

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff

Vs.

CASE NO: 2022-CF-000688-A-O

KELLI RENEE LYNCH,
Defendant

MOTION TO WITHDRAW PLEA

COMES NOW the Defendant, Kelli Lynch, acting Pro Se in accordance with US Statute 28 U.S.C. § 1654, and pursuant to Florida Rule of Criminal Procedure 3.170(f), hereby requests of this honorable court that she withdraw her previously entered pleas of “Nolo Contendere” to the charges alleged against her in this case. Florida Rule of Criminal Procedure 3.170(f) states:

‘ The court may in its discretion, and shall on good cause, at any time before a sentence, permit a plea of guilty or no contest to be withdrawn and, if judgment of conviction has been entered thereon, set aside the judgment and allow a plea of not guilty, or, with the consent of the prosecuting attorney, allow a plea of guilty or no contest of a lesser included offense, or of a lesser degree of the offense charged, to be substituted for the plea of guilty or no contest.

The fact that a defendant may have entered a plea of guilty or no contest and later withdrawn the plea may not be used against the defendant in a trial of that cause. ‘

Good cause for this court to grant the Defendants motion is shown in the incompetent and inefficient council that has been provided to her throughout this case by her attorney, Jonathan Mills. The Defendant has no previous felony convictions and is ignorant to the procedures of criminal court. The Defendant has filed a formal complaint with the Florida Bar citing his lack of effort, not even following through with depositions, as well as his unwillingness to provide the Defendant with knowledge in regards to the law surrounding her case that would allow her to make educated decisions about her case, and most importantly coercing the Defendant to accept a plea deal that is not in her best interest by giving the Defendant false information regarding the plea and failing to explain the terms of the plea deal, thus causing the Defendant to agree to the plea while under duress and fear.

SUPPORTING LAW

State v. Partlow, 840 So.2d 1040, 1042 (Fla. 2003).

‘ Under this provision, a trial court has broad discretion in determining motions to withdraw a plea, although it must permit withdrawal upon “good cause.” ‘

Lehmkuhle v. State, 20 So.3d 971, 974 (Fla. 2d DCA 2009).

‘ An oral motion to withdraw a guilty plea is not untimely if it is raised after the plea has been accepted, but before the defendant has been sentenced. ‘

Tanzi v. State, 964 So.2d 106, 111–12 (Fla. 2007)

‘ The Florida Supreme Court construed a defendant’s statements that he was dissatisfied with his counsel and that he “should have a guilt phase jury since he was being forced to have a penalty phase jury” as an “oral motion to withdraw his plea” under rule 3.170(f). ‘

Rivera v. State, 136 So.3d 609, 610 (Fla. 2d DCA 2013)

‘ The policy behind this rule is that “the law favors a trial on the merits.” That policy requires that liberal construction of the rule. For example, when a defendant states that he would rather go to trial than be sentenced pursuant to a plea of guilty or nolo contendere, such a statement may be sufficient to constitute an oral motion by the defendant to withdraw his plea. ‘

Smith v. United States, 348 F.3d 545 (6th Cir. 2004)

‘ Trial counsel, according to the petitioner in this § 2255 petition, failed to advise him properly about a pending plea offer. At a minimum the court should have held a hearing on this matter. Specifically, petitioner claimed that he should have been fully informed about the various Sentencing Guideline scenarios that would exist following a trial, versus following the entry of a guilty plea. The possible sentence following trial was ten times harsher than the sentence that was offered in the negotiated plea and this information was not (according to the petitioner) conveyed to him. ‘

Oct 20, 2023

Date

Defendant

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Lynch - Motion to Withdraw Plea

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