

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA :
 :
 v. : [REDACTED]
 :
 [REDACTED] :

MOTION FOR LEAVE TO WITHDRAW PLEA OF GUILTY

The Defendant, by and through undersigned counsel, hereby moves for leave to withdraw his plea of guilty to Count Two of the Indictment. In support thereof, undersigned counsel states as follows:

1. On February 26, 2001, the Defendant was indicted on one count of kidnaping, in violation of 18 U.S.C. § 1201, and one count of aggravated sexual abuse, in violation of 18 U.S.C. § 2241(a).

2. On April 2, 2001, the Defendant pled guilty, pursuant to a written plea agreement, to the charge of aggravated sexual abuse. The Court accepted the Defendant's plea of guilty, and set sentencing in the matter for August 7, 2001.

3. The presentence report was disclosed to the parties on June 29, 2001. The Defendant's initial objections to the presentence report were forwarded to the Probation Officer and Government Counsel on July 7, 2001. The Defendant's Position of Defendant with Respect to Sentencing Factors was filed with the Court on July 19, 2001.

4. On July 6, 2001, the Defendant first indicated, in a conference with undersigned counsel's investigator, interest in seeking leave to withdraw his plea of guilty to Count Two of the Indictment. Following an exchange of correspondence, undersigned counsel and his investigator met with the Defendant at the Moore County Jail in Carthage, North Carolina, on July 18, 2001. At that meeting, undersigned counsel advised the Defendant regarding the applicable law, and both the legal and practical implications of seeking leave to withdraw his plea of guilty to Count Two of the Indictment. The Defendant advised undersigned counsel of his belief that he is not guilty of aggravated sexual abuse as charged in Count Two of the Indictment, and his belief that he was depressed and not thinking clearly at the time he entered his plea of guilty.¹ At the conclusion of that meeting, the Defendant instructed undersigned counsel to prepare and file this motion.

5. Rule 32(e) of the Federal Rules of Criminal Procedure provides that, prior to the imposition of sentence, "the court may permit the plea [of guilty] to be withdrawn if the defendant

¹ A mental health evaluation prepared January 23, 2001, by the North Carolina Department of Correction, includes an Axis I diagnosis of Dysthymia, and an Axis II diagnosis of Personality Disorder, NOS, with Antisocial, Paranoid, and Narcissistic Features. The Defendant was prescribed Sinequan and Zyprexa at that time, and he advises undersigned counsel that he continues to take the same medication.

shows any fair and just reason."² It is the Defendant's belief that the matters he described for counsel constitute "fair and just reason[s]," and that he should be allowed leave to withdraw his plea of guilty to Count Two of the Indictment.

6. Because this motion includes reference to sensitive personal mental health information, undersigned counsel requests that it be filed under seal.

Respectfully submitted this the 20th day of July, 2001.

LOUIS C. ALLEN III
Federal Public Defender

ERIC D. PLACKE
Assistant Federal Public Defender
Arkansas State Bar No. [REDACTED]
North Carolina State Bar No. [REDACTED]
101 S. Elm Street, Suite 210
Greensboro, NC 27402
(336) 333-5455

² The factors to be considered in making that determination are set forth in United States v. Moore, 931 F.2d 245, 248 (4th Cir. 1991).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Leave to Withdraw Plea of Guilty were served on the following parties by U.S. Mail:

Ms. Lisa B. Boggs
Assistant United States Attorney
P.O. Box 1858
Greensboro, NC 27402

Mr. Joseph R. Maciejewski
United States Probation Officer
2330 Broad Street
Durham, NC 27704

This the 20th day of July, 2001.

ERIC D. PLACKE
Assistant Federal Public Defender

