BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 23-CM-991

DWAYNE HAWKINS, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CRIMINAL DIVISION

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Cr. No. 2023 DVM 224

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ISSUES PRESENTED

I. Hawkins pled guilty under a nine-month Deferred Sentencing Agreement (DSA) with the government, which required him to take Domestic Violence Intervention Program (DVIP) classes. Hawkins failed to report to DVIP orientation or attend any classes prior to his three-month DSA review hearing. The government revoked the DSA under a provision of the agreement which stated, "The determination of whether the defendant has violated any of the above conditions rests exclusively with the United States." Did the trial court err in denying Hawkins's motion for "specific performance" of the DSA after finding that the government acted in good faith in revoking the agreement based on Hawkins's violations?

II. After the trial court denied Hawkins's motion for specific performance of the DSA, Hawkins sought to withdraw his guilty plea to assault and asserted self-defense. Did the trial court abuse its discretion in denying Hawkins's plea-withdrawal motion, where Hawkins's motion came months after the plea and in response to the revocation of his DSA, and where Hawkins's new self-defense claim contradicted his sworn statements at the plea hearing?

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INTRODUCTION

Appellant Dwayne Hawkins entered into a deferred sentencing agreement (DSA) with the government to resolve his misdemeanor domestic-violence case. Hawkins pled guilty to assault, with sentencing deferred, and the government dismissed the other counts against him. The government agreed that, if Hawkins took Domestic Violence Intervention Program (DVIP) classes, the government would allow Hawkins to withdraw his plea and dismiss the case against him.

Hawkins agreed that the determination of whether he had complied with the agreement "rest[ed] exclusively" with the government.

Hawkins did not attend DVIP orientation, despite being directed to do so by the Court Services and Offender Supervision Agency (CSOSA), and he did not attend any DVIP classes. The government revoked his DSA, and the trial court denied his motion for "specific performance," and subsequent motion to withdraw his plea.

The trial court did not abuse its discretion. Under the explicit terms of the DSA, the government reserved the exclusive right to determine whether Hawkins had violated the agreement. As the trial court found, the government exercised that right in good faith. Hawkins received the benefit of his bargain, and he was not entitled to withdraw his plea after the government determined in good faith that he had failed to fulfill his side of the agreement.

COUNTERSTATEMENT OF THE CASE

On February 27, 2023, the government charged Hawkins by information with assault, D.C. Code § 22-404, destruction of property, D.C. Code § 22-303, and obstructing justice, D.C. Code § 22-722(a)(3)(B)

(Record (R.) 1).[1] On April 4, 2023, Hawkins entered into a DSA with the government and pled guilty to assault (R. 16, 17).

The Deferred Sentencing Agreement

In exchange for Hawkins's guilty plea to assault, the government agreed to dismiss the obstruction and destruction-of-property counts, to not seek Hawkins's detention pending sentencing, and to continue sentencing for nine months (R. 15; 4/4/23 Transcript (Tr.) 3-6). The government also agreed that, if Hawkins "abide[d] by all of the conditions set forth in the DSA, after a period of 9 months, the United States [would] not oppose [Hawkins's] motion to withdraw the plea and [would] enter a nolle prosequi" in the case (*id.*; R. 17 at 3).

Hawkins agreed to abide by the following DSA conditions:

- "The defendant must not violate any law. The defendant must not be rearrested on probable cause";

[1] As Hawkins notes (Brief (Br.) 2 n.1), D.C. Code § 22-722(a)(3)(B) is a felony. Based on the Gerstein affidavit (R. 2), it appears likely that the government intended to charge Hawkins with obstructing a 911 call, a misdemeanor under D.C. Code § 22-1931. Because Hawkins did not raise the issue for "strategic reasons" (Br. 2 n.1), and the count was dismissed as part of the plea agreement, there is no explanation in the record for this apparent oversight.

- "The defendant must not violate any Court order, including any Civil Protection Order";

- "If the defendant is arrested, the defendant must report that fact to the Court";

- "The defendant must not engage in any assaultive, threatening, harassing, or stalking behavior against any person, including [the complainant, A.A.]";

- "The defendant shall abide by all conditions imposed by the Court Services and Supervision Agency";

- "The defendant agrees to successfully complete the following counseling program(s), and agrees to contact CSOSA to initiate enrollment within 72 hours at [phone number]: Domestic Violence Intervention Program [and] Drug and Alcohol Abuse Treatment (as indicated by CSOSA";

- "The defendant agrees to provide written proof of attendance on the scheduled review date(s). The defendant agrees to provide written proof of completion of the indicated programs on the scheduled sentencing date."

