



IN THE SUPREME COURT OF THE STATE OF DELAWARE

TROY BOLDEN,)	
)	
Defendant-Below,)	
Appellant)	
)	
v.)	No. 425, 2024
)	
STATE OF DELAWARE)	
)	
Plaintiff-Below,)	
Appellee.)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S OPENING BRIEF

NICOLE M. WALKER [#4012]
Office of Public Defender
Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801
(302) 577-5121

Attorney for Appellant

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NATURE AND STAGE OF THE PROCEEDINGS

Troy Bolden (“Bolden”) was arrested on May 28, 2022 and later indicted on Attempted Murder, Reckless Endangering First and weapons offenses.¹ On July 17, 2023, he pled “no contest” to Assault Second and two weapons offenses in exchange for the State’s recommendation of no more than 15 years in prison.² But, on September 13, 2023, he filed a *pro se* motion to withdraw the plea alleging that his attorney was ineffective and had coerced him into entering it.³ Defense counsel then filed a motion to withdraw as counsel.⁴ Five months after a hearing, the court issued a written order allowing Bolden to withdraw his plea agreement, finding it was involuntary. Yet, it denied the motion to withdraw as counsel.⁵

Bolden went to jury trial with the same attorney. He was found guilty of Attempted Murder and a firearm offense, but, not guilty of Reckless Endangering. He was sentenced to 23 years plus probation.⁶ This is Price’s Opening Brief in support of a timely-filed appeal.

¹ A5, 10. A psychiatric exam was conducted from which he was found competent. The finding was not disputed.

² A13-14.

³ A22.

⁴ A15.

⁵ March 1, 2024 Order granting motion to withdraw plea, Ex.A; May 14, 2024 Order denying motion to withdraw as counsel, Ex. B.

⁶ Sept 6, 2024 Sentence Order, Ex. C.

SUMMARY OF THE ARGUMENT

1. A defendant has the right to seek the withdrawal of a plea. A plea withdrawal hearing is a critical stage in the criminal proceeding; thus a defendant is entitled to the appointment of counsel in this proceeding. If the defendant's reasons for filing the motion to withdraw include an assertion that his or her counsel has been ineffective or coerced the defendant into pleading, then defense counsel should ask the court to appoint new unconflicted counsel to handle the filing of the motion.” Here, the trial court refused to grant defense counsel’s motion to withdraw from representation when Bolden filed a motion to withdraw his guilty plea based on claims that his attorney was ineffective and coercive.

2. After the trial court allowed Bolden to withdraw his guilty plea because it was involuntary, it denied him the right to counsel by requiring him to go to trial with the attorney he claimed coerced him in to taking the plea. While the trial court issued a separate order stating that defense counsel was not ineffective, the only claims made by defendant in support of his voluntariness argument involved ineffective assistance of counsel. Thus, there was a constructive denial of counsel at trial.

STATEMENT OF FACTS

In the spring of 2022, Jamie Faulkner lived in the first floor apartment of a three-floor building at 416 North Jefferson Street.⁷ His apartment was inside and just to the right of the building's front door. A staircase passes that door and leads up to the second floor. On that floor, there are two apartment doors. One is to a completely second-floor apartment and the other is to a third apartment which includes space on both the second and third floors.⁸ Troy Bolden lived in the third apartment with his wife Monica, his two siblings and various transient people to whom he rented space.⁹ That apartment also has a balcony with a fire escape nearby.¹⁰

At trial, Faulkner testified that on the morning of May 28, 2022, he went outside the building, sat down on the front steps and began to smoke. He acknowledged that he did not know who all was in the building at the time.¹¹ Meanwhile, Robert States, was sitting on the steps in front of the next door building. That morning, as they often did, the two men began chatting.¹²

⁷ A123.

⁸ A123.

⁹ A123, 139.

¹⁰ A130, 132.

¹¹ A128.

¹² A123-124, 126.

