

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

UNITED STATES OF AMERICA

V.

CASE NUMBER: 2:07CR 184 M-S

ADAM MCHANN

ORDER

Came on for hearing, the motion to withdraw plea of guilty as to Adam McHann and the Court having heard witnesses and having reviewed the briefs finds that said motion should be granted.

An indictment filed on November 11, 2007, charged Adam McHann with deprivation of rights under color of law (18 U.S.C. § 242). On February 5, 2008, McHann plead guilty to the charge. That same day McHann's counsel was suspended from the practice of law by the Supreme Court of Mississippi.

On April 16, 2008, the Court ordered McHann's counsel removed from his case and appointed Christi McCoy for any and all further representation of McHann. On May 15, 2008, McHann filed a motion for withdrawal of his plea of guilty.

The Fifth Circuit Court of Appeals formulated a list of factors to apply while deciding whether to allow a defendant to withdraw a guilty plea. *United States v. Carr*, 740 F. 2d 339 (5th Cir. 1984). The Fifth Circuit held that while applying the *Carr* factors, the decision should be based on a consideration of the "totality of the circumstances." *Id.* at 344.

In considering the *Carr* factors, the Court finds that McHann has continuously asserted his innocence; the Court will not be inconvenienced by allowing the withdrawal; withdrawal will not waste judicial resources; and the Court sees no way that allowing the withdrawal will

prejudice the government. In addition, the Court finds it would be a miscarriage of justice to allow McHann to be sentenced on a plea entered into while being represented by an attorney who was suspended from the practice of law. Under the totality of the circumstances, the Court finds that McHann's motion to withdraw should be granted.

Consistent with this court's bench opinion rendered following the hearing of defendant Adam McHann's motion to withdraw the plea of guilty, it is hereby ordered that the motion to withdraw the plea of guilty as to Adam McHann is GRANTED and this matter shall be set for trial.

SO ORDERED, this the 17th day of July, 2008.

/s/ MICHAEL P. MILLS
CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI