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2021 OCT 19 P 1:

In the Court of Common Pleas

Ashtabula County, Ohio

APRIL T. MARIOTTI
CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO OH

STATE OF OHIO	)	Case No. <u>2017 CR 555</u>
Plaintiff,	)	Case No. 2020 CR 640
-vs-	)	Judge Marianne Sezon
	)	<u>JUDGMENT ENTRY</u>
JOSHUA D. GURTO	)	Under Seal
Defendant.	)	Confidential Filing

APRIL T. MARIOTTI
CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO OH

2021 OCT 19 P 1: 29

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Confidential Hearing

The Court held a Confidential Hearing on these two matters on October 14, 2021. Present on behalf of the State of Ohio was Ashtabula County Prosecutor Colleen O'Toole, Chief Assistant Prosecutor Bret Hartup, and Assistant Prosecutor Dawn Cantalamessa. Present on behalf of the Defendant on the 2017 CR 555 case was Attorney Thomas Shaughnessy, and Attorney Ariana Tarighati. Present on behalf of the Defendant on the 2020 CR 640 case was Attorney Edith Jonas. Defendant Joshua Gurto was not present and in the custody of the Ashtabula County Sheriff's Department. Defense counsel in both cases waived the Defendant's presence for the hearing on the record. The Court further reviewed the confidentiality provisions with all present on the record for the reasons stated, including to protect the rights of the Victims and the families, and to protect the Defendant's right to a fair trial.

These two matters were set for Confidential Hearing by the Court's prior Judgment Entries, including those of October 4th, 6th, and 7th, 2021. The Confidential Hearing was held for the sole purpose of providing the State of Ohio an opportunity to provide the Court with a viable rationale for offering the global resolution plea agreements in these cases, for the Court's consideration for acceptance or rejection of the agreements as proposed. See *City of Akron v. Ragsdale*, 61 Ohio App. 2d, 107, (1978); *State v. Ligon*, 2010-Ohio-2054; *State v. Caldwell*, 2013-Ohio-5017.

The State of Ohio provided to the Court on October 1st, 2021, by email, the proposed Plea Agreements, drafted by the State, as part of a global offer, and accepted by the Defendant, which would resolve all pending issues, with stipulated sentences, which were being recommended to the Court for acceptance. Copies of the two proposed Plea Agreements drafted by the Prosecutor are attached to this Judgment Entry.

The plea agreements offered by the State of Ohio, through its Prosecutor, as part of a two-case global resolution, provided for a significant and drastic reduction of the penalties and charges as indicted, specifically in the 2017 CR 555 case, where the Defendant is charged with a number of crimes including Aggravated Murder and Rape. A global resolution has been proposed for the Defendant's two cases, which involve different victims, different witnesses, stem from different alleged incidents, and are charged separately. Namely, Case No. 2017 CR 555 is alleged to have occurred in 2017, with the indictment filed in 2017, and Case No. 2020 CR 640 is alleged to have occurred in 2004, with the indictment filed in 2020.

In 2017 CR 555, the Death Penalty Specifications were dismissed upon application on October 19th, 2018, by the Ashtabula County Prosecutor at the time, Nicholas Iarocci. Only the Death Penalty Specifications were dismissed, and all remaining charges as noted below to include Aggravated Murder and Rape, were not dismissed by the State. Since 2018, former Prosecutor Nicholas Iarocci, former Prosecutor Cecelia Cooper, and current Prosecutor Colleen O'Toole have not filed Applications for Dismissal of any remaining charges during the pendency of the cases.

Present Charges and Proposed Offers

In 2017 CR 555, Defendant is currently charged with Aggravated Murder of a one year old baby, Sereniti Jazzlynn-Sky Sutley, Date of Birth 9/13/2016, (Counts One and Two), where he faces 20 to life, 25 to life, 30 to life and life in prison without parole, Murder, (Counts 3, 4, and 5), where he faces 15 to life in prison, Rape, (Count 6), 1st Degree Felony, where he faces life in prison without parole if the victim is under 10 years of age, Felonious Assault, (Count 7), 2nd Degree Felony, where the Defendant faces 2 to 8 years in prison and Domestic Violence (Count 8). In 2017 CR 555, the State of Ohio through its Prosecutor, has offered the Defendant 6 years of non-mandatory time by way of Alford Plea on the lesser included offense

of Involuntary Manslaughter, amending Count 3, with a Dismissal of all remaining charges, including Aggravated Murder, Rape and Felonious Assault. This is a drastic and significant reduction based upon the Defendant's charges and penalties as indicted. On its face, this drastic and significant reduction is cause for concern.

In 2020 CR 640, the Defendant is currently charged with Aggravated Burglary with the purpose to commit Rape, (Count One), 1st Degree Felony, where he faces 3 to 10 years of imprisonment, Aggravated Burglary with the purpose to commit Felonious Assault (Count Two), 1st Degree Felony, where he faces 3 to 10 years, Rape, (Count Three), 1st Degree Felony, where he faces 3 to 10 years, and Felonious Assault, (Count Four), 2nd Degree Felony, where he faces 2 to 8 years. On this case, the State has offered the Defendant 10 mandatory years in prison on Count 3 Rape, and registration as a Sexual Offender, with a dismissal of all remaining charges.

