SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER
Indictment No.: 18-0865

BRITTANY ROSENTHAL,
Defendant.

FILED

JUL 21 2021

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

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WARHIT, J.

Brittany Rosenthal ("Defendant") moves, through a counseled motion, for permission to withdraw her previously entered pleas of guilty to vehicular assault in the second degree and driving while ability impaired by drugs. The People oppose this application in its entirety. In contemplation of this motion, the Court read and considered the following papers:

Notice of Motion, Affirmation in Support of Motion to Withdraw Guilty Plea, Affidavit of Defendant; Memorandum of Law and Annexed Exhibits; Affirmation in Opposition and *Memorandum of Law; and Reply Affirmation and Annexed Exhibits*

Relevant Procedural Background

Defendant is charged under the within indictment with one count of vehicular assault in the second degree and one count of driving while ability impaired by drugs. On August 1, 2019, Defendant appeared in the Trial Assignment Part personally and by then counsel Gary Rick, Esq. On this date, the Court offered Defendant a plea under which, in exchange for entering pleas of guilty to each count of the indictment, she would be sentenced, *inter alia*, to concurrent definite one-year jail terms (Notice of Motion, Exhibit A, Transcript of January 15, 2019 ("Plea Minutes"), pp. 2, lines 22-25, p. 3, lines 1-9).

Upon counsel having represented Defendant wished to avail herself of this offer, the Court placed Defendant under oath (*Id.*, p. 3, lines 23-25 and p. 4, lines 1-2). The Court then confirmed Defendant's fluency in English as well as her interest in accepting the plea offer (*Id.*, p. 4, lines 3-10). Specifically, the Court inquired of Defendant: "[d]id you hear your attorney's application that you want to plead guilty to vehicular assault, a class E felony and driving while ability impaired by drugs, a class A misdemeanor? . . . "[i]s that what you want to do?" (*Id.*, p. 4, lines 5-9). Defendant replied in the affirmative (*Id.* at p. 4, line 10).

Under oath, Defendant expressed satisfaction with counsel's performance (*Id.*, p. 4, lines 11-22). In particular, Defendant acknowledged she had sufficient time to confer with counsel, that he had answered all of her questions and, in light of the charges she faced, that counsel had

achieved a "good" result for her (*Id.* p. 4, lines 11-17). Of particular significance to the instant motion, the Court advised Defendant: "I don't want an application from you later on that you want your plea back, blaming Mr. Rick. Can I rely upon your statement, made under oath in open court that you're satisfied with his work? (*Id.*, p. 4, lines 18-21). Unambiguously, Defendant replied "Yes" (*Id.*, p. 4, line 22). During the plea *voir dire*, the Court also advised Defendant: "I don't want to read in the presentence report that you're innocent or you're blaming [your attorney]. If I read those things, I'm not necessarily going to keep my [sentence] promise" (*Id.*, p. 8, lines 5-7). Defendant indicated she understood (*Id.*, p. 8, line 8).

Before discussing the Constitutional and other rights implicated by Defendant's decision to avail herself of the plea deal, the Court ensured she was not under the influence of drugs, medication, or alcohol (*Id.*, p. 4, lines 24-25 and pp. 5-10). The Court specifically ensured Defendant understood that by entering pleas of guilty she was giving up her right to a trial, whether by a judge or jury, and forfeiting her right to require the People to prove each and every element of each crime charged beyond a reasonable doubt (*Id.* at pp. 5-6). The Court also advised Defendant, who indicated she understood, that by entering pleas of guilty, she was satisfying the People's burden of proof, absolving the prosecutor of her obligation to call witnesses against her and relinquishing her rights to cross-examine witnesses, present evidence in her own defense and giving up her right to remain silent (*Id.* at p.5, lines 5-21).

During the plea allocution, during which the Court reviewed its sentencing promise, Defendant categorically denied her admissions of guilt were the result of a promise made by anyone other than the Court or that she had been forced to plead guilty (*see* generally, *Id.*, pp. 6-7; *and see* p. 6, lines 10-13 and p. 7, lines 22-23). Upon specific inquiry, Defendant maintained she was entering pleas "freely and voluntarily" because she is "actually guilty" (*Id.*, p. 6, lines 14-17).

As part of its comprehensive plea *voir dire*, the Court discussed with Defendant that, as a condition of the beneficial plea offer it was extending which would permit her to avoid a state prison sentence of up to four years, the Court was asking her to waive her appellate rights to the extent permitted by law (*Id.*, p. 6, lines 18-21 and p. 9, lines 5-14). In this regard, the Court explained the purpose and function of the appellate court and assured Defendant had discussed her decision to waive her appellate rights with counsel and was familiar with those rights she was retaining and those she was forfeiting (*Id.*, p. 8, lines 20-25 and p. 9, lines 14). Additionally, the Court informed Defendant that, in the event she is not a citizen of the United States, she could face deportation upon completing her sentence (*Id.* at p. 10, lines 4-12).

