

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
 :
 v. :
 :
NORTON RYAN :
 :

No. 3:02-CR-217 (EBB)

Ruling on Defendant's Motion to Withdraw His Guilty Plea
and Pro Se Request to Dismiss His Case

Defendant Norton Ryan seeks to have this court vacate his guilty plea and dismiss his case, because he claims his plea was not voluntary, and he has been unable to obtain unbiased counsel. Upon review of the transcript of the Change of Plea Hearing, during which defendant unequivocally waived his right to trial and asserted his guilt in the matter at hand, the court finds no fair and just reason to permit defendant to change his plea or to dismiss his case.

Background

The Court sets forth only those facts deemed necessary to an understanding of the issues raised in, and decision rendered on, this Motion. The facts are distilled from the parties' moving papers, the exhibits thereto, the transcript of Ryan's guilty plea canvas, and the transcript of a hearing held regarding Mr. Ryan's desire to withdraw his guilty plea.

On or about January 2, 2002, defendant received a letter informing him that he was the target of a Grand Jury investigation involving Theft of Government Property, in

violation of 18 U.S.C. §641. Ryan retained private counsel who negotiated a disposition which resulted in the scheduling of a plea to a felony Information before United States District Judge Alvin Thompson in May, 2002. Prior to the scheduled plea, however, the defendant changed his mind regarding pleading guilty. Accordingly, the proceeding was canceled and at the defendant's request, an attorney from the Office of the Federal Public Defender was appointed to represent him. On August 1, 2002, a federal Grand Jury returned an indictment charging the defendant with Theft of Government Property, namely, for knowingly and willfully converting a thing of value of the Social Security Administration (Supplemental Security Income Benefits), with intent to use such benefits for his own use, and thereby depriving the United States of the use and benefit of said funds. Jury selection was scheduled for August 12, 2003. However, the Government renewed its offer to permit the defendant to plead to a misdemeanor Information in the matter, which the defendant accepted. After defendant did not appear at the originally scheduled change of plea, Ryan's plea was rescheduled for July 30, 2003.

At Ryan's plea proceeding on July 30th, the Court placed Ryan under Oath and he swore to tell the truth. During the plea canvas, after being warned of the consequences of not being truthful, Ryan was asked the following:

1) Whether he had ingested any substance in the last 24 hours that might interfere with his ability to understand the court's questions;

2) Whether defendant was under the influence or effect of any drugs, alcohol, or medications;

3) Whether defendant read the information and discussed it with his attorney;

4) Whether his attorney has answered all his question with respect to the charge;

5) Whether he had, in fact, committed the crime charged, after explaining that the court would not want him to plead guilty to an offence he had not committed;

6) Whether he understood the sentencing guidelines which are applicable to his offense;

7) Whether anyone has threatened or coerced him in any way to plead guilty;

His counsel further testified that he knew of no reason why his client should not enter into a plea. Ryan clearly indicated that he understood the rights he was waiving, and that he understood his plea agreement. As Ryan had answered all Rule 11 inquiries appropriately, his plea of guilty to theft of government property was accepted. His sentencing was scheduled for October 17, 2003, which was continued on defendant's request until December 17, 2003 and then continued again until March 23, 2004. In or around January 15, 2004, this court received a letter from one Loretta Stankiewicz, defendant's girlfriend, which included allegations of misconduct of defendant's attorney and the government. As a result, on January 29, 2004, the court held a hearing to

determine whether defendant Ryan adopted the allegations made by Ms. Stankiewicz. At this hearing, Ryan gave the court a letter asserting that he was in need of medical attention on July 30, 2003, the day of the plea, and that he had "no confidence that [his] legal defense could present the case accurately."

Defendant's letter at 1-2. This court construed Ryan's letter as a motion to withdraw his guilty plea, and confirmed with the defendant that he did, in fact, seek to withdraw his guilty plea. In contrast to the statements defendant made at his guilty plea, defendant asserted at the hearing that he was not guilty, and that his guilty plea was a result of his need of medical attention and the discomfort associated with his medical problems. Defendant also presented a letter from his treating physician, Dr. Carl Koplín, Healthwise Network Associates, which was dated 27th of January and outlined Ryan's history of illness and treatment under Dr. Koplín. The letter stated that defendant Ryan has been treated for thirteen years, that he had been hospitalized on several occasions for low heart rate, pneumonia, and emphysema, and that his respiratory status, while stable at the time, was severely compromised. The letter also documents that defendant Ryan underwent repeat angioplasty with a stent placement for angina on August 21, 2003, three weeks after the plea of guilty was taken. The letter was admitted as part of Ryan's motion to withdraw his plea. The court thereafter

reserved decision on the matter in order to review the transcripts from Ryan's guilty plea hearing. Attorney Roger Segal, defendant's current federal public defender, filed a motion to withdraw as defendant's attorney, which the court granted.¹ [Dkt. Nos. 31, 36]. This court then appointed attorney William Andrew Lichtenfels under the Criminal Justice Act to represent Ryan. Attorney Lichtenfels filed an appearance solely for the purposes of interviewing Ryan. After Attorney Lichtenfels and defendant met, Attorney Lichtenfels filed a motion to withdraw as defendant's counsel. Defendant Ryan also wrote a letter to the court informing the court that when he met with Lichtenfels, Lichtenfels informed him that he would only represent him if he accepted the plea agreement. Defendant Ryan asserted that such action was unfair and unreasonable, and that because he is unable to get "unbiased public defense" the case should be dismissed against him. [Defendant's Letter at 1-2]

