

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<hr/>	:	CRIMINAL ACTION
UNITED STATES OF AMERICA	:	
	:	
vs.	:	
	:	NO. 03-810
RICHARD BALLARD	:	
<hr/>	:	

DUBOIS, J.

JULY 18, 2005

MEMORANDUM

I. INTRODUCTION

Defendant, Richard Ballard, was indicted on December 9, 2003 on six counts related to, *inter alia*, the possession with intent to distribute controlled substances and possession of firearms on July 9, 2003. The Court accepted defendant's guilty plea to Counts I, IV, and VI of the Indictment on August 30, 2004. Count I charged possession with intent to distribute cocaine, Count IV charged possession of a firearm by a convicted felon and Count VI charged possession of a firearm in furtherance of a drug trafficking offense. Presently before the Court is defendant's *pro se* Motion to Withdraw Guilty Plea. After careful review of the record, the Court concludes that defendant did not knowingly and voluntarily plead guilty to Count VI of the Indictment and therefore grants his Motion to Withdraw as to that Count. In all other respects this Motion is denied.

II. FACTS

On July 9, 2003, members of the Philadelphia Police Department served search warrants at a residence located at 5531 Master Street in Philadelphia, Pennsylvania. Defendant was the only individual inside the dwelling and he was arrested pursuant to a criminal complaint. Police

searched the residence and recovered a loaded Davis 38-caliber handgun, a loaded Kimel Kamper 12-gauge shotgun, 124 grams of cocaine, 0.4 grams of cocaine base (“crack”), 28 milligrams of heroin, drug paraphernalia, and body armor.

On December 9, 2003, defendant was indicted on six counts: (1) possession with intent to distribute cocaine, in violation of 21 U.S.C. §§841(a)(1), 841(b)(1)(c) (Count I); (2) possession of cocaine base (“crack”) in violation of 21 U.S.C. §844(a)(1) (Count II); (3) possession of heroin, in violation of 21 U.S.C. §841(a) (Count III); (4) possession of a firearm and ammunition after having been convicted in state court of a crime punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C. §§922(g)(1), 924(e) (Count IV); (5) possession of body armor after having been convicted of a crime of violence, in violation of 18 U.S.C. §931 (Count V); and (6) possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. §924(c)(1) (Count VI).

On August 5, 2004, defendant entered into a guilty plea agreement with the government in which he agreed to plead guilty to Counts I, IV, and VI of the Indictment. On August 30, 2004, the Court held a plea hearing and accepted defendant’s guilty plea to those counts. During the plea hearing defendant admitted that he read the Indictment and understood it. (8/30/04 Tr. at 12). Nevertheless, the Court read the entire Indictment to defendant, defendant confirmed that he understood each count, and he declined the offer of the Court to explain the Indictment in greater detail. (Tr. at 12-15, 18, 59- 60). Defendant also stated at the hearing that he read and signed the plea agreement, discussed it with his attorney, and understood the agreement. (Tr. at 42- 43). Notwithstanding those answers, at the direction of the Court, the government summarized the essential terms of the plea agreement, and defendant confirmed his understanding of each provision. (Tr. at 45-53). Moreover, defendant stated that he understood

the preliminary sentencing guideline calculations—that, based on the facts known at the time of the hearing, the sentencing guideline range was 262 to 327 months. (Tr. at 31).

The Court then directed the government to proffer the factual basis for the plea, and the Court asked defendant whether he admitted those facts. In response, defendant admitted that there was a handgun and shotgun located in the residence, that the shotgun belonged to him, and that the handgun belonged to his deceased mother. (Tr. 62-69). He also admitted that he was a convicted felon at the time he possessed the shotgun (Tr. 15-18, 47-52), and that he possessed the cocaine discovered by police and intended to distribute it. (Tr. at 70). Following the government’s proffer and defendant’s admissions, defendant stated that he understood all of the Court’s questions and answered them truthfully, and defense counsel said that he was satisfied that defendant’s plea was knowing, voluntary and intelligent. (Tr. at 72-73). At the end of the Court’s colloquy of defendant, the Court accepted defendant’s plea of guilty to Counts I, IV, and VI of the Indictment. (Tr. at 73).

Significantly, during the guilty plea hearing, defendant did not admit that he possessed a firearm in furtherance of a drug trafficking offense in violation of 18 U.S.C. §924(c)(1),¹ as charged in Count VI of the Indictment. Instead, he said that the handgun discovered by police belonged to his deceased mother and that he never used or fired it. (Tr. at 65). When asked about the shotgun, defendant stated that it was located in a “showcase” above the front door of the residence; and when asked what the weapon was used for, he responded that “[i]t just been there.” (Tr. at 68-69).