- "Within 48 hours of entering this DSA, the defendant must call CSOSA at [phone number] to check in with a supervision officer";

- "The defendant must personally appear for review hearings as well as at the sentencing hearing and bring proof of compliance for all of the programming and/or terms of the DSA to which they have agreed to satisfy." (R. 17 at 1-3.)

The DSA also included a section entitled "Termination of Agreement to Nolle Prosequi the Case for Violations of Conditions" (hereinafter the "Revocation Provision") (R. 17 at 4). It stated:

> If the United States determines that the defendant has violated any condition of this agreement, the government will:
>
> -Oppose the defendant's withdrawal of the guilty plea;
>
> -Not enter a nolle prosequi in this case; and
>
> -Move the Court to proceed to sentencing immediately.
>
> *The determination of whether the defendant has violated any of the above conditions rests exclusively with the United States.* (R. 17 at 4 (emphasis added).)

Hawkins and his counsel both signed the DSA, acknowledging that Hawkins "underst[ood] th[e] agreement and w[ould] abide by its conditions" (R. 17 at 4). Additionally, at Hawkins's plea hearing, the Honorable Kimberley Knowles reviewed the DSA conditions with Hawkins, and Hawkins affirmed under oath that he understood them (4/4/23 Tr. 6-7). The trial court also reminded Hawkins, "[I]f you violate any terms of the agreement, or if you don't complete any of the terms of the agreement, the Government can revoke the agreement, and we will go straight to sentencing" (*id.* 6). Hawkins affirmed under oath that he understood this (*id.*).

In pleading guilty to assault, Hawkins agreed to a factual proffer:

> If 2023 DVM 224 had proceeded to trial, the Government would have admitted evidence proving beyond a reasonable doubt that on or about February 27, 2023, in the District of Columbia, the Defendant Dwayne Hawkins assaulted [A.A.] by hitting her in the head.
>
> [A.A.] found the defendant's actions offensive, a reasonable person would have found the actions offensive, and defendant knew his actions would cause offense. The defendant acted purposefully, voluntarily, and without legal justification. (4/4/23 Tr. 8.)

Hawkins affirmed under oath that the government's proffer was "accurate" (*id.*). The trial court found that Hawkins "ma[de] a knowing and intelligent waiver of his rights and that there [was] a factual basis for the plea," and accepted his plea (*id.* 11).

The court scheduled a DSA review hearing for July 25, 2023, and sentencing for January 4, 2024 (4/4/23 Tr. 11).

The Government Revokes the DSA after Hawkins Fails to Report for DVIP Orientation as Directed by CSOSA.

At the DSA review hearing on July 25, 2023, a CSOSA probation officer reported that Hawkins had "failed to comply with the conditions set forth in the DSA" (7/25/23 Tr. 2). Although Hawkins and the probation officer had spoken at the start of the DSA period, and the

probation officer "g[ave] Hawkins all the information that he needed [to report] for his [DVIP] orientation," Hawkins "never reported for orientation" (*id.*). CSOSA made "efforts to contact" Hawkins "in an attempt to figure out what was going on," but these efforts "all went unnoticed" (*id.*). Hawkins "never responded to any of [CSOSA's] requests to contact [CSOSA] back"; as a result, Hawkins "ha[d] not completed or started any of the conditions" (*id.* 2-3). CSOSA "request[ed] that the DSA be revoked" (*id.* 3).

Hawkins responded (through counsel) that here had been a "misunderstanding" with CSOSA and there had been no "willful noncompliance" (7/25/23 Tr. 3). Hawkins claimed he never received information from CSOSA "about when to begin classes," and he "physically went in person to CSOSA to try to get this resolved," and called counsel while there (*id.*). Counsel therefore "mistakenly believed that everything ha[d] been resolved and that he had begun the classes until preparing for this hearing" (*id.*).

According to the probation officer, however, she informed Hawkins during a phone conversation that the classes were virtual, with "[e]verything being done over Teams and/or Zoom" (7/25/23 Tr. 4).

Hawkins "was provided with the email link to start the classes," but "later [he] just did not show, did not log in" (*id.*).

Based on CSOSA's representations, the government revoked the DSA (7/25/23 Tr. 4). The prosecutor stated, "It's very clear that [Hawkins] has not been in compliance, had a conversation with CSOSA and has still failed, even given all the information to comply with any of the requirements here" (*id.* 4-5).