As part of the global resolution of these two cases, the proposed plea agreements stipulate to have these sentences run consecutively with one another, the 6 year non-mandatory sentence in the 2017 CR 555 Aggravated Murder and Rape Case, and the 10 year mandatory sentence in the 2020 CR 640 Rape case, for a total of 16 years prison incarceration.

Under Seal Briefing and Opportunity for Parties to Present Relevant Information

The State of Ohio filed its Under Seal Briefing on October 7th, 2021, stating that the facts provided in the document were not meant to be all inclusive, instead only providing a brief overview so that the Court may be aware of issues requiring further explanation for any amendments or dismissals. At the hearing on October 14th, 2021, the Court gave the parties an opportunity to provide more information. Given the drastic nature of the reduction, the Court indicated that it would like to hear from the Victims and Investigating Officers, a typical process used by this and other Courts, necessary to evaluate the appropriateness of a plea agreement. The Court informed the parties as follows: "Parties should be fully prepared to disclose information to the Court necessary for its consideration of the Proposed Plea Agreements, as required by law, including but not limited to any statements from the Victims under Marsy's Law."

Prior to this hearing, and during the course of these cases, Counsel for the parties provided this Court with limited information. The Court further learned information shared with the Press and in a plea resolution presented to a Co-

Defendant charged subsequently, separately, and differently than this Defendant in Case No. 2017 CR 555. Based on the limited information presented, the Court wanted to provide the parties with an opportunity to present more information to help the Court make its decision on this global resolution with significant reductions in the charges and penalties as indicted. The Court marked as Exhibits during the hearing the following: Court's Exhibit #1, Star Beacon Article Entitled "Blankenship Gets Six Years for Her Part in Daughter's Murder" written by Shelley Terry, dated March 5, 2021; Court's Exhibit #2, Star Beacon Article Entitled "Trial Set for Late October in Gurto Case" written by Brian Haytcher, dated September 23, 2021; Court's Exhibit #3, Star Beacon Article "Gurto Headed for Hearing", written by Brian Haytcher, dated October 7, 2021; and Court's Exhibit #4, Transcript of Plea and Sentencing Hearing of Kelsie Blankenship, Co-Defendant, occurring on March 5, 2021.

Law

City of Akron v. Ragsdale, 61 Ohio App.2d 107 (1978) at 109, states:

"We agree with the defendant that the prosecution's recommendations ought not to be summarily rejected and that the trial judge ought to exercise sound discretion before refusing to accept or departing from such recommendations. Nevertheless, we believe the final judgment on whether a plea bargain shall be accepted must rest with the trial judge.****When a recommended plea bargain is rejected, the court ought to state reasons for his rejection. In some cases, however, the facts themselves speak so eloquently that no statement by the judge is required."

Ragsdale, at 109-110, states: "Here the defendant was originally charged with a felony, felonious assault, by reason of threatening law enforcement officers with a shot gun. Thereafter, the charge was reduced to a misdemeanor, aggravated menacing. Finally, a reduction was recommended to disorderly conduct, a minor misdemeanor. No cogent reason exists why such a serious act should be dealt with so lightly. We believe that the trial judge acted within the bounds of reasonable discretion and in the public interest in rejecting the plea bargain."

"It is well established that the decision whether or not to accept a plea bargain is within the sound discretion of the trial court. *** When the trial court rejects a recommended plea bargain, it should state reasons for its decision.***."

State v. Irish 2009-Ohio-3791, citing *State v. Stephenson*, (Apr. 30, 1997), 9th Dist. No. 17752, 1997 Ohio App. LEXIS 1738, at *5.

In *State v. Ligon*, 2010-Ohio-2054, at paragraph 7, the trial court rejected a plea agreement reached by the parties, “after reviewing the allegations and potential evidence to be presented at trial, the trial court rejected the parties’ negotiated plea agreement.”

Ligon further states, at paragraph 8:

“We begin by noting that the decision to accept or reject a plea bargain rests within the sound discretion of the trial court. *State v. Fowler*, Clermont App. No. CA2009-06-31, 2010-Ohio-49, paragraph 16; *State v. Underwood*, 124 Ohio St. 3d 365, 371, 922 N.E.2d 923, 2010-Ohio-1; Crim.R. 11(C)(2) (“In felony cases the court may refuse to accept a plea of guilty or a plea of no contest”). A decision rejecting a plea bargain, however, should be accompanied by the trial court’s reasons, absent facts and circumstances that “speak so eloquently that no statement by the judge is required.” See *Akron v. Ragsdale* (1978), 61 Ohio App. 2d 107, 109, 399 N.E.2d 119. In fact, it is the trial court’s responsibility to evaluate plea agreements, and it is free to reject them whenever the facts do not support the prosecutor’s decision to dismiss or reduce the charges, when the prosecutor’s reasons for the plea are not substantial, or when the plea is not compatible with the public interest. See, e.g., *United States v. Hastings* (E.D.Ark.1977), 477 F.Supp. 534, 536-537; *State v. Menucci* (C.P.1986), 33 Ohio Misc.2d 15, 20, 514 N.E.2d 758 (“for any human reason deemed salutary by any Ohio judge which is not based on personal enmity, hostility, passionate prejudice, or unreasonable bias***he or she may refuse to accept a plea of guilty or no contest; or any such plea presented as a result of a plea bargain and be upheld in such refusal[.]”).

Additionally, in *Ligon* at paragraph 11:

“Further, the trial court fulfilled its responsibility to ensure that justice was not sacrificed for the sake of expediency. Neither public interest nor justice would have been served had the trial court accepted this plea agreement, when it was at such variance with the alleged facts.”

Statement of Factual Objective Basis for Rejection of Proposed Global Plea Agreements in Case Nos. 2017 CR 555 and 2020 CR 640

The alleged crimes in 2017 CR 555 and 2020 CR 640 are a tragedy, and for those who will study these cases in the future, there is much to learn about how interested parties, including Victims, Defendants, and the Courts, are communicated with as a case proceeds within the Criminal Justice System. All of these are critical components of the Criminal Justice System, and each has a role in the process, as prosecutors and defense teams attempt to work out plea agreements.

The above statement is not meant to imply that Victims have a say as to what a defendant is ultimately charged with, or who is offered a particular plea deal, any more than the Courts should be a participant in the plea bargaining process. However, Victims must be allowed an opportunity to provide their input. From the Court's perspective, when considering a plea, the Court must be provided with enough information to ensure that Justice is being done in a particular case, for all parties.

Both of these cases involve highly experienced Counsel that have offered numerous plea agreements to Courts on a multitude of different cases. It should not be a surprise to any of them, when a Court is evaluating a potential resolution to a case, that the Judge asks certain questions. For instance, in plea hearings around the Country, Courts will ask the Prosecutor if the Victims agree with a particular plea resolution. Many times, the Victims will be present in the Courtroom, and a Judge will hear from the Victims directly. In those circumstances, it is this Court's practice to ask questions similar to the following: Have you spoken with the Prosecutor's Office? Did you provide the Prosecutor with input related to the plea offered in this case? Do you agree with the plea resolution? In certain cases, such as a domestic violence situation, this Court may talk with the alleged Victim, or receive a written Victim Impact Statement, before dismissing or amending charges, imposing sentence or lifting no-contact/protection orders. This Court does not recall a time when anyone, the Prosecutor or the Defense, has objected to the Court speaking with a Victim, when said Victim expressed a willingness to address the Court.

In 2017 CR 555, the Court inquired of the Prosecutor if the Victims in this case agreed with the proposed plea resolution. The Prosecutor informed the Court that, while no one was “happy” with the plea agreement that they are all in “agreement” that the resolution was “acceptable”. A listing of the Victims in this case was provided by the Victims of Crime Office representative, who the Prosecutor acknowledged was the professional in her office who created the listing. However, when it came time for the Court to actually speak with these Victims, the Prosecutor posted a number of objections to the Court’s inquiry that included the following: that some of the Victims might be witnesses at trial; the harm that would occur to the Victims with the Court’s questions; requesting that the Court go into chambers and off the record with the Victims; potential bias that the Court, ultimately presiding over this matter, might incur in hearing from the Victims; implying that the Court’s questions might harm the State’s case; and general concerns that the Court was overstepping its bounds in its limited questions to the Victims, with the Prosecutor at one point, stating that she wanted to “move on”. The Prosecutor made no attempt to explain why a private “in chambers” meeting with the parties and the Victims would be any less stressful than one “on the record”, with the mere addition of a Court Reporter to create a record and document what occurred at this hearing. The failure to create a complete record of these proceedings, as suggested by the State, would clearly have been error by this Court, as a reviewing Court would have no transcript as to what occurred at this hearing and the basis for this Court’s acceptance or rejection of the proposed global plea agreement.

At one point, the Prosecutor objected to the Court’s questions of the Victims, because this confidential hearing was not a public plea or sentencing hearing. Further, the Prosecutor objected to the Court’s questioning of the Victims because this is the “pre-plea agreement stage”. However, the Court was in receipt of two proposed plea agreements, which the Prosecutor and Defense consistently asked the Court to accept. The Court is of the opinion that the spirit, if not the language of Marsy’s Law, requires that the Prosecutor hear input from the Victims before a plea offer is made. That does not mean that the Victims get to control what offer is being made, just that the Victims’ concerns must be heard and input given. Based on what the Victims subsequently shared at this hearing, the wisdom of the Court’s interpretation of Marsy’s Law is readily apparent. Would the parties truly

have preferred, when confidentiality of these proceedings was presented as of paramount concern to protect all parties to the case, that the Court first hear of the Victims' concerns at a public plea or sentencing hearing?

Furthermore, this Court took extraordinary steps to preserve the confidentiality of the hearing, seeking to ask minimal and limited questions of the Victims. While the answers to the questions provided by the Victims may have been a source of embarrassment to the Prosecution, no one was prejudiced by these proceedings. The Victims have a constitutionally protected right to provide input into the plea process, and the Court has a responsibility to ensure Justice. Does the mere question by the Court: Do the Victims agree with this proposed plea?, so taint a Court from hearing a case anymore than the Court hearing evidence presented at other Court proceedings, such as Suppression Hearings or discussions with Counsel for both sides? Despite the Court being provided at the hearing with a listing of Victims from the Prosecutor's Victim of Crime professional, the Prosecutor continued her objections as to who technically qualified as a "Victim". The Prosecutor did not speak about the offer with some of those on the listing that she felt did not qualify as a "Victim", although these Victims were present for the hearing.

