

THE STATE OF MICHIGAN

IN THE TRIAL COURT FOR THE COUNTY OF BERRIEN

THE PEOPLE OF
THE STATE OF MICHIGAN,

Plaintiff,

JUDGE CHARLES T. LASATA

File No. 2012000595 FC

ANSWER TO MOTION TO
WITHDRAW PLEA

LARRY ROBERT HALF,
Defendant.

MICHAEL J. SEPIC (P29932)
Chief Assistant Prosecutor
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St. Joseph, MI 49085
(269) 983 7111 Ext. 8311

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Attorney for Defendant
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(269) 429 0966

NOW COMES the People of the State of Michigan, by and
through Assistant Prosecuting Attorney, Michael J. Sepic and for
his Answer to Motion to Withdraw Plea states as follows:

1. Denied. The defendant was charged with eight counts of
Criminal Sexual Conduct. The defendant was bound over to
circuit court on 5 counts.

2. Denied. The defendant pled no contest to 1 count of CSC
3rd Degree and the People dismissed the balance of the counts.

3. Admitted.

4. Admitted.

5. Denied that the withdrawal of the plea is in the
interest of justice.

The pertinent rule MCR 6.310(B) says:

(B) Withdrawal After Acceptance but Before Sentence.
After acceptance but before sentence,

(1) a plea may be withdrawn on the defendant's motion or with the defendant's consent only in the interest of justice, and may not be withdrawn if withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by subrule (C).

(2) the defendant is entitled to withdraw the plea if
(a) the plea involves a prosecutorial sentence recommendation or agreement for a specific sentence, and the court states that it is unable to follow the agreement or recommendation; the trial court shall then state the sentence it intends to impose, and provide the defendant the opportunity to affirm or withdraw the plea; or

(b) the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated; the trial court shall provide the defendant the opportunity to affirm or withdraw the plea, but shall not state the sentence it intends to impose.

a. This rule proceeds on the basis of evaluating the interests of justice and prejudice to the prosecutor. But note first that (B)(2) (unrelated to our case) says "the defendant is entitled to withdraw the plea if..." (underline added) which suggests that there is not the same "entitlement" in (B)(1).

b. It should be further noted that if there is prejudice to the prosecutor because of reliance on the plea, then the

plea may not be withdrawn even if in the interest of justice.

c. The factor that must be considered here is the two children who were the victims of the defendant's heinous acts. They were abused by another defendant, a neighbor of their grandparents around the same time as this defendant's conduct. That defendant was prosecuted, pled guilty and was sentenced. Around the time that case was over, the children disclosed this defendant's abuse. They were interviewed, testified at a preliminary examination and were awaiting trial and being counseled and prepared for the experience of a trial when they were informed there would be no trial.

d. Their foster care worker, their counselor and their foster parents (aunt and uncle) prepared them thereafter to get on with their young lives and attempt to put the past behind them. They were told it was over; there would be no trial.

e. To reverse the course at this point would do several things. If the defendant was permitted to withdraw his plea now the children would be told there will be a trial. They will feel they have been betrayed. Their reaction to this betrayal is uncertain. The children may not trust the adults who were trying to help them. They will likely not

testify in the same way as before. It is not in the interests of justice to reverse the children's lives yet again.

f. The prosecutor's case is jeopardized due to the children's uncertain reaction to reversing course.

g. The defendant must meet the burden of establishing that withdrawal of the plea is in the interest of justice. *People v. Patmore*, 264 Mich App 139 (2004) and *People v. Wilhite*, 240 Mich App 587 (2000).

6. Denied for the reason that the record would suggest the defendant did understand the plea and a transcript and testimony from then counsel, Tat Parish, would confirm that.

7. Neither admitted nor denied and the People leave defendant to his proofs.

8. Neither admitted nor denied and the People leave defendant to his proofs.

9. Admitted.

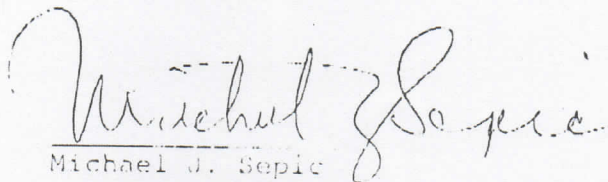
10. Neither admitted nor denied and the People leave defendant to his proofs.

11. Neither admitted nor denied and the People leave defendant to his proofs.

12. Neither admitted nor denied and the People leave defendant to his proofs.

Wherefore, the People pray this court deny defendant's Motion to Withdraw Plea or set the matter for an evidentiary hearing.

July 11, 2012

A handwritten signature in cursive script, reading "Michael J. Sepic".

Michael J. Sepic
Chief Assistant Prosecuting Attorney