

STATE OF SOUTH CAROLINA )  
 COUNTY OF HORRY )  
 STATE OF SOUTH CAROLINA )  
 V. )  
 TIAN T. SMITH, )  
 Defendant. )

IN THE COURT OF GENERAL SESSIONS  
 FIFTEENTH JUDICIAL CIRCUIT  
 Indictments: 2014GS2603635, 2014GS2603636  
 2014GS2603637, 2015GS2603429  
 ORDER DENYING DEFENDANT'S MOTION  
 TO WITHDRAW GUILTY PLEA

2015GS2603429 2014A2610900066

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 SC Court of Appeals

Pursuant to a motion by the Defendant to withdraw his guilty plea, this Court heard from the Defendant, defense counsel, and the State, as well as witnesses. The State was represented by Joshua D. Holford. The Defendant was present and represented by counsel, Dayne Phillips. This Court read and considered Defendant's Memorandum in Support of Defendant's Motion to Withdraw Guilty Plea. This Court also considered and weighed arguments made by the State. After a full hearing and considering arguments of all the parties, this Court denies Defendant's motion to withdraw his guilty plea. The guilty plea is therefore left intact and the sentence imposed at the plea remains.

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**BACKGROUND**

The Defendant was arrested on February 7, 2014 for Trafficking in Heroin, 4g - 14g, 2nd or subsequent offense; Possession of a Stolen Pistol; Possession with Intent to Distribute MDMA or Ecstasy, 2nd offense; Possession of a Stolen Pistol; Unlawful Neglect of a Child; and Distribution of Heroin, 2nd offense. After checking the Defendant's NCIC and receiving back the drug reports from SLED, the State indicted the Defendant on the following: Trafficking in Heroin, 4g - 14g, 2nd or subsequent offense; two counts of Possession of a Stolen Pistol; and Possession with Intent to Distribute a Schedule I, II, III Drug or a Controlled Substance Analogue, 3rd offense. The State made several plea offers to the Defendant, ranging between twelve (12) and fifteen (15) years. The Defendant rejected these plea offers on multiple occasions. Trial was scheduled for October 2015; the Defendant was facing a mandatory twenty-five (25) years if convicted of Trafficking Heroin, 4g - 14g, based on his prior record making it a second or subsequent offense. The trial in October 2015 was continued at the defense's request. Trial was again scheduled for January 2016. During the January 2016 term of court, the State

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realized another trial was going to take the whole week and this case would have to be rescheduled again. On January 20, 2016, the State made one more plea offer for the Defendant to plead guilty to the lesser-included Trafficking Heroin, 4g – 14g, 1st offense, with a negotiated nine (9) year sentence to run concurrent with his plea to other charges. The Defendant rejected the State's plea offer and was arraigned by this Honorable Court on January 20, 2016. A trial date was set for February 8, 2016. On February 8, 2016, the State called the Defendant to trial on all four indictments, a jury was selected, and motions were heard. The Defendant moved to suppress the drugs found at his residence. After a full hearing on the merits, the suppression motion was denied. On February 9, 2016, the Defendant requested that the State make a plea offer to the lesser-included Trafficking Heroin, 1st offense, which does not carry a mandatory twenty-five (25) year sentence. After lengthy discussions between the State and defense counsel, the State agreed to allow the Defendant to plead to a lesser-included offense with a negotiated twenty (20) year sentence to run concurrently with a twenty (20) year sentence for PWID Schedule I, II, or III Drug (methylone), 3rd offense, and concurrently with five (5) year sentences for both Stolen Pistol charges. By pleading guilty, the defendant avoided a mandatory twenty-five (25) year sentence if convicted of Trafficking Heroin and avoided a potential fifty-five (55) year sentence if convicted on all four indictments with consecutive sentences. This court held a complete guilty plea hearing on February 9, 2016, and accepted the Defendant's guilty plea to the four indictments; he was sentenced to twenty (20) years for both drug indictments and five (5) years for both weapons indictments, all sentences were run concurrently with each other. On February 12, 2016, the Defendant filed a pro se Motion to Withdraw Plea. On the same day, February 12, 2016, defense counsel, Barbara Pratt, filed a Motion to be Relieved as Counsel. On March 17, 2016, at a hearing with the State and Defendant, granted Pratt's motion to be relieved. Further on March 17, 2016, the Court pursuant to a motion from Dayne C. Phillips substituted him as defense counsel and granted a continuance for the Defendant's motion to withdraw his plea, in which Dayne Phillips joined by his own motion. This Court set May 19, 2016, as the date to hear the Defendant's motion to withdraw his guilty plea.

