

Appendix F2 (opinion of court unpublished)

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CHALIN MERRIHEW,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D19-3301

[November 25, 2020]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit,
Martin County; Lawrence M. Mirman, Judge; L.T. Case No.
432017CF000940A.

Carey Haughwout, Public Defender, and David John McPherrin,
Assistant Public Defender, West Palm Beach, for appellant.

Ashley Moody, Attorney General, Tallahassee, and Heidi L. Bettendorf,
Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

GERBER, KLINGENSMITH JJ., and NUTT, JAMES, Associate Judge, concur.

* * *

Not final until disposition of timely filed motion for rehearing.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

January 13, 2021

CASE NO.: 4D19-3301
L.T. No.: 432017CF000940A

CHALIN MERRIHEW

v. STATE OF FLORIDA

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that appellant's December 21, 2020 *pro se* motion for rehearing is denied.

Served:

cc: Attorney General-W.P.B.
Heidi Lynn Bettendorf

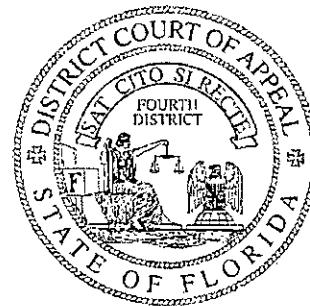
Public Defender-P.B.
Chalin Merrihew

David John McPherrin

kr

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



Attachment A2

Filing # 98009209 E-Filed 10/29/2019 09:25:14 AM

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,

Petitioner,

and

CHALIN MERRIHEW,

Defendant.

Case No.: 2017CF000940

Judge: Sherwood Bauer

**ORDER ON MOTION TO WITHDRAW PLEA
(AFTER SENTENCE)**

THIS CAUSE having come before this Honorable Court on the Defendant's motion to withdraw plea – after sentencing, upon review of the motion, review of the recording of October 4, 2019 hearing, and court file it is hereby;

ORDERED that a defendant, in order to set forth a basis for the withdrawal of a plea after sentencing, must show that a manifest injustice occurred. This would be initially set forth in the motion and if there are any factual issues to be resolved, the matter would be set for a hearing. In this matter, the record is complete as the events which the Defendant now claims show errors.

Factually, the Defendant first claims that he had filed a motion to withdraw his plea prior to sentencing. This is accurate. His attorney adopted the motion and it was set for a hearing on October 4, 2019. The entire time that the Defendant was before the court is recorded and this Court reviewed the audio/video of the proceedings.¹

The Defendant in his new motion states that when he attempted to raise the issue that the bb gun in question was inoperable and therefore the charge of it being a deadly weapon could not be legally supported, "*Judge Sherwood Bauer countered that it could still be deadly because defendant could use it to bludgeon or club the victim.*" The record reflects that this (or anything like it) was stated by the Judge. The Defendant, in his motion, then states that in response he "*countered that not one witness depositioned evidence that bludgeoning or clubbing with the toy bb inoperable gun occurred.*" The record reflects that this (or anything like it) was stated by the Defendant.

The Defendant in his new motion states that after the discussion above (which the record reflects did not occur), "*Judge Bauer referred to state prosecutor Richard Bodeck who just pointed out the Robbery statute and directed defendant's attorney James Regan*

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→ Petitioner did not intentionally make false statements, but simply remembered the sequence of events anachronistically. Petitioner was in debate w/ Judge & was escorted to court's side office, but latter occurred after the hearing, not at the end.

and Defendant to an enclosed side office where Regan proceeded to coerce the defendant to abandon his argument...and to just 'accept the plea or you'll lose your 25 year cap' and 'be remorseful.'" The record reflects that Judge Bauer did not direct the prosecutor to do anything, except to give his opinion on whether the State would proceed with the charge including if they believed it is a deadly weapon. The Judge never directed the Defendant or his attorney to a side office. The record shows that at no time during the court appearance did the Defendant or his attorney go to a side office. The entire event occurred in open court at the lectern. What the attorney said to the Defendant is unknown to the Court, however the discussion between the Judge, the Defendant, his attorney, and the State did openly discuss the possibility of the withdrawal of the 25 year cap at sentencing – if the plea were withdrawn.

Again, Petitioner did not make a unfactual statement, I was escorted to the side office, but it was by my attorney, not the judge, & it was after the hearing, not at the end.

The Defendant adds an unsupported claim that the scoresheet is incorrect at "91" points and should be "89.7." The scoresheet is in the record and the point total was agreed to by the parties and the math was correctly completed by the Court after removal of 2 items from the Defendant's prior record. The Court has reviewed the scoresheet and it appears to be correctly calculated. If there is an issue, the Defendant can file a proper motion, it is not a basis to withdraw the plea.

The Defendant adds that his attorney failed to present his "parent's leniency letters" at the sentencing hearing. If the attorney failed in some regard to properly present the Defendant's case, the Defendant can file a proper motion, it is not a basis to withdraw the plea.

Another libel claim by the Judge. I did the math correctly & quadruple-checked my answer & it is correct. I had my attorney do the math as well, & he came up w/the same answer I did = 89.7! The factual basis claimed in the motion is unsupported by the record and there is no initial showing of any fact which supports a claim of manifest injustice which could require

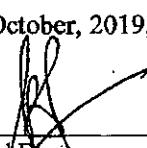
Call my attorney or do a hearing. None will be set. The motion is denied.

100% proof the "deadly" charge is fraud is not manifest-injustice? What law school did this Judge go to?!

DONE AND ORDERED on this the 29th day of October, 2019, in Martin County,

State of Florida.

Name: David McPherrin


Sherwood Bauer
Circuit Court Judge

cc:

Clerk of Court – Martin County
Office of the State Attorney – Martin County
Defendant.

¹A review of the entire proceeding which took place on October 4, 2019 on the Defendant's original motion to withdraw the plea reflects a different picture than the Defendant paints in this motion. The Court verified that the motion was filed by the Defendant, pro-se, and that it was adopted by the attorney. The Court inquired initially if the Defendant wished to proceed, but did caution that if the motion were granted that it

**Additional material
from this filing is
available in the
Clerk's Office.**