

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

UNITED STATES OF AMERICA) CRIMINAL ACTION NO. 3:00CR00010
v.)
WESLEY KEVIN BEAHM,) ORDER
Defendant.) JUDGE JAMES H. MICHAEL, JR.

For the reasons stated in open court on April 26, 2001, and for the reasons stated in the accompanying memorandum opinion, it is accordingly this day

ADJUDGED, ORDERED, AND DECREED

that the defendant's Motion for a Second Hearing on the Motion to Withdraw the Guilty Plea shall be GRANTED to the extent that the court has permitted a full second hearing on the motion, but shall be DENIED to the extent that the defendant seeks to withdraw his guilty plea. The matter shall proceed to sentencing without further delay.

The Clerk of the Court hereby is directed to send a certified copy of this order and the accompanying memorandum opinion to all counsel of record.

ENTERED: _____
Senior United States District Judge

Date

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FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

UNITED STATES OF AMERICA) CRIMINAL ACTION NO. 3:00CR00010
v.)
WESLEY KEVIN BEAHM,) MEMORANDUM OPINION
Defendant.) JUDGE JAMES H. MICHAEL, JR.

Before the court is the defendant’s March 19, 2001 Motion for Second Hearing on the Motion to Withdraw the Guilty Plea. To the extent that the motion sought a second hearing, the motion was granted and the court held a second hearing on the motion to withdraw the guilty plea in open court yesterday, April 26, 2001 (“second hearing”). At the conclusion of the second hearing, the court ruled from the bench, setting forth its reasons for denying the defendant’s motion to withdraw his guilty plea. The court herein reaffirms that ruling from the bench, and the September 28, 2000 memorandum opinion first denying the motion to withdraw. However, the court herein supplements the reasons stated from the bench and in the prior opinion.

I.

The court has set forth fully the facts of this case in its September opinion, and the reader’s familiarity with the detailed facts is assumed. Briefly, the court will state the relevant facts.

The defendant had conversations with Herman Gebele, a.k.a. Arthur Fleischman, regarding the defendant's ex-girlfriend, Christina Jenkins, and their son, Ryan. The defendant expressed his hatred for Christina and the misery that she allegedly caused him. Gebele offered to "take care" of Christina, and stated that Gebele had a friend who owed him a favor and could "shoot [Christina] in the eyes and be gone before she hits the floor." (Sept. 7, 2000 Trans. at 25-26, 27-28). The defendant gave Gebele a picture of Christina, her address, and drew maps to her house from the North and South. Christina and her son were shot in the head and killed. The defendant does not dispute any of the foregoing, but argues that his understanding was that Gebele would investigate alleged child and substance abuse, not that Gebele would have Christina and Ryan killed. The defendant denies giving a statement to Culpeper police on April 28, 1999 which, in part, was summarized as follows: "Kevin was asked if he realized that the meeting were not to have Christina checked out but to have her killed. Kevin stated that he did not want to think that at the time but knows that killing Christina was the intentions. [sic]" (Apr. 26, 2001 hrg., Gov. Ex. 1).

The defendant was indicted by a grand jury on February 15, 2000, on two counts. Count One charged Beahm under 18 U.S.C. § 2 and the Federal Interstate Domestic Violence Statute, 18 U.S.C. § 2261, as a principal aider and/or abettor that did travel or did cause, aid, abet, counsel, induce or procure another person to travel across a state line with intent to injure an intimate partner, Christina Faye Jenkins, and in the course of such travel intentionally committed a crime of violence against the intimate partner, thereby resulting in her death. Count Two charged Beahm under 18 U.S.C. § 2 and the Federal Firearm Statute,

18 U.S.C. § 924, as a principal and/or aider and abettor who knowingly carried and used a firearm in commission of a crime of violence (Interstate Domestic Violence), and in the course of this violation, caused the First Degree Murders of Christina Faye Jenkins and her son, Ryan Wesley Jenkins.

The defendant was arrested by the state police on murder for hire charges in April 1999. The defendant was taken into federal custody on February 1, 2000. On February 6, 2000, David Heilburg was appointed to represent the defendant in federal court. At the time of the federal appointment, Heilburg had represented Beahm on the related state charges for over ten months. The defendant, in the presence of his counsel, proffered evidence to the government over the course of three days in February. On February 14, 2000, in the late afternoon, the defendant, Heilburg, and the United States Attorney entered into a plea agreement. The following day, the Grand Jury returned a two-count indictment against the defendant, and the defendant plead guilty, pursuant to the plea agreement.

On July 17, 2000, the defendant filed a pro se motion to withdraw his plea. On September 7, 2000, the court held a hearing on the defendant's pro se motions to substitute counsel and withdraw his guilty plea ("first hearing" or "September hearing"). In a memorandum opinion dated September 28, 2000, the court granted the defendant's motion to substitute counsel and denied the motion to withdraw the guilty plea. Despite a full hearing on the first motion to withdraw, where the defendant was permitted to present evidence and make any statements to the court he pleased, the court found cause to grant the defendant a second hearing on the motion with the benefit of the assistance of new counsel. The second

hearing was held on April 26, 2001 in open court.

At the second hearing, the defendant presented testimony from three witnesses: Reverend Dilks, Peggy Beahm (defendant's mother), and the defendant. The Beahms both testified at the first hearing. The testimony at yesterday's hearing added little to that which the court already knew of the case. However, pursuant to the reasons stated in support of the request for the second hearing, the defendant tailored the arguments at the second hearing to address directly the *Moore* factors on which the court had previously relied to determine whether the defendant had then, or does now, state a fair and just reason for withdrawal of his plea.

II.

Federal Rule of Criminal Procedure 32(e) permits the withdrawal of a guilty plea prior to sentencing for "a fair and just reason." The district court has discretion to determine whether the defendant has proffered a fair and just reason, and *United States v. Moore*, 931 F.2d 245, 248 (4th Cir. 1991) outlines factors which a court should include in its consideration of a motion to withdraw a guilty plea:

(1) whether the defendant has offered credible evidence that his plea was not knowing or not voluntary, (2) whether the defendant has credibly asserted his legal innocence, (3) whether there has been a delay between the entering of the plea and the filing of the motion, (4) whether defendant has had close assistance of competent counsel, (5) whether withdrawal will cause prejudice to the government, and (6) whether it will inconvenience the court and waste judicial resources.

Moore, 931 F.2d at 248; *United States v. Ubakanma*, 215 F.3d 421, 424 (4th Cir. 2000).

Furthermore, the Fourth Circuit has held that "the key to a 32(e) motion is whether or not the

Rule 11 proceeding was properly conducted.” *United States v. Wilson*, 81 F.3d 1300, 1307 (4th Cir. 1996) (citing *United States v. Puckett*, 61 F.3d 1092, 1099 (4th Cir. 1995)). A "fair and just" reason for withdrawing a guilty plea is one that "essentially challenges ... the fairness of the Rule 11 proceeding." *Puckett*, 62 F.3d at 1099 (quoting *United States v. Lambey*, 974 F.2d 1389, 1393 (4th Cir.1992) (en banc)).

III.

A.

Federal Rule of Criminal Procedure 11 requires a court to address a defendant pleading guilty in open court to ascertain whether the defendant's plea of guilty is knowing and voluntary. A proper rule 11 hearing creates a strong presumption that the guilty plea was knowing and voluntary and, therefore, final and binding. *See Wilson*, 81 F.3d at 1307; *Puckett*, 61 F.3d at 1099; *Lambey*, 974 F.2d at 1393-94. Many criminal defendants plead guilty to the offenses with which they are charged; thus, this court routinely engages in very thorough Rule 11 colloquies. Because guilty pleas have become an integral part of the operation of federal criminal cases, there is a great need for reliability of guilty pleas. In order to place reliance on Rule 11 proceedings, this court painstakingly takes care to ensure that all criminal defendants have a full understanding of their plea, and the consequences thereof. This court performs colloquies to the degree of care that it does, not only for the benefit of the defendant, but for the benefit of the public interest that Rule 11 proceedings, and the pleas accepted in accordance therewith, may be relied upon.

The Rule 11 proceeding when Beahm entered his guilty plea was no less thorough than any other performed by this court. In fact, due to the nature of the offense charged, the

court's Rule 11 colloquy with the defendant was arguably more thorough than in some other cases. On February 15, 2000, at the plea hearing, the court repeatedly inquired of the defendant whether he understood the proceedings, the indictment, the plea agreement, the rights he was giving up by pleading guilty, and the rights he may lose as a consequence of being adjudged guilty of a felony. The court also inquired as to the defendant's satisfaction with the assistance of his counsel, Mr. Heilburg, and offered to take a break in the proceeding at any time so that the defendant could be afforded additional time to consult with his counsel. Only at one time during the proceeding did the defendant take advantage of the opportunity to consult with counsel. (Trans. At 10 (confers with counsel regarding court's statement that probation is not available in this case)). Throughout the Rule 11 proceeding, the defendant affirmed his understanding of the proceedings, acknowledged that he had read the indictment and the plea agreement, professed satisfaction with the assistance of counsel, and stated his desire to plead guilty to the indictment. The government explained the elements of each count of the indictment and produced testimony regarding the government's evidence on the elements. At the conclusion of the approximately forty-five minute hearing, the court found that the defendant was competent, that the plea was knowing, voluntary, and supported by an independent basis in fact. Accordingly, the court accepted the defendant's plea and adjudged the defendant guilty of both counts of the indictment.