For his part, Hawkins "factually dispute[d] that he received an email" and represented that he was "happy to begin the classes" (7/25/23 Tr. 5). The government was unmoved, noting that three months had passed since Hawkins entered the DSA and he had not even started DVIP (*id.*). The court stated: "DSA is revoked. Let's set a sentencing date." (*Id.*) In response, Hawkins claimed that the government had "breach[ed]" the DSA and that the Revocation Provision was "illusory" (*id.* 6). The court asked why Hawkins had agreed to the DSA if he considered it illusory (*id.*). Counsel responded, "[T]hat's not a decision that [was] up to me . . . . The decision of whether to accept the plea [was] up to Mr. Hawkins." (*Id.*). Hawkins personally interjected, "I wouldn't [sign it] now, maybe" (*id.*).

The Trial Court Denies Hawkins's Motions for "Specific Performance" of the DSA and to Withdraw His Plea.

On August 14, 2023, Hawkins filed a motion seeking "specific performance" of the DSA (R.19). Relying on *Santobello v. New York*, 404 U.S. 257 (1971), Hawkins claimed that he "ha[d] not violated the terms of the DSA," alleged that the government had breached the DSA by revoking it, and requested that the trial court "order specific performance of the DSA" (*id.*). In effect, Hawkins asked the trial court to override the government's revocation of the DSA and provide him with another opportunity to comply with it by attending DVIP classes (*id.*). Hawkins acknowledged that the DSA vested "the determination of whether [he had] violated any of [its] conditions . . . exclusively with the United States," but he argued that the Revocation Provision was "a route of complete escape" that "vitiate[d] any other consideration furnished and is incompatible with the existence of a contract" (*id.* (quoting *District of Columbia v. Ofegro*, 700 A.2d 185, 200 (D.C. 1997)). Therefore, Hawkins argued, the Revocation Provision was "void ab initio" (*id.*).

In its opposition, the government responded that Hawkins's "failure to report for DVIP orientation, despite being instructed to do so by CSOSA, [was] plainly a violation of the DSA condition that he 'abide by

all conditions imposed by [CSOSA]'" (R.20). The government also noted that "the DSA expressly require[d] Mr. Hawkins to 'provide written proof of attendance' to '[DVIP]' and 'Drug and Alcohol Abuse and Treatment (as indicated by CSOSA)' on the scheduled review dates," but Hawkins "failed to provide any proof that he enrolled in, let alone attended the DVIP at the July 25, 2023 review date, which was over three months into the nine-month DSA period" (*id.*).

The government also explained that the Revocation Provision was "an express term of the DSA to which Mr. Hawkins agreed, joined by his counsel," and "there [was] no argument by Mr. Hawkins that he did not understand that the United States would be the one to determine whether any of the DSA's conditions were violated" (R. 20). Hawkins never objected to or sought modifications of this term before entering the DSA, "despite seeking other modifications, such as changing the stay away[/]no contact order to a no HAATS order" (*id.*). And Hawkins's argument that the Revocation Provision was invalid and "incompatible with the existence of a contract" was "legally incorrect" (*id.*). The government distinguished the authorities cited by Hawkins (which arose in the government contracting context), noting that the government had

acted in good faith and "[t]here [was] simply no evidence that the United States entered the DSA knowing full well that it would not honor its terms" (*id.*).

At a hearing on September 5, 2023, the trial court expressed confusion how Hawkins could request specific performance, but "in the next breath . . . say that the contract is void" (*id.* 6). Hawkins's counsel replied that he was seeking to have the Revocation Provision "excised" from the DSA, but otherwise to receive the benefit of the DSA (*id.* 7). As a fallback "alternative" position, Hawkins indicated that he would seek to withdraw his plea if the Court refused to excise the Revocation Provision from the DSA (*id.* 7-8). The government relied on *Green v. United States*, 377 A.2d 1132 (D.C. 1977), which upheld a pretrial-diversion plea agreement containing "a clause . . . that said that if a rearrest happens, the prosecutor will be the one to determine whether or not probable cause was met [and the] agreement can be revoked" (9/5/23 Tr. 9).

After hearing argument, the trial court denied Hawkins's motion for specific performance (9/5/23 Tr. 22). The court found that the government was not "acting in bad faith by revoking" the DSA, because

"[a]t that point the representations from CSOSA [were] that [Hawkins] had not reported" to DVIP (*id.* 21). Rather, the court found, "the revocation of the [DSA] was done in good faith" (*id.* 22). The court pointed out, moreover, that based on "what [it] kn[e]w of [DVIP], at that point [Hawkins] could not have completed the 22 weeks of [DVIP] after July 24th when he had not reported" (*id.* 21). The court also found that the DSA was not "void ab initio" and "uph[eld] and agree[d] with the Government's request to revoke [it]" (*id.* 21-22). The DSA was "a contract that was signed by both sides," and Hawkins entered his plea "knowingly, intelligently, and voluntarily" (*id.* 22). Hawkins "had a chance to consult with [his] attorney . . . about all the terms of the [DSA] before the [c]ourt accepted it" (*id.*).

