

DISTRICT COURT, JEFFERSON COUNTY, COLORADO  100 JEFFERSON COUNTY PARKWAY GOLDEN, COLORADO 80401	<p style="text-align: center;">▲ <b>COURT USE ONLY</b> ▲</p>
PEOPLE OF THE STATE OF COLORADO,  Plaintiff,  v.  STEVE DOUGLAS GARTIN,  Defendant.	
DAVID J. THOMAS, District Attorney MARLEEN M. LANGFIELD, Special Deputy District Attorney 1525 Sherman Street, 5 <sup>th</sup> Floor Denver, CO 80203 (303) 866-5773 Registration Number: 10355	Case No.: 00CR3371  Div.: 2
<b>PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO WITHDRAW GUILTY          PLEA</b>	

Come now the People of the State of Colorado, by and through the undersigned special deputy district attorney and respectfully assert the following in response to defendant, Steve Gartin's Motion to Withdraw Guilty Plea.

1. Rule Eleven governs the Court's acceptance of a guilty plea and provides that, the court shall not accept a plea of guilty without first determining that the defendant has been advised of all the rights set forth in Rule 5(a)(2) and also determining: (1) that the defendant understands the nature of the charge and the elements of the offense to which he is pleading and the effect of his plea; (2) that the plea is voluntary and not the result of undue influence or coercion; (3) that the defendant understands his right to trial by jury and that he waives such right by his plea of guilty; (4) that the defendant understands the possible penalty or penalties; (5) that the defendant understands that the court will not be bound by any representations made to the defendant by anyone concerning the penalty to be imposed or the granting or denial of probation, unless the representations are included in a formal plea agreement approved by the court; and (6) that there is a factual basis for the plea.

2. A review of the record including the attached transcript of the providency hearing and the signed documents submitted in connection with the plea reveals that the court fully complied with the requirements of Rule 11.
3. In Maes v. People, 155 Colo. 570, 574-75, 396 P.2d 457, 459 (1964) the Colorado Supreme Court set forth the standards applicable to a motion to withdraw a guilty plea:

One accused of crime may not, as a matter of right, have his plea of guilty withdrawn or changed. An application for the withdrawal or change of such plea is addressed to the discretion of the trial court...

To warrant the exercise of discretion favorable to the defendant concerning a change of plea, there must be some showing that justice will be subverted by a denial thereof, as where a defendant may have been surprised or influenced into a plea of guilty when he had a defense; where a plea of guilty was entered by mistake or under misconception of the charge; where such plea was entered through fear, fraud or official misrepresentation; or where it was made involuntarily for some reason.

This standard was cited with approval in People v. Chavez, 730 P.2d 321, 327 (Colo. 1986).

4. Justice is not subverted by the denial of defendant's motion to withdraw his plea where the record indicates that a defendant has simply changed his mind about the disposition to which he had agreed. See, People v. DiGuglielmo, 33 P.3d 1248, 1250 (Colo. App. 2001).
5. "A guilty plea should not be withdrawn at the instance of a defendant unless he carries his burden of demonstrating that a 'fair and just reason' exists to justify withdrawal. ABA Standard Relating to Pleas of Guilty § 2.1(b)." People v. Matrinez, 533 P.2d 926, 928 (Colo. 1975). See, People v. Lewis, 849 P.2d 855, 856 (Colo. App. 1992); People v. DiGuglielmo, *supra*. Further, "a guilty plea should not be set aside if the record shows that there is a factual basis for the plea, that the defendant was aware of the elements of the offense, and that he entered the plea voluntarily." People v. Hawkins, 543 P.2d 99, 100 (Colo. App. 1975). Finally
6. Mr. Gartin's Motion to Withdraw Guilty Plea fails to allege any deficiency that would entitle him to the exercise of discretion he seeks.
7. Mr. Gartin seeks withdrawal of his plea of guilty on the basis that a purported stipulation that he refrain from filing lawsuits against Gary Clyman, Don Estep, Marleen Langfield, or the Bonilla family "could be construed as fraudulent or possibly extortion".


