

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	I.D. No. 9705016999
v.	:	
	:	
CHARLES R. STREET,	:	
	:	
Defendant.	:	

Oral Argument Held: January 6, 2005
Briefing Completed: February 15, 2005
Decided: March 17, 2005

ORDER

Upon Defendant's Motion to Withdraw
Guilty Plea. Denied.

Robert J. O'Neill, Jr., Esquire, Deputy Attorney General, Dover, Delaware; attorneys for the State.

David R. Anderson, Sr., Esquire, Townsend, Delaware; attorney for the Defendant.

WITHAM, R.J.

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Upon consideration of Defendant's Motion to Withdraw Guilty Plea and the record before this Court, it appears to the Court that:

Charles R. Street ("Defendant") entered into a plea agreement pursuant to Superior Court Criminal Rule 11 (e)(1)(C) on March 30, 1998 and pled guilty to Possession of Drug Paraphernalia, Possession of a Narcotic within 1000' of a School, Possession of Marijuana, Possession of Heroin and Conspiracy 3rd Degree. Defendant also agreed to testify against his co-defendant. The State agreed in return to refrain from pursuing a habitual offender petition and place a twelve year Level Five cap on Defendant's sentence. A pre-sentence investigation was ordered and sentencing was scheduled for August 14, 1998. Defendant was released on bail and subsequently fled the area before sentencing. Because Defendant made himself unavailable to testify against his co-defendant, the State was incapable of successfully prosecuting his co-defendant and had no alternative but to nolle prosequi his co-defendant's charges. Defendant was finally arrested on a capias in 2004.

Following his arrest the State petitioned the Court to declare Defendant a habitual offender and sentence him to life imprisonment. Defendant responded to the State's petition by filing a motion to withdraw his guilty plea contending that he entered the plea agreement involuntarily. Sentencing was stayed pending resolution of Defendant's motion to withdraw his guilty plea. Oral arguments were presented before this Court on January 6, 2005 and this Court requested additional briefing regarding the State's petition to have Defendant declared a habitual offender.

The State contends that Defendant cannot withdraw his guilty plea irrespective of whether the State pursues a habitual offender petition. The State, however, has declared

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that it will not complicate matters by pursuing the habitual offender petition even though it believes it could legally pursue such petition. The State instead argues that this Court is not bound by the sentence recommendation and should sentence Defendant to a period of incarceration for thirty-four years. The State believes that Defendant should not be rewarded by the plea agreement because he has violated a material condition of the agreement by fleeing and failing to testify against his co-defendant. As a result of this breach, the State contends that Defendant remains bound by the plea agreement but that this Court has the authority to sentence Defendant to thirty-four years incarceration even though the Rule 11 (e)(1)(C) agreement states that the period of Level Five incarceration for Defendant shall not exceed twelve years.¹

The determination of whether to permit a defendant to withdraw his guilty plea is reserved to the sound discretion of the trial court.² Pursuant to Superior Court Criminal Rule 32(d), this Court may permit a defendant to withdraw his guilty plea “upon a showing by the defendant of any fair and just reason.”³ For this Court to allow Defendant to withdraw his guilty plea, Defendant must establish that he either entered the plea agreement involuntarily or entered the agreement because he misapprehended or misunderstood his legal rights.⁴ In determining whether the Defendant has provided a fair and just reason for withdrawing his guilty plea, the Court should make the

¹ The Court has since abolished Rule 11(e)(1)(c) plea agreements.

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

³ Super. Ct. Crim. R. 32.

⁴ *State v. Insley*, 141 A.2d 619, 622 (Del. 1958).

following inquiries:

- i. was there a procedural defect in taking the plea;
- ii. did the defendant knowingly and voluntarily consent to the plea agreement;
- iii. does the defendant have a basis to assert legal innocence;
- iv. did the defendant have adequate legal counsel throughout the proceedings; and
- v. does granting the motion prejudice the State or unduly inconvenience the Court?⁵

After reviewing the plea agreement, the truth in sentencing guilty plea form and the plea colloquy, this Court is firmly convinced that Defendant knowingly, intelligently and voluntarily entered into the plea agreement on March 30, 1998. Defendant does not dispute this finding but contends that he knowingly and voluntarily entered into a plea agreement where the maximum period of incarceration is twelve years. Defendant argues that he has an automatic right to withdraw his guilty plea if this Court does not accept the conditions of the plea agreement and sentences him for a longer period of incarceration than twelve years.

The State argues that Defendant should not be allowed to benefit from the plea agreement after fleeing and failing to fulfill his half of the bargain by testifying against his co-defendant. This Court agrees in part with the State. It is undisputed that Defendant materially breached the plea agreement by fleeing and failing to testify against his co-defendant. As a result of Defendant's material breach, the State is not bound by this plea

⁵ *State v. Friend*, 1994 Del. Super. LEXIS 229, *4.

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agreement and has the option of voiding the agreement. The State cannot, however, seek to enforce the plea agreement and simultaneously seek to breach the agreement. This is basic contract law. Moreover, if the State chooses to enforce its Rule 11(e)(1)(C) plea agreement, such agreement is binding upon this Court once the agreement has been accepted.⁶ Accordingly, this Court became bound by the contents of the parties' agreement on March 30, 1998 when it accepted the Rule 11 (e)(1)(C) plea agreement and only has the authority to sentence Defendant to a Level Five term of incarceration of up to twelve years.

In sum, Defendant has not presented this Court with a fair and just reason to withdraw his guilty plea and his motion is therefore *denied*. The State has the option of enforcing the plea agreement or voiding the agreement and proceeding to trial. If the State chooses to enforce the plea agreement, this Court is bound by the terms of the Rule 11(e)(1)(c) plea agreement and may only sentence Defendant for a maximum period of incarceration of up to twelve years.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Order Distribution

⁶ *Prospero v. State*, 782 A.2d 266 (Del. 2001)(ORDER).