After the trial court denied the motion for specific performance, Hawkins orally moved to withdraw his plea on September 5, 2023 (9/5/23 Tr. 22). On September 18, 2023, Hawkins filed a written supplement to his plea-withdrawal motion (R. 22). Hawkins claimed that it would be "fair and just" to allow him "to withdraw his guilty plea and proceed to trial" because of "the lack of prejudice to the government" and his "assertion of legal innocence" (*id.*). Hawkins argued that the government

would not be prejudiced because "the alleged events occurred in February 2023; i.e., the case has not become stale" (*id.*). He also claimed that he "would be able [to] assert self-defense at trial and thus could still be legally innocent of simple assault even if he were proven to have struck the complainant" (*id.*). Finally, Hawkins stated that he had been "under significant stress at the time he entered a plea of guilty, having been ordered to stay away from and have no contact with the complainant, with whom [he] remains close" (*id.*). Hawkins "d[id] not predicate [his] motion on not having had the benefit of competent counsel" (*id.*). The government opposed Hawkins's motion, arguing that it was "woefully untimely," that his claim of legal innocence was unsupported "and belied by his earlier admissions" at the plea hearing, and that "he has been represented by competent counsel throughout" (R. 23).

The trial court denied Hawkins's plea-withdrawal motion at a hearing on October 23, 2023 (10/23/23 Tr. 7). The court found a lengthy delay of "months" in seeking to withdraw the plea, and only "after the Government indicated that he was not in compliance with" his DSA (*id.* 6). Hawkins's claim of legal innocence arose only "after, again, the Government's indication . . . that he was not in compliance" (*id.*). His

claim was also contradicted by his statements at the plea hearing, when he agreed that he assaulted the complainant "'without legal justification,' which indicated no self-defense" (*id.* 6-7). The court also found "no indication that he did not have competent counsel throughout the proceedings" (*id.* 5-6). Therefore, the court found that it would not be "fair and just" to allow Hawkins to withdraw his plea (*id.* 6).

On November 9, 2023, the trial court sentenced Hawkins to 90 days' incarceration, suspended in favor of one year of supervised probation, and ordered him to pay $50 to the Victims of Violent Crime Compensation Fund (R. 23). The court also ordered Hawkins, as conditions of his probation, to submit to drug and alcohol testing and treatment as ordered by CSOSA, enroll in DVIP, and not to engage in harassing, abusive, assaultive, threatening or stalking behavior towards A.A. (R. 24).

Hawkins timely noticed an appeal (R. 24).

SUMMARY OF ARGUMENT

The trial court did not err in denying Hawkins's motion for specific performance, because the government did not breach the DSA. To the contrary, Hawkins had agreed that "the determination of whether [he] ha[d] violated any [DSA] condition rested exclusively with the United

States"; and, as the trial court found, the government acted in good faith when it determined that Hawkins violated the DSA by failing to attend DVIP classes for three months. Hawkins's claim that the DSA's Revocation Provision was an "illusory" promise and thus invalid consideration falls flat, because he acknowledges the validity of the DSA and seeks to enforce it. Moreover, he also appears to concede that the provision would be valid if exercised by the government in good faith, but he does not challenge the trial court's finding that the government acted in good faith when it revoked the DSA—a finding amply supported by the record.

The trial court did not abuse its discretion in denying Hawkins's motion to withdraw his guilty plea. Hawkins sought to withdraw his plea only after the government revoked his DSA and the court denied his specific-performance motion. The court acted well within its discretion under the circumstances in weighing Hawkins's lengthy delay against him. The court also did not abuse its discretion in declining to give significant weight to Hawkins's belated self-defense claim, because he waited to raise it until after his DSA revoked and it contradicted his sworn statements at the plea hearing.

