6. For these reasons, Defendant's Motion To Withdraw Guilty Plea is hereby **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

cc: Allison L. Texter, Esquire
Joseph A. Gabay, Esquire
David J. J. Facciolo, Esquire
Prothonotary

[6] *Supra* Note 2.