

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL SCHOFIELD,	)
	) No. 186, 2011
Defendant Below,	)
Appellant,	) Court Below: Superior Court
	) of the State of Delaware in
v.	) and for New Castle County
	)
STATE OF DELAWARE,	) Cr. ID No. 0906002285
	)
Plaintiff Below,	)
Appellee.	)

Submitted: January 11, 2012

Decided: February 22, 2012

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

***ORDER***

This 22<sup>nd</sup> day of February 2012, it appears to the Court that:

(1) Daniel Schofield, the defendant below, appeals from the denial of a motion to withdraw his guilty plea to Murder Second Degree and Robbery First Degree. On appeal, Schofield argues that the trial judge abused his discretion by refusing to allow him to withdraw his guilty plea. Because we find that Schofield's argument is without merit, we AFFIRM.

(2) On June 4, 2009, police arrested Daniel Schofield. Soon after the arrest, a New Castle County Grand Jury indicted Schofield for Murder First Degree and twenty two other charges. The trial began with jury selection on January 11,

2011. But before the clerk swore the jury, Schofield pleaded guilty to Murder Second Degree and Robbery First Degree.

(3) One and a half months later, Schofield filed a motion to withdraw his guilty plea, and his attorneys filed a motion to withdraw as counsel. The state opposed the former but not the latter motion. In a letter opinion dated March 14, 2011, the trial judge denied Schofield's motion to withdraw his guilty plea. At the sentencing hearing two days later, Schofield requested to be represented by original counsel because he did not want to put the victim's family through having to come to court again.<sup>1</sup> The trial judge sentenced Schofield to 50 years at Level V suspended after 32 years for decreasing levels of supervision for the murder charge, and 35 years at Level V suspended after 3 years for 2 years of Level III for the robbery charge. Having sentenced Schofield with original counsel's representation, the trial judge denied counsel's motion to withdraw as counsel as moot.

(4) A trial judge exercises discretion when deciding whether to grant or deny a motion for withdrawal of a plea of guilty or nolo contendere.<sup>2</sup> A denial of a motion for withdrawal of a guilty plea is reviewed for an abuse of discretion.<sup>3</sup>

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<sup>1</sup> Sentencing Hr'g Tr. 5-6, Mar. 16, 2011 ("His desire is to go forward with sentencing today. He indicated that he doesn't want to put the victim's family through having to come to court again and his own family through that . . .").

<sup>2</sup> *State v. Insley*, 141 A.2d 619, 622 (Del. 1958).

(5) Superior Court Rules of Criminal Procedure 32(d) provides the following standard for granting a plea withdrawal: “If a motion for withdrawal of a plea of guilty or nolo contendere is made before imposition or suspension of sentence . . . the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason.”<sup>4</sup> The plain language of Rule 32(d) reads that the defendant has the burden of showing a fair and just reason to withdraw the plea.<sup>5</sup> To determine whether a defendant has a fair and just reason, the trial judge must consider the factors established in *Scarborough v. State*:

- 1) Was there a procedural default in taking the plea;
- 2) Did [defendant] knowingly and voluntarily consent to the plea agreement;
- 3) Does [defendant] presently have a basis to assert legal innocence;
- 4) Did [defendant] have adequate legal counsel throughout the proceedings; and,
- 5) Does granting the motion prejudice the State or unduly inconvenience the Court.<sup>6</sup>

(5) *Scarborough* also held that the 5 factors are not balanced, and some factors may independently justify relief.<sup>7</sup> Consideration of the first, second, and

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<sup>3</sup> *Blackwell v. State*, 736 A.2d 971, 972 (Del. 1999).

<sup>4</sup> Supr. Ct. Crim. R. 32(d).

<sup>5</sup> *Stow v. State*, 966 A.2d 348, 2009 WL 724133, at \*2 (Del. Jan. 16, 2009) (TABLE).

<sup>6</sup> *Scarborough v. State*, 938 A.2d 644, 649 (Del. 2007).

fourth *Scarborough* factors dictates that the trial judge properly denied Schofield's motion to withdraw the guilty pleas.

(6) The record provides a factual basis for a determination based on the first, second, and fourth *Scarborough* factors. As detailed in the letter opinion, Schofield confirmed in the plea colloquy that he reviewed the forms "thoroughly and carefully" with his attorneys and understood the finality of his guilty pleas.<sup>8</sup> Schofield also responded affirmatively when the trial judge asked "Do you believe you are knowingly, voluntarily and intelligently entering a plea of guilty to this charge – these charges?"<sup>9</sup> Finally, when the trial judge asked "Are you satisfied with your attorney's representation of you and that they have fully advised you of your rights?" Schofield replied "Yes."<sup>10</sup>

(7) A defendant's statements to the trial judge during the plea colloquy are presumed to be truthful.<sup>11</sup> Where the defendant has signed the Truth in Sentencing Guilty Plea Forms and has answered that he understands the effects of the plea, the defendant seeking withdrawal must show by clear and convincing

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<sup>7</sup> *Id.*

<sup>8</sup> *State v. Schofield*, No. 0906002285, at 11 (Del. Super. Mar. 14, 2011).

<sup>9</sup> Plea Colloquy Tr. 13, Jan. 14, 2011.

<sup>10</sup> *Id.* at 9.

<sup>11</sup> *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

evidence that he did not sign those forms knowingly and voluntarily.<sup>12</sup> Because Schofield has not demonstrated that he signed the plea forms or answered the colloquy questions unknowingly or involuntarily, the colloquy answers are presumed truthful.

(8) Finally, Schofield argues that the trial judge erred by not expanding the record with affidavits from defense counsel. Legal authority for this argument is taken from one line in *State v. Insley* which states that when considering a motion for withdrawal of a guilty plea “The proper practice contemplates testimony or affidavits presented to the trial judge.”<sup>13</sup> We clarified in *Stow v. State*, however, that *Insley* does not compel the trial judge to order affidavits because the defendant has the burden of persuasion.<sup>14</sup> Schofield could have presented affidavits to support his claim that he was pressured into accepting the plea and that his counsel played on his emotions to accept the plea offer, but he did not. Other than these naked assertions, Schofield offers no basis to demonstrate that anyone coerced him into accepting the plea offer. The trial judge did not abuse his discretion by denying the motion.

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<sup>12</sup> *Savage v. State*, 815 A.2d 349, 2003 WL 214963, at \*2 (Del. Jan. 31, 2003) (TABLE).

<sup>13</sup> *State v. Insley*, 141 A.2d 619, 622 (Del. 1958).

<sup>14</sup> *Stow v. State*, 966 A.2d 348, 2009 WL 724133, at \*2 (Del. Jan. 16, 2009) (TABLE).

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice