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Attorney for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF [COUNTY]

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff, vs. [DEFENDANT'S NAME] Defendant	**CASE NO. [CASE NUMBER]** **MOTION TO WITHDRAW PLEA (Penal Code section 1018); DECLARATION OF** [Attorney Name] **Date:** **Time:** **Dept:** **Current Trial Date:** **Case Filed:**

PLEASE TAKE NOTICE that on the above date and time and in the above-designated department, [NAME OF DEFENDANT] ("Defendant") will move this court to withdraw his plea of guilty to the offenses charged in the complaint, and enter a plea of not guilty to those offenses.

The motion will be made on the following grounds:

1. The defendant is innocent of the charges in the instant case.

2. At the time the defendant entered his guilty plea he was of the misunderstanding that evidence of his wife being a former victim of molest and her obsession with molestation could not be introduced as evidence at trial in his defense.

3. At the time of the entry of the guilty plea, the

defendant lacked the capacity to enter his plea freely and voluntarily due to a mental defect in his ability to process information.

4. The defendant's previous attorney was ineffective in that

he:

a. At the time of the guilty plea the defendant had not been advised by his attorney that he may be subject to prosecution as a sexually violent predator after completing the 25 year sentence that was agreed to in the plea bargain while telling the defendant that if he did not accept the plea agreement, he would get more prison time. This failure is ineffective assistance of counsel.

b. Prior to the entry of the guilty plea, the defendant

asked his attorney about getting a second opinion from another attorney and was told that "no other attorney could win this case."

c. Failed to get the CPS files and reports regarding the allegations from the complaining witnesses in the instant case to determine the source of the current false allegations was, in fact, Linda Walton, the defendant's wife.

d. Failed to obtain therapist notes regarding the complaining witnesses in the instant case to determine the source of the current false allegations was Linda.

e. Failed to conduct a thorough investigation into previously false allegations by Linda Walton, the defendant's wife, that the defendant molested all of the other children in their family to determine the source of the current false accusations was

f. Failed to conduct a thorough interview with the defendant's son, Matthew, regarding previous allegations made by Linda Walton that the defendant was molesting him. Matthew denies any molest and indicates that Linda Walton was pushing the idea on him.

g. Failed to conduct a thorough interview with the defendant's daughter, Joan, regarding previous allegations by Linda Walton that the defendant was molesting her. Joan

denies any molest and indicates that Linda Walton was pushing the idea on her.

h. Failed to conduct any investigation into false allegations that the defendant molested his daughter, April. The source of this allegations was Linda Walton and not April.

i. Failed to obtain police reports and discovery materials regarding alleged sexual misconduct by the defendant with an individual know as Tina Marie.

i. Failed to obtain all discovery from the district attorney regarding any evidence to be used against the defendant pursuant to Evidence Code section 1108.

5. The defendant's previous legal representation fell below standard of practice in that defendant's previous attorney:

a. Believed that the defendant's wife's obsession with molestation could not be made part of the defense.

b. Focused the investigation solely on where the complaining witnesses denied the instant allegations and did not investigate the source of other false allegations of molestation.

c. Believed that the denials of molestation by the defendant's other children could be used against the defendant in the prosecution's case in chief, when in fact, they are a defense to the instant charges and are not Evidence Code section 1108 evidence.

d. Failed to get discovery on the previous false allegations of molest and other evidence of prior bad acts pursuant to Evidence Code section 1108.

e. Failed to advise the defendant that after the 25 year sentence he was pleading to, there was the possibility that he could still be prosecuted as a sexually violent predator.

f. Advised the defendant that "no other attorney could win this case" thus, eliminating the chance for the defendant to obtain a second opinion.

g. Plead a client, who had passed a polygraph examination and continually maintained his innocence, to a 25 year sentence.

h. Mis-communicated the state of the law to the defendant in such a way that the defendant believed he had no defense to the charges and that after completion of the 25 year sentence there would be no further possibility of prosecution.

Dated: March 16, 2022

____

Patrick Clancy
Attorney for Defendant

I.

MEMORANDUM OF POINTS AND AUTHORITIES

I

A. MISTAKE OR IGNORANCE OF LAW IS GOOD CAUSE

First, the California Supreme Court has directed the trial courts to liberally construe Penal Code Section 1018.

"Trial courts are expressly directed to give a liberal construction to the provisions of section 1018 in the interest of promoting justice." *People vs. Superior Court* (1974) 11 C3d 793, 797, 114 Cal.Rptr. 596, 598.

In the case of People vs. Superior Court, supra, judgment was reversed because the defendant's plea was the result of mistake and ignorance of the law. The court stated:

"A trial court, nevertheless, in the exercise of its discretion directed to the promotion of justice may take into consideration such material matters with which an accused was confronted and as to which he made erroneous assumptions when he entered a guilty plea." *People vs. Superior Court* (1974) 11 C3d 793, 798, 114 Cal.Rptr. 596, 598.

The court went on to restate the general rule about motions to withdraw a plea: "As a general rule, a plea of guilty may be withdrawn `for mistake, ignorance, or inadvertence or any other factor overreaching defendant's free and clear judgment.' *People vs. Butler* (1945) 70 CA2d 553, 561, 161 P.2d 401." *People vs. Superior Court* (1974) 11 C3d 793, 798, 114 Cal.Rptr. 596, 598.

B. ABUSE OF DISCRETION

In the case of *People vs. Tabucchi,* 64 CA3d 245, 134 Cal.Rptr. 245, the court held that it was an abuse of discretion to deny a defendant's motion to withdraw a plea which was based upon a mistake of law. "Apart from the constitutional defect of taking of the plea, it is apparent that the trial court abused its discretion under Penal Code section 1018 in refusing to allow appellant to withdraw his plea."

In determining whether a trial court has abused its discretion in denying a prejudgment motion to withdraw a guilty plea under *Penal Code* section 1018, the test is whether after a consideration of all of the relevant factors, good cause has been shown and whether justice would be furthered by granting the motion. (*People vs. Superior Court (Giron)* (1974) 11 Cal.3d 793, 798, 114 Cal.Rptr. 596, 523 P.2d 636.). Generally, a plea of guilty may be withdrawn for mistake, ignorance, inadvertence or any other factor overriding a defendant's free and clear judgment providing the good cause is shown by clear and convincing evidence. (*People vs. Cruz* (1974) 12 Cal.3d 562, 566, 116 Cal.Rptr. 242, 526 P.2d 250.)

Here, defendant advised the court that when he entered his plea he was under the impression that he would be eligible for parole after having served one-third of the minimum term of five years or twenty months. Nothing in the record by inference contradicts this assertion of fact. Since it has been a matter of common knowledge for many years that in the usual case, assuming good behavior in prison, a defendant will be eligible for parole after serving one-third of the minimum term of punishment, appellant's assertion that he was under such an impression when he entered his plea is plausible on its face.

Trial courts are required to give a liberal construction to the provisions of Penal Code section 1018 in the interests of promoting justice. (*People vs. Superior Court (Giron), supra*, 11 Cal.3d at 796-797, 114 Cal.Rptr. 596, 523 P.2d 636.) Because the record does not reflect that appellant was told that he would have to serve three years in the state prison before he was eligible for parole, but to the contrary shows that he entered his plea on the mistaken belief that he would be eligible for parole in twenty months, appellant has sustained his burden of showing good cause. Thus, we have no alternative but to hold that the trial court abused its discretion in now allowing appellant to withdraw his plea of guilty." *People vs. Tabucci* (1976) 64 CA3d 133, 144-145, 134 Cal.Rptr. 245, 251.

