

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WARREN MCNEILL,)
) No. 237, 2002
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,) Cr. ID #9905019691
)
 Plaintiff Below,)
 Appellee.)

Submitted: October 30, 2002
Decided: November 4, 2002

Before **WALSH, HOLLAND** and **STEELE**, Justices.

ORDER

This 4th day of November 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

1. The defendant-below, Warren McNeill, filed an appeal from the Superior Court's April 3, 2001 order denying his Motion to Withdraw Guilty Plea.
2. On November 22, 2000, McNeill pleaded guilty to Attempted Assault First Degree, Possession of a Firearm During the Commission of a Felony, and Reckless Endangering First Degree. On February 8, 2001, McNeill moved to withdraw his guilty plea.

2. The trial judge did not abuse his discretion by denying the defendant's motion to withdraw his guilty plea.

3. A motion to withdraw a guilty plea is addressed to the sound discretion of the trial court.¹ The timing of a motion to withdraw a guilty plea is an important factor in the exercise of that discretion, the significance of which is recognized in the rules governing the plea process.² Thus, Superior Court Criminal Rule 32(d) provides that if a motion to withdraw a plea of guilty "is made before imposition ... of sentence ... the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. At any later time, a plea may be set aside only by motion under Rule 61."³ Rule 32(d), as opposed to Rule 61, contemplates a lower threshold of cause sufficient to permit withdrawal of a guilty plea and one which must guide the discretion of the trial court.⁴ Here, McNeill moved to withdraw his guilty plea before sentencing; thus, the lower threshold of Rule 32(d) applies.

4. The trial judge, aware that McNeill had changed his mind at least once before taking the plea about which he now complains, carefully conducted a colloquy to ensure that he made the plea knowingly and voluntarily. At the conclusion of the colloquy, the judge accepted the guilty plea, reminding the

¹ *Blackwell v. State*, 736 A.2d 971, 972 (Del. 1999); *Patterson v. State*, 684 A.2d 1234, 1237 (Del. 1983).

² *Id.*

³ *Id.*

⁴ *Patterson*, 684 A.2d at 1237.

defendant that he could not change his mind again. When confronted with the later Motion to Withdraw the Plea, the trial judge carefully considered the following factors before denying the defendant's motion: (1) the procedure of the colloquy; (2) whether the plea was intelligent, knowing and voluntary; (3) whether the defendant had a basis to assert legal innocence; (4) whether the defendant had adequate legal counsel throughout the proceedings; and, (5) whether the State would be prejudiced or the court would be unduly inconvenienced if the defendant were permitted to withdraw his guilty plea.

5. The trial judge after carefully considering the above appropriate factors, in the exercise of his sound discretion correctly determined that McNeill's Motion to Withdraw Guilty Plea should be denied.

6. Because the trial judge's exercise of discretion was the product of a rational and clearly articulated decision-making process, he did not err when he denied McNeill's motion.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice