

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2008-086

NOVEMBER TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Chittenden Circuit
	}	
Victor Hall	}	DOCKET NO. 1928-5-06 Cncr

Trial Judge: Linda Levitt

In the above-entitled cause, the Clerk will enter:

Defendant appeals from a district court order denying his motion to withdraw a guilty plea to two counts of aggravated sexual assault on a child under ten years of age. Defendant contends the court abused its discretion in denying the motion. We affirm.

The record evidence may be summarized as follows. In May 2006, defendant was charged with two counts of aggravated sexual assault against his stepdaughter, who was under the age of ten at the time, and one count of lewd and lascivious conduct with the same victim. The affidavit of probable cause in support of the charges recounted that defendant had revealed the offenses to his wife several years after their occurrence; that defendant and his wife had subsequently disclosed the incidents to the Department for Children and Families, which contacted the police; and that defendant thereafter acknowledged having sexual contact with his stepdaughter during an interview with the Chittenden Unit for Special Investigations investigating officer. Defendant was later charged with several additional counts of possession of child pornography and one count of obstructing justice based upon a threatening letter to his wife.

During the year and a half following the charges, defendant filed various motions seeking either to proceed pro se or for the reappointment of counsel and sought a number of continuances. Ultimately, after the court indicated that no further continuances would be granted, defendant entered a change of plea on November 26, 2007, just days before the trial was scheduled to commence. Pursuant to the plea agreement, defendant agreed to plead guilty to the two aggravated sexual assault charges, and the State agreed to dismiss the remaining counts and to recommend a sentence of ten to fifty years, with defendant free to argue for less. The trial court accepted the plea following a Rule 11 hearing in which the prosecutor described the offenses and noted that, to date, defendant had admitted the charges at least three times: to his

wife, to DCF, and to the investigating officer. In response to the court's questions, defendant acknowledged that he had committed the offenses as described, indicated that he had discussed the case with his attorney and was satisfied with his representation, and explained that he had waived his right to trial "to take responsibility" and to spare his stepdaughter the "continued stress in the legal process."

Shortly before the scheduled sentencing hearing in January 2008, defendant filed a pro se motion to withdraw his plea, alleging that his trial counsel had failed to provide adequate representation; that repeated delays caused by counsel "had prejudiced the Court against permitting any additional continuance;" and that witnesses had "recently come forward" who would "corroborate aspects of the defense." Defendant indicated that he had pled guilty partly "to allow any additional time possible in lieu of a court-ordered continuance in the interest of assembling a just and complete presentation of matters pertaining to his defense."

The court addressed the motion at the start of the sentencing hearing, in which defendant was represented by counsel. The court observed that the motion appeared to be part of a calculated effort by defendant to indirectly obtain a continuance of trial that he had previously been denied, by entering a plea with the intent to later withdraw it. The court cited defendant's own pleadings as well as a statement in an e-mail from defendant's sister to the probation officer, which was part of the PSI report, predicting that defendant "was going to revoke his guilty plea and that he had only made it to buy himself more time so that he could pull together more of his witnesses and . . . try to fight for his innocence in this matter." Noting that the record was "filled with your requests for continuance after continuance after continuance," the court found "no fair and just reason" to grant defendant's motion, concluding "I can only see manipulation."

At the sentencing portion of the hearing which followed, defendant renewed his motion to withdraw and offered, through counsel, a letter from the mother of a girl who was purportedly a friend of defendant's stepdaughter. The letter-writer states that her daughter had informed her that the stepdaughter said the allegations were not true, and that she was forced to fabricate the charges against defendant by her mother. The court indicated that it had read the letter but concluded that it lacked credibility and that it was offered "in further manipulation of the system." The court thereupon sentenced defendant to two concurrent terms of ten to fifty years. This appeal followed.

Defendant contends the court abused its discretion in denying the motion to withdraw his guilty plea. A presentence motion to withdraw a guilty plea may be granted where the defendant "shows any fair and just reason and that reason substantially outweighs any prejudice which would result to the state from the withdrawal of the plea." V.R.Cr.P. 32(d). "Where the trial court denies a motion to withdraw a plea, this Court will not reverse that decision unless the defendant establishes that there was an abuse of discretion." State v. Merchant, 173 Vt. 249, 256 (2001). Viewed in light of this standard, we discern no basis to disturb the court's ruling. Although, to be sure, we have observed that such motions should be "liberally granted" when the standard has been satisfied, State v. Dove, 163 Vt. 429, 431 (1995), here there was ample evidence to support the court's finding that the motion was simply part of a larger scheme to delay the trial and was not brought in good faith, defendant's claims to the contrary notwithstanding. See Merchant, 173 Vt. at 257 (holding that the court's denial of the withdrawal motion "cannot be said to be an abuse of discretion where the court did not find the defendant's

testimony credible”). Nor does the letter which defendant offered as new evidence compel a contrary result. In light of defendant’s multiple prior admissions of guilt and the substantial delay in coming forward with the evidence in question, we cannot conclude that the court abused its discretion in finding that the claims in the letter were not credible. See id. (stating that the trial court is in a unique position to judge the quality and credibility of the evidence and “we will rarely overturn the trial court’s determinations” in this regard). Accordingly, we find no basis to disturb the judgment.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice