# LORAIN COUNTY COURT OF COMMON PLEAS
## LORAIN COUNTY, OHIO
## JOURNAL ENTRY
## Hon. D. Chris Cook, Judge

17CR096381
17CR096095
17CR095926
17CR095819

Date May 18, 2018 Case No. 17CR095455

STATE OF OHIO
Plaintiff

Christopher Pierre
Plaintiff's Attorney

VS

NICHOLAS BLAND
Defendant

Anthony Manning
Defendant's Attorney

This matter is before the Court on Defendant's Motion For Specific Performance of Plea Agreement, filed May 9, 2018; the State responded in opposition on May 17, 2018.

Oral hearing had on May 18, 2018.

**The Motion is not well-taken and DENIED.**

The Defendant's guilty pleas in these cases are hereby *sua sponte* vacated as they were taken in contravention of Crim. R 11. The Defendant's previously entered pleas of "Not Guilty" are restored and the matters are to be set for final pre-trial forthwith.

See Judgment Entry.

IT IS SO ORDERED.

JUDGE D. Chris Cook

cc: Pierre
Manning

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### INTRODUCTION

This matter is before the Court on Defendant's Motion For Specific Performance of Plea Agreement, filed May 9, 2018; the State responded in opposition on May 17, 2018.

Oral hearing had on May 18, 2018.

### PROCEEDURAL HISTORY

The following activity/dates are significant - the Defendant plead guilty to all five (5) cases on November 22, 2017; filed a Motion to Withdraw [those] Pleas on December 6, 2017; moved to withdraw that Motion on January 26, 2018; and, the (prior) trial court, noting some irregularities in the Defendant's plea soliloquy, considered vacating the pleas *sua sponte* over Defendant's objection. In response to a Motion For Recusal filed by the State filed on January 26, 2018, the prior judge (Honorable Raymond J. Ewers – "Judge Ewers") recused himself and the matter was transferred to this Court for further disposition.

On April 19, 2018, this Court granted Defendant's Motion to Withdraw Previously filed Motion to Withdraw Pleas, which place the Defendant in the position of having plead guilty to all five (5) cases, without yet being sentenced.

## ANALYSIS

The gravamen of the Defendant's argument requesting specific performance and the imposition a nine-year prison sentence is 1) the defective plea can be remedied by a new plea with the same, nine-year sentence "agreement;" and 2) since there was an agreement and promise by Judge Ewers that the Defendant would get nine-years, that sentence must be enforced herein.

I disagree.

First, there is a legitimate dispute about whether there actually was a nine-year "agreed" sentence at all. The Defendant acknowledges the inconsistency on the plea sheets in this regard and concedes that the State never agreed to the nine-years. Instead of an agreed sentence, what the Defendant is really arguing is that Judge Ewers unilaterally promised a certain sentence which induced the Defendant to plea. According to the Defendant, the fact that this promise was made without the agreement of the State, hearing from the victims, or considering Marsy's Law is of no accord.

In support of this proposition, the Defendant cites the Court to a number of cases dealing with the enforcement of promised sentences. These cases, however, are all inapposite as 1) the pleas in them were taken in conformity with Crim. R 11and therefore, were not void *ab initio*; and 2) the sentences were actually agreed-to by the parties and court.

Here, the pleas themselves were defective and void for multiple reasons. First, the Defendant was not advised of all of his constitutional rights; second, the Defendant never actually entered a guilty plea to any of the charges; third, there is significant doubt as to whether there was an agreed sentence to begin with; and fourth, even if there was a valid plea and representation by Judge Ewers as to the sentence, this Court cannot enforce a plea that excluded input from the State of Ohio and the victims.

The seminal case on the duties of a trial court when accepting a felony plea of guilty is posited by the matter *State v. Veney,* 120 Ohio St.3d 176, 2008-Ohio-5200. In *Veney,* relying upon its rationale enunciated in *State v. Caudill* (1976), 48 Ohio St.2d 342, 346, and its progeny, the Ohio Supreme Court stated,

> We hold that a trial court must strictly comply with Crim. R. 11(C)(2)(c) and orally advise a defendant before accepting a felony plea that the plea waives (1) the right to a jury trial, (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self-

incrimination. When a trial court fails to strictly comply with this duty, **the defendant's plea is invalid.** *Id.* at ¶ 31. (Emphasis added.)

As noted above and conceded by the Defendant, at the time of the pleas Judge Ewers did not orally advise the Defendant of the privilege against compulsory self-incrimination. Accordingly, pursuant to *Caudill* and its progeny, the Defendant's pleas **are invalid.**

Moreover, the transcript of the plea hearing lacks any indication that the Defendant ever actually entered a guilty plea to any of the charges.

In a recent decision, the Ninth District Court of Appeals vacated a plea where the defendant never entered a plea of guilty. The Court stated, "Because [the defendant] never entered a guilty plea, the trial court had no plea before it to 'accept' and was without any authority to enter the plea." *State v. Kubisen,* 9th Dist. Lorain, No. 16CA011065, 2017-Ohio-8781, ¶ 8.

The Court also determined that the fact the defendant's attorney entered the plea of guilty on the defendant's behalf and that the defendant signed plea sheets pleading guilty ". . . is not a substitute for [the defendant] himself entering his guilty plea in open court . . ." *Id.* at ¶ 9.

Further, as noted *supra,* there is a serious question as to whether there was an actual plea agreement in the first place. While there is some reference during the plea to a nine-year sentence, Judge Ewers never actually promised a nine-year sentence. Moreover, the plea sheets are conflicting and State certainly never agreed to a nine-year sentence.

Finally, even if the pleas were constitutionally, statutorily, and procedurally sound, and Judge Ewers specifically promised a certain sentence (which he did not), the fact that the State and victims were excluded from input into the sentence and deprived of their right to allocution further renders the pleas invalid. See: *State v. Heinz,* 146 Ohio St.3d 314, 2016-Ohio-2814.

Given the forgoing irregularities attendant to the Defendant's plea taken on November 22, 2017, this Court believes that the pleas are constitutionally, statutorily, and procedurally infirm and must be vacated over the Defendant's objections.

This Court has the authority to *sua sponte* vacate these pleas. See: *State v. Castro,* 8th Dist. Cuyahoga, No.100379, 2014-Ohio-2398, for the proposition that a trial court may *sua sponte* vacate an invalid plea. And, from *Boykin v. Alabama* (1969), 395 U.S. 238, 242-243 and its progeny, the United States Supreme Court, Ohio Supreme Court, and

numerous intermediary courts have vacated constitutionally defective pleas. See also: *Caudill, supra,* for the proposition that the plea is "invalid."

Because the Defendant's pleas were constitutionally, statutorily, and procedurally infirm and the Defendant never actually entered any pleas of guilty, the pleas are invalid and hereby held for naught.

Given this disposition, the Court need not address the enforceability of the putative nine-year sentence as that issue is moot given the defective pleas.

IT IS SO ORDERED.

**JUDGE** D. Chris Cook

cc: Pierre, Asst. Pros. Atty.
Manning, Esq.