Meanwhile, according to Bolden's wife Monica, someone banged on the door to their apartment. Bolden answered the door to find no one there. So, Monica testified, Bolden put on his jeans, told her he was going to see who banged on the door then left the apartment. She was clear that Bolden had no weapon or anything else in his possession.¹³

Faulkner told the jury that Bolden came out of the building and stood behind him in the doorway. He also stated that he and Bolden had a cordial relationship and never had any problems. In any event, Bolden proclaimed that someone had just banged on his apartment door.¹⁴ Faulkner, who had been outside the building for some time and had not seen anyone go in or out of told Bolden that no one had banged on his door. Bolden then said, "nobody talking to you." Faulkner told the jury that he turned toward Bolden and saw a flash. While he did not see a gun, he was shot in the neck.¹⁵ Then, Faulkner claimed, as he got up to get away, he was shot in the back.¹⁶

Faulkner testified that he continued to move away from the building until he ended up at a nearby corner where States ran over to help him.¹⁷ At trial, the State presented a video from a Ring camera outside a residence at

¹³ A140-142.

¹⁴ A124, 127-128.

¹⁵ A98-99.

¹⁶ A124-126, 128.

¹⁷ A125-126.

402 Jefferson Street.¹⁸ The video reveals that shortly before 10:00 a.m. on that same morning, two gunshots were fired just seconds apart.¹⁹

It was also around 10:00 a.m. that Briel Mykoo of 404 Jefferson Street called 911 and reported a shooting.²⁰ She testified at trial that she had been outside packing her car for a weekend trip when she heard gunshots then heard someone yell, “my neighbor just shot me.”²¹ She claimed that she turned to see what happened and saw what appeared to be gun smoke in the doorway of the building that she believed was located at 410 Jefferson Street.²² She said she saw the shooter run into that building.²³ She explained to the jury that she believed the address was 410 based on counting the number of houses down the street.²⁴

Several officers responded to the 911 call. On her way to the scene, Officer Ludlam saw a black male limping across the street in the 500 block of 4th Street.²⁵ She stopped to see if the man was hurt. He was in a lot of pain.²⁶

¹⁸ A120-122.

¹⁹ A121-122(e).

²⁰ A78-82, 111-113.

²¹ A122 (f).

²² A122 (g).

²³ A133.

²⁴ A122 (g).

²⁵ A100.

²⁶ A109.

There were no weapons or evidence in the area.²⁷ The man, who turned out to be Bolden, told police that he had been at the scene of the earlier shooting and that bullets had been going past his head.²⁸ He was then taken by ambulance to the hospital and was treated for a fractured ankle.²⁹

Sargent Mitchell responded directly to the scene of the shooting.³⁰ Upon arrival, he found an injured Faulkner on the ground being tended to by States.³¹ Faulkner could not describe what the shooter was wearing because he did not see him.³² He did say that it was someone he knew by the nickname of “Psych.”³³

A SWAT team then surrounded the perimeter of the building at 416 Jefferson Street. They had the building evacuated in an effort to find the suspect. Police never saw anyone exit the apartment building except those they evacuated.³⁴ They never found anyone police believed to be the suspect.³⁵

²⁷ A108.

²⁸ A110.

²⁹ A102-107, 109.

³⁰ A77-80.

³¹ A81-82.

³² A85-88.

³³ A83-84, 124, 127-128.

³⁴ A88-89.

³⁵ A114-119.

Once police obtained a warrant, they searched Bolden's apartment.³⁶ In the process, police found an unspent shell casing, Bolden's Metro card, his medication and his mail in a backpack.³⁷ The casing is an uncommon Aguila brand that matched the two spent casings found outside and to the right of the building.³⁸

Faulkner went to the hospital and received medical treatment. The bullet that entered his neck had exited his body. However, the other bullet remains lodged in his back.³⁹ He was discharged from the hospital the same day.⁴⁰ That night he went to the Wilmington Police Department and identified Bolden from a photo line up as the person who shot him.⁴¹

Officer Wham later conducted a Facebook search and found a page with a user name of "Psych-Psych." Wham testified that the URL of that Facebook page is facebook.com/troy. He also told the jury that it indicates that he was married to Monica Bolden.⁴²

Police subsequently arrested Bolden. While Bolden admitted to police that he was at the scene, he denied being the shooter.

