

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON
No. 5:22-CR-00026-DCR-01

UNITED STATES OF AMERICA

PLAINTIFF

v.

KEON LAMONT LEE

DEFENDANT

**DEFENDANT KEON LAMONT LEE'S MOTION
TO WITHDRAW GUILTY PLEA**

* * * * *

Comes the Defendant, Keon Lamont Lee (“Lee”), and moves the Court pursuant to Federal Rule of Criminal Procedure 11(d)(2)(b) to allow him to withdraw his guilty plea based upon his representation to counsel that at the time he entered a guilty plea, he did not understand that he was waiving his right to appeal both his guilt and sentence to the United States Court of Appeals for the Sixth Circuit after entry of a final judgment.

PROCEDURAL HISTORY

The grand jury returned an indictment on March 3, 2022, which charged Lee with six counts of controlled substance distribution, including a count charging him with distributing fentanyl which resulted in an overdose death in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(c). [DE No. 1.] A jury trial on the indictment commenced on January 17, 2023 [DE No. 54]. During the second day of trial, Lee entered a plea to Count 3 of the Indictment after a break in the proceedings. [DE No. 56]. Lee has represented to counsel that when he entered his plea, he did not understand that by entering a plea he would be waving his right to appeal his guilt to the United States Court of Appeals for the Sixth Circuit.

On March 24, 2023, Lee's prior counsel filed a motion to withdraw as his counsel in which she informed the Court that Lee wishes to withdraw his guilty plea [DE No. 60]. The Court granted her motion to withdraw on March 30, 2023 [DE No. 62].

LEGAL STANDARD

A guilty plea may be withdrawn upon a showing of "a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B). In considering whether to allow a defendant to withdraw a guilty plea, the Court may consider the following factors: (1) the amount of time that elapsed between the plea and the motion to withdraw it; (2) the presence (or absence) of a valid reason for the failure to move to withdraw earlier in the proceedings; (3) whether the defendant has asserted or maintained his innocence; (4) the circumstances underlying the entry of the guilty plea; (5) the defendant's background; (6) the degree to which the defendant has had prior experience with the criminal justice system; and (7) the potential prejudice to the government if the motion to withdraw is granted. *United States v. Bashara*, 27 F.3d 1174, 1181 (6th Cir. 1994). The factors listed in *Bashara* are a general, non-exclusive list for the Court to consider, and no single factor is controlling. *United States v. Bazzi*, 94 F.3d 1025, 1027 (6th Cir. 1996).

ARGUMENT

1. The amount of time that elapsed between the guilty plea and the motion to withdraw the plea.

Lee pled guilty on January 17, 2023. The Court was informed of his desire to withdraw his plea on March 24, 2023 only about two months after entry of the plea.

2. The presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings.

Lee's former counsel withdrew after being informed of Lee's desire to withdraw his plea. Lee has represented that he did not understand that he could not appeal his guilty plea until after discussions with his prior counsel related to his Presentence Investigation Report.

3. Whether the defendant has asserted or maintained his innocence.

Lee asserts that he is not guilty of distributing the fentanyl which resulted in the death of the victim as charged in Count 3 of the Indictment.

4. The circumstances underlying the entry of the guilty plea.

Lee entered his plea after a break in the trial. This limited the type of detailed discussion which normally occurs prior to entry of a guilty plea and lends credence to Lee's representation that Lee did not understand he was waiving his right to appeal his guilt.

5. The defendant's nature and background.

Lee has a high school education but has no further education and limited experience in the judicial system.

6. The degree to which the defendant has had prior experience with the criminal justice system.

This is Lee's first federal felony prosecution. He has only one prior felony conviction which was in state court, and it has been almost eleven years since he entered his plea to that charge.

7. Potential prejudice to the government if the motion to withdraw is granted.

There is no indication that any proof which could have been introduced during the January 2023 trial could not be introduced at trial if Lee is permitted to withdraw his plea.

CONCLUSION

For the reasons stated above, Lee's motion to withdraw his guilty plea should be granted.

Respectfully submitted,

/s/ John Kevin West

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Counsel for Defendant Keon Lamont Lee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 19, 2023, the foregoing was duly filed via the Court's ECF system, which will give notice to all counsel of record.

/s/ John Kevin West

John Kevin West (81802)
Counsel for Defendant Keon Lamont Lee

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**ORDER GRANTING DEFENDANT KEON LAMONT LEE'S
MOTION TO WITHDRAW GUILTY PLEA**

* * * * *

Upon the Motion of Defendant, Keon Lamont Lee (“Lee”), pursuant to Federal Rule of Criminal Procedure 11(d)(2)(b) to allow him to withdraw his guilty plea based upon his representation to counsel that at the time he entered a guilty plea, he did not understand that he was waiving his right to appeal both his guilt and sentence to the United States Court of Appeals for the Sixth Circuit after entry of a final judgment and the Court being otherwise sufficiently advised, said Motion is hereby GRANTED.

Entered this _____ day of May, 2023.

DANNY C. REEVES
UNITED STATES DISTRICT COURT JUDGE