

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA

v.

TIMOTHY HESKETH

Criminal No. 00-95-P-C

ORDER ON DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA

Before the Court for action is Defendant's Motion to Withdraw Guilty Plea and to Dismiss Indictment (Docket No. 13). Defendant has pled guilty to the offense of illegal possession of a firearm by a person previously convicted of a misdemeanor crime of domestic violence under 18 U.S.C. §§ 922(g)(9) and 924(a)(2) and is now awaiting sentencing. After full review of the written submissions hereon, the Court **CONCLUDES** that Defendant has not shown, and cannot show, a "fair and just reason" for seeking to withdraw his guilty plea. FED. R. CRIM. P. 32(e); *see also United States v. Gonzalez*, 202 F.3d 20, 23 (1st Cir. 2000). The Court **FINDS**:

- (1) that Defendant's 1992 state court conviction for assault (Class D) under 17-A M.R.S.A. § 207(1) qualifies as a conviction for a misdemeanor crime of domestic violence within the meaning of 18 U.S.C. § 921(a)(33)(A) and § 922(g)(9);
- (2) that Defendant voluntarily and knowingly admitted at the Rule 11 inquiry the fact of his conviction and that the offense, as committed, was one involving, as a matter of fact, the use of physical force, and further admitted that he actually assaulted his wife, Susanne Hesketh, using violent acts against her to do so. He has, therefore, relinquished the right to challenge the fact of his conviction for that offense and has waived any legal defense which challenges the sufficiency of the attributes of the offense of conviction to meet the definitional requirements of the predicate offense specified in 18 U.S.C. § 922(g)(9), as those are set out in 18 U.S.C.

§ 921(a)(33)(A)(i) and (ii). *United States v. Meade*, 175 F.3d 215, 223-24 (1st Cir. 1999);

- (3) that Defendant's admission, as set out above, was not an error of fact or law on his part.

I invoke once again my rationale employed in a previous case that is factually on all fours with this case, *United States v. Hawkins*, Crim. No. 00-25-P-C, Order on Defendant's Motion to Withdraw Guilty Plea dated December 14, 2000 (Docket No. 15). I scan the record of this case to determine if this Defendant has, in effect, stipulated that his conviction of the predicate offense of assault under Maine law on June 8, 1992, involved physical force justifying the conclusion that the offense is, in fact, a misdemeanor crime of domestic violence.¹ Because I conclude that he has done so, I will deny the motion.²

The Defendant tendered his guilty plea on December 1, 2000, in a Rule 11 inquiry conducted by me that covered all of the usual elements including the following colloquy that is here pertinent:

THE COURT: Now, the Court has before it at this time marked for identification Government's Exhibit 1, a document entitled Prosecution Version, which is signed by the defendant and by Mr. Dilworth for the government, and Mr. Geary as counsel for the defendant.

Mr. Dilworth, is this the government's representation as to what it would prove at trial to be the facts of this case?

MR. DILWORTH: Yes it is.

¹I note that under recent precedent in this circuit, the factual relational nexus between a defendant and his victim in the predicate offense, which makes the assault a "domestic" one, is not a technical element of the federal offense. *United States v. Meade*, 175 F.3d 215, 218-22 (1st Cir. 1999).

²Because the record allows me this method of analysis, I need not choose sides in the controversy that exists between my colleagues, Chief Judge Hornby and Judge Singal, over whether the Maine assault statute, 17-A M.R.S.A. § 207(1), is to be construed so that assault by offensive physical contact necessarily requires the use of physical force. *United States v. Southers*, 2001 WL 9863 (D. Me. Jan. 3, 2001), and *United States v. Nason*, 2001 WL 123722 (D. Me. Feb. 13, 2001). See also *United States v. Weeks*, 2000 WL 1879808 (D. Me. Sept. 28, 2000).

THE COURT: And, Mr. Geary, have you reviewed this document[?]

MR. GEARY: Yes I have your Honor.

THE COURT: Has this defendant read it himself in its entirety?

MR. GEARY: I believe that I have read it to him on several occasions.

THE COURT: You have read the entire document to him?

MR. GEARY: Yes I have.

THE COURT: Is this his signature that appears on it?

MR. GEARY: Yes.

THE COURT: Are you satisfied when he signed it -- first of all, did he sign it in your presence?

MR. GEARY: Yes.

THE COURT: At the time were you satisfied he knew and understood the contents of this document[?]

MR. GEARY: Yes.

THE COURT: Does he understand that to the extent I accept the contents of this document as true, they will form part of the basis upon which I will determine sentence to be imposed upon him?

MR. GEARY: Yes your Honor.

Q. Is it correct that you have read Government Exhibit 1, the prosecution version, yourself in its entirety?

A. Mr. Geary read it to me.

Q. He read it to you?

A. Yes.

Q. Are you satisfied that you know everything contained in the document?

A. Absolutely.

Q. And has he explained its contents to you?

A. Yes, he has.

Q. Do you understand that it's the government's version of what it would prove at trial to be the facts of this case?

A. Yes.

Q. Are you satisfied that you fully understand all the contents of the document?

A. Absolutely.

Q. Is there anything in the document that you believe to be inaccurate or incorrect?

A. No there isn't.

Q. You understand, do you not, that to the extent I accept the contents of the document that will form part of the basis upon which I will determine sentence to be imposed upon you?