¹ 18 U.S.C. § 924(c)(1)(A) provides, in relevant part, that “any person who, during and in relation to any crime of violence or drug trafficking crime. . . for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm,” shall be sentenced to an additional term of years.

Additionally, while proffering the factual basis for defendant's guilty plea, the government did not distinguish between defendant's possession of these firearms in violation of §§922(g)(1) and 924(e) (Count IV), and possession in furtherance of a drug trafficking offense in violation of §924(c)(1) (Count VI). More specifically, before the Court questioned defendant as to whether he possessed the shotgun, the government stated, "I think so far we were talking strictly. . . about the 922(g)(1) count [Count IV]. . . I'd like to hold off on the 924(c) count [Count VI] until you've asked the defendant about the shotgun." (Tr. 65:20-25). The government also stated, "If you find the [defendant] possessed the shotgun for Counts 4 and 6, [whether he also possessed the Davis handgun] has no meaningful difference that comes to my mind right away, because he is still guilty of possessing a firearm by a convicted felon, possessing a firearm in furtherance of a drug trafficking offense." (Tr. at 66:18-22). During the colloquy which followed these statements, defendant was not asked whether he possessed either firearm in furtherance of a drug trafficking crime.

On September 16, 2004, defendant filed a *pro se* Motion to Withdraw Guilty Plea. The Court reads the *pro se* Motion liberally to argue that defendant did not enter a knowing and voluntary plea because he did not understand the nature of the firearms charges against him. (*Pro se* Mot., p.2, ¶¶2-6). The *pro se* Motion also argues that defendant's guilty plea was unknowing and involuntary due to ineffective assistance of counsel because his attorney never gave him a copy of the Indictment, merely read it to him during a 15-minute visit, and simply instructed him to plead guilty without telling him "that he would not receive anything from the government for relinquishing his right to be tried." (*Pro se* Mot., p.1, ¶5). On October 5, 2004, defendant's attorney filed a Petition and Brief in Support of defendant's Motion in which he argued that the government failed to establish a factual basis for defendant's plea to Count VI,

and that “defendants’ possession of the firearms was merely coincidental and unrelated to drug trafficking.” (Def. Br. at 4). Defendant also filed a *pro se* Motion to Dismiss Counsel on November 22, 2004.

The Court held a hearing on February 17, 2005 to address the issues raised by defendant’s *pro se* Motion to Dismiss Counsel, his *pro se* Motion to Withdraw Guilty Plea, and the counseled Petition in Support of the Motion to Withdraw Guilty Plea. First, based on defendant’s agreement, the Court marked defendant’s Motion to Withdraw Counsel as withdrawn, after confirming that defendant stated at his guilty plea hearing that he was satisfied with his attorney and his advice. (2/17/05 Tr. at 7); (8/30/04 Tr. 11:20-23). Second, the parties proffered evidence to supplement the factual basis of defendant’s guilty plea to Count VI. (2/17/05 Tr. at 11-15). Finally, the Court questioned the parties as to whether defendant understood the nature of the charge in Count VI and intended to plead guilty to that Count during the plea hearing. (Tr. 53-59). The government argued that defendant’s admission that he possessed the firearms at issue, combined with the additional facts proffered and admitted, established that defendant knowingly and voluntarily pled guilty to possessing the firearms in furtherance of a drug trafficking offense. (Feb 17, 2005 Tr. at 60-61). Defendant argued that he did not possess either the handgun or shotgun in furtherance of a drug trafficking offense. (Tr. at 45, 61). In support of this position, defendant asserted, and proffered his daughter’s testimony, that he did not deal drugs from the residence (Tr. at 37), that the handgun belonged to his deceased mother (Tr. at 45), and that the shotgun was located in a “display case” above the front door of the residence (Tr. at 34, 39).

III. STANDARD OF REVIEW

“[A] court may, in its discretion, permit a defendant to substitute a plea of not guilty if for any reason the granting of the privilege seems fair and just.” U.S. v. Vallejo, 476 F.2d 667, 669 (3d Cir. 1973); U.S. v. Golden, 2001 WL 1175118, at *3 (E.D. Pa. 2001). “In considering the circumstances under which withdrawal of a guilty plea before imposition of sentence should be permitted, [the Third Circuit has] stated that motions to withdraw guilty pleas made before sentencing should be liberally construed in favor of the accused and should be granted freely.” Gov’t of Virgin Islands v. Berry, 631 F.2d 214, 219 (3d Cir. 1980).

Accordingly, Federal Rule of Criminal Procedure 11(d) provides that, “[a] defendant may withdraw a plea of guilty. . . after the court accepts the plea, but before it imposes sentence if. . . the defendant can show a fair and just reason for requesting the withdrawal.” “The burden of demonstrating a fair and just reason falls on the defendant, and that burden is substantial.” U.S. v. Jones, 336 F.3d 245, 252 (3d Cir. 2003) (internal citations omitted). In determining whether to grant a motion to withdraw a guilty plea, the Third Circuit considers three factors: (1) “the strength of the defendant's reasons for moving to withdraw”; (2) “whether the defendant asserts his innocence”; and (3) “whether the government would be prejudiced by withdrawal.” U.S. v. Trott, 779 F.2d 912, 915 (3d Cir. 1985). See also Jones, 336 F.3d at 252. The Court considers each of these factors in turn.

IV. DISCUSSION

A. Strength of Defendant’s Reasons for Moving to Withdraw

1. *Failure to Understand the Nature of the Firearms Counts*

Defendant argues in his *pro se* Motion that his guilty plea was unknowing and involuntary because he did not understand the nature of the firearms charges at his guilty plea

hearing. In support of this argument, defendant's attorney filed a Petition and Brief in Support of the Motion arguing, *inter alia*, that defendant did not possess the firearms in furtherance of a drug trafficking crime.

Federal Rule of Criminal Procedure 11(b)(1) provides, in relevant part, that “[b]efore the court accepts a plea of guilty. . . the court must inform the defendant of, and determine that the defendant understands. . . the nature of each charge to which the defendant is pleading.” Moreover, Rule 11(b)(2) states that “[b]efore accepting a plea of guilty. . . the court must address the defendant personally in open court and determine that the plea is voluntary.” Defendant may be “entitled to plead anew if a United States district court accepts his plea without fully adhering to the procedure provided in Rule 11.” McCarthy v. U.S., 394 U.S. 459, 463-64 (1969). See also U.S. v. Allen, 804 F.2d 244, 248 (3d Cir. 1986).

The Supreme Court has held that “[b]y entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime. That is why the defendant must be instructed in open court on the nature of the charge to which the plea is offered. . . and why the plea cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.” U.S. v. Broce, 488 U.S. 563, 570 (1989) (quoting McCarthy, 394 U.S. at 466). See also U.S. v. Austin, 85 Fed. Appx. 848, 850 n.1 (2004) (stating, in dicta, that “[f]undamentally, one cannot be said to knowingly plead guilty to charges about which one has not been properly informed”). Moreover, the “goals [of Rule 11] are undermined in proportion to the degree the district judge resorts to ‘assumptions’ not based upon the recorded responses to his inquiries.” McCarthy, 394 U.S. at 467.

The Supreme Court in McCarthy detailed the requirements of Rule 11 as follows:

The nature of the inquiry required by Rule 11 must necessarily vary from case to case, and, therefore, we do not establish any general guidelines other than those expressed in the Rule itself. As our discussion of the facts in this particular case suggests, however, where the charge encompasses lesser included offenses, personally addressing the defendant as to his understanding of the essential elements of the charge to which he pleads guilty would seem a necessary prerequisite to a determination that he understands the meaning of the charge. In all such inquiries, matters of reality, and not mere ritual, should be controlling. Id. at 467 n.20.

Accordingly, courts engage in a “case-to-case” inquiry when determining whether a defendant understood the nature of the charges and knowingly and voluntarily plead guilty to the charges. See U.S. v. Mosley, 173 F.3d 1318, 1322 (11th Cir. 1999) (“[T]here is no one mechanical way or precise juncture to which a district judge must conform in advising a defendant of the charges to which he is pleading guilty.”) (internal citations omitted); U.S. v. Ruiz-del Valle, 8 F.3d 98, 103 (1st Cir. 1993) (same). See also, e.g., Trott, 779 F.2d 912, 914 (3d Cir. 1985); U.S. v. Golden, 2001 WL 1175118, at *2 (E.D. Pa. 2001).