ARGUMENT

I. Hawkins Was Not Entitled to "Specific Performance" of the DSA.

A. Applicable Legal Principles and Standard of Review

"When a plea rests to any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Johnson v. United States*, 30 A.3d 783, 787 (D.C. 2011) (quoting *Santobello v. New York*, 404 U.S. 257, 262 (1971)). Although "[t]he government is held to a standard of strict compliance with its agreement[,] [t]he burden of showing that the government has broken its promise is on the defendant." *Id.* (internal quotation marks omitted). Because "a plea agreement is a contract[,] . . . courts will look to the principles of contract law to determine whether the plea agreement has been breached." *In re Robertson*, 19 A.3d 751, 761 (D.C. 2011). "Ordinarily, in considering such a claim, this [C]ourt construes the terms of the plea agreement de novo

and defers to the trial court's factual findings regarding the alleged breach." *Johnson*, 30 A.3d at 783.[2]

B. Discussion

The government revoked the DSA after determining that Hawkins violated the agreement by failing to comply with its requirements (7/25/23 Tr. 4-5). The revocation conformed to the express terms of the DSA, which vested in the government the exclusive right to determine if Hawkins violated it. As the trial court found, the government acted in good faith in revoking the DSA (9/5/23 Tr. 22).

Hawkins shows no reason that the revocation should be deemed invalid. *See Johnson*, 30 A.3d at 787 (defendant's burden to demonstrate government breach). Hawkins did not comply with his side of the DSA bargain. The DSA required Hawkins "to provide written proof of [DVIP] attendance on the scheduled review dates," and to "abide by all conditions

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[2] Whether this Court reviews the trial court's no-breach finding under a clear error or an abuse of discretion standard "is not decisive here." *Perrow v. United States*, 947 A.2d 54, 56 (D.C. 2008) (acknowledging that Court has employed both standards). "Either test . . . accords some recognition to the fact that the trial judge is in the best position to determine whether" a party breached the agreement. *Id.* (internal quotation marks omitted).

imposed by [CSOSA]" (R. 17). But Hawkins showed up empty-handed at his three-month review hearing because, although his CSOSA officer instructed him to attend DVIP virtually and "g[ave] him all the information that he needed," he "never reported for orientation" (7/25/23 Tr. 2). And when CSOSA tried to follow up with Hawkins "to figure out what was going on," he "never responded to any of [CSOSA's] requests to contact [them] back"—even as Hawkins's counsel averred that he had "never had any trouble reaching" Hawkins (*id.* 2-3).

Moreover, the DSA explicitly authorized the government to revoke if it "determine[d] that [Hawkins] ha[d] violated any condition of this agreement." (R. 17). The DSA further specified in the clearest terms that "[t]he determination of whether [Hawkins] ha[d] violated any of the [DSA] conditions *rest[ed] exclusively* with the United States" (R. 17 (emphasis added)). Here, the government determined that Hawkins violated the DSA and accordingly revoked it.

While Hawkins continues to dispute that he violated the agreement, that "determination . . . rest[ed] exclusively" with the government under the plain terms of his plea agreement. Hawkins has never claimed that he failed to understand the import of the Revocation

Provision when he entered the DSA. At the time, the DSA's clear benefit for Hawkins—an opportunity to have the entire case against him dismissed—outweighed the risk of revocation; otherwise, Hawkins would not have entered the agreement. Hawkins may now regret that he did not take advantage of his opportunity, and he may also believe that the government was too quick to find that he violated the agreement. But the risk that the government would take a stricter view of Hawkins's DSA obligations than Hawkins would is one that he voluntarily assumed. Indeed, the government explicitly bargained for and obtained the "exclusive" right to determine whether Hawkins violated the agreement. "The United States is entitled to the benefit of its bargain." *United States v. Cortez-Arias*, 425 F.3d 547, 548 (9th Cir. 2005).

To be sure, the government must strictly comply with the terms of a plea agreement. *Johnson*, 30 A.3d at 787. The government did so here. Based on the information provided by CSOSA, the government properly exercised its right to revoke the DSA. The government's adherence to the express terms of the DSA did not amount to a breach of the agreement. *See Green v. United States*, 377 A.2d 1132, 1135 (D.C. 1977) (government did not breach plea agreement "which explained that appellant would be

terminated from [diversion] program if he was rearrested and if *the prosecutor*, after a hearing, determined that there was probable cause for the arrest," because "[a]pellant fully understood this condition and agreed to it," and "[t]hus . . . received exactly what he bargained for" (emphasis added)).

Hawkins argues that the Revocation Provision was an "illusory" promise and not "valid consideration" for his guilty plea (Br. 40-43). As the trial court recognized, however, Hawkins's arguments are internally inconsistent; he cannot claim that the DSA was not supported by valid consideration from the government, and then "in the next breath" seek to enforce the agreement (9/5/23 Tr. 6 ("My point is in reading your pleading you want specific performance; however, in the next breath, you say that that his contract is void because there's this term—so is it void, or do you want specific performance?")).