³⁶ A131.

³⁷ A131-136.

³⁸ A129, 134, 137-138.

³⁹ A90-96, 125.

⁴⁰ A97, 125, 127.

⁴¹ A125-126.

⁴² A130.

I. THE TRIAL COURT DENIED BOLDEN THE RIGHT TO COUNSEL DURING PLEA WITHDRAWAL PROCEEDINGS WHICH IS A CRITICAL STAGE IN THE CRIMINAL PROCEEDINGS.

Question Presented

Whether the trial court violated Bolden’s Sixth Amendment right to counsel when it denied his attorney’s motion to withdraw as counsel and refused to appoint conflict free counsel to represent Bolden during plea withdrawal proceedings after Bolden filed a motion to withdraw his no contest plea based on claims that his attorney was ineffective and coerced him into taking the plea.⁴³

Standard And Scope Of Review

The denial of the constitutional right to counsel is reviewed *de novo*.⁴⁴ If the Court does not find a constitutional violation, it reviews the denial of counsel’s motion to withdraw from representation for an abuse of discretion. An abuse of discretion occurs if the trial court's decision is based on “clearly unreasonable or capricious grounds.”⁴⁵

⁴³ A15, 22.

⁴⁴ *Cooke v. State*, 977 A.2d 803, 840 (Del. 2009) (finding ineffective assistance of counsel on direct appeal under *United States v. Cronin*, 466 U.S. 648 (1984) due to complete denial of counsel at a critical stage).

⁴⁵ *Bultron v. State*, 897 A.2d 758, 762 (Del. 2006). See *United States v. Bellille*, 962 F.3d 731, 738 (3d Cir. 2020) (Accordingly, the review of the “denial of a motion to withdraw from representation for an abuse of discretion.”); *Purnell v. State*, 254 A.3d 1053, 1102 (Del. 2021) (noting

Argument

Bolden's charges of Attempted Murder and related offenses carried with them a total potential sentence of life plus 45 years in prison. However, on July 17, 2023, Bolden entered a plea of no contest to Assault Second Degree, Possession of a Firearm By a Person Prohibited and Possession of a Firearm During the Commission of a Felony. As a result, he faced only 6 to 48 years in prison. The State agreed to limit its recommendation to 15 years in prison while defense counsel was permitted to request 6 years.⁴⁶

Two months after the plea was entered and before sentencing, Bolden, *pro se*, filed a motion to withdraw his plea alleging that his attorney

was coersive [sic] in convincing me that my case was not winnable. I had full intentions of declining the plea and taking this case to trial but was discouraged to do so by the confusion from my attorney concerning my evidence. After consideration of the facts afterwards, I have determined that my counsel acted in bad faith and not in my best interest. To date I have only been able to view part of a video once. Without viewing my full

that “issue *could* have been considered on a direct appeal, either via a challenge to the conviction itself or to the trial court's denial of trial counsel's withdrawal motion”); *United States v. Young*, 482 F.2d 993, 995 (5th Cir.1973) (“Unless a Sixth Amendment violation is shown, whether to appoint a different lawyer for an indigent criminal defendant who expresses dissatisfaction with his court-appointed counsel is a matter committed to the sound discretion of the district court.”)

⁴⁶ A13-14.

discovery I could not assess the State[']s case and make the most informed decision regarding the direction of my case. For counsel to be effective[,] trust must be built up through pretrial contact, review of strengths and weaknesses of the state[']s case and a discussion about the defendant[']s chances of an [ac]quittal after trial. None of that took place and no trust was built up. The defendant[']s counsel has not been effective in giving this case the attention it needs per the ABA stand of Criminal Justice 4-3.8.⁴⁷

On October 3, 2023, defense counsel filed a motion to withdraw from representation pursuant to *Reed v. State*.⁴⁸ He noted that “a conflict ha[d] arisen between the client and Counsel” because of Bolden’s claim that “he was forced to accept the guilty plea due to Counsel being ineffective.”⁴⁹ Counsel also pointed to “a breakdown in the attorney-client relationship” due to Bolden’s lack of “trust and confidence” in Counsel’s advice.⁵⁰

The trial court conducted a plea withdrawal hearing on October 9, 2023. Defense counsel’s motion to withdraw was not granted and Bolden was not provided conflict-free counsel to assist him with his motion. The

⁴⁷ A24.

⁴⁸ A17-18 (“If the defendant’s reasons for filing the motion to withdraw include an assertion that his or her counsel has been ineffective or coerced the defendant into pleading, then defense counsel should ask the court to appoint new unconflicted counsel to handle the filing of the motion.”) (quoting *Reed v. State*, 258 A.3d 807, 828-29 (Del. 2021)).

⁴⁹ A18.

⁵⁰ A19.

judge erroneously concluded that “*Re[e]d* doesn't apply here because the conflict there was, there were was no motion to withdraw as counsel. We're past that.”⁵¹

Then, Bolden made his own case, claiming that he should be permitted to withdraw the plea because he was “not confident with his representation”⁵² for various reasons, including: he had not had a serious conversation with his attorney about the case and plea;⁵³ he had not been provided with evidence;⁵⁴ his attorney told him he had waived his preliminary hearing when he never did; ⁵⁵ he “did not feel like [his attorney] was 100 percent with [him] about nothing with this matter;”⁵⁶ and he did not get any help with his case from his attorney.⁵⁷ In fact, Bolden told the court that he felt his attorney was “part of the case.”⁵⁸ Whether or not any of these claims had merit, they were consistent with his claims in his motion alleging ineffective assistance of counsel and coercion.

⁵¹ A27.

⁵² A31.

⁵³ A30.

⁵⁴ A32.

⁵⁵ A32

⁵⁶ A30-31.

⁵⁷ A41.

⁵⁸ A34.

When the trial court asked Bolden why he responded the way he had at the plea hearing, he said that he was confused, he was scared, he was told not to say anything about the case, he did not know anything about the case, and he believed his attorney was part of the case and he was off his medication.⁵⁹ Defense counsel placed on the record his version of the facts related to negotiations for plea.⁶⁰

The judge then tried to explain to Bolden the difference between the benefit of his plea deal versus potential sentence he could receive if he was convicted following a trial. The dialogue reveals that Bolden, who had no assistance of conflict-free counsel, had many questions.⁶¹

Ultimately, the court asked Bolden, whether the “fairness that [he] want[ed was] to go to trial?” Significantly, Bolden’s response was, “[i]f I got representation that’s going to represent me to the fullest, I think that is fairness.” Without having addressed any of the factual allegations with respect to ineffective assistance of counsel or coercion, the court responded, “[c]hances are that’s your counsel.”⁶²

⁵⁹ A34, 36-37

⁶⁰ A33.

⁶¹ A38-46.

⁶² A43.

Defense counsel noted that the court had not addressed any of Bolden's ineffective assistance of counsel or coercion claims and stated that conflict counsel should be appointed to represent Bolden.⁶³ The judge responded, still without addressing any of the relevant facts, that he was not going to find ineffective assistance of counsel at "this point."⁶⁴

The prosecutor then tried to explain that, contrary to the court's earlier conclusion, *Reed* did apply to this case because it involved a claim of ineffective assistance of counsel with respect to the manner in which the defendant was advised as to the plea agreement. Here, while defense counsel did properly follow up with filing the motion to withdraw the plea, the reason he was required to file a motion to withdraw as counsel was due to the conflict resulting from the underlying claims. The prosecutor then noted that in a case with similar circumstances that he had before a different judge, a conflict attorney was appointed to the case.⁶⁵

The judge did not waiver from his earlier conclusion. He went on to state that, "[w]hile a defendant has a right to counsel, he does not have right to counsel who will not disagree with him about how best to proceed with this case. The defendants mere dissatisfaction with his counsel does

⁶³ A43, 48.