During the string of objections made by the Prosecutor, occurring before the Court even asked one Victim a single question, the Court attempted to convey that it merely wanted to give those Victims who wanted an opportunity to address the Court with respect to the plea agreement the ability to do so. The Court attempted to make it clear, and consistent with prior plea agreements conducted by this Judge and other Courts, that it was merely attempting to discern if the proposed plea agreement was acceptable to the Victims and that they had input into the process. The Court made it clear that the Victims were free to address the Court or not address the Court. Information regarding the Victims' agreement with the proposed plea resolution would certainly help any Court evaluate a plea agreement and ensure a Victim's constitutionally protected right to provide input into said plea. When the Court asked Defense Counsel if they joined in the State's objection, the Court was informed that the Defense would have to "think" about it, before later joining the State's objections.

At the end of the day, and after the protests about the Court's questions to the Victims, and determinations by the Prosecutor of how the term "Victim" was defined, the Court was finally permitted an opportunity to speak with those Victims who the Prosecutor believed were actual Victims. It became abundantly clear, from the limited questioning of the Victims by the Court, and contrary to what had been conveyed by the State, that these Victims did NOT agree to the plea agreement. The State then proceeded to ask the Victims questions related to the State's prior conversation with them about potential "pros and cons" of proceeding with trial or the proposed plea agreement. None of these Victims at this hearing were in agreement with the proposed plea resolution, and some conveyed confusion as to what actually was being offered.

Two of the Victims at this hearing stated the following:

We don't know anything as to what happened and that's what our main concern is, is trying to figure out who is guilty, who is not and what happened, so that we can understand that. ***

We felt that if it went to trial, that there's the possibility that *** [the Defendant] could end up with more time or if it's not a good case and not presented well enough, he could walk. Well, that's how we had to decide and we're willing to go to trial. First of all, we want the truth. And we feel if there is a trial, we are going to get the truth.

Aside from hearing from the Victims, the Court during a proposed plea may request information as to whether the Investigating Officers agree with a particular plea agreement. This is particularly true when a substantial reduction is requested in a case, which, as the Prosecutor acknowledged: "I can take the Court's viewpoint, is on its face, a concern." It was conveyed to this Court, in part through the Chief Assistant Prosecutor, that the Investigating Officers agreed to this plea resolution or did not have a "strong objection," and in some aspect of these cases, those officers did agree. However, of the two Officers the Court heard from, a twenty-four year veteran in law enforcement, familiar with the cases, voiced "some professional disagreements" with the Prosecutor's proposed global resolution.

This Court wants to make it clear that it has made no determination as to the facts in this matter or what occurred in the death of the thirteen-month old baby. This entry is a summary of what was conveyed at the hearing on October 14th, and

the limited information provided to the Court. During the proceedings, the Court did not make any comments or harbor any conclusions or preconceived notions about the facts of this case. Quite the contrary, and as so eloquently stated by the Victims in this case, the Court was without a sufficient basis to know if this global plea agreement should be accepted; holding this confidential hearing in an effort to evaluate the global plea agreements offered by the State, accepted by the Defense, and presented for acceptance to the Court.

In an attempt to clarify things, the Court asked the State about the resolution of the Co-Defendant's case. The Co-Defendant, Kelsie Blankenship, the mother of the victim, was charged separately, differently, and subsequently to Defendant Gurto's Case No. 2017 CR 555. Co-Defendant Blankenship pled guilty and was sentenced in March of 2021 surrounding the death of Sereniti Jazzlynn-Sky Sutley. Defendant Gurto was charged with more serious crimes than Co-Defendant Blankenship.

As part of her plea resolution, Co-Defendant Blankenship was Sentenced on Involuntary Manslaughter and Child Endangerment. At her Plea Hearing, Co-Defendant Blankenship stated that "I brought someone into my daughter's life and I didn't know he would ever hurt or harm her and he hurt my daughter." Further, at her Plea Hearing, the State indicated that it received a "full admission" from Co-Defendant Blankenship. At Sentencing, Co-Defendant Blankenship indicated that she allowed a "wolf in sheep's clothing" into her life and that of her child and that she "failed her daughter." The State indicated that the reduced charges were what it could prove. The State's offer and plea agreement in her case, as accepted by the Defense, included Co-Defendant Blankenship, the mother of the victim, admitting that she created a substantial risk to the health or safety of the child by violating a duty of care, protection, or support that resulted in serious physical harm to the child.

Turning to this matter, the Court asked the State if the Co-Defendant's prior plea deal insinuated to the Court that the Defendant was the "principal offender" of the child's death. The Chief Assistant Prosecutor indicated that it did not, as this was a classic case of a he said, she said type situation where "nobody else was in the room. It's not video recorded. It was one of these, who done it." The Prosecutor added that she could not be responsible for what the Co-Defendant said

during her statement in allocution to the Court, but that the resolution of the Co-Defendant's case comported to what could be proven at trial. The State further indicated that it did not secure the Co-Defendant's testimony against the Defendant in this matter, the Chief Assistant Prosecutor saying: "the State doesn't know that they did not act in concert against Sereniti and nobody can say that, besides Ms. Blankenship and Mr. Gurto *** and they haven't." Again, this statement provides the Court with added concerns, and an additional reason to reject this plea. Does a difficult case, with a limited number of possible suspects in a "he said, she said" situation without videotape evidence, prevent the State from proving serious crimes beyond a reasonable doubt? Moreover, aside from what was conveyed at the Co-Defendant's change of plea, statements contained in the State's Response in Opposition to a Defense Motion to Suppress Statements filed by a prior Prosecutor on October 16, 2018, in Case No. 2017 CR 555, provides further confusion as to what the State can and cannot prove.

The Court was further informed at the October 14th hearing that the State had insufficient evidence to pursue certain charges against the Defendant, Mr. Gurto in Case No. 2017 CR 555. Speaking about the evolution of this particular case, and the receipt of newly discovered evidence from the Bureau of Criminal Investigations, the Prosecuting Attorney shared: "Some of the things we can prove, but as far as the rape and everything else at this point, we cannot." The Chief Assistant Prosecutor later clarified for the Court, count by count in the indictment, which charges the State can and cannot present at trial. It appears, based on that clarification, that the State has insufficient evidence of a Rape against the minor child. As noted and acknowledged by the State, neither present Prosecutor Colleen O'Toole, nor former Prosecutor Nicholas Iarocci, nor former Prosecutor Cecelia Cooper, nor any Assistant Prosecutors, have filed any applications for dismissal other than the Death Penalty Specifications in 2018. There is insufficient information before this Court as to when the State received evidence that it could not prove a Rape in Case No. 2017 CR 555 beyond a reasonable doubt.

Unlike the parties, the Court is not involved in the investigative process, and does not receive discovery reports or other information about a particular case. What seems clear, as conveyed in a newspaper account, and acknowledged on the record at the hearing, is that the Prosecuting Attorney hopes these cases resolve with a plea deal. Does expediency of a case equate to Justice? The Court must fulfill

"its responsibility to ensure that justice was not sacrificed for the sake of expediency." *Ligon* at paragraph 11. Is that Justice for the death of a thirteen (13) month old child that occurred, from what the Court has been informed by the State, at the hands of one of two individuals? Meanwhile, the Defendant, Mr. Gurto, sits in the County Jail with the Prosecution now acknowledging that it has insufficient evidence to prove certain charges. Is this Justice for the accused? As so eloquently stated by the Victims who provided their input into this case, Justice rests with the trier of fact, in this case, a jury of twelve citizens. Based upon the facts and circumstances provided, the Court recognizes not only the seriousness of the allegations, but the many factual issues which require presentation to a trier of fact for resolution. Justice would not be served by the Court's acceptance of the proposed global resolution plea agreements.

If it is not apparent by now, the Court is rejecting the proposed Global Plea Agreements as offered by the State and accepted by the Defense, based on the facts and circumstances provided at the hearing, and as addressed throughout this judgment entry. Aside from these being cases where, on their faces, the significant reduction of the charges and penalties is of concern, there is a serious disconnect between what the State has said about the understanding of Victims and Investigating Officers to this Global Resolution and what those persons stated on the record. This Court is not stating, nor insinuating, to its knowledge, that it was "lied to" or purposefully misled when considering this or any other plea resolution. The Court does not know specific dates as to when the State first learned of information as these cases evolved, or when the State sought input from any particular Victim of the proposed plea resolution.

The Court expressed its concerns about the significant reduction offered in these cases that alone would justify the rejection of the proposed plea for a global resolution of these matters. The Court gave the parties ample opportunity to provide this Court with information to support this plea. That information was not adequately provided. In the future, and consistent with the past practices of this and other Courts, it is hoped that answers to simple questions regarding the State's contact with the Victims and their ability to present input, will be more freely given. The Court, applying the facts and circumstances provided, finds that the State has not shown a viable rationale for offering the global resolution plea agreements in these two cases, nor did the Prosecutor provide substantial reasoning for the Court

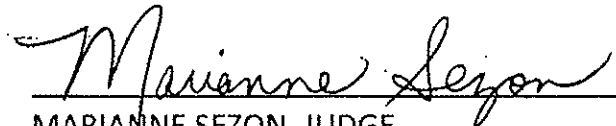
to accept the proposed agreements. *Ligon* at paragraph 8, citing to *Hastings and Menucci*.

In making this decision, the Court is painfully aware that there is an alleged Victim in 2020 CR 640, who, based upon the proposed global resolution plea agreements offered by the State, and the Court's rejection of such agreements as globally proposed, will have to proceed with a trial on events that occurred many years ago. This alleged victim has expressed to the Prosecutor fear and distress at reliving experiences long ago in this cold case. However, the Globally Proposed Plea Agreement is just that, a proposed plea that would resolve two separately indicted cases. With the rejection of the Proposed Plea Agreement, as presented in 2017 CR 555, the Proposed Plea Agreement in 2020 CR 640, is similarly rejected, as these two agreements were presented to the Court for acceptance as part of a global resolution and are rejected as globally presented.

This Judgment Entry and all attachments are filed CONFIDENTIALLY and UNDER SEAL.

IT IS SO ORDERED.

The Clerk of this Court is directed to serve notice of this Entry and its date of entry upon the journal upon the following: Ashtabula County Prosecuting Attorney Colleen O'Toole; Chief Assistant Prosecutor Bret Hartup; Assistant Prosecutor Dawn Cantalamessa; Thomas Shaughnessy, Esq.; Ariana Tarighati, Esq.; and Edith Jonas, Esq.


MARIANNE SEZON, JUDGE

Attachments:

2017 CR 555 Proposed Plea Agreement

2020 CR 640 Proposed Plea Agreement

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STATE v. «DFNDT1nm»
«COURT_CASE»

CONFIDENTIAL

**IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO**

STATE OF OHIO	)	CASE NO. 2017 CR 00555
)	
PLAINTIFF	)	JUDGE MARIANNE SEZON
)	
VS.	)	<u>WRITTEN PLEA OF GUILTY</u>
	)	<u>AND PLEA AGREEMENT</u>
JOSHUA D GURTO	)	(ALFORD PLEA)
)	
DEFENDANT)	

WRITTEN PLEA OF GUILTY

I, JOSHUA D GURTO, the Defendant in the above-captioned case, hereby state that my counsel has explained to me the facts and circumstances surrounding my plea, and has informed me of the charge(s) against me and the penalty provided by law for such charge(s).

Prior to signing this written plea of "Guilty", my attorney explained to me that I have the following constitutional rights which I would waive by pleading "Guilty" by way of *Alford*.

I understand that this plea means I give up my right:

- To a jury trial or court trial;
- To question or have my attorney question witnesses against me;
- To use the power of the court to call witnesses;
- At a trial I have the right not to take the witness stand and have no one comment if I decide not to testify;
- At a trial the State would be required to prove my guilt beyond a reasonable doubt on every element of the offense;
- If I were convicted at trial I would have the right to appeal.

I understand these rights and privileges and the possible consequences of Guilty" by way of *Alford* plea. I waive and reject all of these rights. I am voluntarily pleading "Guilty" of my own free will. I understand that this written plea of Guilty" by way of *Alford* constitutes an admission which may be used against me at a later trial. By pleading Guilty" by way of *Alford* I am not contesting the facts contained in the charges and will not have to tell the judge the facts and circumstances of my guilt.

I am not under the influence of drugs or alcohol and I have not taken any drugs or alcohol in a hour period preceding the hearing. No threats have been made to me. No promises other than those which are part of this plea agreement have been made.

My attorney has explained my right to appeal a maximum sentence, my other limited appellate rights, and that any appeal must be filed within 30 days of the Court's entry of the judgment of my sentence. I know the judge may either sentence me today or refer my case for a pre-sentence report.

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PLEA AGREEMENT

CONFIDENTIAL

I understand that I was charged in the Indictment with the following offense(s):

Count 1	AGGRAVATED MURDER	2903.01	UNCLASSIFIED FELONY
Count 2	AGGRAVATED MURDER	2903.01	UNCLASSIFIED FELONY
Count 3	MURDER	2903.02	UNCLASSIFIED FELONY
Count 4	MURDER	2903.02	UNCLASSIFIED FELONY
Count 5	MURDER	2903.02	UNCLASSIFIED FELONY
Count 6	RAPE	2907.02(A)(1)(b)	F1
Count 7	FELONIOUS ASSAULT	2903.11	F2
Count 8	DOMESTIC VIOLENCE	2919.25	M1

I understand that the State has agreed to dismiss and/or amend the above charges as follows:

Dismiss Counts 1, 2, 4, 5, 6, 7 and 8

Amend Count 3 to Involuntary Manslaughter 2903.04(A)(C) F1

I now withdraw my former "Not Guilty" plea and enter a plea of "GUILTY" by way of *Alford*, to the following offenses:

<u>COUNT</u>	<u>OFFENSE/SPECIFICATION</u>	<u>RC §</u>	<u>DEGREE OF OFFENSE</u>
<u>3</u>	<u>Involuntary Manslaughter</u>	<u>2903.04(A)(C)</u>	<u>F-1</u>

I understand that the maximum penalty as to each count to which I am pleading is as follows:

<u>Offense/ Specification</u>	<u>Range of basic Prison term</u>	<u>Fine/Mandatory Fine</u>	<u>Mandatory Prison</u>	<u>Presumption for prison</u>
<u>Involuntary Manslaughter</u>	<u>3, 4, 5, 6, 7, 8, 9, 10 or 11 years</u>	<u>\$20,000/\$0</u>	<u>No</u>	<u>Yes</u>

I understand that restitution, other financial costs and other consequences: (e.g. license suspension) are possible as follows:

Court costs

I understand that the State of Ohio's position on sentencing is:

This sentence is stipulated and agreed to by the parties for the purpose identified in 2953.08(D)(1). The parties stipulate to 6 years prison on Count 3 to be served consecutively with a stipulated 10 years prison sentence in Ashtabula Court of Common Pleas case 2020CR640 for a total of 16 years prison, with credit for time served on this case from 10/10/17 to the date of sentencing.

I understand that any recommendation of sentence to the Court by the State is not binding in any way on the Court and that any sentence to be imposed is in the sole discretion of the Court. This sentence is a stipulated and agreed to sentence by the parties for the purpose identified in R.C. 2953.08(D)(1)

If I am pleading "Guilty" to a Felony of the First or Second degree and if I am found to be a repeat violent offender, I could face an additional ten (10) years of prison time.