A. Yes.

Q. Do you know of anything in the document that is untrue or inaccurate?

A. No your Honor.

THE COURT [TO MR. GEARY]: Are you satisfied from your investigation of this case that the government can in fact produce the evidence indicated by Government Exhibit 1 at trial?

MR. GEARY: Yes your Honor.

THE COURT: Are you satisfied that the admissible portion of that evidence would be sufficient to permit a properly instructed jury to determine beyond a reasonable doubt that this defendant is guilty of the charged offense?

MR. GEARY: Yes your Honor.

Q. Mr. Hesketh, do you acknowledge that you are in fact guilty as charged in this [I]ndictment?

A. Yes, I do.

THE COURT: The Court finds that there is a factual basis for the plea of guilty tendered by this defendant to the charge made in this [I]ndictment. If there is no objection, Government Exhibit 1 will become a part of the record of these proceedings. Any objection?

MR. DILWORTH: No your Honor.

MR. GEARY: No objection.

Transcript of Rule 11 Proceeding on December 1, 2000, at 12-15. The Prosecution Version, referred to in the foregoing colloquy, reads in its entirety as follows:

At trial, the Government would prove the following:

On June 18, 1992, the Defendant pled guilty to assaulting his wife, Susanne Hesketh. According to Susanne Hesketh, the Defendant threw her in a chair, squeezed her shoulders, and bent her hands back. The Defendant also threatened to hit her with a chair. The Defendant was fined \$200.

On May 3, 2000, Lewiston police officers took a shotgun from Marilyn Willey, the Defendant's girlfriend at the time. Ms. Willey had threatened to harm herself with the shotgun, a Harrington and Richardson, Model Topper 58, 12-gauge shotgun, bearing serial number AM335800. On May 31, 2000, agents from the Central Maine Violent Crime Task Force interviewed Ms. Willey at her trailer to determine whether she was receiving mental health counseling. The Defendant was present during that interview. Among other things, the Defendant said the gun belonged to him and he used it to hunt deer. He asked when he was going to get the shotgun back.

The evidence would also show that the Defendant used the gun solely for hunting. The gun was not manufactured in Maine.

Prosecution Version (Docket No. 10). The language of the Indictment reads as follows:

The Grand Jury charges that:

From in or about April 2000 to on or about May 3, 2000,
in the District of Maine, defendant

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being a person convicted of a misdemeanor crime of domestic violence, specifically:

Assault (Class D), in the Maine District Court (Division of Southern Androscoggin) on or about June 18, 1992;

knowingly possessed in and affecting commerce a firearm, namely, a Harrington and Richardson, Model Topper 58, 12-gauge shotgun, bearing serial number AM335800;

All in violation of Title 18, United States Code, Sections 922(g)(9) and 924(a)(2).

Indictment (Docket No. 1) (emphasis added).

The foregoing record, carefully parsed, clearly establishes that Defendant has stipulated, in effect, as propositions of fact to which he makes no contest: (1) that he was convicted on June 18, 1992, after entering a plea of guilty, of the crime of assault under Maine law and (2) that the conviction was "of a misdemeanor crime of domestic violence." He acknowledged twice in the Rule 11 inquiry that none of the contents of the Prosecution Version were untrue. The Prosecution Version clearly describes the predicate state conviction as an assault and describes factually the physical force exerted by Defendant upon his wife to accomplish it. Defendant also acknowledged in the Rule 11 inquiry that he was "in fact guilty as charged in the [I]ndictment," having previously assured the Court that he was fully knowledgeable of the Indictment's contents. Transcript of Rule 11 Proceeding at 15. The Indictment alleges as one of the elements of the offense that Defendant had previously been convicted "of a misdemeanor crime of domestic violence," specifically: Assault (Class D), in the Maine District Court (Division of Southern Androscoggin) on or about June 18, 1992." Indictment (Docket No. 1).

Thus, Defendant has agreed -- that is, stipulated as fact -- to the two findings with which this order commences. Under the holding of *Meade*, Defendant has thereby "relinquishe[d] his right to test the Government's case with respect to the existence of the facts underlying that particular" element and the "stipulation as to facts also functions as a waiver of legal defenses to the establishment of the particular element to which the parties have stipulated." *Meade*, 175 F.3d 215 at 223. As in *Meade*, there is not in the record of this case "the slightest indication at any point in the proceedings" prior to the filing of the present motion that Defendant intended to "raise or preserve any legal defenses" to the conviction of the predicate offense as a misdemeanor crime of domestic violence. *Id.* His guilty plea was accepted on the basis of those factual concessions. There is no indication of error in his decision to make those concessions and, consequently, there is no "fair and just reason" for him to be permitted to withdraw his plea of guilty.

Accordingly, Defendant's Motion to Withdraw Guilty Plea is hereby **DENIED**. The Motion to Dismiss the Indictment is also **DENIED**.

So **ORDERED**.

GENE CARTER
District Judge

Dated at Portland, Maine this 23rd day of February, 2001.

TIMOTHY A HESKETH (1)

JOHN E. GEARY

defendant

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