

the plea on June 11th of--of 2012.

I-- The Court-- There was-- I had a conversation in chambers with both the Prosecutor Mr. Sepic, as well as Mr. Parish, because - I've stated this on multiple occasions so it's nothing new - I'm always reluctant to take no contest pleas in cases of this type, and--and I stated my reasons why I'm reluctant to do that. The main reason is that, you know, if Mr. Hale, if I find against him here today and then I sentence him to prison later this month, at some point if he's paroled--when he's paroled, he goes to some sex offender courses; and I've heard from various counselors, met with them that conduct these counseling sessions, that when they have a--a client that has pled no contest, they try to deny, deny, deny all the way through and it's--it's really disruptive and it's not helpful to the counseling sessions. So, I'm very reluctant to accept no contest pleas in these types of cases. However, I met with both Mr. Parish and Sepic in chambers. We discussed much of which is contained within Mr. Kirk's brief as well as the oral argument here this morning. the other defendant. the description of the events by the--the victims, the pluses and minuses, both for the People and for the Defense, and I was willing to go along with it, quite frankly, because I thought that the interest of justice were being met in that plea agreement. And it was a--took a lot of convincing because I wasn't going to allow a no contest plea, initially, in part, because of reasons like this,

this type of a motion. But I ultimately decided that it was probably in the best interest of justice, as well as the--the victim's, after meeting with counsel.

The main thrust of the Defense motion in this case is contained in paragraph 6, where Mr. Hale indicates he's not able to read or write and did not understand or comprehend his no contest plea to a CSC 3rd Degree. And I just find that completely without merit. Not only-- Mr. Parish alerted me early on in chambers and then also at the beginning of the plea that Mr. Hale had problems reading and writing and comprehending things, and--and the Court listened to the tape this morning and the Court went through each prong of his rights form with the defendant, individually. So I am completely convinced that the plea was just and proper as it relates to any deficiencies that the defendant may have with regard to reading and/or writing.

Somewhat instructive in paragraph 8 of the Defense motion, that it's only after in speaking with his family that the defendant has decided to pursue this motion to withdraw his plea. Obviously, and I completely understand and respect his family being concerned about the situation the defendant now finds himself in, but the Court has to--to weigh the prejudice to the People pursuant to MCR 6.310; and, quite frankly, the People make a compelling argument in several paragraphs, more specifically, paragraph 5(d), where they talk about the foster care worker, the counselor and the foster parents have all met

with these victims. And-- And the--the children are young. I--
I found in some of the pleadings that during this proceeding
they were 9- and 6-years of age. I don't know, perhaps now
they're 10 and 7. I didn't find their dates of births. But, in
any event, they--they were 9- and 6-years of age as we were
proceeding through this matter. I remember the 6-year old
having difficulty, adjusting the chair in the witness box for
her. These are young, young children who have been abused on
multiple occasions.

And I--I do find in paragraph F of--paragraph 5(f),
the Prosecutor makes reference to their case being jeopardized
because of this reverse in course - almost kind of an estoppel
argument - that the People have relied upon the plea, the
knowing and freely given plea by the defendant, a 54-year old
man, on June 11th of 2012, and now, more than a month later,
after the--these children in their tender years have relied upon
that plea, we had reversed course. I-- I don't mean to trivial
-trivialize this matter 'cause it's obviously a very, very
serious matter. We've got some abused victims here. And-- And
the man, Mr. Hale, that is looking at, I believe there's also a
sentencing recommendation of 10 years. So he's gonna go to
prison for 10 years. I think he's probably the only person in
this courtroom right now who has ever been convicted of an
offense like this; but, perhaps, something that many people
could understand, a--a buyer's remorse type of situation here.

I think that--that Mr. Hale, now understanding that he's likely going to prison for 10 years as a convicted sex offender, is having some buyer's remorse from the knowing decisions that a mature man--man made with, what I found to be, you know, zealous advocacy, as Mr. Sepic indicated, by Mr. Parish on June 11th of 2012. His future is ominous. I recognize that. I understand that. But, nothing in the defendant's pleading would warrant allowing him to withdraw his plea. I find a significant prejudice to the People if that were to be granted and, accordingly, deny the Defense motion.

Could you prepare a brief order consistent with that ruling, Mr. Sepic?

MR. SEPIC: Yes, judge. I have-- I--

THE COURT: All right. And I did schedule this hearing in advance of the sentencing just so we'd have adequate times. I wouldn't had to adjourn the sentencing. So it's my intent to continue as scheduled with his felony sentencing later this month.

MR. KIRK: Your Honor, might--we--we might be asking-- let me bring up another point, though.

If this case were to go as you preceded and then Mr. Hale would have an appeal based on this Fonville case, in particular, that says that--that when you-- The point you brought up about the no contest, I think are valid, and that, that it's very likely that the high court's gonna see that the

fact that he made a no contest plea, did not make any allocutions or inculpatory statements that he might just be granted--likely, be granted that new trial, and that may come up--

THE COURT: I think that's unlikely, Mr. Kirk, or I wouldn't have ruled the way I did. So I'm not adjourning anything.

