

People v White
2020 NY Slip Op 34438(U)
December 10, 2020
County Court, Westchester County
Docket Number: 18-0373
Judge: George E. Fufidio
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DEC 11 2020

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER

TASJAWN WHITE,

Indictment No.: 18-0373

Defendant.

-----X
FUFIDIO, J.

Defendant TASJAWN WHITE, moves for an order of this Court permitting him to withdraw his previously entered plea of guilty to murder in the first degree, attempted murder in the second degree and robbery in the first degree and to permit him to enter a plea of not responsible by reason of mental disease or defect (CPL 220.15). The People oppose the instant application, asserting that defendant's guilty plea was knowingly, intelligently and voluntarily entered. In consideration of this motion, the court has read and considered the following papers numbered 1 through 6:

Notice of Motion	1
Attorney Affirmation/Defendant Affidavit	2-3
Defendant's Memorandum of Law with Exhibits A, B & C	4
Affirmation in Opposition	5
Memorandum of Law in Opposition	6

Upon the foregoing papers, for the reasons articulated hereinafter, the relief sought is DENIED.

Tasjawn White ("defendant") was arrested on March 29, 2018 and indicted on June 13, 2018 where he was charged individually with murder in the first degree (Penal Law § 125.27 [i][a][vii]); and with aiding and abetting and acting in concert with Pierre Menash with two counts of murder in the second degree (Penal Law § 125.25[1,3]); two counts of attempted murder in the second degree (Penal Law § 110/125.25[1]); two counts criminal possession of a weapon in the fourth degree (Penal Law § 265.01); assault in the first degree (Penal Law § 120.10 [1]); attempted assault in the first degree (Penal Law § 110/120.10[1]); two counts of attempted robbery in the first degree (Penal Law § 110/160.15[1]); four counts of criminal possession of a weapon in the second degree (Penal Law § 265.03[1B,3]); two counts of robbery in the first degree (Penal Law § 160.15[2,4]); two counts of grand larceny in the fourth degree (Penal Law § 155.30[5]) and criminal possession of stolen property in the fourth degree (Penal Law § 165.45[2]). A third codefendant, Phillip Spearman, was charged individually for events that occurred after the murder.

The Defendant was initially assigned counsel from the Legal Aid Society of Westchester County, New York. On December 27, 2018 the Defendant moved for counsel to be relieved (People's Exhibit 1). His request was granted and on January 17, 2019, another attorney, Brendan O'Meara, from the 18b panel was appointed to represent him. On October 24, 2019 the Court (Warhit, J.), in an attempt to resolve the case, told the Defendant that upon a plea of guilty to murder in the second degree, the Court would sentence him indeterminately to 16 years to life in State Prison. The defendant, through counsel, advised the Court that despite the Court's sentence promise, he still wanted to go to trial (People's Exhibit 2). The Court gave him a week to further consider the sentence promise and provided him the opportunity to consult with his mother in addition to his attorney. On November 1, 2019 he reiterated his desire to go to trial. The case was then transferred to this Court as the trial court for pretrial hearings and ultimately, trial. Hearings commenced November 18, 2019. The next day, the People informed the defendant that his two co-defendants, Pierre Menash and Phillip Spearman had pleaded guilty pursuant to cooperation agreements and that they would be testifying for the People at trial. During Menash's plea, he fully implicated the defendant as the person who shot and killed the victim, Donovan Brown.

On November 20, 2019, after a decision on the pretrial hearings had been rendered the Court was told that a tentative plea agreement had been reached (Defense Exhibit A). The Court sought assurances that the defendant understood what had just been discussed concerning cooperating witnesses and various agreements made with them and then advised the defendant what the understanding of the plea agreement was and told the defendant that if, at any time, he had questions about what was happening in court that day that he could stop and get the answers he sought from the court or his attorney. The defendant stated that he understood. Once the terms of the plea had been recited for the record the Court then twice asked if the defendant understood the terms of the plea agreement, which included a waiver of his right to appeal. The defendant stated that he did. The defendant's attorney then stated that he had been given the authority by the defendant to enter a plea of guilty as had just been outlined by the Court. The Defendant was then placed under oath and fully and comprehensively allocated to his change of plea.