I have been advised that under certain circumstances specified in R.C. 2967.193, if I am eligible, I may be able to earn days of credit up to 8% of my prison time. After release from prison, I will have a mandatory (5) years of **post-release control**. If I violate post-release control, I could be returned to prison for up to another nine (9) months for each violation, for a total of 50% of my original sentence.

I understand if I am convicted of a new felony while on post-release control, that, besides being punished for the new offense, the sentencing Court could terminate my post-release control and impose a consecutive prison term of one year or what time remains on my post-release control term, whichever is greater.

If I am granted community control at any point in my sentence I will have conditions to follow and if I violate any of those conditions I could be given a longer period under court control, greater restrictions or a prison term from the basic range. Community control may be imposed for up to five (5) years.

I further state that I (am) (am not) a citizen of the United States. If I am not a citizen of the United States, I have been advised in open court pursuant to R.C. 2943.031 of the following: that conviction of the offense(s) to which I am pleading "Guilty" by way of *Alford* may have the consequences of removal, deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

I understand for this offense(s) that I do not face mandatory time in prison and if I go to prison, the law does allow me to apply for judicial release after a specific length of time served. I understand the State may renegotiate the terms of my plea if I fail to appear at any stage of the proceedings or am charged with any new offenses prior to sentencing.

Date: _____

JOSHUA D GURTO, Defendant

I, THOMAS E. SHAUGHNESSY, counsel for the Defendant herein, stipulate to the Court that I have witnessed my client sign this WRITTEN PLEA OF GUILTY by way of *Alford*; that I have reviewed the Document with him/her; that I have reviewed all of the consequences of my client changing his/her plea to "Guilty" by way of *Alford*; and I have, prior to these proceedings, advised my client that he/she does not face mandatory prison term as a consequence of this "Guilty" by way of *Alford* plea.

THOMAS E. SHAUGHNESSY 0047201
ATTORNEY FOR DEFENDANT

ARIANA E. TARIGHATI 0039372
ATTORNEY FOR DEFENDANT

COLLEEN M. O'TOOLE 0053652
PROSECUTING ATTORNEY

BRET R. HARTUP 0077299
CHIEF ASSISTANT PROSECUTOR

Pursuant to Civil rule 58(b), the Clerk of this Court is directed to serve a copy of this Entry upon: THOMAS E. SHAUGHNESSY, ATTORNEY AT LAW 11510 BUCKEYE ROAD, CLEVELAND, OH 44104 Attorney for Defendant; Ariana E. Tarighati, 34 South Chestnut St., STE 100, Jefferson, Ohio 44047 Attorney for Defendant; and Prosecuting Attorney Colleen M. O'Toole.

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

STATE OF OHIO	)	CASE NO. 2020 CR 00640
)	
PLAINTIFF	)	JUDGE MARIANNE SEZON
)	
VS.	)	<u>WRITTEN PLEA OF GUILTY</u>
	)	<u>AND PLEA AGREEMENT</u>
JOSHUA DALE GURTO)	
)	
DEFENDANT)	

WRITTEN PLEA OF GUILTY

I, Joshua Dale Gurto, the Defendant in the above-captioned case, hereby state that my counsel has explained to me the facts and circumstances surrounding my plea, and has informed me of the charge(s) against me and the penalty provided by law for such charge(s).

Prior to signing this written plea of "Guilty", my attorney explained to me that I have the following constitutional rights which I would waive by pleading "Guilty."

I understand that this plea means I give up my right:

- To a jury trial or court trial;
- To question or have my attorney question witnesses against me;
- To use the power of the court to call witnesses;
- At a trial I have the right not to take the witness stand and have no one comment if I decide not to testify;
- At a trial the State would be required to prove my guilt beyond a reasonable doubt on every element of the offense;
- If I were convicted at trial I would have the right to appeal.

I understand these rights and privileges and the possible consequences of a "Guilty" plea. I waive and reject all of these rights. I am voluntarily pleading "Guilty" of my own free will. I understand that this written plea of "Guilty" constitutes an admission which may be used against me at a later trial. By pleading "Guilty" I admit committing the offense and will tell the judge the facts and circumstances of my guilt.

I am not under the influence of drugs or alcohol and I have not taken any drugs or alcohol in a hour period preceding the hearing. No threats have been made to me. No promises other than those which are part of this plea agreement have been made.

My attorney has explained my right to appeal a maximum sentence, my other limited appellate rights, and that any appeal must be filed within 30 days of the Court's entry of the judgment of my sentence. I know the judge may either sentence me today or refer my case for a pre-sentence report.