Legal Analysis

____Under the applicable rule, district courts are granted discretion to permit a defendant to withdraw a guilty plea prior to sentencing "for any fair and just reason." Fed. R. Crim. P. 32(e); see also United States v. Torres, 129 F.3d 710, 715 (2d

¹ Since defendant was indicted, he has been represented by three public defenders.

Cir. 1997) ("The decision to allow a guilty plea to be withdrawn is committed to the discretion of the district judge."). However, a defendant does not have an automatic right to withdraw a plea knowingly and voluntarily entered because "society has a strong interest in the finality of guilty pleas, and allowing withdrawal of pleas not only undermines the confidence in the integrity of our judicial procedures, but also increases the volume of judicial work, and delays and impairs the orderly administration of justice." United States v. Goodman, 165 F.3d 169, 173 (2d Cir. 1999) (internal quotations omitted). Defendant bears the burden of persuasion on a motion to withdraw a guilty plea, see id., and "must raise a significant question about the voluntariness of the original plea" in order to prevail. Torres, 129 F.3d at 715 (noting that "bald statements that simply contradict what [defendant] said at his plea allocution are not sufficient grounds to withdraw the guilty plea.") Nor will defendant's mere "change of heart" suffice to permit withdrawal of a guilty plea. Goodman, 165 F.3d at 173.

In order to decide whether a fair and just reason justifies withdrawal of a guilty plea, the "court should consider: (1) the time lapse between the plea and the motion; and (2) whether the government would be prejudiced by a withdrawal of the plea." Torres, 129 F.3d at 715 (citing Fed. R. Crim. P. 32, Advisory Committee Notes). Where the defendant fails to show sufficient

grounds to justify withdrawal, however, the government need not show prejudice. See id. Here, the court need not consider whether this delay prejudiced the government because defendant fails to raise a significant question about the knowing and voluntary nature of his plea.

_____A review of the plea allocution transcript [Dkt. No. 37] reveals that defendant's plea was knowing and voluntary.

Defendant was sworn, and affirmed under oath that he had read the indictment/information, discussed it with his attorney, and that he had no questions concerning the charges. Defendant also affirmed that he had, in fact, committed the offenses to which he was pleading, and that no one coerced him in any way to plead guilty, which he was doing voluntarily, of his own free will. The Court paid particular attention to inquire as to whether defendant was under the influence of any drugs, alcohol, or medication. Defendant clearly responded that the only medication he was on was for his heart, which would not affect his ability to understand the proceedings that took place that morning. (Tr. at 5.) This court is therefore not persuaded by defendant's current attempt to persuade this court that his very same heart conditions did, in fact, affect his ability to comprehend the proceedings at his change of plea. The fact that a defendant has had a change of heart prompted by his reevaluation of either the Government's case against him or the penalty that might be

imposed is not a sufficient reason to permit withdrawal of a plea. See United States v. Gonzalez, 970 F.2d 1095, 1100 (2d Cir. 1992). The Court therefore holds that Ryan has failed to meet his burden under Fed. R. Crim. P. 32, in that he did not point to any defects in the plea canvas that would call into question the validity or voluntariness of his guilty plea. In light of this Court's extensive canvassing of defendant at his change of plea hearing, there is no fair or just reason to allow defendant to withdraw his guilty plea. Defendant's motion to withdraw his guilty plea is therefore DENIED.

For the same reasons, this court finds there is no basis for finding defendant has received unfair treatment by either defense counsel or the government. In fact, despite defendant Ryan's continual reluctance to cooperate, and frequent changes in position, the government has offered a plea agreement highly favorable to Ryan, permitting him to plea to a misdemeanor charge instead of the originally scheduled felony, and agreeing to a far lesser restitution figure than identified in the original indictment. (\$2500 as opposed to \$58,788.74). Accordingly, there is no basis for determining that defendant has been treated unjustly, and his letter request that the case be dismissed against him is DENIED.

CONCLUSION

For the preceding reasons, defendant's motion to withdraw his guilty plea is DENIED. Defendant's pro se request to dismiss the case is also DENIED.

Defendant is ordered to cooperate with the probation officer assigned to this case for the preparation of a pre-sentence report. The Court reserves decision on Attorney Lichtenfels' Motion for Permission to Withdraw Appearance, in hopes that the conflict that exists between him and the defendant will be resolved upon receipt of this ruling.

SO ORDERED

ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ____ day of June, 2004.