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## LAW

For a guilty plea to be voluntarily and knowingly entered into by the defendant, the record must establish that the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and may be accomplished by a colloquy between the Court and the defendant, between the Court and defendant's counsel, or both. *Roddy v. State*, 339 S.C. 29, 528 S.E.2d 418 (2000). However, once a defendant enters a guilty plea, whether to allow withdrawal of the plea is left to the sound discretion of the circuit court. *State v. Thomason*, 355 S.C. 278, 584 S.E.2d 143 (S.C. App. 2003) (citing *State v. Riddle*, 278 S.C. 148, 292 S.E.2d 795 (1982)). In considering a plea of guilty on a PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the plea hearing will be considered to determine whether any possible error by counsel was cured by information conveyed at the plea hearing. *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997). A defendant's displeasure at the sentence imposed does not mean that his plea wasn't knowing and voluntary. *State v. Barton*, 325 S.C. 522, 481 S.E.2d 439 (1997). The defendant must be aware of the nature and crucial elements of the offense, the maximum and mandatory minimum penalty and the nature of the constitutional rights being waived. *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980). A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses. A guilty plea waives all defenses and admits all the elements of the offense charged, leaving open for review only the sufficiency of the indictment. *State v. Munsch*, 287 S.C. 313, 338 S.E.2d 329 (1985). All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitution rights he is waiving, and that the record reflect a factual basis for the plea. *Anderson v. State*, 342 S.C. 54, 535 S.E.2d 649 (2000).

## FINDINGS

This Court finds that the Defendant voluntarily and knowingly entered a plea of guilty after being informed of the nature and elements of the charges; after having the advice of competent counsel, with whom he said he was satisfied; after understanding and knowingly

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waiving his constitution rights; and after intelligently considering the consequences of his guilty plea. The Defendant's guilty plea was freely and intelligently made. There was a substantial factual basis for the guilty plea and that the record reflects the same. The Defendant was aware of the minimum mandatory sentences as well as the maximum sentences, as well as the negotiated sentence between himself, his defense counsel, and the State. The Defendant had a complete understanding of the consequences and the nature of the crime. The Defendant knowingly, intelligently, and voluntarily waived his right to a trial. The Defendant fully and completely acknowledged his guilt, agreed to the facts as stated, waived his constitutional rights, and made an intelligent decision to plead guilty to a lesser-included offense. The Defendant cannot now come before the Court and claim he was deliberately lying to the court at the time of his guilty plea in order to get have his plea withdrawn. It is clear that that Defendant has buyer's remorse," and that he does not in fact want a trial, but rather wants the benefit of a previous offer, which is no longer available to him. The Defendant was not pressured, forced, or coerced into pleading guilty; the option of a fair and impartial trial cannot be considered

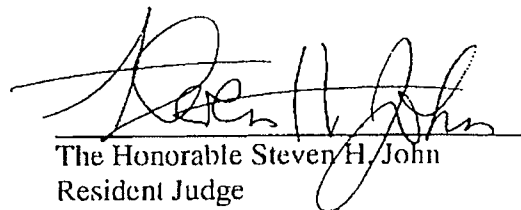
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The Court also finds that it is in its discretion whether to allow the Defendant to withdraw his guilty plea. The Defendant has shown unequivocally that it is not his intention to go to trial, but rather to hope for a lower recommended sentence. There is no factual or legal basis to overturn the guilty plea. It is therefore

ORDERED that the Defendant's Motion to Withdraw Guilty Plea is denied. It is further

ORDERED that the Defendant shall remain in the custody of South Carolina Department of Corrections and serve the sentence as originally imposed.

July 21, 2016  
Conway, South Carolina

  
The Honorable Steven H. John  
Resident Judge  
Fifteenth Judicial Circuit

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