

IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,

vs.

CASE NO. 2016-CF-003068-A-O
Division 19

CHARLES WILLIAM WHITMAN,

Defendant.

MOTION TO WITHDRAW PLEA OF NOLO CONTENDERE

COMES NOW the Defendant, Charles Whitman, by and through the undersigned attorney, asking this Court to withdraw his plea of nolo contendere, and to instead enter a plea of not guilty and set the case for trial, on grounds that it was entered into involuntarily as permitted by Florida Rule of Criminal Procedure 3.170(1) and Florida Rules of Appellate Procedure 9.140(a)(b)(2)(A)(ii)(c). In support of this motion, Mr. Whitman would show:

1. Mr. Whitman is charged with Lewd or Lascivious Molestation pursuant to Florida Statute 800.04(5)(C)(2).
2. On August 3, 2016, Mr. Whitman went before the Court, entered a plea of nolo contendere, was adjudicated guilty, and sentenced to eight years of probation on the same day.
3. Mr. Whitman is asking this Court to withdraw his nolo contendere plea because his attorney had coerced him into entering the plea. Although exculpatory evidence was readily available, Mr. Whitman's attorney had strongly pressured him into accepting the plea in order to avoid investing the requisite time and energy into building a proper defense. In fact, despite Mr. Whitman immediately advising his attorney of witnesses who could attest to his innocence, Mr. Whitman's attorney never even attempted to contact these witnesses. Furthermore, Mr. Whitman

had attempted to provide his attorney with evidence that would have corroborated the testimony of those witnesses; this evidence was ignored.

4. Additionally, Mr. Whitman's attorney had told him that if he did not take the plea, it "would only get worse," and that because the plea had already been offered two or three times in the past, the judge was likely getting tired of dealing with his case.

5. Mr. Whitman did not understand the nature of the plea hearing. On the day of the plea hearing, his attorney had told him to meet her at the courthouse at 1:00 PM, and he arrived approximately at 12:50 PM. However, he did not end up speaking with my attorney until less than five minutes before his plea hearing.

6. During this five-minute conversation, Mr. Whitman had attempted to ask his attorney questions regarding the plea hearing, but his attorney only provided very short, limited responses that did not help him understand the nature of the plea hearing.

7. Throughout the course of his proceeding, Mr. Whitman's attorney had only contacted him via phone in regards to scheduling; there was extremely limited, if any, additional outside contact between him and his attorney throughout the course of his proceeding.

8. Further, despite Mr. Whitman wanting to go to trial, Mr. Whitman's attorney never spoke to him about possible trial strategies, arguments, or any possible defenses; rather, his attorney only left with two options: probation or prison time.

9. It is well known that "[t]he Sixth Amendment right to counsel is the right to the *effective* assistance of counsel." *Strickland v. Washington*, 466 U.S. 668, 669 (1984) (emphasis added). It is also well known that "[a]s an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system." FL ST BAR Preamble. In fact,

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and take whatever lawful and

ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.

FL ST BAR Rule 4-1.3.

10. Despite these obligations, Mr. Whitman's attorney strongly pressured Mr. Whitman into accepting the plea in order to avoid developing a necessary, strategic defense; rather he only left Mr. Whitman with the option of accepting the plea, or prison time. Thus, with Mr. Whitman having children to support, Mr. Whitman felt as if he had no other option but to accept the plea and forego his right to a jury trial.

WHEREFORE, Mr. Whitman moves to withdraw his plea of nolo contendere, asks that a plea of not guilty be entered, and requests a trial date be set.

Dated: August 26, 2016

Respectfully Submitted,

/s/ Jaime T. Halscott
Jaime T. Halscott, Esq.
Federal Trial Law Group
33 East Robinson Street, Suite 210
Orlando, Florida 32801
(o) 407-255-2168
(f) 855-224-1671
jhalscott@federaltriallawgroup.com
Florida Bar ID # 0103043

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to the Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida, via e-portal/electronic filing/electronic service on August 26, 2016.

/s/ Jaime T. Halscott
Jaime T. Halscott, Esq.

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Defendant.

_____/

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF ORANGE)

Before the undersigned authority, the undersigned Affiant wears and acknowledges under oath and penalty of perjury, as true and correct the following:

1. I, CHARLES WILLIAM WHITMAN, am over eighteen years of age and am competent to testify to my personal knowledge on the following.

2. I had an attorney assist in writing this document and declare that I have read this affidavit.

3. On August 3, 2016, I went before this Court and pled nolo contendere to Lewd and Lascivious Molestation defined under Florida Statutes 800.04(5)(C)(2). I was adjudicated guilty and sentenced to eight years of probation on the same day.

4. I am asking this Court to withdraw my nolo contendere plea because my attorney had coerced me into entering the plea.

5. In accepting the plea, I genuinely felt as if my attorney did not want to invest the requisite time and energy into building a proper defense.

6. I did not understand the nature of the plea hearing. On the day of the plea hearing, my attorney had told me to meet her at the courthouse at 1:00 PM, and I arrived approximately at

12:50 PM. However, I did not end up speaking with my attorney until less than five minutes before my plea hearing.

7. During this five-minute conversation, I had attempted to ask my attorney questions regarding the plea hearing, but my attorney only provided very short, limited responses that did not help me understand the nature of the plea hearing.

8. Immediately after my attorney was appointed, I promptly informed her of witnesses who could attest to my innocence; however, my attorney never attempted to contact these witnesses.

9. I also offered to provide my attorney with necessary phone records, which is evidence that would have corroborated the testimony of the aforementioned witnesses, but this evidence was ignored.

10. My attorney had specifically told me that if I did not take the plea, it “would only get worse,” and that because the plea had already been offered two or three times prior, the judge was likely getting tired of dealing with the case.

11. Although it was my full intention to go to trial, my attorney never spoke to me about any possible trial strategies, arguments, or any possible defenses; rather, my attorney said that my only options were either probation or prison time.

12. Throughout the course of my proceeding, my attorney had only contacted me via phone in regards to scheduling; there was extremely limited, if any, additional outside contact between my attorney and I throughout the course of my proceeding.



Affiant Printed Name



Affiant Signature

STATE OF FLORIDA IN THE COUNTY OF ORANGE

Under the penalty of perjury, the foregoing affidavit was sworn and acknowledged as true and correct before me this 26th day of August, 2016 Notary Public-State of Florida.

My Commission Expires:
D. license
ω-355-159-874080



by: [Signature]

CERTIFICATE OF SERVICE

We certify that on _____ a true and correct copy of foregoing was mailed to parties in the attached service list.

SERVICE LIST: Case Number: 2016-CF-003068-A-O

_____: _____
_____: _____
_____: _____
_____: _____