

**ARIZONA SUPERIOR COURT  
GILA COUNTY**

Date: 01/15/2015

PETER J. CAHILL, JUDGE  
Division One

C. DURNAN  
Judicial Assistant

STATE OF ARIZONA,  <p style="text-align:right">Plaintiff,</p> v.  CLAYTON ROBERT SOPELAND,  <p style="text-align:right">Defendant.</p>	CR 201400104 – VICTIM CASE
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**ORDER DENYING MOTION**

*For Permission to Withdraw from Plea Bargain*

Defendant seeks permission to withdraw from his already agreed-to and entered plea of guilty. Plaintiff objects. The plea of guilty to a single, lesser charge (*with the considerably more serious charges to be dropped*) was entered after a standard, bench-conducted change of plea colloquy intended to give the court assurance that Defendant understood what he was doing, including questioning focused on whether he knew his decision to plead was “final.” There is some significance to the fact that the terms of the plea agreement itself have not yet been found to be appropriate, that is the agreement has not been “accepted.”

In Arizona, a motion to withdraw a plea of guilty is addressed to the sound discretion of the trial court. *State v. City Court of City of Tucson*, 131 Ariz. 236, 237, 640 P.2d 167, 168 (1981)(quoting, *State v. Corvelo*, 91 Ariz. 52, 369 P.2d 903 (1962)). The court recognizes that its discretion “should be liberally exercised in favor of permitting the withdrawal.” And, where there is any showing that justice will be served by permitting the withdrawal, the Supreme Court has directed that “any doubt should be resolved in favor of withdrawing the plea.” *Corvelo*, 91 Ariz. at 54, 369 P.2d at 905 (citing, *Krolage v. People*, 224 Ill. 456, 79 N.E. 570 (1906)).

Even if Defendant is not required to meet the burden suggested by Plaintiff, that he prove “manifest injustice” before being allowed to unilaterally decide to withdraw from a mutually agreed-upon plea-bargain, surely he must be required to have some good reason to justify the court exercising discretion in his favor. Otherwise, litigants could withdraw from agreed upon agreements upon a mere whim—no discretion would be involved at all.

Requiring “a good reason” is good policy especially where—as here—the opposing party justifiably relied upon Defendant’s agreement, his counsel’s agreement, his plea of guilty and their stated intentions to abide by the plea agreement. This is especially the case where, after careful and formal inquiry by the court, the agreement was found to have been “voluntarily, knowingly and intelligently” entered into. The State insists (*with complete justification*) that it has relied on this agreement to its detriment and that it would be prejudiced if, for merely the reasons given, Defendant is allowed to withdraw his plea.

As some justification for his request to be allowed to withdraw from the agreement, Defendant points out that the State, the Victim, the Probation Officer (*in her pre-sentence report*) and even the court have all construed his plea as his tacit acknowledgment of responsibility for participation in something more than a single theft (the crime pled to) but instead an admission to a scheme. For example, the prosecutor suggested a 60-day jail term for Defendant because he “perpetrated” a “lengthy, deliberate fraud.” Thus, Defendant has good reason to be concerned that others, most especially both the State and the court see his plea as an acknowledgment that this more than a single criminal act, a theft.

However, Defendant’s concerns can be addressed short of permitting him to withdraw his guilty plea. In fact, the prosecutor has since withdrawn his recommendation for jail, something the court understands to imply a recommendation by the State against putting Defendant in jail. Accordingly,

**IT IS THEREFORE ORDERED** that Defendant’s Motion to Withdraw Plea of Guilty is **DENIED**.

cc:  
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