Following the above detailed inquiry, Defendant admitted that on October 30, 2017 in the Town of Somers, she operated a motor vehicle while ability impaired by the use of a drug and that, as a result of such impairment, she crossed a double yellow line and struck a school bus causing serious physical injury to the bus driver (*Id.*, p. 10, lines 20-25 and p. 11, lines 1-18). Prior to accepting Defendant's pleas of guilty as being entered "freely and voluntarily and knowingly", the Court confirmed Defendant had understood every aspect of the proceeding and had no questions (*Id.*, p. 11, lines 19-25).

The Court initially set a sentencing date of October 31, 2019 (*Id.*, p. 12, line 5). However, upon Defendant's declaration that she wished to pursue the within motion, the matter was adjourned, prior counsel was relieved and present counsel was appointed in his stead.

On or about May 30, 2021, Defendant filed the instant counseled motion through which she seeks an Order permitting her to withdraw her previously entered pleas of guilty. Defendant submits she is entitled to the relief sought on grounds that she did not fully comprehend the court proceedings, felt pressure to accept the negotiated plea deal and on grounds that her former counsel provided ineffective assistance. Specifically, Defendant claims her former attorney "did not properly pursue the defense that she had in this case, to wit: that the abortion pill caused the defendant to lose consciousness resulting in the accident" and pressured her to accept the plea deal (Affirmation in Support of Motion to Withdraw Guilty Plea ("Affirmation in Support"), ¶¶ 10-12). By Affirmation in Opposition and Memorandum of Law, filed June 17, 2021, the People oppose Defendant's motion to withdraw her pleas of guilty in its entirety.

Findings of Law

A guilty plea is intended to signify the end of a criminal case and is not intended to serve as a "gateway" to further litigation (*see*, *People v. Hansen*, 95 NY2d 227, 230 [2000]; and *see*, *People v. Taylor*, 65 NY2d 1, 5 [1985]). As a rule, where the record of the plea proceeding establishes a defendant unequivocally admitted guilt and did so knowingly, voluntarily and intelligently, there is no basis to disrupt a plea (*see, People v. Elmendorf*, 45 AD3d 858, 859 [2d Dept. 2007]; *and* see, *People v. Fiumefreddo*, 82 NY2d 536 [1993]; *see also*, *People v. Fears*, 488 NYS2d 26, 27 [2d Dept. 1985]). Although applicable statute sets forth a procedure by which a defendant may seek to withdraw a previously entered guilty plea, courts are expected to grant these applications sparingly and only in cases where there is some evidence of innocence or that fraud or mistake played a role in inducing the plea (*People v. Smith*, 54 AD3d 879 [2d Dept. 2008]; *and see, People v. Pillich*, 48 AD3d 1061 [2008]). The decision whether to grant a defendant permission to withdraw a previously entered plea of guilty rests squarely in the discretion of the trial court (CPL § 220.60[3]; *and see*, *People v. Alexander*, 97 NY2d 482 [2002]; *People v. Elmendorf*, 45 AD3d at 859). Where the record demonstrates a defendant unequivocally admitted her guilt during the plea allocution, a motion to withdraw a guilty plea is properly denied (see, People v. Fears, 488 NYS2d 26,27 [2d Dept. 1985]).

The case at bar does not present a circumstance in which this discretion should be exercised. This Court took steps to make sure that Defendant fully comprehended the consequences of her pleas of guilty and took painstaking efforts to ensure she was satisfied with the legal representation she received before it accepted her guilty pleas (*see generally*, Plea Minutes, p. 4 lines 5-22 and p. 8, lines 5-8). Under oath, Defendant repeatedly and unequivocally acknowledged her guilt (*Id.*, p. 6, lines 14-15, p. 10, lines 17-25 and p. 11 lines 1-18). Moreover, she indicated complete satisfaction with prior counsel and categorically denied anyone forced her to enter the pleas of guilty now at issue (*Id.*, p. 4, lines 5- 22, p. 6, lines 12-17 and p. 8, lines 5-8).

In disposing of a motion such as this, the court is "entitled to rely on the record to ascertain whether any promises, representations, implications and the like were made to the defendant" and induced her plea (People v. Ramos, 65 NY2d 640, 642 [1984]). Defendant's belated, self-serving protestations, that she did not fully comprehend the proceeding, felt pressured and did not receive effective representation, stand in sharp contrast to the record of the plea *voir dire* (*Id; cf.*, Defendant's Affidavit, ¶ 6).