PLEA AGREEMENT

I understand that I was charged in the Indictment with the following offense(s):

Count 1 §2911.11(A), 2911.11(B):	Aggravated Burglary	F1
Count 2 §2911.11(A), 2911.11(B):	Aggravated Burglary	F1
Count 3 §2907.02(A)(2):	Rape	F1
Count 4 §2903.11(A)(2), 2903.11(D):	Felonious Assault	F2

I understand that the State has agreed to dismiss the above charges as follows:

Dismiss Counts 1, 2 and 4

I now withdraw my former "Not Guilty" plea and enter a plea of "GUILTY" to the following offenses:

<u>COUNT</u>	<u>OFFENSE/SPECIFICATION</u>	<u>RC §</u>	<u>DEGREE OF OFFENSE</u>
<u>3</u>	<u>Rape</u>	<u>2907.02(A)(2)</u>	<u>F-1</u>

I understand that the maximum penalty as to each count to which I am pleading is as follows:

<u>Offense/ Specification</u>	<u>Range of basic Prison term</u>	<u>Fine/Mandatory Fine</u>	<u>Mandatory Prison</u>	<u>Presumption for prison</u>
<u>Rape</u>	<u>3, 4, 5, 6, 7, 8, 9 or 10 years</u>	<u>\$20,000/\$0</u>	<u>Yes</u>	<u>No</u>

I understand that restitution, other financial costs and other consequences: (e.g. license suspension) are possible as follows:

Sex Offender Registry

I understand that the State of Ohio's position on sentencing is:

This sentence is stipulated and agreed to by the parties for the purpose identified in 2953.08(D)(1). The parties stipulate to 10 years mandatory prison on Count 3 to be served consecutively with a stipulated 6 years prison sentence in Ashtabula Court of Common Pleas case 2017CR555 for a total of 16 years prison. Further, the parties stipulate the Court classify Joshua Dale Gurto a sexual predator pursuant to R.C. 2950.09.

I understand that any recommendation of sentence to the Court by the State is not binding in any way on the Court and that any sentence to be imposed is in the sole discretion of the Court. This sentence is a stipulated and agreed to sentence by the parties for the purpose identified in R.C. 2953.08(D)(1)

If I am pleading "Guilty" to a Felony of the First or Second degree and if I am found to be a repeat violent offender, I could face an additional ten (10) years of prison time.

STATE v. Joshua Dale Gurto
2020 CR 00640

I have been advised that under certain circumstances specified in R.C. 2967.193, if I am eligible, I may be able to earn days of credit up to 8% of my prison time. After release from prison, I will have a mandatory five (5) years of post-release control. If I violate post-release control, I could be returned to prison for up to another nine (9) months for each violation, for a total of 50% of my original sentence.

I understand if I am convicted of a new felony while on post-release control, that, besides being punished for the new offense, the sentencing Court could terminate my post-release control and impose a consecutive prison term of one year or what time remains on my post-release control term, whichever is greater.

If I am granted community control at any point in my sentence I will have conditions to follow and if I violate any of those conditions I could be given a longer period under court control, greater restrictions or a prison term from the basic range. Community control may be imposed for up to five (5) years.

I further state that I (am) (am not) a citizen of the United States. If I am not a citizen of the United States, I have been advised in open court pursuant to R.C. 2943.031 of the following: that conviction of the offense(s) to which I am pleading "Guilty" may have the consequences of removal, deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

I understand for this offense(s) that I do face mandatory time in prison and if I go to prison, the law does not allow me to apply for judicial release after a specific length of time served. I understand the State may renegotiate the terms of my plea if I fail to appear at any stage of the proceedings or am charged with any new offenses prior to sentencing.

Date: _____

Joshua Dale Gurto, Defendant

I, Edith M. Jonas, counsel for the Defendant herein, stipulate to the Court that I have witnessed my client sign this WRITTEN PLEA OF GUILTY; that I have reviewed the Document with him/her; that I have reviewed all of the consequences of my client changing his/her plea to "Guilty;" and I have, prior to these proceedings, advised my client that he/she does face mandatory prison term as a consequence of this "Guilty" plea.

EDITH M. JONAS
ATTORNEY FOR DEFENDANT

COLLEEN M O'TOOLE, 0053652
PROSECUTING ATTORNEY

BRET R. HARTUP 0077299
CHIEF ASSISTANT PROSECUTOR

Pursuant to Civil rule 58(b), the Clerk of this Court is directed to serve a copy of this Entry upon:
Attorney for Defendant: Edith M. Jonas, P.O. Box 684, Andover, OH 44003, Ashtabula County, Email: edithjonas.esq@gmail.com; and Prosecuting Attorney Colleen M. O'Toole.

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

THE STATE OF OHIO,

Plaintiff,

-vs-

JOSHUA D. GURTO,
DOB: 10/31/1979

Defendant.

CASE NOS. 2017 CR 555
2020 CR 640

JUDGE PATRICIA A. COSGROVE
(By Assignment)

JUDGMENT ENTRY

ARIL DANIELS
CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO OH

2022 OCT -3 PM 12:45

FILED

Any documents or proceedings previously ordered sealed by this Court are now ordered to be unsealed.

IT IS SO ORDERED.



Judge Patricia A. Cosgrove, By Assignment

Pursuant to Civil Rule 58(B), the Clerk of this Court is directed to serve copies of the foregoing entry and its date of entry upon the record to the following parties: *Ashtabula County Prosecutor Colleen O'Toole; Chief Assistant Prosecutor Dawn Cantalamessa; Thomas Shaughnessy, Esq.; Ariana Tarighati, Esq.; Edith Jonas, Esq.; and Sean Martin, Esq.*

Scanned: OCT 04, 2022 09:46 April Daniels, Clerk Ashtabula Co Common Pleas