

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

STATE OF DELAWARE,)	
)	
V.)	DEF. I.D.: 0502008815
)	
CHADWICK KUCK,)	
)	
Defendant.)	

Date Submitted: December 21, 2005
Date Decided: January 13, 2006

*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 Misdemeanor Receiving Stolen Property on May 2, 2005. On December 21, 2005, the defendant moved to withdraw his guilty plea. 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 a sufficient basis to meet the "fair and just" standard.³

4. Defendant argues that he should be permitted to withdraw his guilty plea because "he improvidently entered the plea to a lesser-included misdemeanor charge at final case review in order to avoid a possible felony conviction."⁴ Defendant's proffered basis to withdraw his plea falls well short of the mark. First and foremost, the Court must observe that the defendant admitted during the plea colloquy that he committed the offense of Receiving Stolen Property. His admission was clear and unequivocal.⁵ His attorney likewise acknowledged that "there is a factual basis for him to plead guilty to one count of Receiving Stolen Property, a misdemeanor."⁶ The

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

²*Id.*

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

⁴D.I. 11, at ¶ 5.

⁵*Tr. of Guilty Plea* at 10.

⁶*Id.* at 3.

defendant represented to the Court that he had discussed his Plea Agreement and the Truth-in-Sentencing Guilty Plea form with his attorney and that his attorney answered all of his questions about the documents to his satisfaction.⁷ The defendant also 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?”⁸ 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?”⁹ The defendant was by no means a “new comer” to the criminal justice system; he knew his rights and exercised them voluntarily.¹⁰

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 Receiving Stolen Property. Having “second thoughts about accepting a plea agreement does not constitute a fair and just reason for withdrawing a guilty plea.”¹¹

6. Defendant’s Motion to Withdraw his Guilty Plea is **DENIED**. Sentencing will take place on the soonest available date on the Court’s sentencing calendar.

⁷*Id.* at 4.

⁸*Id.*

⁹*Id.*

¹⁰According to DELJIS, the defendant has 30 misdemeanor arrests and 15 misdemeanor convictions dating back to 1988.

¹¹*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).

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to Prothonotary

cc: Mr. Chadwick Kuck
Sean Lugg, Esquire
Brian J. Bartley, Esquire
Investigative Services Office