The Defendant assured the Court that he understood the rights he was giving up by pleading guilty and that he had been given enough time to speak with his lawyer about the decision to plead guilty. He stated that he was satisfied with his lawyer's representation and he denied having taken any drugs, medication or alcohol that could impair his understanding of what was occurring in court. When he was asked if anyone had threatened, coerced or forced him in any way to plead guilty, he unequivocally answered, "no" and when asked if he was pleading guilty because he is guilty and that he was getting a benefit from the plea bargain, he unequivocally answered, "yes."

When it came time for the Court to inform the Defendant what the maximum sentences that he faced could be, the Defendant paused, having misunderstood what was being told to him. He then conferred with his attorney to straighten out his confusion. The Court made sure that the Defendant understood that particular aspect of the plea colloquy, before going on to explain what the actual promised sentence would be. The Court then explained to the Defendant what could happen regarding the promised sentence if, between the plea and the sentencing date, he got in more trouble or refused to comply with the compilation of the pre-sentence report. The Defendant stated that he understood. Next, the Defendant waived his right to appeal. Finally, he

allocated to sufficient facts, as recited by the People, to establish the elements of the crimes to which he pleaded guilty.

The court listened to the defendant's answers during the allocution and carefully observed his demeanor, noting that the defendant responded to all questions asked of him lucidly and in a confident and clear manner, without any equivocation or hesitation. There was no indication that the defendant had any difficulty understanding the proceedings or any of the questions posed to him by the prosecutor, his attorney, or the Court. Based upon the answers the Defendant gave while under oath during the extensive plea allocution, the People recommended, and this Court accepted defendant's guilty plea and then a sentencing date was picked.

On October 8, 2020, this court received the defendant's instant motion seeking leave to withdraw his guilty plea. The defendant contends through his attorney's affirmation that he is entitled to withdraw his guilty plea because at the time of the plea, the Defendant was, "unable to assess his own ability to understand the proceedings," because he suffers from mental illness and that during the plea allocution he was, "hearing voices which caused him to enter a plea of guilty." The Defendant contends that a not guilty plea, by reason of mental disease and defect is required to be imposed instead of the guilty pleas.

By Affirmation in Opposition and Memorandum of Law, the People oppose defendant's application to withdraw his plea of guilty and waiver and contend that it must be denied without a hearing as the motion is facially without merit and is belied by his comprehensive plea allocution.

Conclusions of Law

A motion to withdraw a guilty plea, as well as the nature and extent of the fact finding inquiry are within the sound discretion of the court (*People v Stephens*, 186 AD3d 751 [2nd Dept. 2020]). "A guilty plea represents a compromise or bargain struck after negotiation between the defendant and the People. It is meant to mark the end of a criminal case, not [as] a "gateway" to further litigation (*see People v Taylor*, 65 NY2d 1, 5 [1985]). A Court may deny such a motion without a hearing if the Defendant is given a reasonable opportunity to present his contentions and the Court can make an informed decision on those contentions (*People v Rodriguez*, 270 AD2d 434 [2nd Dept. 2000]). The appropriate inquiry concerning the validity of a guilty plea provides that same will be upheld where it is found to have been entered knowingly, voluntarily and intelligently (*see People v Frederick*, 45 NY2d 520, 526 [1978]) ("A defendant will not be heard to challenge his guilty plea when the minutes of the plea are unequivocal and refute" his reason for withdrawal of the plea); *People v Fiumfreddo*, 82 NY2d 536, 543 [1993]; *People v Moisset*, 76 NY2d 909, 910; *People v Harris*, 61 NY2d 9 [1983]). Subsequent unsupported claims of innocence or duress present an insufficient basis to permit a defendant to withdraw a plea of guilty which was voluntarily made upon advice of counsel (*see People v Dixon*, 29 NY2d 55 [1971]).