MR. KIRK: Okay.

THE COURT: We're going forward as scheduled. I'm not going to grant you any sort of delays.

MR. KIRK: But let me before--just say further--

THE COURT: Sure.

MR. KIRK: --though. At-- At that point, then, if it gets kicked back, I mean, that could be a year or two from now, and then all of a sudden you're back at the same point of having the trial and reversing and having the children come up when it's not even, you know, much further away in time and they're more on with their lives. So, I think it's less prejudice to actually have the trial than to take--

THE COURT: I've--

MR. KIRK: --the chil--

THE COURT: I've already ruled, Mister--

MR. KIRK: Okay.

THE COURT: --Kirk. Okay, thank you very much, counsel.

St. Joseph, Michigan

Tuesday, July 12, 2012 - 9:44 a.m.

THE COURT: Okay, this is file number 2012000595, People of the State of Michigan versus Larry Hale. You are that person, sir?

THE DEFENDANT: Yes, sir.

THE COURT: All right. You're appearing here this morning, along with your substitute counsel Mr. Kirk. Good morning, Mr. Kirk.

MR. KIRK: Good morning, your Honor.

THE COURT: People represented by the prosecuting attorney Mr. Sepic. Good morning, Mr. Sepic.

MR. SEPIC: Good morning, judge.

THE COURT: I have had the opportunity to review both the motion filed by Mr. Kirk as well as Mr. Sepic's response. I apologize. I took some time this morning 'cause I wanted to listen to the plea. So I did listen to the plea from June 11th of 2012 on our recording equipment before I came into court here this morning. Mr. Sepic hadn't received the motion so he filed the answer kind of late. I assume that you're not objecting to that in any way, Mr. Kirk?

MR. KIRK: No, I'm--

THE COURT: Okay.

MR. KIRK: --not. I said that if he wanted more time, I'd be happy to grant--

THE COURT: And-- And it--it's fine. It-- It was a relatively simple, straightforward matter and the Court had handled both, the preliminary examination on March 6th of 2012, as well as, the plea on June 11th of 2012. So it was a simple matter for me to get up to speed on this.

I will give both-- I blocked some time here if--if either counsel wants to, you know, briefly argue their motion. I guess it's your motion, Mr. Kirk. I have read it and reviewed it. But, if you have any oral argument, sir?

MR. KIRK: Well, your Honor, I would state--I would bring to your attention a case that I looked up. People v Fonville, it's 291 Mich. App. 363, 2011. And, they're talking about this case is a--is a withdrawal before sentencing. So, I don't believe-- So there's a different standard than if he waited till after sentencing.

But, in that case it talks about being able to withdraw a plea and that it should only be granted if the defendant is able to show that the withdrawal of the plea is in the interest of justice, meaning, that the defendant has to articulate a fair and just reason for withdrawing the plea. Fair and just reasons include reasons like claim of actual innocence or a valid defense to the charge. Things that are not considered fair and just reasons are dissatisfaction with the sentence or incorrect advice from the defendant's attorney.

So, he--Mr. Hale has, throughout, maintained his

innocence to this charge. And what I also would note, your Honor, that, in that Fonville case, they had ruled against the defendant but they had said that he had, during the plea, given statements that were inculpatory and--towards his case. And, in this case, as my understanding, though I haven't heard the June 11th tape, that he pled no contest and that he did not make any admissions of guilt that could be used against him. So-- And-- And after reviewing the case for a bit, I believe he does have a valid defense - there's been changes in the stories. At one time the Prosecutor had two defendants and now only has one because one of 'em story was completely different than what they'd been telling the counselors and the--over at the children's assessment center, and that--and completely unraveled and they ended up dropping the charges. And I don't believe Mr. Parish really did much in the way of cross-examination. That just kind of came out on their own that--that the story was "I don't remember, I don't remember" and--and it--and it--that charge fell down. So I think that also should be considered in the claim of actual innocence that that one didn't--didn't fly.

The-- There's other defenses; is that, there was very little time, very little opportunity for any of these things to occur. I'll just bring up one point; that--that there's a claim that--that he--Mr. Hale would do this when Mrs. Hale would drive off to the store. Well, talking to Mrs. Hale, she says, she doesn't drive. Mr. Hale would always do the driving. So-- And

if they drove, there would be either an adult stay with the children or the children would all go with him. So it kind of flies in the face of that--that there was these opportunities for him to have accomplished this. And there's also the fact that in the reports there seems to be there's this other fellow Michael Barrett, who pled guilty to having inappropriate contact with the children. But then there was another statement where they claimed that the grandfather had done something, but, oh they didn't want to because he might go to jail. There's also, I think, evidence to back up that these children were learning about various things by watching their mother and their mother's boyfriend perform sex acts in front of them and the children were actually acting out on that and--and saying that they were doing things that they had saw.

X So I think there's enough, by looking--without going into the whole case because there's--it's volumes of material, there's enough to--to show that he does have a valid defense.

