

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**CRIMINAL NO. 2:07cr184-M-B**

**ADAM MCHANN**

**MOTION TO WITHDRAW GUILTY PLEA**

COMES NOW, Adam McHann, defendant herein, by and through counsel, and moves this Honorable Court, to allow him to withdraw the guilty plea entered February 5, 2008, stating the following; to-wit:

1. Adam McHann is named in an indictment charging civil rights violations of a suspect in the custody of the Olive Branch Police Department. Mr. McHann was a police officer with the Olive Branch Police Department at the time of the alleged violation and he was represented by John Dolan before and during the change of plea hearing.  
Mr. McHann would show this Honorable Court that he did not in fact, commit the crime charged, but that he only admitted that he did so at the urging of counsel.
2. Should this Honorable Court allow a hearing on this motion, the following testimony would be offered:

Adam McHann was an employee of the Olive Branch Police Department when he was indicted in November 2007 for civil rights violations that allegedly occurred in March 2003. Mr. McHann retained attorney John Dolan to represent him in the matter. Mr. McHann had very little contact with Mr. Dolan following his arraignment. Mr. Dolan never provided discovery documents nor did he discuss

the discovery process with Mr. McHann. Mr. Dolan instructed Mr. McHann that he was to be present in Oxford on February 5, 2008 for a suppression hearing. Mr. McHann and his wife appeared in Oxford for the suppression hearing. Prior to the hearing they were counseled by Mr. Dolan who insisted that it was in Adam's best interest to plead guilty. He first told them that two of Adam's former co-workers were going to testify against Adam. Adam adamantly denied that these gentlemen had anything to offer in the way of incriminating evidence against him. Dolan convinced the McHanns that the co-workers would go so far as to perjure themselves if necessary. Dolan guaranteed Adam that he would get probation if he plead guilty; and further, that his record would be expunged in one year.

The McHanns were further advised that the deal was only good for that day and that they could not think it over prior to making a decision. Adam's innocence was important, but in his mind it was not nearly as important as protecting his family. He felt that if he could be guaranteed probation **and** his record would be expunged that he should proceed with a plea of guilty.

In the little time given to prepare for the plea, Mr. Dolan advised Adam to agree with the Judge's questioning and all would go according to plan.

Against his "gut instinct", Adam McHann stood before this Honorable Court and lied repeatedly about his role in the incident alleged in the indictment. There is no excuse for perjury, however; Mr. McHann was following the advice of counsel and begs this Honorable Court to show mercy for his wrongdoing.

Adam met with U.S. Probation officer Laura Wright immediately following the change of plea hearing. Dolan did not attend this meeting. Adam admitted to Officer Wright that he did not understand the implication of his actions and that he was blindly following counsel's advice. He further advised that he did not understand the sentencing guidelines and had never reviewed the same.

Immediately following the plea Adam recanted his admission of guilt. He attempted to contact Dolan to have the plea set aside. He received no response. He called the Court and his probation officer and eventually learned that Dolan was suspended from law practice on the very day of the plea. Dolan never again contacted Adam, despite an explicit order from the Mississippi Supreme Court that he do so immediately.

Counsel undersigned was appointed to represent Adam on April 16, 2008.

From their first telephone conversation Adam McHann has professed his innocence and explained his desire to withdraw the plea of guilty.

Counsel has spent several hours with Adam and his wife and believes that Adam did not receive adequate counseling and guidance prior to the entry of the guilty plea.

3. Authorities

There is no absolute right to withdraw a guilty plea before sentencing, although a district court may allow it if the defendant can show "a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B). The burden "rests with the defendant."

*United States v. Brewster*, 137 F.3d 853, 857-58 (5th Cir. 1998).

The guiding case in the Fifth Circuit on this issue is *United States v. Carr*, 740 F. 2d 339

(5<sup>th</sup> Cir. 1984). The *Carr* Court laid out an illustrative list of factors for deciding whether a fair and just reason exists for withdrawal:

(1) whether or not the defendant has asserted his innocence; (2) whether or not the government would suffer prejudice if the withdrawal motion were granted; (3) whether or not the defendant has delayed in filing his withdrawal motion; (4) whether or not the withdrawal would substantially inconvenience the court; (5) whether or not close assistance of counsel was available; (6) whether or not the original plea was knowing and voluntary; and (7) whether or not the withdrawal would waste judicial resources; and, as applicable, the reason why defenses advanced later were not proffered at the time of the original pleading, or the reasons why a defendant delayed in making his withdrawal motion.

Although this illustrative list should be considered, the ultimate decision should be based on the "totality of the circumstances." *Id.* at 344.

An application of the *Carr* factors in the case at bar indicate that Adam McHann's plea should be withdrawn.

