

sentence Defendant up to 15 years. Defense counsel stated that Defendant “has hand-written himself that he Court may impose as much as 15 years of incarceration” on the truth-in-sentencing guilty plea form.

4. The Court engaged in an extensive colloquy with Defendant. Defendant stated that he understood that he was pleading guilty and waiving his constitutional trial rights. Defendant also acknowledged that there were consequences flowing from the guilty plea, including that Defendant could be sentenced to up to 15 years.
5. The Court accepted Defendant’s guilty plea to one count of Rape in the Fourth Degree as a knowing, intelligent, and voluntary waiver of Defendant’s constitutional trial rights. The State entered a *nolle prosequi* on two charges of Rape in the Third Degree and one charge of Unlawful Sexual Contact in the Second Degree.
6. Defendant’s sentencing was deferred for consideration of the motion now before the Court.
7. Superior Court Rule of Criminal Procedure 32(d) allows for withdrawal of a defendant’s guilty plea if the defendant demonstrates that a fair and just reason exists for doing so.¹ It is the defendant’s burden to meet the standard of Rule 32(d) and to provide the Court with sufficient evidence to demonstrate a fair and just reason for withdrawing defendant’s guilty plea.² The decision to grant a

¹ Super. Ct. Crim. R. 32(d).

² *State v. Friend*, 1994 WL 234120, at *1 (Del. Super. May 12, 1994) (quoting *Blackwell v. State*, 736 A.2d 971, 972 (Del. 1999)).

motion to withdraw a guilty plea is within the sound discretion of the Court.³ The Court will grant the motion only if the plea was either not made voluntarily or was entered because defendant misapprehended or was mistaken as to his legal rights.⁴

8. In deciding a motion to withdraw a guilty plea, the Court must consider five factors: (1) whether there was a procedural defect in taking the plea; (2) whether the defendant knowingly and voluntarily consented to the plea; (3) whether there is any present basis to assert legal innocence; (4) whether defendant had adequate legal representation throughout the proceedings; (5) whether granting the motion would prejudice the State or unduly inconvenience the Court.⁵ The Court need not balance these factors, and one factor standing alone may be sufficient to grant the motion.⁶
9. Defendant's motion is premised on legal innocence (factor 3) and lack of prejudice to the State or burden to the Court (factor 5).
10. To assert a basis for legal innocence after entering a guilty plea and admitting guilt at a plea hearing, the defendant must point to specific evidence that forms the basis for assertion of legal innocence.⁷ Defendant argues that the following evidence demonstrates his legal innocence: there is no physical evidence of sexual contact with the victim; the accusations were a "set-up" by Defendant's wife and the victim's father; and there are no other eyewitnesses except for the victim and

³ *Scarborough v. State*, 938 A.2d 644, 649 (Del. 2007)

⁴ *Smith v. State*, 451 A.2d 837, 839 (Del. 1982).

⁵ *Scarborough*, 938 A.2d at 649.

⁶ *Id.*

⁷ *State v. Wright*, 2009 WL 866185, at *5 (Del. Super. Mar. 30, 2009).

her father. These claims do not support the relief sought by Defendant: physical evidence is not required to support the charges on which Defendant was indicted; the victim provided a detailed statement to the police about sexual contact with Defendant; the victim's father provided a statement that he found his teen-aged daughter and Defendant naked together in bed; Defendant does not offer any evidence of the "set-up" he claims motivated the charges; and additional eyewitnesses in addition to the victim and victim's father are not required for the State to establish a prima facie case.

11. The State would be prejudiced if Defendant was permitted to withdraw his guilty plea. The incident that is the subject of this case took place in 2011. The State has expressed concern that the victim struggles with addiction and is being treated for post traumatic stress disorder, anxiety, and depression, all of which are directly related to the crime which Defendant admitted he committed.

NOW, THEREFORE, this 5th day of March, 2014, Defendant Daniel Capobianco's Motion to Withdraw Guilty Plea is hereby DENIED. Defendant shall be sentenced on March 28, 2014.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli