

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CRIMINAL NO. 1999-0057
v.)	
)	
ANTHONY MARRERO,)	_____
)	
Defendant.)	
_____)	

APPEARANCES

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H.I.D.T.A. Task Force
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U.S.V.I. 00820
Attorneys for Defendant

MEMORANDUM OPINION

Finch, C. J.

This matter comes before the Court on Defendant Anthony Marrero's Motion to Vacate the Entry of his Guilty Plea. For the reasons expressed below, the Court will deny Defendant's motion.

I. Background

On June 23, 1999, officers of the High Intensity Drug Trafficking Area ("HIDTA") were

issued a search warrant for several rooms at the Colony Cove Condominiums. During the execution of the warrant Defendant, along with his brother Eduardo Marrero, was apprehended and subsequently arrested.

On September 1, 1999, Defendant entered into an Admission Agreement with the U.S. Government. In the Agreement, Defendant plead guilty to Count 1 of the Indictment: Possession of a Firearm by a Convicted Felon. The plea was accepted and Defendant was found to be adjudicated of said crime by this Court on September 14, 1999.

On October 6, 1999, this Court granted a motion to suppress filed by Defendant's brother, Eduardo Marrero, in the case of United States of America v. Eduardo Marrero, Criminal No. 1999-0056. In that case, this Court held that the affidavit submitted by the HIDTA officers did not contain sufficient facts to support a finding of probable cause for the issuance of a search warrant by the Magistrate Judge. The United States Government subsequently filed a motion requesting that this Court reconsider its ruling on the motion to suppress. The Government's motion was denied on December 2, 1999.

In light of this Court's rulings in the Eduardo Marrero case, Defendant Anthony Marrero now moves to vacate his guilty plea on the grounds that the search by the HIDTA officers that led to Eduardo and Anthony Marrero's arrest lacked probable cause.

II. Analysis

Fed. R. Crim. P. 32(e) provides that "[i]f a motion to withdraw a plea of guilty . . . is made before sentence is imposed, the court may permit the plea to be withdrawn if the defendant shows any fair and just reason." The Third Circuit has held that three factors must be considered when a district court evaluates a motion to withdraw a guilty plea: "(1) whether the defendant

asserts his innocence; (2) whether the government would be prejudiced by his withdrawal; and (3) the strength of the defendant's reasons to withdraw the plea." United States v. Jones, 979 F.2d 317, 318 (3d Cir. 1992)(citing United States v. Huff, 873 F.2d 709, 712 (3d Cir. 1989)); see also Government of the Virgin Islands v. Knight, 764 F.Supp. 1042, 1046-1047 (1991)("These factors provide guideposts in evaluating whether a defendant has asserted a 'fair and just reason' for withdrawal of his guilty plea.")

Further, "the district court retains a great deal of discretion to deny a withdrawal motion. A simple shift in defense tactics, a change of mind, or the fear of punishment are not adequate reasons to force the government to incur the expense, difficulty and risk of trying a defendant, who has already acknowledged his guilt before the court." Jones 979 F.2d at 318. In Jones, the Third Circuit held that the district court did not abuse its discretion by denying the defendant's motion to withdraw his guilty plea. Id. The court stated that when a defendant voluntarily and knowingly enters a guilty plea, then in a motion to withdraw that plea, the defendant must not only reassert his innocence, but also 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 and reclaim the right to trial. Id.

In the instant case, Defendant, in his motion, states that he does not assert his innocence.¹ Further, Defendant does not explain why contradictory positions were taken before this Court nor

¹ At the hearing, Defendant stated that he now asserts his innocence. However, in his motion to vacate, Defendant specifically states that he "does not assert his innocence." Motion to Vacate Entry of Guilty Plea at 3. Apparently, Defendant is confused as to whether he is or is not innocent. Given his lack of consistency, the Court is not persuaded by Defendant's recent assertion of innocence.

does he assert that his guilty plea was made involuntarily² or unknowingly. Rather, Defendant argues that his guilty plea should be vacated on the grounds that he was subjected to an unreasonable search and seizure in violation of his Fourth Amendment rights.

The fact that Defendant now claims that his Fourth Amendment rights were violated is not a sufficient reason for permitting withdrawal of a guilty plea. The Supreme Court, in Tollet v. Henderson, 411 U.S. 258 (1973), held that when a guilty plea is voluntarily and knowingly entered, a defendant waives any claims of deprivation of constitutional rights that may have occurred prior to the entry of the plea. Id. Although Tollet involved a habeas corpus petition and not a Fed. R. Crim. P. 32(e) plea withdrawal, courts have applied the rule expressed in Tollet to cases involving Rule 32(e) plea withdrawals, i.e., cases in which the motion for withdrawal is brought prior to sentencing. See United States v. Marholz, 86 F.3d 1164 (9th Cir. 1996)(citing United States v. Cortez, 973 F.2d 764, 766 (9th Cir. 1992)); see also United States v. Jones, 916 F.Supp 558 (E.D. Va. 1996).

With respect to the issue of prejudice, the Government proffers the following as evidence of the prejudice it will suffer should the Court grant Defendant's motion. First, the Government contends that it will be prejudiced by virtue of loss of time. Marrero entered his plea on

² In a subsequent brief on the issue of prejudice to the Government, Defendant asserts that he "felt pressured to take the plea by both his counsel and the Government." Def.'s Response Brief on the Issue of Prejudice. The Court assumes that Defendant is now claiming that his plea was made involuntarily. Defendant did not make this claim in his original motion for withdrawal. The Court finds that if Defendant had truly felt pressured to take the plea, he would have included that fact in his first motion. Further, the Magistrate Judge in accepting Defendant's plea found it to be entered into voluntarily and knowingly. See Report and Recommendation Concerning Plea of Guilty. Finally, Defendant presents no factual basis to support his claim. Accordingly, the court considers Defendant's bare allegation that he "felt pressured" to be insufficient to render his plea involuntary.

September 1, 1999. Approximately four and one-half months later,³ on January 18, 2000, Defendant filed the instant motion. Secondly, the Government argues that it may lose potential witnesses and that the memories of the available witnesses may not be as sharp due to the lapse of time. Thirdly, the Government argues that the orderly administration of criminal justice would be severely prejudiced by permitting Defendant to withdraw his plea. Specifically, the Government claims that granting the instant motion would make every plea a conditional plea.

Defendant argues that the Government's assertions of prejudice do not constitute specific prejudice as required by Government of the Virgin Islands v. Knight, 26 V.I. 280 (D.V.I. 1991). The Court agrees with Defendant that per Knight the Government's assertions concerning prejudice lack specificity.⁴ However, in light of the fact that the Court finds that Defendant has failed to assert sufficient grounds for permitting withdrawal of his plea, the Government need not make a showing of prejudice. United States v. Martinez, 785 F.2d 111, 116 (3d Cir. 1986).

III. Conclusion

In sum, the Court finds that Defendant has failed to advance a fair or just reason for why he should be permitted to withdraw his guilty plea. Having found that no sufficient reason exists for such withdrawal, the Court need not find prejudice to the Government if the plea is withdrawn in order to deny Defendant permission to withdraw his plea. Martinez, 785 F.2d at 116.

³ The Government incorrectly states that the loss of time between when Defendant entered his plea and when he filed the instant motion is over six months.

⁴ In Knight, the government made similar assertions of prejudice to the ones made by the Government in the instant action. There the government listed, *inter alia*, the following as prejudice: 1) "an adverse impact on the general administration of justice in St. Croix as the withdrawal of this plea will send the wrong message to other defendants" and 2) "delay caused by defendant makes it likely that witnesses may have scattered and memories dimmed." Knight, 26 V.I. at 292.

Accordingly, Defendant's Motion to Vacate the Entry of his Guilty Plea is denied. An appropriate Order is attached.

ENTER:

DATED: April __, 2000 _____

RAYMOND L. FINCH
U.S. DISTRICT JUDGE

A T T E S T:
Orinn F. Arnold
Clerk of Court

by: _____
Deputy Clerk

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UNITED STATES OF AMERICA,)	
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Plaintiff,)	
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ANTHONY MARRERO,)	_____
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Defendant.)	
_____)	

ORDER

For the reasons expressed in the attached Memorandum Opinion, it is hereby

ORDERED that Defendant Anthony Marrero's Motion to Vacate the Entry of his Guilty Plea is **DENIED**.

ENTER:

DATED: April __, 2000 _____

RAYMOND L. FINCH
U.S. DISTRICT JUDGE

A T T E S T:
Orinn F. Arnold
Clerk of Court

by: _____
Deputy Clerk

cc: Tracey Christopher, Esq.
Rhonda Hospedales, Esq.