8. A review of the transcript of the guilty plea and the related documents contains no reference to any stipulation that Mr. Gartin refrain from filing any lawsuits. Nor is the undersigned special deputy district attorney aware of any such stipulation or even any discussion of such a stipulation. Perhaps, Mr. Miller advised Mr. Gartin that it might be in his best interest to refrain from filing any further frivolous claims in view of the nature of the conduct that formed that basis of the charges in this case.
9. Next, Mr. Gartin asserts that he should be permitted to withdraw his plea because Mr. Miller advised him that he was not required to pay the \$4,000 restitution, advice that Mr. Gartin characterizes as “erroneous, and may be construed as official misconduct.”
10. Both the Plea Agreement, which was signed by Mr. Gartin and the Stipulation for Unsupervised Deferred Judgment and Sentence, which contains Mr. Gartin’s signature specifically provide for the payment of restitution. Further, during the providency hearing the defendant assured the court that he had read through the terms and conditions of the stipulation, understood them and was willing to abide by them. *See, Attached Transcript page 17, lines 3 – 20.* Perhaps, Mr. Miller correctly advised Mr. Gartin that his deferred judgment and sentence would not be revoked for failure to pay restitution in the event he was unable to meet that obligation in spite of his best efforts.
11. If a defendant receives advice, either from counsel or the providency court, that is different from the information contained in the written plea documents, he must request clarification from the court when given the opportunity to do so, rather than assert the discrepancy as the basis for postconviction relief. People v. DiGuglielmo, *supra* at 1251.
12. Next, Mr. Gartin asserts that he should be permitted to withdraw his guilty plea because Attorney Miller erroneously advised him that all the charges would be dismissed at the end of the two year probation and that the record would be sealed.
13. Again, a review of the record reveals that Mr. Gartin’s claim lacks merit. During the providency hearing the Court carefully and clearly explained to Mr. Gartin that the deferred judgment applied only to the felony extortion charge. With respect to the misdemeanor plea the Court advised Mr. Gartin as follows: “the misdemeanor is a straight plea to a misdemeanor, that would be a misdemeanor conviction on your record, that’s permanent; do you understand that?” Mr. Gartin replied, “Yes, sir.” *See Attached Transcript page 13, lines 7 – 24.*
14. If Mr. Gartin was receiving conflicting information from Mr. Miller and was confused he had an obligation to request clarification when he had an opportunity to do so, rather than assert the discrepancy as the basis for postconviction relief.

15. Next, Mr. Gartin asserts that he is entitled to withdraw his guilty plea because he lied to this court when he admitted that he had committed the crimes to which he pled guilty.
16. It is incongruous that Mr. Gartin seeks the exercise of this court's discretion in his favor and seeks a finding that justice will be subverted absent a withdrawal of his guilty plea because the court relied upon Mr. Gartin's purported lies. Mr. Gartin can not derive a "fair and just reason" to justify the withdrawal of his guilty plea from his own asserted misconduct. Indeed, this situation appears to be akin to situations that give rise to the invited error doctrine, which provides that when a court acquiesces in a course of conduct urged by the defendant, he is estopped on appeal from raising as error that conduct or its result.
17. In any event, a claim of innocence is not, by itself, reason to allow a defendant to withdraw his plea. People v. Valdez, 928 P.2d 1387, 1392 (Colo. App. 1996).
18. Finally, Mr. Gartin makes a bald assertion that his attorney, Mr. Miller was ineffective. Mr. Gartin provides no basis for his assertion. Rather, he indicates his interest in having Mr. Miller continue to represent him, a position that would appear to be inconsistent with a claim that Mr. Miller is ineffective.
19. A trial court may deny a motion for post-conviction relief without an evidentiary hearing and may decline to appoint counsel if the motion, the files, and the record establish that the defendant is not entitled to relief as a matter of law. People v. Moriarity, 8 P.3d 566, 569 (Colo. App. 2000); People v. Hartkemeyer, 843 P.2d 92 (Colo. App. 1992). This includes motions that claim ineffective assistance of counsel. People v. DiGuglielmo, *supra*, at 1251.
20. To establish a claim of ineffectiveness of counsel, a defendant must show that: (1) counsel's performance was outside the wide range of professionally competent assistance; and (2) the defendant was prejudiced by counsel's errors. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); People v. Cole, 775 P.2d 551 (Colo. 1989). The Strickland test also applies in the context of a guilty plea. People v. DiGuglielmo, *supra*, at 1251. Mr. Gartin has failed to meet this burden.

WHEREFORE, the People of the State of Colorado respectfully request that his court deny defendant's motion without an evidentiary hearing.

Respectfully submitted this 4<sup>th</sup> day of May 2004.

DAVID J. THOMAS  
District Attorney

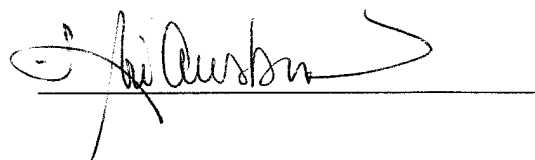
  
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Marleen Langfield, #F0355

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within People's Response to Defendant's Motion to Withdraw Guilty Plea upon all parties herein by mailing a copy of the same postage prepaid on the 4th day of May 2004 addressed to:

Steve D. Gartin  
23631/2 South Decatur  
Denver, CO 80219

Attorney Thomas Miller  
1026 Lincoln Place  
Boulder, CO 80302



A handwritten signature in black ink, appearing to read "Steve D. Gartin", is written over a horizontal line. The signature is stylized and cursive.