

UNITED STATES OF AMERICA :
:
v. :
:
DERRELL BENNETT :
:
Defendant. :
:
_____ :

2013 JAN 18 P 7 25

Case No. 2010-CF1-24172
Judge Beck

MOTION TO WITHDRAW GUILTY PLEA

COMES NOW, the Defendant, Mr. Derrell Bennett, by and through his counsel, Brian K. McDaniel and McDaniel & Asso. P.A. hereby praying this Honorable Court allow the Defendant to withdraw his plea of guilty to the criminal offense charged in the above captioned matter. In support of the same, Defendant proffers the following:

1. The Defendant represents that he is in fact innocent of the charges for which he currently stands convicted. The Defendant did not commit the acts as outlined by the United States Attorney in the factual proffer in support of the guilty plea which was read to the court on November 30, 2012. This is a fact supported by Mr. Bennett's refusal to acknowledge the same during the disposition hearing and his insistence that his plea be entered pursuant to the procedure outlined in North Carolina v. Alford, 400 U.S. 25 (1970).

2. An Order allowing Mr. Bennett to withdraw his guilty plea would not prejudice the Government. This is especially true in this particular case as the government has substantially prepared its case against Mr. Bennett and all of its' witnesses which were available for the original December 10, 2012 trial date are ostensibly still available for any new trial date.

3. The Defendant has not delayed filing the current Motion without justification and files the same a full week in advance of his currently scheduled sentencing date of January 25, 2013 and only 48 days after the entry of his plea of guilt.

4. An Order allowing the Defendant to withdraw his plea of guilty would not substantially inconvenience this Honorable Court. A defendant can request that his plea be withdrawn under D.C. SCR-Crim 32 (e):

A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice, the Court after sentence may set aside the judgment of conviction and permit the defendant to withdraw the plea.

"[I]f for any reason the granting of the privilege seems fair and just," a motion to withdraw a guilty plea filed prior to sentencing should be granted. Kercheval v. United States, 274 U.S. 220 (1927). An Order allowing the Defendant to withdraw his plea of guilty would be in the interest of justice as the defendant would likely be successful at trial in this matter as the governments evidence against him is based upon evidence of a circumstantial nature and the testimony of a biased witness who had curried extraordinary benefit and assistance from the government. In addition, the bulk if not all of the physical evidence developed by the government in this case indicates that the aforementioned government witness was actually responsible for the shooting death for which Mr. Bennett now awaits sentencing.

5. An Order allowing the Defendant to withdraw his plea of guilty would protect the Defendant's Constitutional right to a fair trial.

6. An Order allowing him to withdraw his plea of guilty would protect the Defendant's Constitutional Right to Due Process.

WHEREFORE, for the reasons stated above, the Defendant, Derrell Bennett, respectfully requests that this Honorable Court allow the Defendant to withdraw his plea of guilty.

~~Respectfully Submitted,~~



Brian K. McDaniel, Esq.
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(202) 331-0793
Counsel for Defendant

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that that on this 18th day of January, 2013 a copy of the foregoing Motion To Withdraw Guilty Plea was sent postage prepaid to Mr. Gary Wheeler, Assistant United States Attorney, Criminal Division: 555 4th Street, N.W., Room 4822, Washington, DC 20001.



Brian K. McDaniel

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
(Criminal Division)

UNITED STATES OF AMERICA

v.

DERRELL BENNETT

Defendant.

Case No. 2010-CF1-24772
Judge Beck

MEMORANDUM IN SUPPORT OF MOTION TO

IL

COMES NOW, the Defendant, Derrell Bennett, by and through undersigned counsel, and submits this memorandum of legal authority in support of his motion to withdraw guilty plea.

I. Legal Predicate

D.C. SCR-Crim 32 (e):

A motion to withdraw a plea of guilty or nolo contendere may be granted only before sentence is imposed or imposed in part; and, notwithstanding this rule, but to correct manifest injustice, the Court after sentence may set aside the judgment of conviction and permit the defendant to withdraw the plea.

