

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO
CASE NOS. 95-CR-696 & 96-CR-599

STATE OF OHIO,)

Plaintiff)

vs.)

JUDGMENT ENTRY

ANTHONY CIOFFI,)

Defendant)

This matter is before the Court on Defendant's Motion to Set Aside Judgment of Conviction and to Allow Defendant to Withdraw Pleas of Guilty.

Hearing was had to Court wherein counsel for Defendant and for the State of Ohio presented testimony and both sides have presented written briefs.

On December 6, 1996, the Defendant entered pleas of guilty before this Court under Case No. 95-CR-696 originally assigned to this Court and Case No. 96-CR-599 originally assigned to Judge Mitchell Shaker of this Court.

The main thrust of the Defendant's motion is based upon the admitted fact that his attorney was not fully prepared to try Case No. 96-CR-599 which was set at a later date. Also that the records form Children Services were not reviewed

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before entering the plea. The records were before the Court the morning of trial, and the process of evaluation was about to start when counsel for the Defendant was summoned from chambers by the Defendant.

After sentencing by approximately four years, Defendant through counsel has obtained information that may have been used as exculpatory to Defendant's benefit if the matters had been tried.

The issue before the Court is to determine whether Defendant knowingly, voluntarily and intelligently entered into a plea agreement. "Manifest injustice is determined by examining the totality of the circumstances surrounding the guilty plea." State v. Padgett (July 1, 1993) Cuyahoga App.No. 64846, unreported, page 1.

It is apparent from the record that Defendant's counsel was present at the trial called before this Court and that he was ready to proceed. Had the conference with the judge, prosecutor and counsel for the Defendant not been interrupted by Defendant's summons of counsel, the information contained in the Children Services file would have been provided to counsel, at least those portions that may have been exculpatory.

As it played out, that was cut short by Defendant's

action.

It is quite apparent that counsel for Defendant knew he was not prepared for the second case that would be tried shortly after the conclusion of the first, but this Court finds that has no bearing on the present issue because counsel freely acknowledged this at the time of negotiations and at the present hearing. He informed his client of the fact.

The Defendant was apprehensive of the fact another trial with similar issues had been concluded a short time before his date of trial, and he was apparently aware of what he may have considered an extreme sentence imposed by the judge who was to hear his second case on similar charges.

When Defendant asked his counsel to see if the negotiated plea offer was still available, counsel asked Defendant to confer with his mother and father, who were present. The dialogue between counsel and Defendant and his parents centered on being assured the sentence agreed upon would be followed by the judge.

One of the Defendant's family suggested the trial go forward, to which Defendant replied, "It's not you, it's me!"

Defendant's counsel left the family and Defendant to discuss Defendant's options. Upon returning, the dialogue according to the testimony of Defendant's counsel at hearing,

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was that he assured them the Court would accept the recommendation as to sentencing. The testimony from Defendant's counsel's deposition is as follows:

A. Tony said 'Let's get it done.' I said 'Are you sure?' He said, 'what difference would it make to win one case, but don't win the other.' He said, 'they are going to take me no matter what I do.'

Q. How was he basing that analysis?

A. I really don't know. He knew what his criminal history is.

Q. He has an offense out there dealing with having sex with, like, a 16 or 17 year old.

A. That's it. It's not a significant history I told him. He kept saying, 'This is Trumbull County.' I said, 'Tony, we have discussed all that.' Now, I am telling him, 'Don't plead, okay?' I want you to know that I am telling him not to plead, this is trial day, this is like anxiety at this time. He said, 'I want to get rid of them all.'

It is apparent that Defendant knew the possibility existed that a potentially viable defense could be constructed, but his decision was made to get a sure commitment and counsel at Defendant's insistence obtained the commitment.

This Court finds no basis from the totality of circumstances presented to find manifest injustice occurred. Defendant's Motion is denied.

3/7/02

DATE

John M. Stuard

JUDGE JOHN M. STUARD

TO THE CLERK OF COURTS: YOU ARE ORDERED TO SERVE COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD OR UPON THE PARTIES WHO ARE UNREPRESENTED FORTH WITH BY ORDINARY MAIL.

John M. Stuard

JUDGE

AT THE EVIDENTIARY hearing my attorney have brought up alot of important issues that the Judge didnt acknowledge in his findings. Judge STUART based his findings ON ATTORNEY ZENAS LIES.

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