Initially, upon the court's review of the stenographic record of the defendant's plea proceedings, including the defendant's unequivocal responses to the questions posed to him by the Court during the plea colloquy, that review demonstrates that he understood the proceedings, the rights he was waiving, the terms of his proposed sentence, and his detailed allocution to the elements of the crimes to which he entered his guilty pleas is sufficient to demonstrate that his guilty plea was knowingly, intelligently and voluntarily entered (*see People v Ramos*, 77 AD3d 773 [2d Dept 2010]). The one instance when he demonstrably did not understand what the Court

was telling him about the maximum sentences he faced, he appropriately stopped the *voir dire* and sought the advice of counsel. Furthermore, there was no observable basis to suggest that the defendant failed to comprehend the proceedings or was pleading guilty for any other reason than because he was guilty (*People v Matthews*, 21 AD3d 499 [2d Dept 2005]). The defendant at the time of the plea and in the preceding hearing days appeared lucid and alert, he responded appropriately and coherently to the questions asked of him and he indicated, on several occasions, that he understood the proceedings. Additionally, the defendant was not rushed into entering a guilty plea, in fact, the case had been pending for more than a year before he tendered his plea. While the case was pending, he had received the advice of two separate, experienced criminal defense attorneys. Further, just before the case was assigned to this part for trial, he had specifically been given the opportunity to consult with his mother about whether to plead guilty. Finally, within the context of the case itself, pleading guilty under the circumstances was objectively not an irrational option. The Defendant, throughout the pretrial proceedings, had an opportunity to glimpse the evidence that would have been presented against him at trial and by the time he pleaded guilty he had received a final ruling on the scope of evidence that could have been used against him. In addition, he had just received information that the two people who had been charged with him as co-defendants were also going to be testifying against him, further strengthening an already strong case for the People. Given the number of victims and separate criminal acts, the Defendant was facing multiple, lengthy, consecutive sentences if he was convicted and given the uncertainty of a trial outcome, opting for the certainty of a plea, with a limited sentence, although lengthy in itself, foreclosed even longer sentences. Accordingly, there is nothing in the record that casts doubt on the voluntariness of the pleas the defendant entered (*Frederick* at 526).

Nevertheless, the Defendant now claims that he is innocent of the crimes for which he pleaded guilty and that his mental state was impaired because he was acting on command auditory hallucinations he heard in his head that told him to plead guilty by "answer(ing) yes to some questions and no to others...without considering the questions themselves," thereby challenging his competency with respect to the knowingness, voluntariness and intelligence of the plea. Notwithstanding counsel's argument that he should be permitted to enter a plea of not guilty by reason of mental disease or defect, which in itself would require an admission of the acts for which he claims innocence, the defendant's claim of innocence is entirely unsupported and his claim of incompetence is spurious (*see, People v Dixon*, 29 NY2d 55 [1971]; *People v Cummings*, 53 AD3d 587 [2nd Dept. 2008]). While the People concede that the Defendant does suffer from mental illness, and the Court finds no reason to doubt this either, that mental illness in and of itself does not call into question his competency to perceive and participate in the proceedings before him (*People v Tortorici*, 92 NY2d 757 [1999]). Any claims otherwise are not borne out by the history of this case. The Defendant had an understanding of the plea process. This case was not the Defendant's first time charged with crimes nor pleading guilty to them. The Defendant, throughout this case had four experienced criminal defense lawyers assigned to him at various stages, pre and post-plea. All of whom would have understood the implications of an incompetent defendant, yet none of whom questioned his capacity or fitness to proceed and each of whom was well positioned to adequately gauge whether or not there was indeed a problem with the Defendant's ability to understand the various pretrial proceedings as they unfolded, including, as is relevant here, his plea. None of them did until this issue was raised in the instant motion and tellingly, present counsel has not even raised the issue of the

Defendant's ability to understand the instant proceedings (*Id.*). In support of his contentions, he has attached as Exhibit C, a report from Dr. Amsel who conducted an examination on the Defendant and reviewed Westchester County Medical Records. The Court is not persuaded by Dr. Amsel's report.