⁶⁴ A49.

⁶⁵ A54-55.

not by itself justify the appointment of different counsel.”⁶⁶ Thus, rather than appointing conflict-free counsel, the judge instructed current counsel, the one whom Bolden claimed coerced him into taking the plea in the first place, to take more time with Bolden to discuss the prudence of withdrawing the plea.

Not surprisingly, after the attorney whom he did not trust met with him, Bolden had not changed his mind. When the court was informed of this and five months after the hearing, it granted Bolden’s motion to withdraw his guilty plea finding

Defendant maintains that his plea was not voluntary. Although Defendant did specifically assert legal innocence, he was given an opportunity to review the evidence. The Court reviews five factors in determining whether to grant a Motion to Withdraw. The Court focuses on the second (voluntary) and third (assert legal innocence). The Court finds that the plea was not voluntary, and defendant should be allowed to assert his legal innocence. The Motion is **GRANTED**. The No Contest Plea may be withdrawn.⁶⁷

At no time during this process was Bolden assigned conflict-free counsel to provide advice as to the prudence of withdrawing the plea or in litigating the motion.

The Sixth Amendment to the Constitution of the United States provides that “[i]n all criminal prosecutions, the accused shall enjoy the right... to have

⁶⁶ A47-48.

⁶⁷Ex. A.

the Assistance of Counsel for his defense.”⁶⁸ Contained within that right is the guarantee of the effective assistance of counsel.⁶⁹ This guarantee applies not only at the trial stage, it also applies at “pretrial critical stages that are part of the whole course of a criminal proceeding, a proceeding in which defendants cannot be presumed to make critical decisions without counsel's advice.”⁷⁰

the assistance of counsel cannot be limited to participation in a trial; to deprive a person of counsel during the period prior to trial may be more damaging than denial of counsel during the trial itself. Recognizing that the right to the assistance of counsel is shaped by the need for the assistance of counsel, [the United States Supreme Court] ha[s] found that the right attaches at earlier, ‘critical’ stages in the criminal justice process ‘where the results might well settle the accused's fate and reduce the trial itself to a mere formality.’⁷¹

Among the proceedings in which a defendant cannot be presumed to make a critical decision without counsel’s advice is “the negotiation of a plea bargain[.]”⁷² Correspondingly, “a plea withdrawal hearing is a critical stage

⁶⁸ U.S.Const., amend. VI.

⁶⁹ *Reed*, 258 A.3d at 821; *Bultron*, 897 A.2d at 762–63.

⁷⁰ *Reed*, 258 A.3d at 821-822.

⁷¹ *Maine v. Moulton*, 474 U.S. 159, 170 (1985) (quoting *United States v. Wade*, 388 U.S. 218, 224 (1967)).

⁷² *Reed*, 258 A.3d 822.

in the criminal proceedings[.]”⁷³ Accordingly, a defendant is entitled to the appointment of counsel in both of these proceedings.⁷⁴

This Court clarified in *Reed v. State*,⁷⁵ that a defendant has the right to seek the withdrawal of a plea. Because he has the right to counsel when seeking withdrawal, “[i]f the defendant's reasons for filing the motion to withdraw include an assertion that his or her counsel has been ineffective or coerced the defendant into pleading, then defense counsel should ask the court to appoint new unconflicted counsel to handle the filing of the motion.”⁷⁶

Here, Bolden’s allegations, whether or not they had merit, were clear. He alleged in his motion and at the hearing that his plea was not voluntary because his attorney was ineffective and coercive. The standard for whether there is a conflict is whether the basis of the defendants claims is ineffective

⁷³ *Reed*, 258 A.3d at 822 n.60.