The court is aware of nothing that it could have done to ensure that the Rule 11 proceedings occurred in a more thorough or fair manner. Further, the court is aware of nothing that would provide a stronger basis for reliance on a Rule 11 proceeding performed in the manner that the defendant's plea hearing was performed.

B.

The Fourth Circuit has set forth six factors for the court to consider in determining whether to permit a defendant to withdraw his guilty plea. *See Moore*, 931 F.2d at 248. However, the Fourth Circuit notes that a fair Rule 11 hearing is the key to a guilty plea withdrawal motion. *See Wilson*, 81 F.3d at 1307 (4th Cir. 1996) (citing *Puckett*, 61 F.3d at 1099).

The defendant has produced no credible evidence that undermines the fairness of the Rule 11 hearing. The defendant alleges -- contrary to his statements in open court on February 15, 2000 -- that his plea was neither knowing nor voluntary. The defendant's testimony in support of this contention is rife with contradictions, to the point where directing the reader's attention to every one of such contradictions would be a work of supererogation. Suffice it to say, the defendant has produced no credible evidence that his guilty plea was not knowing and voluntary. For example, to explain why the defendant allegedly lied to the court during the plea hearing by answering that he knew and understood all that was happening, the defendant testified that his attorney told him to answer the court's questions in accordance with the plea agreement. However, although the defendant states that he had no knowledge of the contents of the plea agreement during the colloquy, he nonetheless successfully answered all of the court's questions in accordance with his written plea. This is just one example of the multitudinous inconsistencies of the defendant's various sworn statements to this court.

Notwithstanding the exceedingly thorough plea colloquy, the court understands the responsibility to determine whether there is credible evidence that undermines the hearing and

its validity. The court finds the defendant's statements about not understanding the plea agreement and coercion to be wholly lacking in credibility. Although the defendant alleges that he did not have the opportunity to read thoroughly the plea agreement before signing the same, the defendant has stated that he was able to read some of it, particularly the first page, and that he skimmed it for approximately fifteen to twenty minutes while discussing it with counsel. (Sept 7 Trans. at 9). The defendant also states he had no understanding of the indictment or what was to be charged. However, the very first sentence of the plea agreement, which the defendant admits he read prior to signing the agreement, sets forth the two counts charged in the indictment.¹ The defendant expressed knowledge and understanding of the parts of the plea agreement wherein the government agrees not to seek the death penalty and agrees to provide for the possibility of a 5K motion.² Finally, the defendant explained to this court that, and apparently to the Reverend, that he pled guilty to take "responsibility" for partaking in behavior that – allegedly unintentionally – lead to the

¹ The court attaches no particular significance to the fact that the two counts for which the defendant ultimately was indicted apparently were discussed during the plea negotiations in the context of a six-count draft indictment. It is undisputed that the six-count indictment encompassed the two counts ultimately charged, and that the charged counts properly were identified in the plea agreement. (Counts One and Two of the February 15, 2000 Indictment mirrored Counts Three and Six, respectively, of the six-count draft indictment). In fact, in testifying at the second hearing regarding his understanding of the plea agreement, Beahm stated, "If I signed, it would be just the two charges, whatever was on that piece of paper would be the only two charges and the rest of it would not be brought up."

² The court notes that, although the defendant claims to have "absolutely no involvement" in the murders, (April 26 Dilks test.), the defendant states that he understood that a 5K may be available upon truthful cooperation, and further stated that he expected the government to perform an investigation and find the real killer based on Beahm's statements. The court finds it incongruous for a person with "no involvement" to believe that his assistance would lead to the "real killer."

deaths of Christina and Ryan. (Sept. 7 Trans at 50; Apr. 26 Dilks test.)

For all of these reasons, the court finds that the defendant's entry of a plea pursuant to a written plea agreement was knowing and voluntary and, therefore, must be relied upon.

C.

The court has made several explanations of the other *Moore* factors, both in the September 28 opinion and the ruling from the bench. The court shall not herein undertake to recite all of its prior statements on the matter. However, the court finds it relevant to state its finding that the defendant has not credibly asserted his legal innocence. Furthermore, the court finds that the assistance of counsel rendered by Mr. Heilburg was competent and effective. Although the defendant was faced with the possibility of a six-count indictment, for which the death penalty may have been sought, Mr. Heilburg was able to negotiate a plea to a two count indictment, which "took the death penalty off the table," provided the opportunity for a downward departure, and did not charge with conspiracy to murder Ryan.

IV.

For the foregoing reasons, and for the reasons stated in the September 28, 200 memorandum opinion and from the bench at the second hearing, the Defendant's motion to withdraw his guilty plea is again denied. This matter shall proceed to sentencing without further delay.

An appropriate order shall this day enter.

ENTERED: _____
Senior United States District Judge

Date