

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,	)	CRIMINAL NO:
	)	ST-15-CR-368
Plaintiff,	)	
vs.	)	
	)	
TYRONE THOMAS,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Tyrone Thomas' Motion To Withdraw Guilty Plea And To Request A Hearing (filed June 14, 2016). The hearing was held on September 28, 2016. At that hearing, the People were represented by Assistant Attorney General Nadia Harrigan, and Defendant appeared with counsel, Paula D. Norkaitis (Assistant Territorial Public Defender). For the reasons set forth herein, Defendant Thomas' Motion to Withdraw Guilty Plea will be denied.

I. Background

Defendant Tyrone Thomas was criminally charged on October 22, 2015, for robbery of a Domino's Pizza restaurant in Tutu Park. The People of the Virgin Islands charged Defendant Thomas with: (1) First Degree Robbery (2) First Degree Assault, (3) Attempted Third Degree Robbery, (4) Grand Larceny and (5) Using a Dangerous Weapon During a Crime of Violence. On May 2, 2016, the jury was selected and trial commenced the following day.¹ After closing arguments ended on May 4, 2016, the

¹ During the trial the People were represented by Daniel Huston, Assistant Attorney General and Defendant Tyrone Thomas was represented by Paula D. Norkaitis, Assistant Public Defender.

jury was duly charged, and the jury retired to deliberate Defendant Thomas' verdict. After approximately three hours of deliberation, the jury notified the Court they had not yet reached a unanimous decision. The jury also disclosed on their verdict forms that eleven of the jurors were in favor to convict, while only one juror was in favor of acquitting Defendant Thomas, all of which was contrary to the Court's jury instruction to not disclose a split count when a decision was not unanimous.

The Court made all parties aware of the jury's disclosure, instructed the jury to not make such a disclosure again, and then instructed the jury to continue deliberating with the goal of reaching a unanimous verdict on each count. As the jury continued their deliberation, plea negotiations occurred between the parties. The People extended a plea agreement which was accepted and signed by Defendant Thomas. After Defendant Thomas signed the plea agreement, the Court reconvened and the parties advised the Court that Defendant Thomas had signed a plea agreement. According to the agreement, Defendant Thomas would plead guilty to First Degree Robbery, and the People would recommend an eight year prison sentence, dismiss the remaining counts against him and would not seek an enhanced sentence under the habitual offender statute.

Defendant Thomas was then sworn, advised of his rights, and examined. The Court specifically asked Defendant Thomas if he understood the consequences of his plea, and if he was satisfied with the services of his attorney. Defendant Thomas replied "Yes, Your Honor" to both questions. See, *People of the Virgin Islands v. Thomas*, ST-15-CR-F368, Hearing Transcript, 107 (May, 4, 2016). After accepting

Defendant Thomas' guilty plea to First Degree Robbery, sentencing was scheduled for July 8, 2016, and court was adjourned.

On June 14, 2016, Defendant Thomas through counsel filed a motion to withdraw his guilty plea, and request a hearing. In the motion, Defendant asserts "that he was under pressure after learning from a note from the jury that the jury had voted eleven to convict and one to acquit" and "that he did not understand the ramifications of his guilty plea." Def.'s Mot. to Withdraw, 3. In response to the motion, on September 28, 2016 the court held a hearing on the motion. During the hearing, Defendant Thomas also claimed he was "fooled" into taking the plea, and "set-up" by his attorney.

II. Discussion

Superior Court Rule 126 governs guilty pleas in the Superior Court, and requires a defendant to obtain "permission of the court" to change his plea back to not guilty. *See Bruno v. People of the Virgin Islands*, 59 V.I. 748, 753 (VI. 2013); *Corraspe v. People of the Virgin Islands*, 53 V.I. 470, 486 (VI. 2010). "There is no absolute right to withdraw a guilty plea, and the right to do so is within the sound discretion of the trial court." *Hightree v. People of the Virgin Islands*, 60 V.I. 514, 522 (VI. 2014) (internal quotation mark omitted) (quoting *United States v. Stayton*, 408 F.2d 559, 561 (3d Cir. 1969). "Such a withdrawal should be permitted if for any reason the granting of the privilege seems fair and just." *Bruno*, at 753. But, "[t]he burden of demonstrating that there is a "fair and just reason for withdrawing the plea falls on

the defendant, and that burden is substantial” *Id.* (internal citation marks omitted) (citing *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003)).

In determining if the defendant met his burden, the Superior Court must consider “(1) whether the defendant asserts his innocence; (2) whether the government would be prejudiced by his withdrawal; and (3) the strength of the defendant's reason to withdraw the plea” *Corraspe*, at 487. This Court may deny withdrawing a guilty plea, if the plea was “knowing, voluntary, and intelligent.” *Hightree*, at 522.