C. ARGUMENT

Based on the discussion in the hallway with defense attorney, the defendant was under the mistaken impression or belief that if convicted in __________ the court would have no option but to send him to prison. That in order to avoid prison he had no choice but to enter a plea in _____________ and a plea in __________.

II

A. COURT HAS DISCRETIONARY POWER TO ALLOW WITHDRAWAL OF PLEA WHEN DEFENDANT ENTERED PLEA FOR EXPEDIENCY

In the case of *People vs. Clark* (1968) 264 CA2d 44, 70 Cal.Rptr. 324, the court held that when a defendant maintains his innocence, the court has the power to withdraw the defendant's plea of guilty.

> To the offence charged in Count II appellants originally entered pleas of guilty in the municipal court, but on their subsequent appearance in the superior court their pleas were in effect vacated by Judge Alarcon. Appellants contend that, absent motions from them for a substitution of pleas, Judge Alarcon lacked authority to set aside their pleas on his own motion. We reject this argument for two reasons:
>
> (1) Every court has inherent power to prevent abuse of its process and to conform its procedures to the fundamentals of due process. The combined acceptance by the court of a guilty plea in the face of a defendant's suggestion that in fact he is not guilty, runs contrary to all basic conceptions of justice under law. Whenever the superior court has reason to suspect that a defendant has pleaded guilty to a felony as a matter of expediency we think the court has inherent power to set aside the plea on its own initiative prior to the entry of judgment. In our view double jeopardy no more follows the vacation of an erroneously accepted plea than it does an instance of mistaken identity, incompetency, corruption, or mistrial.
>
> (2) In doing what it did the court acted in substantial compliance with the provisions of section 1018 of the Penal Code: Unless otherwise provided by law every plea must be put in by the defendant himself in open court. * * * On application of the defendant any time before judgment the court may, and in the case of a defendant who appeared without counsel at the time of the plea the court must, for good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted. * * * This section shall be liberally construed to effect these objects and to promote justice.
>
> In this section a basic characteristic of criminal procedure appears: the defendant himself, not counsel, is responsible for the entry of his plea. From this it follows that the defendant himself is the most appropriate person to apply for permission to withdraw a plea and put in another. In view of this emphasis in criminal pleading

on the personal responsibility of the defendant, it seems to us that when appellants told Judge Alarcon they had no intention to cheat anybody, in effect they notified him they did not consider themselves guilty of the charge to which they had previously entered pleas of guilty. We think Judge Alarcon was justified in interpreting their statements in open court as implicit requests to withdraw their pleas of guilty and enter pleas of not guilty, in ordering the entry of not guilty pleas Judge Alarcon in effect acted favorably on their requests.

The appropriateness of the court ruling was demonstrated by later events. On the filing of the information appellant pleaded not guilty to all charges, plea which they thereafter maintained and on which they stood trial. If in fact appellants thought of themselves as guilty and genuinely desired to enter guilty please, they could have done so any time before trial. Normally, a prosecutor initially willing to accept a plea of guilty to one count will display the same willingness at a later stage of the proceedings. The plea of guilty, however, involves an admission which each element of the offense charged, an admission which appellants were apparently not willing to make. When they stood trial on the merits appellants clearly displayed a continued belief in their own innocence, a belief wholly inconsistent with their initial entry of pleas of guilty to one count. Indeed, had the court failed to take steps to vacate the original pleas, appellants might later have argued with some justification that the court neglected its basic duty to protect the rights of the accused at all stages of the prosecution."

People vs. Clark (1968) 264 CA2d 44, 47-49, 70 Cal.Rptr. 324, 325-326.

B. ARGUMENT

As indicated in the transcript when asked about a factual basis the defendant said he was pleading guilty to avoid prison. Clearly his belief at the time was that his options were limited. He did not realize he had the option to apply for probation should a jury convict him. There was no discussion regarding his changes for probation in __________ if convicted given the minimal touching over four years alleged by the complainant.