To begin, Dr. Amsel's interview was conducted and his report was generated almost a year after the events in question occurred and relied primarily on the Defendant's self-interested account of what his mental state was at the time of the plea nearly a year prior. Contemporaneous accounts of his mental state around the time of his plea are more revealing to the Court, which, not only had the opportunity to observe his demeanor during the plea, but also presided over several days of hearings leading up to the plea date where the Defendant was present and was observed. These accounts which are recorded in Westchester County Jail medical records, and that were, in fact, reviewed by Dr. Amsel, show a different account. They show a Defendant with a history of mental illness, who, understandably, given his circumstances, exhibited signs of anxiety and depression in the period of time leading up to what would have been his trial on, *inter alia*, several murder and attempted murder charges. Beginning on November 6, 2019, two weeks before he pleaded guilty, the Defendant is reported by the jail to being not acutely distressed, but exhibiting anxiety, depression and sleeplessness and no report of auditory hallucinations. On November 10, 2019 he was still depressed and anxious and reported auditory hallucinations telling him that he is worthless. On November 11, 2019 the Defendant complained of sleeplessness, but was not in acute distress. On November 12, there was no acute distress reported, but he did report auditory hallucinations, again, telling him he was worthless. He also reported being depressed. On November 13, the Defendant was in court. On November 14, he was not in acute distress and on November 15, he was under the impression that someone at the jail had tampered with his food, because he was vomiting, however, there was no report of any acute psychological distress. On November 17, there was no acute distress reported, but he did report mild anxiety and depression and again reported auditory hallucinations repeating his apparent worthlessness. There was no sign of internal preoccupation. On November 18, 19 and 20, the Defendant was in court for pretrial hearings and on the 20th he pleaded guilty. The day after his plea, November 21, and indeed, for a few weeks thereafter, the Defendant was not acutely distressed, nor did he report any complaints or mental health issues and no thoughts of self-harm or suicidal ideation. Throughout, there were no reports made of command auditory hallucinations. The only distress noted was that on November 21 his prescribed trazadone was mistakenly discontinued and when he was told that it had been re-prescribed, he exhibited relief. That he was feeling anxious and depressed at the prospect of going to trial is understandable, however, it is not a basis for withdrawing his plea (*People v Alexander*, 97 NY2d 487 [2002]). Equally unavailing is the Defendant's apparent dissatisfaction with his bargained for plea. A few weeks after his plea, on December 4, 2019, the Defendant is reported to have told the hospital medical staff that, "...he is going to retract his plea. Is facing a very long sentence." This dissatisfaction is likewise an insufficient reason to allow him to withdraw his plea (*People v Hagzan*, 155 AD2d 616 [2nd Dept. 1989]).

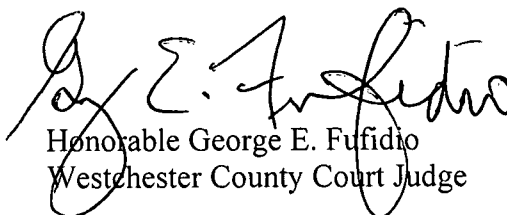
Finally, the Court does not find that the series of cases cited favorably by the Defendant compel a hearing or a withdrawal of his plea (*People v D'Adamo*, 281 AD2d 751 [3rd Dept. 2001]); *People v Jones*, 227 AD2d 982 [4th Dept. 1996]); *People v DeWolf*, 155 AD2d 995 [4th Dept. 1989]); *People v Hennessey*, 111 Ad3d 1166 [3rd Dept. 2013]). The People have ably distinguished each of these cases.

Based upon the foregoing, the defendant's application to withdraw his guilty plea and his waiver of appeal is summarily denied as the record demonstrates that he fully comprehended, the nature of and the consequences of his guilty pleas which was, therefore, knowingly, voluntarily and intelligently entered (*see People v Barnett, supra*, at 526; *People v Dunbar*, 260 AD2d 644; *People v Bonds*, 254 AD2d 430; *People v Suggs, supra*, at 630; *People v Andrews*, 207 AD2d 406).

The People's application for a continuation of the previously imposed sealing order is GRANTED.

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
December 10, 2020



Honorable George E. Fufidio
Westchester County Court Judge

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