“Withdrawal of a guilty plea is governed by paragraph (e) which, like its counterpart, permits a motion to withdraw a guilty plea prior to sentencing but provides guidance for grant of the motion, though it authorizes withdrawal of such plea after sentence “to correct manifest injustice.” Durante v. United States, 468 F.2d 1322 (D.C. 1973). “Under paragraph (e) of this rule, an appellant may by motion to withdraw a plea of guilty, but the trial court may grant the motion where it is filed after sentencing only upon a showing of “manifest injustice.” Willis v. United States, 468 A.2d 1320 (App. D.C. 1983). “A defendant may successfully move to withdraw a guilty

plea under paragraph (e) of this Rule by establishing either of two separate and independent grounds. He may make a showing of a fatal defect in the Rule 11 proceeding at which the guilty plea was taken, or a showing that justice demands withdrawal in the circumstances of the individual case.” Springs v. United States, 614 A.2d 1 (App.D.C. 1992). “While it is true that motions to withdraw guilty pleas filed prior to sentence are looked upon more favorably than those filed subsequent thereto, courts need not grant such motions as a matter of right, for the determination of whether the defendant has put forth a “fair and just” reason for the withdrawal is left to the trial court. Jordan v. United States, 350 A.2d 735 (App.D.C. 1976). “In making a determination as to whether a motion to withdraw a guilty plea will be granted, one “compelling consideration” to be taken into account is whether the grounds set forth in the motion are tantamount to a claim of legal innocence. *Id.* at 735.

“When a motion to withdraw a guilty plea is made prior to sentencing, the motion should be granted if for any reason the granting of the privilege seems fair and just. The factors used to determine whether it would be fair and just to allow the withdrawal of the pleas are: (1) whether the defendant has asserted his or her legal innocence; (2) the length of delay between entry of the guilty plea and the desire to withdraw it; and (3) whether the accused has had the full benefit of competent counsel at all relevant times.” Pettiford v. United States, 700 A.2d 207 (App.D.C. 1997).

II. Facts

On September 14, 2011 a Grand Jury in the District of Columbia returned a four count indictment charging Mr. Bennett with the premeditated murder of Mr. Keith Banks on or about November 12, 2010. Subsequently, both Mr. Bennett and his indicted co-

defendant, Mr. Reginald Vance, were both arrested and held without bond in the D.C. Jail awaiting trial. During the pretrial phase, Mr. Vance, (who had up to the date of his disposition, represented to Mr. Bennett that he was going to go to trial) resolved his case in a fashion which resulted in the sealing of his case file jacket. This fact led Mr. Bennett and his counsel to surmise that, not only had Mr. Vance entered into an agreement with the government to dispose of his case, but that this agreement would also include him providing testimony against Mr. Bennett, a fact which would explain the sealing of his case.

During the pendency of the case, the government requested that the court schedule the underlying trial on a date which would allow them to complete the analysis of the biological material recovered in the case. On the evening of the shooting of Mr. Banks, law enforcement recovered a water bottle from the identified crime scene. The analysis of the bottle revealed that the D.N.A. or biological material present on the bottle belonged to Mr. Vance. Additionally, law enforcement also found red colored reflector lens glass, which their investigation revealed belonged to the truck owned by Mr. Vance's girlfriend. There was no biological or physical evidence recovered at the scene which in any way was connected to Mr. Bennett.

Counsel for Mr. Bennett negotiated an 11(e)(1)(c) plea for Mr. Bennett which required him to enter a plea of guilt to one count of Second Degree Murder. In return, the government agreed to a sentence of 17 years. Counsel had several discussions with Mr. Bennett in which Mr. Bennett represented that he wished to go to trial as he was not responsible for the shooting. However, Mr. Bennett ultimately decided to enter his guilty plea to avoid the uncertainty of a trial from which a guilty verdict could have resulted in a

mandatory minimum sentence of nearly twice the negotiated sentence and potentially more. Even in the face of resolving himself to take the benefit of the plea offer, Mr. Bennett maintained that he was not guilty of the offense and mandated that any plea which was entered be taken pursuant to *North Carolina v. Alford*.

Mr. Bennett entered his plea of guilt on November 30, 2012 and has now decided that he can not abide the plea agreement or the agreed upon sentence. This court has scheduled a sentencing hearing on January 25, 2013.

I. GIVEN THE EVIDENCIARY REALITIES OF THIS CASE AND THE ACTUAL INNOCENCE OF MR. BENNETT, THE WITHDRAWAL OF HIS GUILTY PLEA WOULD BE FAIR AND JUST.

“Under the fair and just standard, the factors a trial court must consider when evaluating a motion to withdraw a guilty plea include (1) “whether the defendant has asserted his or her legal innocence;” (2) “the length of the delay between entry of the guilty plea and the desire to withdraw it;” and (3) “whether the accused has had the full benefit of competent counsel at all relevant times.” Benett v. United States, 726 A.2d 156 (D.C.C.A. 1999) citing Springs, supra, 614 A.2d at 4. “None of these factors is controlling and the trial court must consider them cumulatively in the context of the individual case.” *Id.* at 166.