III

A. POPE ERROR - INEFFECTIVE ASSISTANCE OF COUNSEL AT TIME OF PLEA - GROUNDS FOR WITHDRAWAL OF PLEA

In the case of *People vs. McCary* (1985) 166 CA3d 1, 212 Cal.Rptr. 114, the court ruled that ineffective assistance of counsel was grounds for withdrawal of a plea. The court stated:

"We begin with the established principle that a defendant is `entitled to representation at every step of the proceedings, including the aid of counsel to enable an intelligent decision as to his plea.' (*People vs. Mattson* (1959) 51 Cal.2d 777, 790, fn. 5, 336 P.2d 937, see also People vs. Chesser (1947) 29 Cal.2d 815, 820-821, 178 P.2d 761; People vs. Avilez (1948) 86 Cal.App.2d 289, 296, 194 P.2d 829.) Where a defendant has been denied the effective assistance of counsel in entering a plea of guilty, he is entitled to reversal and an opportunity to withdraw his plea if he so desires. (*People vs. Chesser*, supra, 29 Cal.2d at p. 825, 178 P.2d 761; *People vs. Avilez*, supra, 86 Cal.App.2d at p. 299, 194 P.2d 829.)" People vs. McCary (1985) 166 CA3d 1, 8, 212 Cal.Rptr. 114, 117.

In the case of *People vs. McCary, supra*, the court laid out counsel's duty in the entry of a guilty or no contest plea.

"With respect to counsel's duties in the entry of a guilty plea, `It is his [counsel's] task to investigate carefully all defenses of fact and of law that may be available to the defendant and confer with him about them before he permits his client to foreclose all possibility of defense and submit to conviction without a hearing by pleading guilty.' (People vs. Mattson, supra, 51 Cal.2d at p. 791, 336 P.2d 937, quoting People vs. Avilez, supra, 86 Cal.App.3d at p. 296, 194 P.2d 829.) Counsel `is expected...to possess knowledge of those plain and elementary principles of law which are commonly known by well informed attorneys, and to discover those additional rules of law which, although not commonly known, may readily be found by standard research techniques.' (Smith vs. Lewis (1975) 13 Cal.3d 349, 358, 118 Cal.Rptr. 621, 530 P.2d 589.)" People vs. McCary (1985) 166 CA3d 1, 9, 212 Cal.Rptr. 114, 117-118.

B. TWO TYPES OF INEFFECTIVE ASSISTANCE OF COUNSEL

In the case of *People vs. Stanworth* (1974) 11 C3d 588, 613, 114 Cal.Rptr. 272, 267, the court stated that there are two types of ineffective assistance of counsel in failing to assert a defense. First, where counsel did know the facts but did not know the law. Secondly, where counsel knew the law but did not know the facts. Where the facts establish that counsel was

ignorant of the facts or the law and it appears that such ignorance caused the withdrawal of a crucial defense, his client is entitled to relief.

C. FIRST LEVEL TEST

The test for showing of good cause is clear and convincing evidence. *People vs. Fratianno* (1970) 6 CA3d 211, 221-222, 85 Cal.Rptr. 755, People vs. Cruz (1974) 12 C3d 562, 567, 116 Cal.Rptr. 242, 244.

D. STANDARD WHERE UNDERLYING GROUNDS ARE INEFFECTIVE ASSISTANCE OF COUNSEL IS NOT CLEAR AND CONVINCING EVIDENCE BUT POPE STANDARD

If one of the grounds for withdrawal of the plea is ineffective assistance of counsel, a two level analysis must occur. First, the defense must show by clear and convincing evidence that the attorney either did not know the facts or did not know the law.

However, the defense does not have to prove by clear and convincing evidence that the motion to suppress a critical statement would have been granted or that a defense of diminished capacity, etc. would have prevailed by clear and convincing evidence. In the case *of People vs. McCary* (1985) 166 CA3d 1, 212 Cal.Rptr. 114, the court set forth the test of the underlying grounds when a plea has been entered.