The transcript of Defendant's plea allocution soundly demonstrates that, at a minimum, the Court afforded Defendant a "second call" for the apparent purpose of permitting counsel the opportunity to discuss the plea offer with Defendant and that, on the date of the plea, Defendant acknowledged that she had been given sufficient time to confer with counsel, he had answered all of her questions and achieved a "good" result for her (*Id.*, p. 2, lines 2-15 and p. 4, lines 5-22); *cf.*, Affirmation in Support, ¶¶ 6-7). The record further evidences that, under oath on the date of the plea, Defendant was resolute that she was entering her guilty pleas "freely and voluntarily" based upon her "actual[ ] guilt[ ]" (*Id.*, p. 6, lines 12-17). Furthermore, upon the record before this Court, there is no basis to conclude that Defendant, who has completed higher education and obtained a certification in nursing, lacked the intelligence or capacity to appreciate and understand the plea proceedings (*see*, Affidavit in Support, ¶¶ 10-11 and Annexed Exhibits).

While Defendant may have "felt rushed and pressured into accepting the plea", this does not form a basis to disrupt her voluntary pleas of guilty. Nothing in the record suggests either the court or counsel inaccurately represented the legal peril and potential outcomes Defendant faced (*cf.*, *People v. Jones*, 44 NY2d 76, 81 [1978] (authorizing withdrawal of a plea where the prosecution persuaded defendant to enter a plea by affirmative deceit and misstatements or misrepresentations). Situational pressure, which necessarily arises when, as here, a defendant must decide whether to enter a plea of guilty or go to trial, does not constitute "undue pressure" or coercion or otherwise undermine the voluntariness of defendant's guilty plea (*People v. Sparbanie*, 158 AD3d 942, 954 [3d Dept. 2018]; *see also*, *People v. Montgomery*, 27 NY2d 601 [1970]; *People v. Merck*, 242 AD2d 792 [3d Dept. 1997]). This premise remains unchanged even if counsel or family members are the source of the alleged pressure or stress (*see*, *People v. Mann*, 32 AD3d 865 [2d Dept. 2006]; *see also*, *People v. Manor*, 27 NY3d 1012, 1014 [2016]; *and see*, *People v. Burdo*, 1 AD3d 793, 794 [3d Dept. 2003]).

Furthermore, Defendant has not set forth a sufficient basis upon which to conclude that her former counsel's performance was deficient or that she was prejudiced by it (*Strickland v. Washington*, 466 US 668, 686 [1984]). Under the law, there exists a strong presumption that counsel has provided effective assistance and inquiries pertaining to attorney effectiveness are required to focus upon the fairness of the proceedings as a whole (*Id.* at 689; *see also*, *People v. Stultz*, 2 NY3d 277, 284 [2004]; *People v. Taylor*, 1 NY3d 174, 176 [2003]). A defendant who claims to have received ineffective assistance of counsel bears the burden of establishing that counsel's actions lacked strategic or other explanation and that counsel "partook an inexplicably prejudicial course" (*People v. Benevento*, 91 NY2d 708 [1998])(internal quotations omitted); *People v. Bank*, 129 AD3d 1445, 1447 [4th Dept. 2015]. "It is well settled that, in the context of a guilty plea, a defendant has been afforded meaningful representation when he or she receives

an advantageous plea and nothing in the record casts doubt on the apparent effectiveness of counsel" (*People v. Wares*, 124 AD3d 1079 [2015]).

Defendant herein received an advantageous plea in that she faced 1 1/3 to 4 years in state prison and, by virtue of the pleas of guilty at issue, she avoided state prison and received concurrent definite one-year jail sentences. Moreover, her claim that prior counsel failed to properly pursue an applicable defense, namely that she was impaired by Mifepristone, an abortion pill, rather than marijuana at the time of the charged motor vehicle accident, is belied by the fact that, in former counsel's presence, Defendant testified to this alleged occurrence before the grand jury which, nonetheless, voted a true bill. Moreover, and contrary to Defendant's present contention, counsel was not ineffective for failing to respond to a grand jury request to provide documentation to prove she had taken Mifepristone as no grand juror made such a request (Transcript of the Grand Jury Proceedings, pp. 7-74; *cf.*, Defendant's Affidavit ¶ 5).

Upon the foregoing and, in particular, the record of the plea proceeding which conclusively demonstrates Defendant entered her pleas of guilty knowingly and voluntarily after a proper and searching inquiry into her understanding of the rights implicated and where, while under oath during the allocution, Defendant acknowledged her satisfaction with counsel and denied her plea was the result of force or a promise other than the sentence commitment, it is an appropriate exercise of this Court's discretion to summarily deny the within motion (see, *People v. Hansen*, 269 AD2d [2d Dept. 2000] citing *People v Rosa*, 239 AD2d 364 [2d Dept. 1997]); *People v. Sain*, 261 AD2d 488, 489 [2d Dept. 1999] citing CPL §.220.60[3]).

To the extent Defendant urges this Court to modify the promised sentence to direct a non-jail or weekend only sentence, the Court declines to do so other than upon the consent of the People (*see generally, People v. Thompson*, 91 AD2d 672 [2d Dept. 1982], *reversed on other grounds*, 60 NY2d 513 [1983]).

Accordingly, Defendant's motion is summarily denied in its entirety.

The foregoing constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
July 22, 2021

Honorable Barry E. Warhit
Supreme Court Judge

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