Defendant Thomas has not met his burden to demonstrate that there is a fair and just reason for withdrawing his guilty plea. “[T]he burden under the first factor in the *Corraspe* analysis cannot be met through bald assertions of innocence...” instead the Defendant must “explain why contradictory positions were taken before the [trial] court...” *Bruno*, at 754-55. Defendant Thomas’ motion reasserts his innocence in two sentences by stating “Defendant cannot be identified as the perpetrator by the videotape. The witnesses made identifications of Defendant after he was the only person observed behind a glass and police chose not to conduct a photo array.” Then the motion begins to address the second factor in the *Corraspe* analysis without addressing why Defendant Thomas took the contradictory position of pleading guilty. In addition, at the September 28, 2016 hearing, Defendant Thomas primarily testified about contentions with his attorney instead of his own innocence. Accordingly, Defendant Thomas has failed to meet the burden of the first *Corraspe* factor.

Under the second factor in the *Corrapse*, the Court looks at the potential prejudice to the Government if Defendant Thomas's guilty plea is withdrawn. The People argue it will be difficult to re-try the case because they will have to re-locate the witnesses. Apart from witness availability, the Court must point out the amount of resources that are depleted in conducting a full trial, particularly since Defendant pled guilty during jury deliberations. Defendant Thomas did not enter his guilty plea during arraignment, or even on the eve of trial. Instead, the amount of resources were maximized because Defendant Thomas accepted the plea agreement during jury deliberations, after the People had tried and rested their case. "A simple shift in defense tactics, a change of mind, or the fear of punishment are not adequate reasons to force the government to incur the expense, difficulty and risk of trying a defendant, who has already acknowledged his guilt before the court." *United States v. Jones*, 979 F.2d 317, 318 (3d Cir. 1992). Allowing Defendant Thomas to withdraw his guilty plea will force the People to begin anew, and re-try this case from the very beginning. The Court highlights this unfairness, and finds the Government will be prejudiced by Defendant Thomas withdrawing his guilty plea.

Finally, the Court finds Defendant Thomas' reason to withdraw his guilty plea lacks strength. Defendant Thomas claims that he was pressured into pleading guilty after learning the jury was 11-1, in favor of conviction. Defendant Thomas also claimed he was "fooled" into taking the plea, and also was "set-up by his attorney." However, when Defendant Thomas accepted and signed the People's plea agreement,

the Court advised him of the consequences of pleading guilty, and also specifically questioned him in regards to the plea. For example:

The Court: Do you understand these consequences, Mr. Thomas?

The Defendant: Yes, Your Honor

....

The Court: Are you satisfied with the services of your attorney?

The Defendant: Yes, Your Honor.

The Court: Are you pleading guilty of your own free will?

The Defendant: Yes, Your Honor.

....

The Court: Has anyone threatened you or pressured you into pleading guilty?

The Defendant: No, Your Honor.

....

The Court: Well, Sir, you don't have to plead guilty. You can wait.

The Defendant: Well, I going plead guilty, Your Honor. I going plead guilty.

....

The Court: Do you understand that you don't have to do this now and that we can wait and see what the jury verdict is?

The Defendant: But then my life will be at stake heavily, more heavier, so I would rather just take the eight years...

People of the Virgin Islands v. Thomas, ST-15-CR-F368, Hearing Transcript, 107-110, (May, 4, 2016).

Defendant Thomas' claims of being "set-up," "fooled," or not understanding the ramifications of his guilty plea are not substantiated by the record. Instead, the Court

finds Defendant Thomas' agreement to the plea guilty was "knowing, voluntary, and intelligent." Defendant Thomas became aware that he was possibly on the verge of conviction when he found out that eleven jurors were in favor of conviction, while only one juror was in favor of acquittal. In addition, if convicted he was subject to the habitual offender statute. It was then that Defendant Thomas accepted the plea agreement, and was subsequently sworn, advised of his rights, and examined. Given the fact that Defendant Thomas was "fully apprised of the charges against him—and the Superior Court went through a lengthy colloquy ensuring that he knew the penalties he could face and that he was satisfied with the performance of his attorney — [Defendant Thomas'] argument that he did not understand the ramifications of his plea must fail." *Bruno*, at 756.

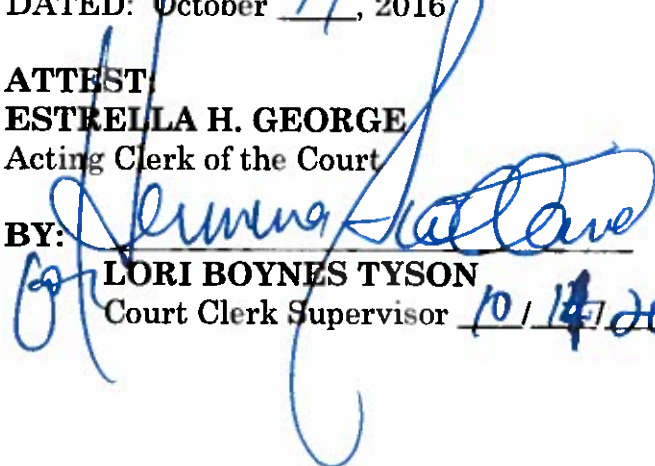
Defendant Thomas has not met his burden to demonstrate that there is a fair and just reason for withdrawing his guilty plea, and therefore his motion will be denied.

An Order consistent with this Memorandum Opinion will be entered.

DATED: October 14, 2016

ATTEST
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY:


LORI BOYNES TYSON
Court Clerk Supervisor 10/14/2016


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands