EFiled: May 02 2025 04:36PM EDT
Filing ID 76201180
Case Number 425,2024

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

STATE'S ANSWERING BRIEF

Jordan A. Braunsberg (No. 5593)
Deputy Attorney General
Delaware Department of Justice
Carvel State Office Building
820 North French Street, 5th Floor
Wilmington, Delaware 19801
(302) 683-8815

Dated: May 2, 2025

TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS

CASES **PAGE**

STATUTES AND RULES

OTHER AUTHORITIES

NATURE AND STAGE OF THE PROCEEDINGS

On July 15, 2022, Troy Bolden ("Bolden") was indicted on four counts: (i) First Degree Attempted Murder; (ii) Possession of a Firearm During Commission of a Felony ("PFDCF"); (iii) Possession of a Firearm by a Person Prohibited; and (iv) Reckless Endangering First Degree.[1] On August 2, 2022, the trial court ordered a psychological evaluation of Bolden.[2] He underwent that evaluation at the Delaware Psychiatric Center, and a report was filed with the court following that evaluation.[3] He was ultimately found competent, which was not contested.[4]

On July 17, 2023, at Bolden's final case review, he initially rejected the State's plea offer.[5] At Bolden's request and following a colloquy between Bolden and the trial court, the court rescheduled the matter to that day's afternoon calendar where Bolden pled no contest to Assault Second Degree and the firearms charges.[6] The court deferred sentencing pending a presentence investigation, but the parties agreed in the plea paperwork that the State would cap its Level V sentence recommendation

[1] A1; A10-12.
[2] A1.
[3] A1-2.
[4] A2.
[5] B3-4.
[6] A3-4; A13-14; B13-17.

at fifteen years and the defense could argue for the minimum mandatory of six years.[7]

On September 13, 2023, Bolden filed a *pro se* motion to withdraw his no contest plea.[8] On October 3, 2023, Bolden's defense counsel filed a motion to withdraw as counsel and attached Bolden's motion to withdraw the plea as an exhibit.[9] On October 9, 2023, the Superior Court heard argument on Bolden's motion to withdraw the plea.[10] On March 1, 2024, the court entered an order granting the motion to withdraw the plea, focusing on the grounds of involuntariness and legal innocence.[11] On May 9, 2024, the court held an office conference with the parties where they addressed, among other things, the motion to withdraw as counsel.[12] On May 14, 2024, the court entered an order denying that motion, finding there were no grounds to terminate the representation.[13]

On May 20, 2024, Bolden's trial began, and, on May 24, 2024, the jury found Bolden guilty of Attempted Murder in the First Degree and PFDCF.[14] On September

[7] A13.
[8] A22-25.
[9] A15-25.
[10] A4.
[11] Opening Br. Ex. A.
[12] A5.
[13] A7.
[14] A7-8.

6, 2024, the Superior Court sentenced Bolden to 23 years at Level V followed by probation.[15]

Bolden timely filed this appeal and an opening brief. This is the State's answering brief.

[15] Opening Br. Ex. C.

SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. The Superior Court did not err when it denied Bolden's trial counsel's motion to withdraw as counsel. The denial of such motion did not constitute, in effect, a complete denial of counsel. This Court's precedent does not require a motion to withdraw as counsel that is filed in connection with a motion to withdraw a plea alleging ineffectiveness and coercion be granted irrespective of the merits of those allegations of ineffectiveness. Nor did the Superior Court commit an abuse of discretion when it denied counsel's motion to withdraw because unsubstantiated allegations alone do not create a conflict of interest between counsel and client.

II. Appellant's argument is denied. The Superior Court did not err when it denied the motion to withdraw as counsel. The denial of such motion did not constitute, in effect, a complete denial of counsel. The Superior Court's decision granting the motion to withdraw the plea focused on involuntariness and legal innocence and did not substantiate Bolden's claims of ineffective assistance. Nor did the Superior Court commit an abuse of discretion when it denied counsel's motion to withdraw, as it did not find trial counsel had been ineffective when it granted the motion to withdraw the plea.

STATEMENT OF FACTS

On the morning of May 28, 2022, Jamie Faulkner sat on the front steps of 416 North Jefferson Street, where he rented the first floor apartment, talking with his neighbor, Robert States.[16] While they talked, Troy Bolden, a neighbor who lived on the upper floor, came downstairs and stood behind them in the doorway to the building.[17] Interrupting Faulkner's and States' conversation, Bolden stated, "Somebody banging on my door."[18] Faulkner, who had been sitting on the front steps of the building and had seen no one enter, responded, "Man, ain't nobody been knocking on your door."[19] Bolden paused for a second, then replied, "Man, nobody talking to you."[20] Faulkner turned to see a flash and realized he had been shot in the neck.[21] Bolden then shot Faulkner in his back.[22] Faulkner staggered to a corner, and States tried to help him staunch the bleeding.[23]

Immediately after the shooting, Briel Mykoo, who lived at 404 North Jefferson Street and was outside packing her car when the shooting occurred, called 911.[24] Mykoo reported that she had heard the sound of two pops, which she

---

[16] A123-24.
[17] A123-24; A139.
[18] A124.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] A125.
[24] B42.

identified as gunshots or BB gunshots, and saw what she believed to be gunpowder smoke.[25] She also heard Faulkner scream, "My neighbor shot me," before she fled inside.[26]

Several officers from the Wilmington Police Department ("WPD") responded to the scene, and Mykoo yelled to responding officers that the shooter was still inside the building.[27] Sergeant Mitchell, having heard the shots, arrived approximately a minute and a half after the incident occurred.[28] Mitchell oversaw Faulkner's turnover to medical professionals.[29] While he was waiting for paramedics, Faulkner provided Mitchell with the nickname of the shooter and that he had fled to 416 North Jefferson.[30] Officer Verna, who was assigned to the WPD's Forensic Services Unit, also responded to the scene.[31] He collected two spent shell casings "in close proximity" to the steps of 416 North Jefferson.[32]

---

[25] B42.
[26] B42-43.
[27] A122(g). On the call with 911, Mykoo mistakenly identified that house as 410 North Jefferson instead of 416 North Jefferson. A122(g); A113; A122(a); B43. While speaking to the 911 operator, Mykoo also stumbled over her words saying that the victim had been sitting on a couch. B45. And some of the questions asked by the 911 operator confused Mykoo. B45.
[28] A81; B26.
[29] A82-83.
[30] A83; A86-87.
[31] B39-40.
[32] B40.

On the way to the scene, WPD Detective Ludlam saw a black male, later identified as Bolden, walking down the street and limping as if he were injured.[33] Because they were responding to a shooting and Bolden was apparently injured, Ludlam and her partner stopped to make sure Bolden had not been involved.[34] Bolden was irate.[35] He was also in considerable pain and eventually determined to have a fractured ankle.[36] While waiting for the ambulance, Bolden was impatient and "trying to go, like ASAP."[37] Ludlam rode with Bolden to the hospital because the investigation was ongoing and WPD officers were unsure of what had occurred.[38] Officers searched Bolden before he left in the ambulance and did not find a firearm on him or in the surrounding area.[39]

At the hospital, Sarah Peluso, a forensic nurse, examined Faulkner.[40] Upon arrival, Faulkner was designated a trauma code due to the location of the gunshot wounds—his head and chest—which presented a risk of significant injury.[41] As a part of his intake at the hospital, Peluso asked Faulkner who shot him.[42] Faulkner

---

[33] A100-01; B35.
[34] A102.
[35] A101.
[36] A109.
[37] A107.
[38] *Id.*; B37.
[39] A108; B37.
[40] B28-30.
[41] B30-31.
[42] B32.

told her that "Psyhc [sic]," who lived in the apartment above Faulkner's with his sister, shot him.[43] Faulkner described "Psyhc [sic]" as "40-something," with "brown skin," and with a "height [of] five-seven to five-eight."[44] Faulkner also told Peluso that the gun had been two feet away from him when he had been shot.[45]

After the shooting, a SWAT team cleared 416 North Jefferson, and WPD executed a search warrant for Bolden's apartment at 416 North Jefferson, Apartment 3.[46] Because they were investigating a shooting, WPD officers' search focused on locating a gun or ammunition.[47] Inside of a bookbag found in the apartment, WPD officers located Social Security paperwork addressed to Troy Lamar Bolden at the address in the search warrant, as well as a metro card in Bolden's name with an expiration of February 20, 2025.[48] Located in the same bookbag along with those papers was a single live round of .25 caliber Aguila ammunition.[49]

Stephen Deady of the Delaware State Police analyzed the two shell casings recovered from the scene.[50] Deady determined that both cartridges were discharged from the same firearm.[51] And he identified those as .25 caliber Aguila shell

[43] B32.
[44] B32.
[45] B32.
[46] A131.
[47] A132.
[48] A133.
[49] A134.
[50] A137; B49.
[51] *Id.*

casings.[52] He also explained that in his 37 years of experience, .25 caliber ammunition is "among the least common."[53]

Other evidence tied Bolden to the shooting. The night of the shooting Faulkner identified Bolden out of a photo lineup administered by WPD officers as the person who shot him.[54] The Chief Investigating Officer also identified a Facebook page with a user name of "Psych-Psych," that had a URL of facebook.com/troy, and that indicated the user was married to Monica Bolden.[55] Monica Bolden is Bolden's wife.[56] Gunshot residue was also found on Bolden's hands.[57]

Officers subsequently arrested Bolden, who admitted being at the scene.[58]

[52] A137-38.
[53] A138.
[54] A125-26.
[55] A130.
[56] A139.
[57] A130.
[58] B37a.

ARGUMENT

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION OR OTHERWISE ERR IN DENYING TRIAL COUNSEL'S MOTION TO WITHDRAW AS COUNSEL.

Question Presented

Whether the Superior Court's denial of trial counsel's motion to withdraw as counsel constituted, in effect, a complete denial of counsel in violation of the Sixth Amendment after Bolden had alleged his counsel was ineffective and that he was coerced when he sought to withdraw his plea.[59]

Standard and Scope of Review

This Court reviews constitutional claims *de novo*.[60] It reviews motions to withdraw as counsel for abuse of discretion.[61] "An abuse of discretion occurs when the trial judge 'exceed[s] the bounds of reason in view of the circumstances and has so ignored recognized rules of law or practice so as to produce injustice.'"[62] Decisions based "on 'clearly unreasonable or capricious grounds'" satisfy that standard.[63]

---

[59] A15-25; A47-49.
[60] *Nance v. State*, 903 A.2d 283, 285 (Del. 2006).
[61] *Gibbs v. State*, 2011 WL 3427211, at *1 n.8 (Del. Aug. 3, 2011) (citing *Bultron v. State*, 897 A.2d 758, 763 (Del. 2006)).
[62] *State v. Wright*, 131 A.3d 310, 320 (Del. 2016) (quoting *Charbonneau v. State*, 904 A.2d 295, 304 (Del. 2006)).
[63] *Quintero v. State*, 2007 WL 2827680, at *3 (Del. Oct. 1, 2007) (quoting *Bultron*, 897 A.2d at 762).

Merits of Argument

Bolden argues that he was completely denied counsel in connection with the plea withdrawal proceedings when the Superior Court denied trial counsel's motion to withdraw as counsel and refused to appoint new counsel. This claim does not hinge on whether trial counsel was ineffective, and as such, does not violate the general rule that allegations of ineffective assistance will not be heard for the first time on appeal.[64] Instead, Bolden contends that a motion to withdraw as counsel must be granted where a defendant has merely alleged ineffectiveness and coercion in connection with a plea agreement. Because he attacked trial counsel's representation when he sought to withdraw his plea, Bolden also argues that the court abused its discretion by denying the motion to withdraw as counsel. Bolden's claims are unavailing; he misconstrues this Court's precedent, and his conclusory allegations alone do not require granting a motion to withdraw as counsel.

A. This Court's Holding in *Reed v. State* Does Not Mandate that the Superior Court Should Have Granted the Motion to Withdraw and Appointed New Counsel Irrespective of the Merits of Bolden's Allegations of Ineffectiveness and Coercion.

Bolden first argues that this Court's decision in *Reed v. State* requires a motion to withdraw as counsel be granted when a defendant alleges coercion and

[64] Opening Br. 16-17; s*ee Ploof v. State*, 75 A.3d 811, 820 (Del. 2013) ("We generally decline to consider ineffective assistance of counsel claims in a direct appeal so that the defendant can full investigate the issue in a postconviction proceeding.").

ineffectiveness in connection with a motion to withdraw a plea irrespective of the merits of those allegations.[65] In *Reed*, this Court addressed an appeal from the Superior Court's refusal to consider a *pro se* motion to withdraw a plea agreement.[66] The trial court had refused to consider the motion because the defendant was represented by counsel, and counsel, in turn, had refused to file such a motion because they believed it meritless.[67] The defendant argued that this left him "stuck in Catch-22 due to the operation of two Superior Court Rules."[68]

This Court reversed and remanded the case, concluding, among other things, that a motion to withdraw a guilty plea is of such importance that counsel cannot override a client's direction to file one.[69] That is true even if counsel believes "the defendant's motion is contrary to his interest or is without merit."[70] Further, this Court explained that if a motion to withdraw a plea includes allegations that counsel was ineffective or coercive with respect to that plea, "then counsel should ask the

---

[65] Opening Br. 9-17 (citing *Reed v. State*, 258 A.3d 807 (Del. 2021)).
[66] *Reed*, 258 A.3d at 812.
[67] *Id.* In his *pro se* motion to withdraw his plea, Reed asserted ineffective assistance of counsel, alleging his trial counsel had advised him that he would not receive a fair trial based on his race. *Id.* at 825-26. Because of this advice, Reed pled guilty instead of preceding to trial. *Id.* at 824. Later, Reed tried to withdraw his guilty plea. In response to Reed's allegations, trial counsel submitted an affidavit in which he denied advising Reed on the probable make-up of the jury pool. *Id.* at 826.
[68] *Id.* at 812.
[69] *Id.* at 828-29.
[70] *Id.* at 829.

court to appoint new unconflicted counsel to handle the filing of that motion."[71] Contrary to Bolden's argument, *Reed* does not speak to whether a trial court must grant a defendant's motion to appoint new counsel to handle the filing of the motion the plea.[72]

Reed is also readily distinguishable, as the Superior Court observed.[73] Here, there is no allegation that Bolden asked trial counsel or that trial counsel refused to file a motion to withdraw the plea. Instead, trial counsel filed the motion to withdraw the plea, albeit as an exhibit to his motion to withdraw as counsel.[74] Further distinguishing *Reed* are the Superior Court's grounds for granting the motion to withdraw the plea: involuntariness and legal innocence.[75] In reaching that ruling, the court expressly found counsel had not been ineffective and Bolden's complaints amounted to general dissatisfaction with trial counsel.[76] It accordingly declined to appoint substitute counsel.

Nor is there any basis to expand on *Reed* and require trial courts to appoint substitute counsel to assist with the motion to withdraw or to grant a motion to withdraw as counsel based only on a defendant's allegations of ineffectiveness and

---

[71] *Id.*
[72] *Id.* 828-29.
[73] A47.
[74] A15-25.
[75] Opening Br. Ex. A.
[76] *See infra* II.A.

coercion in connection with a motion to withdraw a guilty plea. *Strickland v. Washington* governs ineffective assistance of counsel claims.[77] Under that test, "[m]ere allegations are insufficient."[78] They must be substantiated.[79] Bolden tries to sidestep *Strickland* in favor of *United States v. Cronic*[80] by proposing that mere allegations in connection with a motion to withdraw a plea create a conflict so severe that it effects a complete denial of counsel.[81] Bolden's argument is nonsensical. If mere allegations of ineffectiveness do not satisfy *Strickland*, they cannot satisfy *Cronic*.[82] Any contrary ruling would vitiate *Strickland* in favor of *Cronic*, allowing defendants to successfully claim ineffectiveness on the basis of mere allegations, which *Strickland* has long rejected. Nor would a rule that mere allegations establish a conflict so severe as to implicate *Chronic* have any clear limit. This Court should, accordingly, deny Bolden's invitation to expand *Cronic* to circumstances based on mere allegations.

---

[77] *See, e.g.*, *Reed*, 258 A.3d at 824-25 (applying *Strickland v. Washington*, 466 U.S. 668 (1984)).
[78] *Jackson v. State*, 21 A.3d 27, 40-41 (Del. 2011), *corrected* (May 23, 2011).
[79] *Id.*
[80] 466 U.S. 648 (1984).
[81] A17.
[82] *See, e.g.*, *Urquhart v. State*, 203 A.3d 719, 730 (Del. 2019) ("[B]ad lawyering, regardless of *how* bad, does not support *Cronic* presumption.") (internal notations and quotations omitted) (emphasis in original).

The Second Circuit rejected a similar argument in *United States v. Rivernider*.[83] There, among other things, the circuit court addressed whether the district court erred in declining to appoint substitute counsel to address appellant's *pro se* motion to withdraw his guilty plea.[84] Specifically, appellant asserted that their trial counsel had coerced them into entering that plea agreement.[85] The district court declined to appoint substitute counsel with respect to that motion, finding the allegations conclusory and contradicted by appellant's statements at the plea hearing.[86] The circuit court observed while a defendant has a right to conflict-free counsel where allegations of coercion are adequately set forth, that right is not automatic "simply because the defendant asserts that there was coercion."[87] It concluded the district court had made no error in declining to appoint substitute counsel.[88]

---

[83] 828 F.3d 91 (2d Cir. 2016).
[84] *Id.* at 98-99.
[85] *Id.* at 98.
[86] *Id.* at 102.
[87] *Id.* at 109 (citing *United States v. Davis*, 239 F.3d 283, 286-87 (2d Cir. 2001) and *Armienti v. United States*, 234 F.3d 820, 823 (2d Cir. 2000)). The circuit court also noted that it had previously observed a circuit split on whether more than mere conclusory allegations of coercion in connection with a guilty plea should be reviewed under *Strickland* or *Cronic*. *Id.* at 106-07 (citing *Hines v. Miller*, 318 F.3d 157, 162-63 (2d Cir. 2003)).
[88] *Id.* at 110. *See also United States v. Frazier*, 166 F.3d 335 (4th Cir. 1998) (finding no error in denial of appointment of substitute counsel made after entry of plea agreement despite allegations that counsel was ineffective); and *United States v. Bride*, 263 F. App'x 550, 551–52 (9th Cir. 2008) (addressing denial of motions to substitute counsel and withdraw guilty plea on the grounds that defendant was

The same holds true here. Like the district court in *Rivernider*, the Superior Court found Bolden failed to establish ineffectiveness. Likewise, Bolden's allegations in his motion to withdraw his plea contradict his statements in his plea that he was pleading "freely and voluntarily" and that no one had forced or threatened him to enter the plea.[89] Bolden may have been entitled to substitute counsel, but he must have adequately set forth his allegations of ineffectiveness and coercion. He failed to do so. Under those circumstances, it was no error for the trial court to decline to appoint substitute counsel to assist Bolden with the motion to withdraw his plea.

B. The Trial Court Did Not Abuse Its Discretion When It Denied the Motion to Withdraw as Counsel.

Here, the Superior Court held a hearing on Bolden's motion to withdraw his plea at which it assessed whether Bolden's allegations of ineffectiveness had merit. The trial judge was already familiar with Bolden from presiding over his plea colloquy.[90] And at the hearing on the motion to withdraw his plea, the trial judge engaged in another colloquy with Bolden to determine the basis of his allegations of ineffectiveness.[91] During the hearing, the court found that Bolden's complaints

---

allegedly pressured into entering plea and concluding district court had conducted sufficient inquiry into the allegations and applied correct legal standard).

[89] A14.

[90] B3-16.

[91] A30-56.

regarding trial counsel amounted to general dissatisfaction and quoted this Court's recent decision in *Thomas v. State* for the proposition that "mere dissatisfaction with his counsel does not by itself justify the appointment of different counsel."[92] And the court further observed that "we can't allow the defendant to merely assert that counsel has been ineffective."[93] If that were the law, the trial court explained, defendants "would never have an attorney they were satisfied with."[94] The court concluded during the hearing that it did not find trial counsel ineffective.[95] The court subsequently reiterated that conclusion in its order denying trial counsel's motion to withdraw as counsel, stating that defense counsel's conduct did not fall below the objective standard of reasonableness, the *Strickland* standard.[96]

This Court addressed a comparable situation in *Jones v. State*.[97] There, Jones complained about defense counsel's "lack of preparation and her apparent interest in having him accept a plea bargain instead of going to trial."[98] Jones ultimately proceeded *pro se* with defense counsel serving as standby counsel.[99] A jury found

---

[92] A47-48 (quoting *Thomas*, 305 A.3d 705).
[93] A49.
[94] A47.
[95] A49. The trial court's clear statements that it was not finding ineffective assistance refute any inference that the grant of the motion to withdraw the plea amounted to a finding of ineffective assistance, as explained *infra* II.A.
[96] A7.
[97] 2000 WL 1504965 (Del. Aug. 30, 2000).
[98] *Id.* at *1.
[99] *Id.*

Jones guilty on several counts.[100] On appeal, Jones argued the trial court violated his constitutional rights by failing to question him in detail on the reasons for his dissatisfaction.[101] This Court found the argument "lack[ed] merit." It explained "[i]f the reason why the accused is dissatisfied with counsel are made known to the court, the court may rule without more. If no reasons are stated, then the court has a duty to inquire."[102]

Here, Bolden claims the denial of the motion to withdraw as counsel was an abuse of discretion. Specifically, he contends that it was unreasonable to require defense counsel to represent Bolden after Bolden attacked trial counsel's representation.[103] Bolden cites to no case that holds that mere allegations of ineffectiveness require a trial court appoint new counsel or grant a motion to withdraw. There is good reason; mere allegations against counsel do not require counsel to withdraw.[104] And, as in *Jones*, the Superior Court was well versed in