In any event, Hawkins concedes that the government's "promise to evaluate in good faith" whether he had violated the agreement would not be an illusory promise and would be enforceable (Br. 43). He nonetheless argues that "[t]he offending provision of the DSA . . . said nothing of good faith" (*id.*). The lack of an explicit good-faith term is meaningless,

however, because "[l]ike all contracts," Hawkins's plea agreement "include[d] an implied obligation of good faith and fair dealing." *United States v. Jones*, 58 F.3d 688, 692 (D.C. Cir. 1995). "Every contract contains an implied covenant of good faith and fair dealing. This covenant precludes any party from doing anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Sundberg v. TTR Realty LLC*, 109 A.3d 1123, 1133 (D.C. 2015) (internal quotation marks omitted).[3] Hawkins suggests that the trial court could have "excised" the Revocation Provision (Br. 43), but the court properly declined his attempt to rewrite the DSA in his favor and give him a windfall for which he had not bargained. *Cf. United States v.*

[3] Hawkins argues that "contract language should not be interpreted to render the contract promise illusory or meaningless" (Br. 43). If the Revocation Provision would be illusory without a promise of good faith, then that doctrine weighs heavily in favor of interpreting the provision to include an implied covenant of good faith and fair dealing. That interpretation would "give effect" to "the intention of the parties" in entering the DSA, as evidenced by the terms of the agreement. *See American Bldg. Maintenance Co. v. L'Enfant Plaza Properties, Inc.*, 655 A.2d 858, 861 (D.C. 1995) ("The cardinal rule of the interpretation of contracts is to ascertain, if possible from the instrument itself, the intention of the parties, and to give effect to that intention."). Conversely, "excis[ing] the offending clause" completely (Br. 43) would profoundly alter the agreement.

Cook, 406 F.3d 485, 488 (7th Cir. 2005) (Posner, J.) ("[T]he defendant is seeking to avoid the limitations that contract law and criminal law alike place on efforts to obtain one-sided benefits by challenging a plea agreement.").

Here, as the trial court found, the government acted "in good faith" in revoking the DSA after determining that Hawkins had violated it (9/5/23 Tr. 22). Hawkins does not challenge the trial court's good-faith finding, which is well-supported by the record. When CSOSA reported that Hawkins had not attended any DVIP classes more than three months after pleading guilty and had not responded when CSOSA "attempt[ed] to figure out what was going on," even the trial court was apparently stunned (7/25/23 Tr. 2 ("Oh, my goodness gracious.")). Good faith did not require the government to give Hawkins a mulligan and let him take another shot at complying with the DSA.

Hawkins argues that, notwithstanding his failure to attend any DVIP classes or respond to CSOSA's "efforts . . . to figure out what was going on" (7/25/23 Tr. 2), he was complying with the DSA when the government revoked it (Br. 27-40). None of Hawkins's arguments undermines the trial court's finding, owed deference by this Court, that

the government acted in good faith in revoking the DSA. *See Johnson*, 30 A.3d at 783.[4]

Hawkins argues that he still could have completed DVIP in the remaining DSA period, and he faults the trial court for "finding" otherwise (Br. 30-37). The trial court expressed considerable skepticism that Hawkins would have been able to complete DVIP in time (9/5/23 Tr. 10-13). But, as Hawkins acknowledges (Br. 30 n.28), the court ultimately denied Hawkins's motion after finding that "revocation of the [DSA] was done in good faith" by the government (*id.* 22)—not because the court independently found that Hawkins violated the agreement.[5]

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[4] As noted, Hawkins does not appear to challenge the trial court's good-faith finding, so any such challenge would appear to be abandoned. *See, e.g., Comford v. United States*, 947 A.2d 1181, 1188 (D.C. 2008). Nevertheless, out of an abundance of caution, the government responds briefly to Hawkins's arguments that he in fact did not violate the DSA. None of his arguments is so compelling as to demonstrate that the government acted in bad faith in revoking the DSA.

[5] Hawkins discusses the doctrine of "anticipatory repudiation," which he suggests the trial court "appeared to rely on without naming" (Br. 35). As he acknowledges, however, the court did not discuss this doctrine at all, and Hawkins himself is the first to raise it. The court's point was not that Hawkins had manifested an intention not to comply with the DSA in the future; the government revoked the DSA after determining that Hawkins had already violated it. The court was simply pointing out that, by failing to attend DVIP classes for the first three months of the DSA, Hawkins

(continued . . .)

