

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2000-008471

09/07/2004

HONORABLE PAMELA J. FRANKS

CLERK OF THE COURT
G. Smith
Deputy

FILED: 09/09/2004

STATE OF ARIZONA

ARTHUR G HAZELTON JR.

v.

RONALD EDWARD SANCHEZ

EDWARD F MCGEE
JOHN RONAN CURRY

APPEALS-CCC
VICTIM SERVICES DIV-CA-CCC

MINUTE ENTRY

On September 3, 2004, the court heard evidence concerning the Defendant's Petition for Post Conviction Relief. The court took the matter under advisement and rules at this time.

FINDINGS OF FACT:

1. Mr. Sanchez was charged with Burglary in the Third Degree, a Class 4 Felony, and with Trafficking in Stolen Property in the Second Degree, a Class 3 Felony. The Public Defender's Office withdrew from representing Mr. Sanchez at his Preliminary Hearing on May 25, 2000, as that office already represented the co-defendant. The Office of the Legal Defender was instead appointed to represent Mr. Sanchez. The Office of the Legal Defender assigned Pat Shaler to represent Mr. Sanchez. On June 13, 2000, the Prosecutor sent Ms. Shaler a letter with an attached plea agreement in Mr. Sanchez' case. Mr. Sanchez has no memory of ever meeting Ms. Shaler or knowing that she was ever assigned to represent him. The Office of the Legal Defender's file in this matter does not include any notes to indicate that Ms. Shaler ever reviewed the offered plea agreement with Mr. Sanchez.
2. The Office of the Legal Defender reassigned Mr. Sanchez' case to John Curry. Mr. Curry sent Mr. Sanchez a "boiler plate" letter on June 16, 2000, stating that he had been appointed to represent Mr. Sanchez.

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3. On July 2, 2000, Mr. Sanchez sent Mr. Curry a letter. The letter stated that Mr. Sanchez, who was in custody, had been trying to call Mr. Curry but could not reach him. Mr. Sanchez requested that Mr. Curry file a Motion to Review his Conditions of Release. Mr. Curry wrote Mr. Sanchez back on July 12, 2000. Mr. Curry sent Mr. Sanchez a Pre Trial Services form and asked Mr. Sanchez to fill it out and send it back to him.
4. Mr. Curry first met Mr. Sanchez at the jail on July 27, 2000. Mr. Curry did not bring the proposed written plea agreement with him but he discussed the proposed plea agreement with Mr. Sanchez. They also discussed possible counter offers.
5. Mr. Curry next saw Mr. Sanchez at the Pretrial Conference on July 31, 2000. Mr. Sanchez was in custody on "the chain" with the other in-custody defendants. Mr. Curry showed Mr. Sanchez the written plea agreement for the first time in that setting. This happened in court while other hearings were going on. They did not have a lot of time to talk. Mr. Curry told Mr. Sanchez that the Prosecutor had said that July 31, 2000, was the plea cut off date and that Mr. Sanchez had to take the plea that day if he wanted it. Mr. Sanchez told Mr. Curry that he needed more time to think about it and that he needed to discuss it with his family. Mr. Curry got the prosecutor to extend the plea cut off date by 5 working days. Mr. Curry's impression at the Pretrial Conference was that Mr. Sanchez had not made up his mind one way or the other and needed more time to think about the plea offer.
6. Mr. Sanchez testified that he asked Mr. Curry for a copy of the plea agreement at the Pretrial Conference and that Mr. Curry said he would make a copy and get it back to Mr. Sanchez before Mr. Sanchez was transported back to the jail. Mr. Curry does not remember if Mr. Sanchez asked him for a copy of the plea agreement. Both Mr. Sanchez and Mr. Curry agree that Mr. Curry did not ever give Mr. Sanchez a copy of the proposed plea agreement.
7. As Mr. Curry was going to be in trial during the following week, he instructed Mr. Sanchez at the Pretrial Conference to call him if he wanted to take the plea. Mr. Curry did not go to the jail to meet with Mr. Sanchez before the plea cut off date lapsed.
8. Mr. Sanchez tried to call Mr. Curry during the extended plea cut off days to say he wanted to take the plea offer and left messages for Mr. Curry. Mr. Curry did not receive any telephone messages from Mr. Sanchez. Mr. Curry testified, however, that his office routinely has in-custody clients complain that they are not able to get through to counsel by telephone.
9. In subsequent meetings, Mr. Sanchez told Mr. Curry that he had tried to reach Mr. Curry by telephone but was unable to do so and that he wanted to take the plea offer. Mr. Curry tried to get the Prosecutor to extend the plea cut off date. The Prosecutor refused to do so. Mr. Sanchez would have accepted the plea offer.

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10. Mr. Sanchez went to trial and received a sentence of 10 years in prison.

CONCLUSIONS OF LAW:

To prevail on an ineffective assistance of counsel claim, a Defendant must show that (1) his attorney's performance was unreasonable under prevailing professional standards and (2) that there is a reasonable probability that but for counsel's unprofessional errors, the result would have been different. Strickland v. Washington 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The Sixth Amendment right to counsel attaches at all critical stages in criminal proceedings after the initiation of formal charges, including plea negotiations. United States v. Gordon 156 F.3d 376 (2nd Cir. 1998) The decision whether to plead guilty or contest a criminal charge is ordinarily the most important single decision in any criminal case. Boria v. Keane 99 F.3d 492 (2nd Cir. 1996) It is ineffective assistance of counsel to not inform a defendant of a plea offer before it expires. State v. Blaylock 20 F.3d 1458 (9th Cir. 1994)

Mr. Curry has appeared before the Judge of this Division on numerous occasions in criminal cases. He has always been extremely professional, knowledgeable and concerned for his clients' well being. He has an excellent reputation. Nevertheless, under the totality of the circumstances in this case, the court finds that his performance was unreasonable under prevailing professional standards. He never gave his client a written copy of the proposed plea agreement and only showed it to his client briefly in a busy courtroom on the day the offer was to expire. Mr. Curry was on specific notice from Mr. Sanchez' earlier letter and from communication with other in-custody defendants that in-custody defendants at times had difficulty reaching counsel at the Legal Defender's Office by telephone. Nonetheless, Mr. Curry did not go see Mr. Sanchez or check back with him before the plea deadline expired. When he last saw Mr. Sanchez at the Pre Trial Conference, Mr. Curry's impression was that Mr. Sanchez had not made up his mind. Although Mr. Curry notified Mr. Sanchez of this plea offer, he did not do so in a manner that guaranteed Mr. Sanchez an ability to accept it. (The court assumes that this occurred as Mr. Curry was in trial on another matter.) Mr. Sanchez would have accepted the plea offer that guaranteed him a sentence shorter than the 10-year sentence he received from the court after trial.

A trial court confronted with a denial of the right to effective assistance of counsel has the power to fashion a suitable remedy, which, if necessary and appropriate, may include an order to reinstate the plea offer. State v. Donald 198 Ariz. 406, 10 P.3d 1193 (App. 2000).

IT IS THEREFORE ORDERED that the State reinstate the plea offer that was extended to Mr. Sanchez in this case.

IT IS ORDERED setting a Change of Plea and Resentencing hearing on Wednesday September 8, 2004, at 3:30 p.m.

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IT IS ORDERED that counsel for the State and counsel for Mr. Sanchez meet and confer before that hearing in an effort to reach a stipulation as to the amount of credit that Mr. Sanchez should receive for presentence days in jail and prison.

JUDICIAL OFFICER OF THE SUPERIOR COURT