"This does not end the inquiry, for Pope additionally requires defendant to establish that counsel's acts or omissions resulted in the withdrawal of potentially meritorious defense. (People vs. Pope, supra, 23 Cal.3d at p. 425, 152 Cal.Rptr. 732, 590 P.2d 859.) Where counsel's failing does not result in the withdrawal of a defense, ineffectiveness may be proven by establishing `that it is reasonably probable a determination more favorable to the defendant would have resulted in the absence of counsel's failings.' (*People vs. Fosselman* (1983) 33 Cal.3d 572, 584, 189 Cal.Rptr. 855, 659 P.2d 1144.)

Neither standard as worded above fits squarely within the present case, for those cases resulted from trials, where it is possible to examine the record and ascertain whether counsel's

failings had a prejudicial effect on the fact-finding process. In this case, defendant's guilt was determined by his own pleas, and whether he would have pled differently in the absence of counsel's failings is more difficult to ascertain.

However, the standards expressed in *Pope and Fosselman* are not exhaustive. As the court in Fosselman points out, the basis inquiry in all cases is whether defendant was prejudiced by the conduct of his attorney. (*Fosselman, supra*, 33 Cal.3d at p. 584, 189 Cal.Rptr. 855, 659 P.2d 1144.) In the present case, prejudice can be measured by determining whether counsel's acts or omissions adversely affected defendant's ability to knowingly, intelligently and voluntarily decide to enter a plea of guilty. In this respect, the standard applicable to the withdrawal of a guilty plea is helpful. In other words, if, as a result of counsel's acts or omissions, it fairly appears defendant entered his plea under the influence of `mistake, ignorance or inadvertence or any other factor overreaching defendant's free and clear judgment' such as would justify the withdrawal of his plea, he was ineffectively represented by counsel."

"Generally, the Sixth Amendment and Article I, Section 15 require counsel's diligence and active participation in the full and effective preparation of his client's case." (Citations omitted). Criminal defense attorneys have a `duty to investigate carefully all defenses of fact and law that may be available to the defendant...' (Citation omitted). This obligation includes conferring with the client `without defense delay and as often as necessary to elicit matters of defense...'" *People vs. Pope* (1979) 23 C3d 472, 152 Cal.Rptr. 732.

E. ARGUMENT

The defendant's declaration asks this court to find that he had not been given effective assistance of counsel. His attorney did not know the facts of the defendant's defense.
Before the trial there had been only two meetings with Mr. _____. No discussion of the defense took place at either meeting - financing the defense was the agenda for both meetings.
On the day of trial Mr. _____ asked to continue the _____________ trial to trail the __________ case. The motion was denied and the trial was set to commence at 1:30 p.m. that day.

There was no interview with Mr. _____ before the 1:30 p.m. court appearance, nor was there any interview after the first day of trial, nor after the second day of trial. On the third day, before the trial commenced, defense counsel took the defendant into the hallway and presented the offer. By failing to explore the defense with the defendant, counsel was not in a position to effectively evaluate the strength of the state's case after rebuttal by defense evidence. Failing to meet and confer with the defendant deprived defense counsel of potentially meritorious defense witnesses.

As recognized in Pope a substantial portion of the obligation counsel owes to a defendant is not directly connected with the trial but involves investigation and advice at pretrial and post trial stages. Pretrial advice not grounded on an adequate database does not comply with constitutional mandates.

The defendant did not have the benefit of informed advice on the __________ case. His decision to plead in __________ and, therefore in _____________, was made without the benefit of reasonably competent assistance of an attorney acting as his diligent and conscientious advocate. Pleading to the misdemeanor in _____________ made sense if he was pleading to two felonies in __________. If the decision to plead in __________ was based on inadequate advice then so was the plea in _____________.