---

[100] *Id.*
[101] *Id.* at *2.
[102] *Id.* (internal brackets and quotations omitted); *Thomas v. State*, 305 A.3d 683, 705 (Del. 2023) (same).
[103] Opening Br. 18-19.
[104] *Watson v. State*, 2013 WL 5969065, at *1 (Del. Nov. 6, 2013) ("Watson's filing of a [federal action] against Counsel did not, in and of itself, create a prejudicial conflict of interest."); *Talmo v. State*, 2003 WL 723993, at *1 (Del. Feb. 28, 2003) (finding that filing of legal malpractice complaint against counsel shortly before trial did not create a conflict of interest); *Woods v. State*, 1996 WL 666009, at *3 n.* (Del. Nov. 12, 1996) ("[T]he mere filing of a complaint against his attorney would not, without more, require Woods' trial counsel to withdraw his representation."); *but see Quintero*, 2007 WL 2827680, at *1 (finding no abuse of discretion by trial

Bolden's issues with counsel, having interacted with him at length during his plea colloquy and then again when it questioned him regarding the motion to withdraw his plea. The argument is, accordingly, meritless and should be rejected.

But, even if mere allegations of ineffectiveness were sufficient to grant a motion to withdraw as counsel, Bolden would need to show "the error arises to the level of significant prejudice, which would deny the defendant a fair trial."[105] Bolden does not allege he was prejudiced, however, and therefore fails to satisfy this portion of the abuse of discretion analysis. Nor could he show prejudice because the court granted his motion to withdraw the plea. This provides an independent basis on which to reject his argument.

Bolden also claims that Rule 1.16(b)(6) of the Delaware Rule of Professional Conduct ("DLRPC") supports a ruling that it was unreasonable for the court to require trial counsel to continue to represent Bolden "in proceedings in claims attacking counsel's representation."[106] That rule addresses representation a client makes "unreasonably difficult."[107] Trial counsel made no such allegation. But, even had trial made that allegation, the rule addresses permissive, not mandatory,

---

court when it allowed private counsel to withdraw after arranging a plea with no incarceration, which defendant rejected, when defendant wrote to counsel after being found guilty to allege ineffectiveness).

[105] *Manna v. State*, 945 A.2d 1149, 1153 (Del. 2008).

[106] Opening Br. 19.

[107] Del. R. Prof'l Conduct 1.16(b)(6).

withdraw.[108] And moreover, that permissive withdraw may only be done with the authorization of the appointing court.[109] DLRPC 1.16(b)(6) is not implicated here.

[108] Del. R. Prof'l Conduct 1.16(b).
[109] Del. R. Prof'l Conduct 1.16(c).

II. THE SUPERIOR COURT DID NOT DENY BOLDEN THE RIGHT TO COUNSEL AT TRIAL WHEN IT DENIED THE MOTION TO WITHDRAW AS COUNSEL.

Question Presented

Did the Superior Court deny Bolden counsel when it denied the motion to withdraw as counsel after granting Bolden's motion to withdraw his plea based on the factors of involuntariness and legal innocence.[110]

Standard and Scope of Review

This Court reviews constitutional claims *de novo*.[111] It reviews motions to withdraw as counsel for abuse of discretion.[112] "An abuse of discretion occurs when the trial judge exceeds the bounds of reason in view of the circumstances and has so ignored recognized rules of law or practice so as to produce injustice."[113] Decisions based "on clearly unreasonable or capricious grounds" satisfy that standard.[114]

Merits of the Argument

Bolden argues he was constructively denied counsel at trial, another critical stage under *Cronic*.[115] Bolden bases this argument on the trial court's granting of

---

[110] A15-A25; A60-62; Opening Br. Ex. A; and A7.
[111] *Nance v. State*, 903 A.2d 283, 285 (Del. 2006).
[112] *Gibbs v. State*, 2011 WL 3427211, at *1 n.8 (Del. 2011) (citing *Bultron v. State*, 897 A.2d 758, 763 (Del. 2006)).
[113] *State v. Wright*, 131 A.3d 310, 320 (Del. 2016) (quoting *Charbonneau v. State*, 904 A.2d 295, 304 (Del. 2006)).
[114] *Quintero v. State*, 2007 WL 2827680, at *3 (Del. 2007) (quoting *Bultron*, 897 A.2d at 762).
[115] Opening Br. 19.

Bolden's motion to withdraw his plea. Bolden contends that the court's granting of that motion substantiated his claims of ineffective assistance of counsel and, once those claims were substantiated, new counsel should have been appointed. Because new counsel was not appointed, Bolden claims that there was a complete breakdown either of the adversarial process or the attorney-client relationship. Bolden similarly contends that once trial counsel's ineffectiveness was substantiated, it was unreasonable for the court to require them to continue to represent Bolden and the court's denial of the motion to withdraw constituted an abuse of discretion. Not so; Bolden's argument incorrectly concludes that the trial court substantiated ineffectiveness.

A. The Superior Court's Granting of the Motion to Withdraw the Plea Did Not Substantiate Bolden's Claims of Ineffective Assistance of Counsel.

Bolden's argument hinges on the conclusion that the trial court necessarily found his ineffectiveness claims substantiated when it granted the motion to withdraw his guilty plea. The record does not support Bolden's claim. The trial court expressly rejected Bolden's claims of ineffective assistance of counsel and found that counsel's conduct did not fall below an objective standard of reasonableness. Bolden's claim is also refuted by the trial court's reliance on factors other than "adequate representation of counsel" when it granted the motion to withdraw the guilty plea. Even setting the trial court's plain language and reasoning

aside, the trial court's finding of involuntariness does not necessarily lead to the conclusion that the trial court substantiated ineffectiveness. Thus, Bolden's conclusion that the trial court substantiated ineffectiveness is without basis. Because Bolden's argument that he was denied counsel at trial hinges on that conclusion, his claim should be denied.