Moreover, a court has the discretion to determine that defendant’s plea was not knowing and voluntary where circumstances suggest that a defendant did not intend to plead guilty to a charge. See e.g., U.S. v. Pena, 314 F.3d 1152, 1156 (9th Cir. 2003); U.S. v. Suarez, 155 F.3d 521, 524 (5th Cir. 1998); U.S. v. Ruiz-del Valle, 8 F.3d 98, 103 (1st Cir. 1993). See also U.S. v. Ciorletti, 1992 WL 203322, at *5 n.3 (E.D. Pa. 1992). For example, in Ruiz-del Valle, the First Circuit held that the trial court erred in accepting defendant’s guilty plea to a violation of 18 U.S.C. §924(c)(1) in part because, during her plea hearing, she made statements suggesting that she did not understand this charge—i.e., that she “knew there was a weapon in the room” but did not buy or use it. See Ruiz-del Valle, 8 F.3d at 103. In Suarez, the Fifth Circuit vacated defendant’s guilty plea to a charge of possession with intent to distribute cocaine in part because, at both his arraignment and sentencing, defendant insisted that although he possessed a large

quantity of cocaine, and “the court suggested that the amount of cocaine was too large for personal use,” he did not intend to distribute it. See Suarez, 155 F.3d 524-26. In so ruling the Court of Appeals stated that, in light of defendant’s statements, the trial court erred by failing to ensure that defendant understood the nature of this charge. Id. at 524.

Turning to the present case, to the extent that defendant’s *pro se* Motion alleges that he did not understand the nature of the charge in Count IV, the felon in possession charge, the Court rejects this argument. That determination is based on the fact that, in response to the Court’s questions at the guilty plea hearing, defendant admitted that he was a prior convicted felon and that he knowingly possessed the shotgun.

However, with regard to his plea of guilty to Count VI, defendant never stated that he possessed either of the firearms in furtherance of a drug trafficking offense as charged in that Count. To the contrary, like the defendant in Ruiz-del Valle, the defendant in this case denied that he possessed the handgun or shotgun in furtherance of a drug trafficking offense at the February 17, 2005 hearing. See Ruiz-del Valle, 8 F.3d at 103. He insisted at all times that the handgun belonged to his deceased mother, that the shotgun was located in a showcase above the front door, and that he did not use the weapons in connection with the drugs discovered in the residence.² Even if the government proffered a sufficient factual basis to support Count VI, this

² The Third Circuit has held that, in order to establish a violation of §924(c)(1), “the mere presence of a gun is not enough. What is instead required is evidence more specific to the particular defendant, showing that his or her possession actually furthered the drug trafficking offense. . . that possession of the firearm advanced or helped forward a drug trafficking crime.” U.S. v. Sparrow, 371 F.3d 851, 853 (3d Cir. 2004) (internal quotations and citations omitted). The court in Sparrow held that it should consider the following nonexclusive factors as relevant: (1) “the type of the weapon,” (2) “the type of drug activity that is being conducted,” (3) “accessibility of the firearm,” (4) “whether the weapon is stolen,” (5) “the status of the possession (legitimate or illegal),” (6) “whether the gun is loaded,” (7) “proximity to drugs or drug profits,” (8) “and the time and circumstances under which the gun is found.” Id. (quoting Ceballos-Torres, 218 F.3d at 414-15). In so doing, the Sparrow court cited the Sixth Circuit’s

proffer does not establish that defendant understood the nature of this charge and intended to plead guilty to it. Suarez, 155 F.3d 524-26.³

Moreover, while attempting to establish a factual basis for defendant's guilty plea, the government conflated defendant's possession of the firearms by a convicted felon with possession of the firearms in furtherance of a drug trafficking offense. As a result, the government never distinguished this latter charge or those facts proffered in support of it to ensure that defendant "possess[ed] an understanding of the law in relation to the facts" before pleading guilty, as required under Rule 11. Broce, 488 U.S. at 570.

Defendant has demonstrated that he did not understand the nature of the charge in Count VI and did not knowingly and voluntarily plead guilty to that Count. The Court concludes that defendant's failure to knowingly and voluntarily plead guilty to Count VI of the Indictment

holding that the factors above serve to "distinguish possession in furtherance of a crime from innocent possession of a wall-mounted antique or an unloaded hunting rifle locked in a cupboard." Id. at 853 (quoting U.S. v. Mackey, 265 F.3d 457, 462 (6th Cir. 2001)).

³ The Court also concludes that this case is distinguishable from the Supreme Court's recent decision Bradshaw v. Stumpf, – S. Ct. –, 2005 WL 1383730 (2005). In that case, the petitioner filed a Petition for Habeas Corpus alleging that his guilty plea in state court to a charge for aggravated murder was invalid because he denied shooting the victim during his plea hearing. The Supreme Court held that defendant's guilty plea was not unknowing or involuntary because: (1) his lawyer stated at the plea hearing that he had informed defendant of the elements of this charge; (2) when the trial court specifically asked defendant whether he was "in fact guilty of" the charge at issue, defense counsel responded that "[defendant's] answer is yes"; (3) his insistence at the plea hearing that he did not shoot the victim was consistent with the charge at issue because state law did not require a showing that he shot the victim; and (4) petitioner appeared to be presenting "mitigation" evidence appropriate for sentencing and not contesting the charge. Bradshaw, 2005 WL 1383730 at *4-7. Unlike the petitioner in Bradshaw, defendant in this case was never specifically asked whether he was "in fact guilty of" the §924(c)(1) charge in Count VI, and he never specifically stated that he possessed a firearm in furtherance of a drug trafficking crime. Moreover, unlike the petitioner in Bradshaw, defendant has asserted that he did not commit the crime as charged in Count VI.

constitutes a “fair and just” reason for permitting defendant to withdraw his plea of guilty to that Count under Rule 11(d).⁴

2. Ineffective Assistance of Counsel

In his *pro se* Motion to Withdraw Guilty Plea, defendant also argues that his guilty plea was unknowing and involuntary due to ineffective assistance of counsel. Specifically, he argues that his attorney did not discuss the charges with him and failed to inform him the government would not give him anything in return for pleading guilty.

A defendant may only withdraw a guilty plea as involuntary or unknowing due to ineffective assistance of counsel if: “(1) the defendant shows that his attorney's advice was under all the circumstances unreasonable under prevailing professional norms [and] (2) the defendant shows that he suffered sufficient prejudice from his counsel's errors.” U.S. v. Jones, 336 F.3d 245, 253-254 (3d Cir. 2003).

The record belies defendant’s assertions his attorney’s advice was unreasonable under prevailing professional norms. At the plea hearing defendant stated he was fully satisfied with his attorney and his advice. (8/30/04 Tr. at 11). After the Court read the Indictment to defendant, defendant stated that he understood the charges, declined the offer of the Court to explain the Indictment in greater detail, and added that “the lawyer already told me.” (Tr. at 18). Defendant

⁴ The Court also notes that Rule 11(h) provides: “A variance from the requirements of this rule is harmless error if it does not affect substantial rights.” Although not every deviation from the requirements of Rule 11 constitutes reversible error, U.S. v. Vonn, 535 U.S. 55 (2002), “it is fair to say that the kinds of Rule 11 violations which might be found to constitute harmless error upon direct appeal are fairly limited.” Fed. Rule Crim. P. 11(h) Advisory Committee Notes (1983). The test for determining whether an error is harmless is “subjective” and “highly individualized.” U.S. v. Powell, 269 F.3d 175, 185 (3d Cir. 2001). One court in this Circuit has held that “[t]he failure to ensure that a defendant understood the charges. . . for the guilty plea does not constitute harmless error.” U.S. v. Ciorletti, 1992 WL 203322, at *5 n.3 (E.D. Pa. 1992). This Court concludes that defendant did not enter a knowing and voluntary guilty plea to Count VI and that under the circumstances presented in this case the error was not harmless.

also stated that he discussed the plea agreement with his attorney and understood it, and confirmed that at both the plea hearing and the February 17, 2005 hearing. (8/30/04 Tr. at 42-43); (2/17/05 Tr. at 7). Thus, the Court concludes that there was no ineffective assistance of counsel and that defendant's plea of guilty to Counts I and IV was a knowing and voluntary plea.

B. Other Factors

As stated above, the Court concludes that defendant has provided a "fair and just" reason to withdraw his guilty plea to Count VI of the Indictment—that he did not understand the nature of the charge in Count VI and did not intend to plead guilty to that charge. Although the Court concludes that, taken alone, the strength of this reason for moving to withdraw the plea to Count VI is sufficient to vacate the plea to that Count, it will also address the other factors weighed by courts in the Third Circuit when considering a motion to withdraw a guilty plea—whether defendant asserts his innocence and whether the government would be prejudiced as a result of granting the Motion.