IV

A. FAILURE OF COUNSEL TO PROPERLY ADVISE REGARDING P. C. SECTION 290 REGISTRATION

In the case of *In Re Birch* (1973) 10 C3d 314, 110 Cal.Rptr. 212, the Supreme Court held that a guilty plea to Penal Code Section 647(a) had to be reversed because the defendant was not advised of the requirement that he register as a sex offender pursuant to Penal Code Section 290. The court stated: "Although we have not as yet had occasion to explore the full extent of this responsibility under all circumstances, we conclude that in the instant case, in view of the unusual and onerous nature of the sex registration requirement that follows inexorably from a conviction under section 647, subdivision (a), the trial court's duty surely included an obligation to advise

1 petitioner of his sanction prior to accepting his guilty plea."

2 Under *Penal Code* Section 290, a person convicted of one of the enumerated offenses,
3 including *Penal Code* Section 647, subdivision (a), must register for life with the police
4 department in the city in which he lives. He must re-register whenever he moves and must report
5 each change of address within 10 days. Individuals convicted of one of the enumerated crimes
6 have been deemed by the Legislature to have a propensity to commit such antisocial crimes in the
7 future and thus are the subject of continual police surveillance. Whenever any sex crime occurs
8 in his area, the registrant may very well be subjected to investigation. Although the stigma of a
9 short jail sentence should eventually fade, the ignominious badge carried by the convicted sex
10 offender can remain for a lifetime." *In Re Birch* (1973) 10 C3d 314, 322-323, 110 Cal.Rptr. 212,
11 216-217.

12 The Supreme Court made it clear that the fact that the registration was for life and that he
13 must re-register every time he moves made it an ignominious badge. The standard to apply is a
14 full understanding of the consequences. "The United States Supreme Court observed over 40
15 years ago that `Out of just consideration for persons accused of crime, courts are careful that a
16 plea of guilty shall not be accepted unless made voluntarily after proper advice and with full
17 understanding of the consequences.' (Kercheval vs. United States (1972) 274 U.S. 220, 47 S.Ct.
18 582, 583, 71 L.Ed. 1009.)" In Re Birch, supra, fn. 7."

19 B. INEFFECTIVE ASSISTANCE OF COUNSEL

20 In the case of *People vs. Soriano* (1987) 194 CA3d 1470, 240 Cal.Rptr. 328, the court
21 noted that in an immigration case the court had discharged its duty when at the time of the plea it
22 advised the defendant that if you are not a citizen, you are hereby advised that conviction of the
23 offense for which you have been charged may have the consequences of deportation, exclusion
24 from admission to the United States, or denial of naturalization pursuant to the laws of the United
25 States.

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27

However, the court went on to find that there was ineffective assistance of counsel because the attorney did not adequately advise the defendant of the specific ramifications of the immigration law that impacted the defendant's case. The court examined whether the defendant was effectively advised of the immigration laws that did exist and found that the attorney had not. It rejected the contention that being advised that the plea could lead to deportation was sufficient. The court stated:

> What is uncontested is that counsel, knowing the defendant was an alien, resident in this country less than five years at the time he committed the crime, did not make it her business to discover what impact his negotiated sentence would have on his deportability. We have received an amicus brief in this case from San Francisco Public Defender Jeff Brown pointing out that his `office regards a defendant's immigration status as an important factor to be considered in determining the appropriate plea bargain for one's client.' Accordingly, the public defender's office imposes on its staff attorneys, under its `Minimum Standards of Representation', the duty to ascertain `what the impact of the case may have on [the client's] immigration status in this country.