1. The Trial Court Expressly Found Trial Counsel's Conduct Did Not Fall Below an Objective Standard of Reasonableness.

Bolden's conclusion that the trial court substantiated his ineffective assistance of counsel claims should be rejected because it is directly contrary to the trial court's own findings. At the hearing on the motion to withdraw Bolden's plea, this exchange occurred:

> [Trial Counsel]: "So if I'm interpreting what you're saying correctly, you're saying that you have not found any ineffective assistance of counsel.
>
> The Court: Not to this point.[116]

Likewise, in its order on the motion to withdraw as counsel, the trial court reiterated as much when it explained why there was no basis to grant that motion: "Trial counsel's conduct did not fall below an objective standard of reasonableness."[117] These statements refute Bolden's claim that ineffectiveness was substantiated

[116] A49.
[117] A7.

because ineffectiveness asks whether counsel's conduct fell below an "objective standard of reasonableness."[118] Both statements, therefore, make clear that the trial court did not find the ineffectiveness claims substantiated.

2. A Review of the Trial Court's Findings Under the *Scarborough* Factors Demonstrates It Did Not Substantiate Bolden's Ineffectiveness Claims.

Even were the explicit language of the trial court insufficient to conclude it made no findings of ineffectiveness, its *Scarborough* analysis further supports that it made no such finding. Superior Court Criminal Rule 32(d) permits a motion to withdraw a plea be granted "upon a showing by the defendant of any fair or just reason."[119] When assessing whether such a reason exists, this Court has instructed trial courts to evaluate five factors, "any of which can be determinative" (the "*Scarborough* Factors"):

> (1) whether there was a procedural defect in the plea, (2) whether the defendant knowingly and voluntarily consented to the plea, (3) whether there is a basis to assert legal innocence, (4) whether legal counsel was adequate, and (5) whether granting the motion would prejudice the State or unduly influence the court.[120]

Here, the trial court correctly applied this standard, citing both the relevant rule and this Court's decision in *Kinderman v. State* and explaining that courts

---

[118] *Reed*, 258 A.3d at 824 (Del. 2021) (quoting *Swan v. State*, 248 A3d 839, 858-59 (Del. 2021)).
[119] Super. Ct. Crim. R. 32(d).
[120] *Carney v. State*, 319 A.3d 842, 845 (Del. 2024).

"review[] five factors" when addressing a motion to withdraw a plea.[121] In granting Bolden's motion to withdraw his plea, the court's order only identified the second factor (voluntariness) and third factor (legal innocence) as the basis to grant Bolden's motion.[122]

Notably, the trial court did not rely on the fourth factor (the adequacy of legal counsel) in granting Bolden's motion. That decision is telling here. This Court has established that this fourth factor asks whether counsel was ineffective through the *Strickland* analysis.[123] Bolden, accordingly, asks this Court to accept an incongruity: that the trial court knew of the relevant standard yet instead of finding ineffectiveness under the factor that addresses that issue (the fourth factor) it found ineffectiveness under involuntariness (the second factor) and legal innocence (the third factor). Bolden provides, and the State sees, no reason to accept such an incongruity.

---

[121] Opening Br. Ex. A (citing *Kinderman v. State*, 302 A.3d 407, 413 (Del. 2023)).
[122] This Court has previously held that "[c]ertain of the factors, standing alone, will themselves justify the relief" and that the five factors "do not lend themselves to a balancing analysis." *Patterson v. State*, 684 A.2d 1234, 1238-39 (Del. 1996); *see also Scarborough v. State*, 938 A.2d 644, 649 (Del. 2007) ("These factors are not factors to be balanced; indeed, some of the factors themselves may justify relief.") (citing *Patterson*, 684 A.2d at 1239)).
[123] *Barnett v. State*, 2007 WL 1314664, at *2 (Del. May 7, 2007) (citing *MacDonald v. State*, 778 A.2d 1064, 1074-75 (Del. 2001)).

3. Involuntariness Does Not Speak to Whether Trial Counsel Was Effective.

Despite the forgoing, Bolden contends that the only arguments he made regarding voluntariness related to ineffectiveness. In support, he marshals allegations from his motion to withdraw his plea that speak to trial counsel's conduct.[124] And he reasons that because these were the only bases he alleged and they alleged ineffectiveness, the trial court must have substantiated those allegations when it granted the motion. That means, he concludes, that the trial court substantiated allegations of ineffectiveness.

Bolden is incorrect—for two related reasons. First, when assessing voluntariness, courts do not look to the efficacy of counsel but to the plea colloquy. For example, in *Jones v. State*, when faced with an allegation that the plea was involuntary, this Court looked to the trial court's explanation to appellant that it could impose a sentence greater than that in the plea and its discussion with appellant regarding the Truth-in-Sentencing form, which appellant had signed.[125] Cases

[124] Opening Br. 23-24.
[125] 2018 WL 1134744, at *2-3 (Del. Apr. 18, 2022).

assessing voluntariness by resort to the plea colloquy are abundant.[126] They do not address the efficacy of counsel.[127]

Second, the only reason Bolden provides for ignoring that precedent is that his motion alleged ineffectiveness. Yet those allegations are not the sole basis on which the trial court could have ruled on the motion to withdraw the plea. A review of the trial court's interactions with Bolden evidences the trial court's concern was voluntariness and the plea colloquy. The trial court engaged at some length with Bolden to determine why he wished to withdraw the plea.[128] In particular, the following exchange evidences the trial court's focus:

> The Court: … So just tell me now, are you saying something different?
> [Bolden]: No. I'm not saying nothing different. At the moment, Your Honor, like I'm telling you right now, mad, confused. It's like I'm being pressured to say something I shouldn't say.
> The Court: I would accept the fact if now you said you were saying something different --
> [Bolden]: Right.