Hawkins's claim that there was a factual dispute over whether he received the email with the link to the online sessions (see Br. 13-14, 36) does not show that the government acted in bad faith. Even accepting as true Hawkins's claim about not receiving the link after speaking with the CSOSA officer, he does not dispute that he failed to attend DVIP for three months and that he "never responded to any" of CSOSA's attempts to contact him (7/27/23 Tr. 2-3). He even seems to have left his counsel in the dark. Although Hawkins claims that he "went in person" to CSOSA and called counsel while there, the only thing Hawkins apparently accomplished was to give counsel the "mistaken[] belie[f] that everything ha[d] been resolved" (*id.* 3). The government acted in good faith in holding Hawkins responsible for his noncompliance.

Hawkins claims that he did not violate the provisions cited by the government in revoking the DSA, requiring him to "abide by all conditions imposed by [CSOSA]" and "provide written proof of [DVIP] attendance on the scheduled review dates" (Br. 37-40). Hawkins does not appear to contest as a factual matter that he did not abide by conditions

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had not realistically left enough time to complete DVIP before the end of the DSA period.

imposed by CSOSA when he failed to report for DVIP orientation as instructed by CSOSA (7/25/23 Tr. 2, 4). Rather, he argues that the CSOSA provision cannot be interpreted to cover any conditions involving DVIP, because the DSA "contains [other] specific provisions relating to the DVIP," and "specific terms and exact terms are given greater weight than general language" in contract interpretation (Br. 38-39). But the General/Specific Canon only comes into play when contract provisions "stand irreconcilably in conflict." *Abdelrhman v. Ackerman*, 76 A.3d 883, 891 (D.C. 2013). Otherwise, "[w]here both the specific and general provisions may be given reasonable effect, both are to be retained." *Id.* There is no irreconcilable conflict between the requirement that Hawkins complete DVIP classes within nine months and the requirement that he abide by all conditions imposed by CSOSA, especially those meant to facilitate DVIP attendance.

Hawkins interprets the second provision as "only requiring him to bring proof of completion for any sessions he had completed by that time" (Br. 40). That is a strained interpretation of a provision requiring him to "provide written proof of *attendance* on the scheduled review date(s)," especially when the very next line specifies that he must "provide written

proof of *completion* of the indicated programs on the scheduled sentencing date" (R. 17 (emphasis added)). Fairly read, the provision required Hawkins to provide written proof of his DVIP attendance at his review hearing to demonstrate that he was complying with the DSA. He failed to do so.

In sum, the government did not breach the DSA when it revoked in good faith, and Hawkins was not entitled to specific performance.

II. The Trial Court Did Not Abuse Its Discretion in Denying Hawkins's Plea-Withdrawal Motion After His DSA Was Revoked.

A. Applicable Legal Principles and Standard of Review

Under Superior Court Criminal Rule 11, a defendant may withdraw a guilty plea before sentencing if "the defendant can show a fair and just reason for requesting the withdrawal." Super. Ct. Crim. R. 11(d)(2)(B). In evaluating a motion to withdraw a guilty plea under the "fair and just" standard, the trial court must consider: "(1) whether the defendant has asserted [his] legal innocence; (2) the length of the delay between entry of the guilty plea and the desire to withdraw it; and (3) whether the accused has had the full benefit of competent counsel at all relevant

times." *Springs v. United States*, 614 A.2d 1, 4 (D.C. 1992) (cleaned up). "None of these factors is controlling and the trial court must consider them cumulatively in the context of the individual case"; additionally, the "circumstances of the individual case may reveal other factors which will affect the calculation of the fair and just standard." *Id.*[6]

"The determination of whether to allow withdrawal of a guilty plea is left to the sound discretion of the trial court and reversal will be required only upon a showing of abuse of discretion." *Springs*, 614 A.2d at 4. "[R]eversal on appeal is 'uncommon.'" *Bennett*, 726 A.2d at 165 (quoting *United States v. Barker*, 514 F.2d 208, 219 (D.C. Cir. 1975)).

B. Discussion

Hawkins received the benefit of his bargain: an opportunity to have the entire case against him dismissed if he complied with the DSA. It was only after he failed to attend DVIP and the government revoked the agreement that Hawkins changed his mind and tried to withdraw his

[6] A defendant may also move to withdraw a guilty plea prior to sentencing based on the "separate and independent ground[]" that there was a "fatal defect in the proceeding at which the guilty plea was taken." *Bennett v. United States*, 726 A.2d 156, 165 (D.C. 1999). Hawkins does not allege any fatal defect in the plea proceedings.

plea. The trial court did not abuse its discretion in finding that his self-inflicted buyer's remorse was not a "fair and just reason" to permit withdrawal. On the contrary, the three factors this Court has expressly identified as bearing on whether plea withdrawal is "fair and just" all weighed against Hawkins.