The Defendant in this case entered his plea of guilt not because he was in fact guilty, but because he wished to take advantage of the plea offer which had been negotiated. An objective review of the case history reveals that it was reasonable for the Defendant to conclude that in any trial of this matter, his previous Co-Defendant would be taking the witness stand against him. It was this fact as well as the potential exposure

to an erroneous verdict which led to Mr. Bennett entering his guilty plea. An objective review of the tangible evidence in this case reveals the Defendant's reasonable projection of success at a trial in this matter should this motion be granted. All of the physical evidence at the scene of Mr. Banks shooting relates back to Mr. Vance. Mr. Vance's DNA appears on the water bottle recovered and the broken light cover is from the vehicle owned by his girlfriend. There are no other witnesses that the Defense is aware of who would implicate Mr. Bennett as being present during the shooting.

A consideration of the *Spriggs* factors also weighs in favor of the granting of Defendant's motion. The court need only look to the fact that Mr. Bennett mandated that the plea be taken pursuant to *Alford* to find that Defendant has maintained his innocence in this matter. Additionally Mr. Bennett has filed this motion well in advance of the courts scheduled sentencing hearing at which time the court was to inform the parties as to whether the sentence of 17 years would be accepted pursuant to *Alford*. As such, Mr. Bennett has filed this motion prior to his sentencing when Motions to Withdraw Pleas are given preferential treatment. "A motion to withdraw asserted after sentencing should be granted only upon a showing of "manifest injustice." On the other hand, a motion to withdraw a guilty plea made before sentencing is regarded more leniently and should be given favorable consideration if for any reason the granting of the privilege seems fair and just. *Id.*

CONCLUSION

For all of the reasons outlined above, Defendant requests that this court allow the withdraw of his plea and the scheduling of a new trial date.

Respectfully Submitted,

A large, stylized handwritten signature in black ink, appearing to read 'BK McDaniel', is written over a horizontal line.

Brian K. McDaniel

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IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION (Criminal Division)

UNITED STATES OF AMERICA :
2013 JAN 23 4:01

v. :

DERRELL BENNETT :

Defendant. :

Case No. 2010-CF1-24172

Judge Beck

FILED

**MOTION TO CONVERT SENTENCING HEARING TO STATUS DATE
AND FOR HEARING ON DEFENDANT'S PENDING MOTION TO
WITHDRAW PLEA**

Now comes the Defendant, Mr. Derrell Bennett, by and through his counsel, Brian K. McDaniel, and McDaniel & Asso. P.A, requesting that this court convert the currently scheduled Sentencing Hearing Date to a status hearing and schedule a hearing on the pending Motion to Withdraw Plea. In support of the same, Defendant proffers the following:

1. The Defendant entered a plea of guilt in this matter to one count of Second Degree Murder on November 30, 2012. Defendant entered his plea pursuant to North Carolina v. Alford, as he maintained his innocence on that date.

2. Mr. Bennett directed his counsel to file a Motion to Withdraw his Guilty Plea and the motion seeking the relief was filed on Friday January 18, 2013.

3. This matter is currently scheduled for a Sentencing Hearing on Friday January 25, 2013. As Defendant would like to have a hearing on the pending Motion to Withdraw Plea, he now seeks to convert the scheduled sentencing hearing to a status hearing to allow the scheduling of a hearing date for his motion.

WHEREFORE, Defendant requests that this court convert the currently scheduled sentencing date to a status date and that the court schedule a hearing for the pending Motion to Withdraw Plea.

Respectfully Submitted,

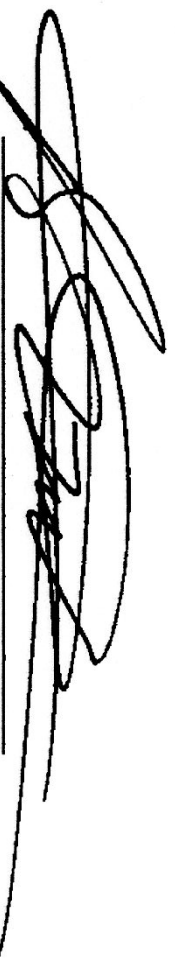


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Counsel for Defendant
Derrell Bennett

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that that on this 23rd day of January, 2013 a copy of the foregoing Motion To Convert Hearing Date and Request for Hearing was sent postage prepaid to Mr. Gary Wheeler, Assistant United States Attorney, Criminal Division: 555 4th Street, N.W., Room 4822, Washington, DC 20001.



Brian K. McDaniel