⁷⁴ *Id.* (citing *White v. State*, 2000 WL 368313, at *1 (Del. Mar. 23, 2000)) (“[T]he defendant was entitled to the appointment of counsel at the plea withdrawal hearing because it occurred prior to sentencing at a critical stage of the criminal process.”). The *Reed* Court also collected cases where “defendants who have moved to withdraw their guilty plea in Superior Court are routinely appointed new counsel for that purpose, especially when the defendant raises claims of coercion or ineffective assistance of counsel.” n.101.

⁷⁵ *Reed*, 258 A.3d 807 (Del. 2021)

⁷⁶ *Reed*, 258 A.3d at 829.

assistance of counsel or coercion not whether the court ultimately finds them to have merit.⁷⁷

Contrary to the trial court's logic, the conflict between defense counsel and defendant does not evaporate by defense counsel simply filing the motion to withdraw. Nor is the error cured by granting Bolden's motion to withdraw the plea. "A complete denial of counsel occurs when a criminal defendant must navigate a critical stage of the proceedings against him without the aid of an attorney dedicated to the protection of his client's rights under our adversarial system of justice."⁷⁸ Here, Bolden was not only denied the benefit of conflict free representation at the hearing, he did not have the benefit of conflict-free advice with respect to whether withdrawing the plea was in his best interest.

Significantly, Bolden was not necessarily seeking a trial at the hearing. He informed the Court that fairness dictated that he have another attorney. Ironically, a conflict-free attorney may well have confirmed for him that the agreement he had reached (a request of 6 to 15 years) was significantly better for him than that which he could get (life plus 45 years) or that which he actually got after trial (23 years).

⁷⁷ *Reed*, 258 A.3d at 829.

⁷⁸ *Urquhart v. State*, 203 A.3d 719, 730 (Del. 2019).

The only basis that Bolden asserted for its involuntariness was the conduct of his attorney. The trial court's subsequent decision allowing him to withdraw his plea because it was involuntary provides a reasonable inference of a finding that the claims about his counsel was substantiated as the court did not place any explanation for his finding in the record at that point.

The trial court's failure to allow counsel to withdraw prior to the plea withdrawal hearing and to appoint a conflict-free attorney amounted to structural error requiring reversal in this case.⁷⁹ The court's error denied the fairness of the process that preceded the trial "which caused the defendant to lose benefits he would have received in the ordinary course but for counsel's ineffective assistance."⁸⁰

Not only was the trial court's failure to appoint conflict free counsel for purposes of the plea withdrawal hearing a denial of Bolden's right to counsel, the denial of the motion to withdraw as counsel was an abuse of counsel. Based on the claim that he was ineffective provides a conflict. "[T]he judiciary has an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings are

⁷⁹ See *Cronic*, 466 U.S. at 658.

⁸⁰ *Lafler v. Cooper*, 566 U.S. 156, 169 (2012).

fair.”⁸¹ It was unreasonable for defense counsel to require counsel to represent Bolden in proceedings in claims attacking counsel’s representation.⁸²

Thus, Bolden’s convictions must be reversed.

⁸¹ *Purnell*, 254 A.3d at 1107.

⁸² Delaware Rules Professional Conduct 1.16 (b) (6) (“a lawyer may withdraw from representing a client if... the representation...has been rendered unreasonably difficult by the client”).

II. THE TRIAL COURT DENIED BOLDEN THE RIGHT TO COUNSEL AT TRIAL WHEN IT REFUSED TO GRANT HIS ATTORNEY’S MOTION TO WITHDRAW FROM REPRESENTATION AND TO APPOINT CONFLICT FREE COUNSEL.

Question Presented

Whether the trial court denied Bolden his right to counsel at trial when it allowed him to withdraw his plea as involuntary after he claimed his attorney was ineffective and coercive but it denied counsel’s motion to withdraw from representation because of the conflict created by Bolden’s claims.⁸³

Standard And Scope Of Review

The denial of the constitutional right to counsel is reviewed *de novo*.⁸⁴

Argument

On March 1, 2024, 5 months after the plea withdrawal hearing, the trial court granted Bolden’s motion to withdraw his plea after finding that it was “not voluntar[ily]” entered.⁸⁵ In support of its decision, the court stated,

⁸³ A15, 60-62.

