

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
AT LEXINGTON
Criminal Action No. 5:17-CR-121-KKC

Filed electronically

UNITED STATES OF AMERICA

PLAINTIFF

V.

KENNETH GRAVITT

DEFENDANT

DEFENDANT'S MOTION TO SET ASIDE GUILTY PLEA

The defendant, Kenneth Gravitt, by and through the undersigned counsel, hereby moves the court to set aside the guilty plea entered in court on May 7, 2018, and proceed with a trial.

Respectfully submitted,

/s/ Charles W. Arnold, Esq.
Charles W. Arnold, Esq.
Christopher D. Miller, Esq.
401 West Main Street, Suite 303
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Attorneys for the Defendant

CERTIFICATE OF SERVICE

On June 25, 2018, the undersigned electronically filed the foregoing using the Court's CM/ECF system, which will send a notice of filing to counsel of record.

/s/ Charles W. Arnold, Esq.

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DEFENDANT'S MEMORANDUM
SUPPORTING MOTION TO SET ASIDE GUILTY PLEA

The defendant, Kenneth Gravitt, by and through the undersigned counsel, offers the following memorandum in support of his motion to set aside the guilty plea entered in court on May 7, 2018.

A. BACKGROUND

On February 2, 2017, a federal grand jury returned an eight count indictment and a forfeiture claim against Kenneth alleging various violations of illegal disposition of hazardous materials. On October 12, 2017, a federal grand jury superseded the February 2 indictment recharging Kenneth with essentially the same facts and acts as the first indictment. From his first knowledge of the government's investigation of these matters, Kenneth has maintained his innocence and pursued a diligent course of preparation for trial.

It wasn't until after his day in court on May 7, 2018, while on his way back to Texas that Kenneth realized he had made a horrible mistake. His affidavit attached as Exhibit A explains in more detail his unfortunate decision to enter a guilty plea.

B. LEGAL STANDARD

The district court has wide discretion to allow a defendant to withdraw a guilty plea where the moving defendant satisfies the court that there are valid reasons for his withdrawal of the plea and the court concludes that these reasons outweigh any prejudice to the government, all considered within the context of a social interest in finality of guilty pleas. The court should be liberal in granting a defendant leave to withdraw a plea of guilty prior to imposition of sentence. *U.S. v Rosen*, 409 F.3d 535 (C.A.2 NY, 2005); *Codero v. U.S.*, 533 F.2d 723 (C.A.1 Puerto Rico, 1976). The rule governing withdrawal of guilty pleas is to be construed and applied liberally. *U.S. v. Rodriguez-DeMaya*, 674 F.2d 1122 (C.A.5 TX, 1982).

The policy of normally allowing withdrawal of plea before sentencing is justified because of the public interest in protecting the accuser's right to a jury trial. *U.S. v. Strauss*, 563 F.2d 127 (C.A. 4, 1977). A criminal defendant does not have an absolute right to withdraw a plea of guilty, but a request to withdraw, made before imposition of sentence, shall be construed and considered carefully and liberally. *U.S. v. Hancock*, 607 F.2d 337 (C.A.10 Okla., 1979).

When a defendant seeks to withdraw his plea of guilty before sentencing, the district judge should not determine guilt or innocence of the defendant could only consider factors relevant for accepting withdrawal of guilty plea. *U.S. v. Webster*, 468 F.2d 1276, (C.A.9 OR, 1972). Included in criteria for determining whether defendant's proffered reason for vacating display or "fair and just" on the amount of time that elapsed plea and motion to vacate, presence, or absence, a valid reason for failure to present grounds withdrawal at an earlier point in the proceedings, and whether the

movant had asserted his legal innocence. *U.S. v. Alexander*, 948 F.2d 1002 (C.A. 6 Ohio, 1991).

C. DISCUSSION

From October 2015, to the scheduled date of trial on May 7, 2018, Kenneth has maintained his innocence and, as stated above, the standard measure for the court to permit withdrawal of guilty pleas is to be construed and applied liberally. See *Rodriguez, supra*. Kenneth is a perfect example of the person who should benefit from the liberal construction of approval. He meets all the criteria. Aside from the hundreds and hundreds of hours of protesting his innocence, excepted only by the few hours of indiscretion on May 7, 2018, Kenneth has maintained his innocence. His motion to withdraw his guilty plea was filed before sentencing, before a presentence report has been generated, contains the elements that are “fair and just” to state his innocence, and is justified and supported by fundamental justice and case law.

For the reasons stated above, Kenneth respectfully requests the court grant him permission to withdraw his guilty plea and proceed to trial.

Respectfully submitted,

/s/ Charles W. Arnold, Esq.
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Christopher D. Miller, Esq.
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ORDER

On motion of the defendant and the court being otherwise sufficiently advised; IT
IS ORDERED:

The defendant's motion to set aside the guilty plea entered in court on May 7,
2018, is GRANTED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
AT LEXINGTON
Criminal Action No. 5:17-CR-19-KKC

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UNITED STATES OF AMERICA

PLAINTIFF,

V.

KENNETH GRAVITT

DEFENDANT.

AFFIDAVIT OF KENNETH GRAVITT

The defendant, Kenneth Gravitt, states the following, under oath, in support of his motion to set aside his guilty plea:

1. My name is Kenneth Gravitt. I am the defendant in the above-captioned criminal matter pending before this court. I am under no disability, and the contents of this affidavit are from my personal knowledge.

2. On May 7, 2018, the first day of the trial, I plead guilty to counts 1 and 3, of the indictment; however, I maintain my innocence and state under oath that I entered the plea for the reasons outlined herein.

3. After hundreds of hours of preparation and thousands of dollars of costs, I came to court on May 7, 2018, fully prepared to seek my innocence by trial.

4. Both the court and my attorneys, Charles W. Arnold and Christopher D. Miller, explained to me the ramifications of entering a guilty plea.

5. I was willing to accept the plea at that time, in part, out of fear, panic, and in hopes that my wife, Joanna, may find some peace. When I saw Joanna in the back



of the courtroom, she was in tears. Her emotion evoked an overwhelming need, for her sake, to simply get this ordeal over and behind me.

6. The criminal charges and subsequent stress of this ordeal since late 2015, have affected Joanna and, nearly ending our 46 year marriage. We have been forced to sell our home, go into debt, and deplete our savings and my retirement account(s) to provide for my defense.

7. I also suffer from serious health problems. The reality of possibly receiving a lengthy prison sentence – had I been found guilty of all eight counts — terrified me. I was afraid that I would not receive my medication and/or adequate treatment in prison, and as an insulin-dependent diabetic, I knew that would be fatal.

8. Before accepting the plea deal, I asked my counsel to seek from the AUSA an offer that did not include prison time, but none such options were provided.

9. I felt I had no choice but to accept the only deal being offered by the government.

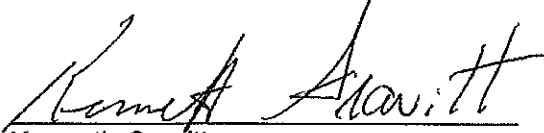
10. Although this ordeal has consumed my life since late 2015, I did not feel the reality and gravity of these charges until entering the courtroom the day of trial.

11. The enormity of the huge courtroom and ominous authority of the situation compelled me to do anything to just make it go away.

12. It was not until I left the courtroom and began the drive back home to Texas, that I realized I had made a terrible mistake.

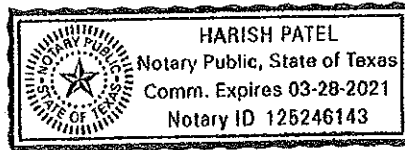
13. I spent some time discussing the plea and the alternatives with Joanna, and after much thought, I have come to the conclusion that I cannot live with my decision accepting the plea deal, when I continue to maintain my innocence.


14. I respectfully ask that this court allow me to rescind my plea and proceed with a trial. I made a terrible mistake, one that I hope this court will allow me the opportunity to rectify.


Kenneth Gravitt

STATE OF TEXAS
COUNTY OF TRAVIS

Subscribed, sworn to and acknowledged before me by Kenneth Gravitt on June 21, 2018.




NOTARY PUBLIC

My commission expires: 03-28-2021