The American Bar Association's Standards for Criminal Justice, standard 14-3.2, which discusses plea agreements, provides in pertinent part, that `(b) To aid the defendant in reaching a decision, defense counsel, after appropriate investigation, should advise the defendant of the alternatives available and of considerations deemed important by defense counsel or the defendant in reaching a decision.' (3 ABA Standards for Criminal Justice, std. 14-3.2 (2d ed. 1980 p. 73.) The commentary to the standard notes the importance of advising a client of collateral consequences which may follow his conviction. `[W]here the defendant raises a specific question concerning collateral consequences (as where the defendant inquires about the possibility of deportation), counsel should fully advise the defendant of these consequences.' (Id, at p. 75)

While counsel maintained that she did warn defendant that there might be immigration consequences to his guilty plea, when questioned she described the warning she gave as `the advisement that is given in the course of the guilty plea, that is the general advisement I gave him.' Is such a formulaic warning from his own attorney an adequate effort to advise a criminal

defendant of the possible consequences of his plea? We think not.

The commentary to the American Bar Association's Standards for Criminal Justice standard 14-3.2 notes that while `the court must inquire into the defendant's understanding of the possible consequences at the time the plea is received..., this is not a substitute for advice by counsel. The court's warning, coming as it does just before the plea is taken, may not afford time for mature reflection.' (3 ABA Standards for Criminal Justice std. 14-3.2, supra, at p. 74.) Similarly, section 1016.5, subdivision (b) itself provides that `[u]pon request, the court shall allow the defendant additional time to consider the appropriateness of the plea in light of the advisement as described in this section.' Both commentary and statute are concerned with the self-evident proposition that a defendant's in-court responses to rights advisements should not be made `off the cuff'. Instead, they should reflect informed decisions he has reached after meaningful consultation with his attorney."

C. ARGUMENT

The courts require more than simple advisement from defense counsel that deportation could result if not a citizen.

By analogy it is argued that the courts likewise require more than simple advisement that you must register under *Penal Code* Section 290.

In the instant case the full import of a lifetime registration as a sex offender was not explained to the defendant. There was no discussions about the collateral consequences on his career, his life, his employment or future employability.

Such advice is required when one's immigration status is in jeopardy. It should also be required in cases where sex registration is required.

V

A. DUE DELIBERATION

In the landmark Supreme Court case of *People vs. McCrory*, 41 C 458, the court introduced the concept that a plea can be withdrawn if the plea was entered without due

deliberation.

"A party should not be allowed to trifle with the court by deliberately entering a plea of `guilty' one day and capriciously withdrawing the next. But when there is reason to believe that the plea has been entered through inadvertence, and without due deliberation, or ignorantly, and mainly from the hope that the punishment to which the accused would otherwise be exposed, may thereby be mitigated, the court should be indulgent in permitting the plea to be withdrawn." *People vs. McCrory, supra*, 462.

B. ARGUMENT

The defendant, in his declaration, alleges that the plea bargain was offered before the third day of trial commenced. That the offer was made in the hallway in a rushed atmosphere without due deliberation. His free will was overborne by the pressure to settle that was put on him by defense counsel. The threat of prison was used as a tool to coerce the defendant to give up valuable constitutional rights.

He had been offered a no state prison deal prior to the commencement of the trial. It was only when defense counsel appeared to abandon the fight that the defendant became frightened and fearful that he was in this alone. He was told he had no choice. He had to plead guilty. Clearly, the defendant wanted his trial. He was unduly influenced to abandon that choice without due deliberation.

CONCLUSION

The court should permit him to withdraw his plea in this case.

Dated:

Respectfully submitted,

____

Attorney for Defendant

I, PATRICK E. CLANCY declare:

1. I am an attorney duly licensed to practice law in the State of California. I am a Certified Criminal Law Specialist. I am the attorney for the defendant in this matter. This matter is set for trial on April 13, 2020.

2. I represent [NAME OF DEFENDANT] ("Defendant") who is accused of

I declare the above under penalty of perjury except as to those matters based upon information and belief and as to those matters, I believe them to be true.

Executed in Pleasant Hill, CA on March 16, 2022.

____

[Attorney Name], SBN

EXHIBIT LIST