1. Assertion of Innocence

The Third Circuit has held that, in addition to providing a fair and just reason for withdrawal, "credible assertions of innocence by the defendant are of considerable significance." Berry, 631 F.2d 214, 220 (3d Cir. 1980); Golden, 2001 WL 1175118, at *3 (E.D. Pa. 2001) ("An assertion of innocence by the defendant weighs heavily in favor of granting a plea withdrawal motion if the assertion is credible."). "Assertions of innocence must be buttressed by facts in the record that support a claimed defense. . . [A] defendant must give sufficient reasons to explain why contradictory positions were taken before the district court and why permission should be given to withdraw the guilty plea." U.S. v. Brown, 250 F.3d 811, 818 (3d Cir. 2001).

In his counseled Brief, and during the February 17, 2005 hearing before the Court, defendant asserted that he did not possess the firearms at issue in furtherance of a drug trafficking offense as charged in Count VI of the Indictment. At the hearing defense counsel stated, “defendant is saying that the guns were guns that had been [in the residence] long before he had ever moved into that residence. . . [and] it’s been his claim since entering the plea, that the guns were not possessed to further drug trafficking activity.” (Tr. at 45:15-22). See also (Tr. at 61) (“[A]ll of my client’s facts that he had conveyed to the Court, in essence taken together, established what was in his mind and that was that these guns were never possessed to further any drug trafficking activities.”). Moreover, in support of this position, defendant has insisted that the handgun belonged to his deceased mother and that the shotgun was located in a showcase above the front door of the residence and he has never admitted that he used these weapons in connection with drug trafficking. Thus, the Court concludes that defendant has credibly asserted his innocence with respect to Count VI of the Indictment.

2. Prejudice to the Government

As noted above, in determining whether to grant defendant’s Motion to Withdraw, the Court should also weigh “whether the government would be prejudiced by withdrawal.” U.S. v. Trott, 779 F.2d at 915. “Only if the government can show substantial prejudice, then the motion in the trial court’s discretion, may be denied.” Berry, 631 F.2d at 223.

The government fails to argue that it would suffer prejudice as a result of the withdrawal of defendant’s guilty plea other than “hav[ing] to undergo the expense, difficulty and risk of trying a defendant who has already admitted his guilt and been adjudged guilty.” (Resp. at 8) (internal quotations omitted). Any such prejudice to the government resulting from the granting

of the Motion is outweighed by the strength of defendant's reason for moving to withdraw the plea to Count VI and his asserted innocence of the charge in Count VI.⁵

V. CONCLUSION

For all the of the forgoing reasons, defendant's *pro se* Motion to Withdraw Guilty Plea is granted with respect to Count VI of the Indictment and denied in all other respects.

An appropriate Order follows.

⁵ The Court notes that the defendant, in his counseled Brief in support of his Motion to Withdraw, also argues that the government did not proffer a sufficient factual basis to support defendant's guilty plea to Count VI. However, because the Court concludes that defendant did not understand the nature of the charge in Count VI and did not knowingly and voluntarily plead guilty to this Count, it need not address this additional issue.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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UNITED STATES OF AMERICA	:	
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vs.	:	
	:	NO. 03-810
RICHARD BALLARD	:	
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ORDER

AND NOW, this 18th day of July, 2005, upon consideration of defendant's *pro se* Motion to Withdraw Guilty Plea (Doc. No. 41, filed September 16, 2004), defendant's Petition in Support of Motion to Withdraw Guilty Plea (Doc. No. 45, filed October 5, 2004), the Government's Consolidated Response to Defendant's Motions to Withdraw Guilty Plea (Doc. No. 47, filed October 8, 2004), Defendant's Supplementary Memorandum in Support of Motion to Withdraw Guilty Plea (Doc. No. 50, filed November 17, 2004), the Government's Supplemental Response to Defendant's Motions to Withdraw Guilty Plea (Doc. No. 52, filed November 29, 2004), and the related submissions of the parties, following a hearing in open court on February 17, 2005, for the reasons set forth in the attached Memorandum, **IT IS ORDERED THAT** defendant's *pro se* Motion to Withdraw Guilty Plea is **GRANTED** with respect Count VI of the Indictment and **DENIED** in all other respects.

IT IS FURTHER ORDERED THAT the government shall report to the Court (letter to Chambers, Room 12613) on or before August 1, 2005, with respect to (a) the scheduling of sentencing on Counts I and IV of the Indictment, (b) the scheduling of further proceedings with

respect to Count VI of the Indictment, and (c) any other issues presented by the attached Memorandum.

BY THE COURT:

JAN E. DUBOIS, J.