---

[126] *See, e.g.*, *Teel v. State*, 2008 WL 4483731, at *2 (Del. Oct. 7, 2008) ("Because the plea colloquy clearly reflects that Teel's plea was voluntary, there were no grounds to support its withdraw."); *Sykes v. State*, 2012 WL 5503846, at *2 (Del. Nov. 13, 2012); *Hartman v. State*, 2007 WL 38401, at *2 (Del. Jan. 8, 2007); *Lane v. State*, 2006 WL 3703683, at *2 (Del. Dec. 18, 2006); *Anderson v. State*, 2014 WL 3511717, at *2 (Del. July 14, 2014); *Trotter v. State*, 2018 WL 6167322, at *3 (Del. Nov. 21, 2018); *Shorts v. State*, 2018 WL 2437229, at *4-5 (Del. May 30, 2018).

[127] Efficacy of counsel could be implicated in the context of a claim that a plea was involuntary if there were some claim that counsel failed to perform some function in connection with the plea colloquy. Bolden does not make that claim. *See* A22-25.

[128] A30-46; A49-54.

> The Court: -- but you just told me you weren't saying something different.
> [Bolden]: I said, if I say something different, I will be penalized for it.
> The Court: I need to try and understand what went on then and what went on now. I'm not trying to penalize you for this.
> [Bolden]: Your Honor, confused and afraid, scared.
> The Court: Okay. So let me understand. So when I did the plea colloquy --
> [Bolden]: Nervous.
> The Court: -- you were confused?
> [Bolden]: Exactly.
> The Court: You signed this outside of my presence. So you were afraid and confused at that point?
> [Bolden]: Still was, like I am now.[129]

Similarly, the trial court attempted to determine if Bolden was able to understand what he was charged with:

> The Court: You were accused of attempted murder. Do you understand that?
> [Bolden]: I hear it.
> The Court: Okay. And attempted murder carries up to life in prison. That's a fact. Do you understand that fact?
> [Bolden]: No. I hear you saying it, but I don't understand…[130]

The trial court then pivoted to whether Bolden wanted to withdraw the guilty plea, and Bolden agreed that was what he wanted.[131] When the trial court attempted to confirm that, given the lengthy possible sentence, the dialogue became unfocused as

[129] A35-37.
[130] A38.
[131] A39.

Bolden expressed difficulty in understanding the various possible sentences he faced at trial versus the plea.[132] In the midst of that, he expressed concern that he might regret the plea and talked about the facts of the case, raising issues like the absence of a gun and DNA evidence.[133]

These exchanges echo an earlier one between the trial court and Bolden at his final case review prior to his plea entry:

> The Court: Mr. Bolden, do you understand the maximum penalties that you are exposed to?
> [Bolden]: No, I don't.
> The Court: What is the total?
> [Defense Counsel]: A life sentence plus 45 years.
> The Court: Do you understand that? It's pretty simple.
> (Pause)
> The Court: You're telling me you don't understand that you face a possible life sentence if you go to trial?
> [Bolden]: No, I don't understand that, not facing no life. Not facing life.[134]

There, among other things, the issue had been whether Bolden was able to grasp the difference between three items: the State's cap in the plea; the six-year minimum

---

[132] A39-A42. Similarly, Bolden later confirmed in the same hearing that he wanted fairness and trial with counsel who would represent him "to the fullest" but transitioned almost immediately from that representation to asking what resources he would get if he accepted a plea. A42-46.
[133] A41.
[134] B4.

mandatory in the plea, and the trial court's ability to sentence him beyond what the State recommended.[135]

These dialogues between Bolden and the trial court, as well as others,[136] illustrate the trial court's focus was whether the plea was voluntary through the lens of whether Bolden understood the plea, the charges, and the consequences of his decisions. And the record provides a reasonable explanation of why the trial court granted Bolden's motion to withdraw the plea on the grounds of involuntariness. In turn, that explanation provides a basis to reject Bolden's claim that the withdrawal of the plea on involuntariness grounds is an implicit finding of ineffective assistance.

B. Even if Granting the Motion to Withdraw the Guilty Plea Substantiated Ineffectiveness, New Counsel Need Not Have Been Appointed.

Based on his claim that ineffectiveness was substantiated, Bolden asserts that "substituted counsel should have been appointed as an attorney of record for all

[135] B5-9. Defense counsel confirmed they had discussed these topics with Bolden, that Bolden had mental health and memory issues that created difficulties in their communication, and that, in counsel's estimation, Bolden understood the topics. B10.

[136] A34 (as to why he said no one threatened him, "because I was told earlier not to say anything about the case"); A34 (as to Bolden's satisfaction with the representation: "I was off my medication. My mind -- I'm always confused. And it's just like, you said -- I said that I was satisfied with his representation, but at the same time, I'm like satisfied for what"); A35 (as to his signature on the forms "If you look at the form, you see that I tried to purposefully mess up my signature so that you don't accept it").

purposes."[137] In support, he cites to the California Supreme Court's decision in *People v. Sanchez*.[138] He cites *Sanchez* for the proposition that once Bolden showed that his right to counsel had been "substantially impaired," new counsel should have been appointed.[139] The failure to do so, he contends, violates *Cronic* as it resulted in a "constructive denial of counsel involving a complete breakdown either in the adversarial process or in the attorney-client communication."[140] Bolden's claim is unavailing.