(1) whether or not the defendant has asserted his innocence - **other than the brief time before this Honorable Court, Adam McHann has maintained his innocence in the five years since the alleged violation. He entered the guilty plea based on fear and poor advice of counsel.**

(2) whether or not the government would suffer prejudice if the withdrawal motion were granted; - **No prejudice would befall the government should this Honorable Court allow Adam to withdraw his plea and proceed to trial.**

**Adam entered his plea less than a week before trial, so one would assume the government was prepared to move forward and could move forward again.**

(3) whether or not the defendant has delayed in filing his withdrawal motion -

**Adam McHann wanted to withdraw his guilty plea the day it was entered.**

**He told everyone he could that he wanted to do so. His attorney would not communicate with him and wholly failed to represent his interests. Although there is a delay in this motion, it is through no fault of Adam's. New counsel was appointed less than one month ago. Documents were received and reviewed by counsel and Adam McHann. Counsel undertook an investigation of the situation and spoke to as many people as possible who participated in the plea, including witnesses to the plea as well as the U.S. Probation officer who met Adam immediately thereafter.**

(4) whether or not the withdrawal would substantially inconvenience the court -

**Adam McHann does not wish to inconvenience this Honorable Court in any way whatsoever. Adam is not aware of any inconvenience but would assert that any inconvenience is negated by the pursuit of Justice and Truth.**

(5) whether or not close assistance of counsel was available - **There is no**

**question that an attorney was physically present on behalf of Adam**

**McHann. However, his presence does not meet the standard of assistance associated with any competent representation. Adam's attorney**

**recommended that he plead to the indictment and take whatever punishment the judge imposed. There was no "negotiation" involved in such a plea. The only possible benefit would be the acceptance of responsibility or a 5k1.1**

**motion. Adam didn't know about either of these as the guidelines had not been explained to him. Dolan recommended that he agree to waive any and all collateral attacks on the plea as well as the sentence to be imposed; despite the fact that he had no idea what that sentence would be. Dolan advised Adam that he would be guaranteed probation which was possible, but not a guarantee. He further advised that Adam's conviction could be expunged, which is blatantly false as there is no procedure for such an action. Dolan advised that two people were willing to perjure themselves to testify against Adam. It has since been confirmed that neither of those individuals ever offered to testify against Adam; and in fact, had repeatedly stated they knew nothing about Adam's indictment. Furthermore, counsel for Adam was suspended from the practice of law on the very day of the guilty plea. As part of the order of suspension he was to immediately contact all his clients and apprise them of the situation. He never again contacted Adam McHann. Mr. Dolan also informed the prosecutor that he was forwarding all information to counsel undersigned, but he failed to do so. Despite the presence of counsel, it is clear that Adam McHann was not afforded competent counsel before and during his change of plea hearing.**

**(6) whether or not the original plea was knowing and voluntary - The plea was entered based on false representations. It was uninformed and the result of manipulation at the hands of counsel. Adam McHann told this Honorable Court, under oath, that the plea was voluntary. However, because it was not based on fact or supported by competent negotiations, it cannot be construed**

**as voluntary.**

**(7) whether or not the withdrawal would waste judicial resources - Adam McHann cannot attest to the current state of judicial resources. However, righting a blatant wrong can never, ever constitute a waste of judicial resources.**

The bottom line is that Adam McHann entered a guilty plea to a crime he did not commit. He entered the plea based on false promises and misrepresentations. His attorney was suspended the same day of the plea and failed to communicate with Adam in any way following his suspension. It was only through Court intervention that Adam learned of the fate of his attorney and of his need for new counsel.

The totality of the circumstances mandate a withdrawal of the plea of guilty of Adam McHann.

WHEREFORE, PREMISES CONSIDERED, Adam McHann moves this Honorable Court to allow him to withdraw the guilty plea entered in this case and to proceed with trial.

Respectfully submitted,

/s/Christi McCoy  
Christi McCoy, MSB#9986

Christi R. McCoy  
Attorney at Law  
1739 University Avenue, No. 252  
Oxford, Mississippi 38655  
Telephone: 662-513-6366  
Facsimile: 662-513-6367

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via the ECF filing system. Said system delivered the motion to the following:

**Robert Willie Coleman , II**

robert.coleman@usdoj.gov,usamsn.ecf@usdoj.gov,robin.b.garrison@usdoj.gov

**Anthony L. Farese**

tony@fareselaw.com,susan@fareselaw.com

**Christi Rena McCoy**

mccoylew@avsia.com,cmlawoxford@aol.com

**Evan Rikhye**

evan.rikhye@usdoj.gov

**William F. Travis**

bill@southavenlaw.com

/s/Christi McCoy

CHRISTI MCCOY