⁸⁴ *Cooke v. State*, 977 A.2d 803, 840 (Del. 2009) (finding ineffective assistance of counsel on direct appeal under *United States v. Cronin*, 466 U.S. 648 (1984)). Here, since the issue is not whether defense counsel was actually ineffective but whether the trial court’s finding of an involuntary plea following claims of ineffectiveness denied the right to counsel, there is no conflict and the issue is ripe on direct appeal.

⁸⁵ Ex.A.

“[a]lthough Defendant did specifically assert legal innocence, he was given an opportunity to review the evidence. The Court reviews five factors in determining whether to grant a Motion to Withdraw. The Court focuses on the second (voluntary) and third (assert legal innocence).”⁸⁶

An office conference was conducted about 2 months later, on May 9, 2024, outside Bolden’s presence. The following discussion took place regarding the parties’ concerns about defense counsel’s ability to continue to represent Bolden:

PROSECUTOR: Your Honor, so while the motion to withdraw the guilty plea has been granted, and now the Court is going to deny the motion to withdraw counsel if that has not already been done, I think the State has concerns, kind of given the current status of the record. The basis for Mr. Bolden moving to withdraw his guilty plea was an allegation that he was coerced into accepting that plea by his defense attorney. The Court does not say in its order, which is on the docket, that it made that finding, that coercion was the reason why he entered the plea, but the Court does find that he did voluntarily [sic] enter the plea, and that's the basis for allowing him to withdrew it. So the State has concerns that implicit in that finding is that the Court has made a finding that the plea was coerced by defense counsel. And then does that created an issue with regard to the relationship between Mr. Bolden's trial attorney and himself, where Mr. Keating can effectively represent him.

⁸⁶ Ex.A.

And I asked Mr. Keating, has the defendant been making any complaints about your ability to represent him, and Mr. Keating said no, but he really doesn't talk to him that much. So that kind of raised the State's concerns even more. So we just wanted to kind of put on the record as to the Court's finding as to whether or not there is now a conflict as to the Court's finding on the motion to withdraw the guilty plea.

THE COURT: Well, see, the granting of the motion to withdraw the guilty plea, to me, makes those other concerns moot. His big thing was, I really didn't want to enter this plea, and I needed my attorney to make a motion. That type of thing. Once he did that, once I granted it, it seems like we start from the beginning in the case. So that was kind of my thinking. I'll do-up an order supporting that.

PROSECUTOR: And if Mr. Keating could put on the record kind of the status of his conversations with Mr. Bolden at this point, I think that would be good to have on the record.

DEFENSE COUNSEL: So I have had some difficulty, recently, speaking with Mr. Bolden. I spoke again with his wife as recently as yesterday to try to -- really in hopes that she could help facilitate better with cooperation. I'm meeting with him again on Saturday. So I don't have any updates beyond what the State has already communicated, that I have had difficulty speaking with Mr. Bolden. I don't know if the Court wants to have some sort of a colloquy or anything like that early next week.⁸⁷

⁸⁷ A60-62.

On May 14, 2024, the trial court clarified that it denied defense counsel's motion to withdraw from representation because his "conduct did not fall below an objective standard of reasonable[ness]." ⁸⁸ Bolden subsequently went to trial and sentencing with representation by that counsel.

Contrary to the court's recollection, Bolden's claims of ineffective assistance of counsel were based on his attorney's alleged deficient conduct leading to the entry of the plea agreement, not simply, "I didn't want to enter this plea, and I needed my attorney to make a motion." In fact, Bolden's motion and argument at the hearing were very clear and detailed with respect to his claims. In his motion, he claimed that his attorney "was coersive [sic] in convincing me that my case was not winnable. I had full intentions of declining the plea and taking this case to trial but was discouraged to do so by the confusion from my attorney concerning my evidence." The motion alleged that his attorney "acted in bad faith and not in my best interest." ⁸⁹ It claimed that he was not able to view his "full discovery" in order to "assess the State's case and make the most informed decision regarding the direction of my case." Finally, he

⁸⁸ Ex.B.