In *Sanchez*, the court discussed case law surrounding "*Marsden* Hearings," which occur in California when a defendant makes some indication that they are dissatisfied with current counsel and require the court to hear the nature of the defendant's complaints.[141] If at the *Marsden* Hearing, a defendant shows that their right to counsel has been "substantially impaired," then California requires new counsel be appointed.[142] Such "substantial impairment" occurs where "the record shows that the first appointed attorney is not providing adequate representation or that the defendant and the attorney have become embroiled in such an irreconcilable conflict that ineffective representation is the likely result."[143]

---

[137] Opening Br. 25 (internal quotations omitted).
[138] Opening Br. 25 (citing *People v. Sanchez*, 264 P3d 349, 355 (Cal. 2011)).
[139] Opening Br. 25, n.95 (quoting *Sanchez*, 264 P.3d at 355).
[140] Opening Br. 25 (quoting *United States v. Cronic*, 466 U.S. 646, 648 (1984)).
[141] *Sanchez*, 264 P.3d at 352-53.
[142] *Id.*
[143] *Sanchez*, 264 P.3d at 354.

Sanchez does not bind this Court, but even were it persuasive, it does not apply here. Bolden asks this Court to conclude that a "substantial impairment" showing under *Sanchez* establishes a *Cronic* violation. It does not. *Sanchez* makes no reference to that case (or *Strickland*). There is good cause, as the respective lines of cases are concerned with two different things. As explained herein, *Cronic* asks whether someone ***has been denied counsel*** in violation of the Sixth Amendment. *Marsden* and its progeny, including *Sanchez*, however, are concerned with whether someone ***should continue to represent*** a defendant. In other words, Bolden asks this Court to graft a sister state's requirements for appointing new counsel onto the federal standard for a complete denial of counsel. While these can be related inquiries, they are distinct, which California recognizes.[144] *Sanchez*'s ruling regarding "substantial impairment", accordingly, has no bearing here.

Nor does Bolden explain how much or how little of the more than sixty years of precedent surrounding substantial impairment this Court should adopt, arguing only that this Court can pluck the "substantial impairment" from California law and implement it into Delaware law. *Marsden* is half a century old.[145] The case it cites

[144] *People v. Alexander*, 235 P.3d 873, 902 n.8 (Cal. 2010) ("Whether Watson adequately represented defendant is a separate question from whether the trial court abused its discretion by declining to reconsider its order appointing *some* attorney other than Koppel to represented defendant.") (emphasis in original); *People v. Streeter*, 278 P.3d 754, 774-779 (Cal. 2012) (discussing as distinct inquiries on appeal denial of *Marsden* motion and claim of *Cronic* violation).
[145] *People v. Marsden*, 465 P.2d 44 (Cal. 1970).

to for the "substantial impairment" principle is a decade older.[146] And as *Sanchez* demonstrates, California has developed extensive common law in the resulting six decades.[147]

C. The Trial Court Committed No Abuse of Discretion When It Denied the Motion to Withdraw as Counsel.

Bolden claims it was an abuse of discretion for the trial court to deny his motion to withdraw as counsel.[148] Specifically, he contends that it was unreasonable to deny the motion after substantiating Bolden's claims of ineffective assistance. In support, he cites to DLRPC 1.16(b)(6). As explained above, the trial court did not substantiate Bolden's ineffectiveness claims. Also, as explained above, DLRPC1.16(b)(6) does not help him.[149] The court, therefore, did not abuse its discretion.

But, even if the trial court had substantiated the claims of ineffective assistance, Bolden would need to show "the error arises to the level of significant

---

[146] *Marsden*, 465 P.2d 47 (citing *People v. Mitchell*, 185 Cal.App.2d 507, 512 (Cal. Ct. App. 1960)).
[147] *Sanchez*, 264 P.3d at 352-57.
[148] Bolden makes substantially the same argument here as in his first argument. The difference between the two is his contention as to why denial of the motion to withdraw was unreasonable. In the first, Bolden argues it was unreasonable because Bolden attacked trial counsel's representation. In the second, Bolden argues it was unreasonable because the trial court substantiated the claims of ineffectiveness. *Compare* Opening Br. 18-19 *with* 26.
[149] *See supra* I.B.

prejudice, which would deny the defendant a fair trial."[150] Bolden makes no effort to address and therefore fails to satisfy this portion of the abuse of discretion analysis.[151] Nor could he show prejudice because the court granted his motion to withdraw the plea. This provides an independent basis on which to reject Bolden's argument.

[150] *Manna v. State*, 945 A.2d 1149, 1153 (Del. 2008).

[151] DLRPC 1.16(b)(6) changes none of this, as it addresses representation that is "unreasonably difficult," an allegation trial counsel did not make, addresses permissive withdraw, and conditions that withdraw on authorization by the appointing court. It is not implicated here.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

/s/ *Jordan A. Braunsberg*
Jordan A. Braunsberg (No. 5593)
Deputy Attorney General
Delaware Department of Justice
Carvel State Office Building
820 N. French Street, 5th Floor
Wilmington, DE 19801
(302) 577-8500

Dated: May 2, 2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using MS Word.

2. This brief complies with the type-volume requirement of Rule 14(d)(i) because it contains 7,196 words, which were counted by MS Word.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ *Jordan A. Braunsberg*
Jordan A. Braunsberg (No. 5593)
Deputy Attorney General

DATE: May 2, 2025