First, although Hawkins belatedly asserted self-defense, "the mere assertion of a defense is insufficient to allow withdrawal of the plea." *White v. United States*, 863 A.2d 839, 842 (D.C. 2004). Rather, "[i]n deciding whether a credible claim of innocence has been made, such an assertion is to be weighed against the proffer made by the government, appellant's sworn adoption of the facts contained in that proffer, and appellant's own sworn admissions made at the time the pleas were entered." *Id.* (internal quotation marks omitted). The trial court did exactly that, comparing Hawkins's self-defense claim against his signed factual proffer, affirmed under oath at the plea hearing, that he assaulted A.A. "without legal justification" (10/23/23 Tr. 6-7). The court was "free to credit" Hawkins's "clear statement of culpability" during the plea "over [his later] denial." *Springs*, 614 A.2d at 7.

Second, this Court has "repeatedly held" that a delay of more than three weeks between a guilty plea and attempt to withdraw it weighs against a defendant, because "a swift change of heart is itself a strong indication that the plea was entered in haste and confusion." *White*, 863 A.2d at 844. Here, five months passed between Hawkins's plea (April 4, 2023) and his oral motion to withdraw it (September 5, 2023). That months-long delay weighed heavily against him.

Third, as the trial court found, there is "no indication that [Hawkins] did not have competent counsel throughout the proceedings" (10/23/23 Tr. 5-6). Because the relevant factors did not support plea withdrawal, the trial court properly denied the withdrawal motion.

Hawkins claims that the trial court made several errors in applying the relevant factors (Br. 45-48). His arguments lack merit.

Contrary to Hawkins's first argument (Br. 46-47), the trial court was not required to consider prejudice to the government before weighing Hawkins's months-long delay against him. *See Bennett*, 726 A.2d at 169-70 ("[W]e similarly conclude that the trial judge did not err in determining that a three-week delay, *even in the absence of prejudice to*

the government, did not weigh in favor of granting Bennett's motion to withdraw the plea." (emphasis added)).[7]

Hawkins next claims the trial court did not "consider whether [he] had put forward facts, which accepted as true, would make out a legally cognizable defense to the charge" (Br. 48). The court did not dispute, however, that Hawkins was "claiming innocence" (10/23/23 Tr. 5). Rather, the court did what it was entitled to do—weigh Hawkins's assertion against his "sworn admissions" at the plea hearing. *White*, 863 A.2d at 842.

Finally, Hawkins briefly asserts that the trial court "impermissibly combin[ed]" the "length of delay" and "legal innocence" factors (Br. 48). Nothing required the court to keep these factors hermetically sealed.

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[7] As Hawkins acknowledges (Br. 46 n.55), the government did identify some prejudice to its case if Hawkins were allowed to withdraw his plea after such a lengthy delay; the government specifically cited the potential impact on witness' memories (R. 23). In this domestic-violence case, the government would have relied heavily on the testimony of A.A. Before Hawkins entered the DSA, he had been ordered to stay away from and have no contact with A.A. The stay-away order was lifted as part of the DSA (R. 20), and Hawkins appears to have resumed "close" contact with the victim after his guilty plea (R. 22 at 4). The resumption of "close" relations between Hawkins and the victim can reasonably be expected to have exacerbated any naturally occurring memory loss about the assault.

Rather, the court followed this Court's guidance and "consider[ed] [the factors] cumulatively in the context of the individual case." *Springs*, 614 A.2d at 4. The court appropriately exercised its discretion in affording Hawkins's self-defense claim less weight because he advanced it so late in the game, months after he affirmed under oath that he assaulted A.A. without justification, and only after his DSA was revoked. *Cf. Long v. United States*, 312 A.3d 1247, 1271 (D.C. 2024) ("[O]n review for abuse of discretion, an argument that the trial court 'should have given more weight to factors favorable to the [defendant] is not a basis for reversal.'") (quoting *Sharps v. United States*, 246 A.3d 1141, 1159 n.90 (D.C. 2021)).

CONCLUSION

WHEREFORE, the government respectfully submits that the judgment of the Superior Court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Adrian Madsen, Esq., on this 5th day of June, 2024.

/s/
MARK HOBEL
Assistant United States Attorney