⁸⁹ A24.

cited ABA Standard of Criminal Justice 4-3.8 claiming that there was no effective trust built up between the attorney and client.⁹⁰

When the trial court issued the order allowing Bolden to withdraw his plea, it noted that it “reviews five factors” and that it focused “on the second (voluntary) and third (assert legal innocence).”⁹¹ However, the trial court was required to do more than review each of the factors, it is “mandatory” that it “specifically examine” each factor before making its decision.⁹² The totality of the factors includes:

(1) was there a procedural defect in taking the plea, (2) did the defendant knowingly and voluntarily consent to the plea agreement, (3) does the defendant presently have a basis to assert legal innocence, (4) did the defendant have adequate legal counsel throughout the proceedings, and (5) does granting the motion prejudice the State or unduly inconvenience the Court?⁹³

The court’s order reveals that it did not focus on the specific factor related to the adequacy of legal counsel. Yet, the court found the plea was involuntary. However, the court did not provide any explanation for why the plea was involuntary. The basis of Bolden’s voluntariness claim was the inadequacy of his legal counsel.

⁹⁰ A22.

⁹¹ Ex.A.

⁹² *Reed v. State*, 258 A.3d 807, 830 (Del. 2021).

⁹³ *Scarborough v. State*, 938 A.2d 644, 650 (Del. 2007).

A reasonable interpretation of the court’s order allowing the withdrawal of the guilty plea is that defense counsel provided ineffective assistance of counsel or coerced Bolden into enter the plea. A plea that is involuntary is not mutually exclusive of a plea resulting from ineffective assistance of counsel.⁹⁴ Thus, Bolden could reasonably have concluded that the trial court agreed with him as to the basis of his claims. Such an interpretation by Bolden would be even more reasonable given that he was not invited to the office conference in which the counsel’s motion to withdraw was discussed in detail and in which the court misconstrued his motion.

Once the trial court determined the plea was involuntary, substitute counsel should have been “appointed as attorney of record for all purposes.”⁹⁵ Since no conflict-free counsel was appointed, there was a “constructive denial of counsel” involving “a complete breakdown,” either “in the adversarial process or in attorney-client communication.”⁹⁶

⁹⁴ *MacDonald v. State*, 778 A.2d 1064, 1074 (Del. 2001) (“claims of ineffective assistance of counsel...challenge the voluntary and intelligent nature of the plea agreement”) (internal citation and quotation marks omitted).

⁹⁵ See *People v. Sanchez*, 264 P.3d 349, 355 (Cal.4th 2011) (if the defendant makes a showing during a hearing that his right to counsel has been “substantially impaired” substitute counsel must be appointed as attorney of record for all purposes).

⁹⁶ *Cronic*, 466 U.S. 648.

Finally, “[t]he United States Supreme Court and this Court have held that the judiciary has an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings are fair.”⁹⁷ Once Bolden’s claims were substantiated, it was unreasonable for defense counsel to continue to represent him in further proceedings.⁹⁸ And, Bolden was not given the opportunity to waive any potential conflict at that point. Thus, in addition to the violation of Bolden’s Sixth Amendment Right to Counsel, the trial court abused its discretion in denying counsel’s motion to withdraw from representation prior to trial. Thus, Bolden’s convictions must be reversed.

⁹⁷ *Purnell v. State*, 254 A.3d at 1107.

⁹⁸ Delaware Rules Professional Conduct 1.16 (b) (6) (“a lawyer may withdraw from representing a client if... the representation...has been rendered unreasonably difficult by the client”).

CONCLUSION

For the reasons and upon the authorities cited herein, Bolden's convictions must be vacated.

Respectfully submitted,

/s/ Nicole M. Walker
Nicole M. Walker [#4012]
Carvel State Building
820 North French Street
Wilmington, DE 19801

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