He's fifty-some years old. He has no prior record. Usually people would have some kind of a--a prior history of doing something like this if that's what they did. And there--there's just no evidence to back that up.

THE COURT: A big thrust of your argument, as I read your motion, Mr. Kirk, was the defendant's inability to read. So I--that's why I wanted to listen to the--the tape of the--the actual plea.

MR. KIRK: My-- My client informs me that he--he's been in Special Ed his entire--he went to up to 10th grade but that he didn't make it up to 10th grade level, that-- He's tried numerous times through night school and other processes to try to--to learn to read and he's just been unable. Not from lack of effort, but for just inability to do so.

I don't believe that he--he really is in that position. He has to have things read to him and explained to him more thoroughly than--than the average client.

THE COURT: Okay. Okay, anything further, Mister--

MR. KIRK: And--

THE COURT: --Kirk?

MR. KIRK: --I would say one other thing. I don't believe that there's--reading over the Prosecutor's response, I don't believe that there is--there might be prejudice but I don't believe it's substantial prejudice. We would say that we don't think there's any prejudice for witnesses to come into court to tell the truth. I think prejudice would involve something where the children were then released and are far away and unavailable to come in, and that would definitely prejudice the Prosecutor's case. But in this case, the witnesses are available. He can proceed with his case. It might be unfortunate that they were told that it was over and now it's starting up again. But the pre--the real prejudice would be my client being convicted of a charge that he didn't do and

spending considerable time in prison for something that didn't happen. So think that's the real prejudice, the--weighing the prejudice that the Prosecutor has and, well, now we gotta go forward 'cause Mr. Kirk's involved and--and he wants and Mr. Hale's wants to withdraw his plea and we're gonna have to have a trial. Well, that's prejudice, but it's not substantial prejudice. It's certainly not outweighed by my client's rights to counsel of his choice and a right to a jury trial.

THE COURT: Okay. Alright, thank you, Mr. Kirk. Any argument, Mr. Sepic?

— MR. SEPIC: Judge, just to answer some of those notions. While the items that Mr. Kirk cites as a defense, those--not--none of those are new. Mr. Parish was well aware of those items that he could present as a defense. And, frankly, I don't know of any other attorney who is more thorough and will defend to the death, so to speak, than Mr. Parish. I think he's got that reputation. He ended up talking to Mr. Hale that Monday. The agreement was struck. I-- I-- I haven't listened to it either, but I believe there might have been a--well, I--I do know that the discussion was held on the record at the time of the plea about Mr. Hale's inability to read and--and whether that was playing a part, or the Court giving more time, perhaps, or making sure that Mr. Hale understood what he was gonna be doing.

THE COURT: Actually, I listened to the tape, Mr.

sepic, and--and the Court, I--I read each of his rights--

MR. SEPIC: Yes.

THE COURT: --to him because I was aware of him stopping school in 10th grade. That was my recollection. I listened to the tape this morning to make sure my recollection was accurate, and I did go through each point with the defendant.

MR. SEPIC: And I don't be--I don't know if the Court offered this but there was no request for more time to consider this plea agreement and it--it seemed like the plea flowed pretty normally and that there wasn't much in the way of hesitation or--or disagreement with Mr. Parish, or anything like that. So, I just don't believe there was anything wrong with the plea taking. I don't believe it's in the interest of justice, all towed here, when you factor in the children's situation. Mr. Kirk says, well, it's not like they've been released to go far away. Well, they've been released, so to speak, from the burden of having to face Mr. Hale. Thank you.

THE COURT: Okay. Thank you, Mister--

MR. KIRK: Can-- Can I add--

THE COURT: --Sepic.

MR. KIRK: --one little point?

THE COURT: Sure, any final response, Mr. Kirk?

MR. KIRK: Just, Mr. Hale, from my understanding, immediately after taking the plea was talk--trying to get ahold

of Mr. Parish to say, "I don't want this. I don't want it. Take it off", and there was some discussions with Mr. Parish about that. And-- And then Mr. Parish didn't wanna go forward with the withdrawal of the plea so he immediately sought substitute counsel. So, I don't believe that he kind of sat on it, was satisfied with the plea and then changed his mind. It was almost immediate that he started taking steps to either get Mr. Parish to take action or to find a different lawyer to so, so.

THE COURT: Okay, thank you, Mr. Kirk. Okay, I'm--I'm prepared to rule.

I've had an opportunity to review the pleadings filed in this matter, as well as a transcript of the preliminary examination from March 6th of 2012, and finally, I didn't listen to the entire plea, but I listened to a good portion of the actual plea, the recorded transcript--recorded record, rather, of that plea from June 11th of 2012. I presided over all proceedings relating to this matter so I--I feel that I've got a good grasp of--of the situation here.

Both parties agree that MCR 6.310(b) is controlling. The parties properly cited to various sections of that court rule in their pleadings, and the Court would make several observations. Number one, we're dealing with a 54-year old man here, Mr. Hale, who had retained counsel of his choice at the-- at both the preliminary examination, as well as, at the time of