

IN THE SUPREME COURT OF OHIO

ORIGINAL

09-1625

STATE OF OHIO	:	COURT OF APPEALS CASE NO. 2008-A-0051
	:	SUPREME COURT CASE NO.
PLAINTIFF-APPELLEE	:	
	:	
-vs-	:	
	:	
JAMES IRISH	:	
	:	
DEFENDANT-APPELLANT:	:	

APPEAL FROM THE COURT OF APPEALS  
 ELEVENTH APPELLATE DISTRICT  
 ASHTABULA COUNTY, OHIO

MEMORANDUM IN SUPPORT OF JURISDICTION

Ashtabula County Public Defender, Inc.  
 Attorney for Defendant-Appellant  
 Joseph A. Humpolick, Attorney (#0023665)  
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 (440) 998-2628

FILED  
 SEP 11 2008  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

TABLE OF CONTENTS

STATEMENT OF THE CASE.....	1
A. Procedural Posture	
B. Statement of Facts	
PROPOSITION OF LAW.....	3
A COURT ABUSES ITS DISCRETION WHEN IT ENFORCES A STRICT POLICY THAT PROHIBITS PLEA BARGAINS BEYOND A CERTAIN DATE THAT DOESN'T ALLOW FOR EXCEPTIONAL CIRCUMSTANCES.	
<u>AUTHORITIES</u>	
<i>Akron v. Ragsdale</i> , 61 OA 2d 107, 109 (9 <sup>th</sup> Dist., 1978).....	3
<i>State of Ohio v. Denes</i> , 2008 Ohio 3506, ¶23 (9 <sup>th</sup> Dist., July 14, 2008)..	3
<i>U.S. v. Ammidown</i> , 497 F 2d 615, 622 (D.C. Circuit, 1972).....	3
Revised Code 2919.25.....	3
<i>State v. James Irish</i> , 2008-A-0051 at page 4, ¶ 20.....	4
<i>State v. James Irish</i> , 2008-A-0051 at page 6, ¶ 27.....	5
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	7
APPENDIX.....	8

APPENDIX TABLE OF CONTENTS

1. Appellant's indictment of November 9, 2007.....	A-1
2. Appellant's no contest plea of May 13, 2008.....	A-2
3. Appellant's sentencing of July 13, 2008.....	A-4
4. Judgment Entry of Eleventh District Court of Appeals August 3, 2009.....	A-7
5. Opinion of Eleventh District Court of Appeals August 3, 2009.....	A-8

## STATEMENT OF THE CASE

### A. Procedural Posture

On November 9, 2007 James Irish, Appellant herein, was indicted by the Ashtabula County Grand Jury of one count of domestic violence, in violation of Revised Code 2919.25, a felony of the fourth degree. TD 2. On May 13, 2008 Appellant plead no contest as indicted. TD 37. On July 16, 2008 Appellant was placed on community control. TD 40.

On August 11, 2008 Appellant filed a notice of appeal. TD 43. After briefs were filed and arguments were heard, the Appellate Court held against Appellant on August 3, 2009.

Appellant now timely appeals to this court and seeks to have it hear this matter further.

### B. Statement of facts

On May 12, 2008 and on May 13, 2008, prior to entering his plea of no contest, Appellant informed the trial court that he was willing to plead guilty to the first degree misdemeanor of domestic violence pursuant to a plea agreement worked out between defense counsel and the prosecution. Transcript of Plea (hereinafter TP) at 2-3.

However, Ashtabula County Common Pleas Judge Alfred Mackey refused to accept the plea on grounds that he had a policy of not accepting negotiated pleas to anything other than the indictment beyond a plea deadline date that had already passed. TP at 3-4, see TD 22. Accordingly, Appellant entered a plea of no contest to the indictment as charged. TP at 4, 23, TD 37. In return, the State of Ohio agreed to recommend community control. TP at 4-5.

Appellant was given community control on July 16, 2008. TD 40. Appellant filed a notice of appeal on August 11, 2008. On August 3, 2009 the Appellate Court held against Appellant.

WHY THIS CASE SHOULD BE ACCEPTED FOR REVIEW  
BY THIS COURT.

How far can a court go to enforce a policy of docket control that prohibits plea bargains beyond a certain date that doesn't provide for exceptional circumstances? Does a court abuse its discretion when it refuses to allow an accused to execute a plea offer after that date that comes from the prosecutor that would have been accepted had it been made much earlier?

That's what's involved in this case. It is about how far a court can go to enforce a local rule. Counsel submits that this case provides an opportunity for this court to define reasonable limits on judicial discretion that don't interfere with docket control. That's what makes this case worthy of further review.

## PROPOSITION OF LAW

A COURT ABUSES ITS DISCRETION WHEN IT ENFORCES A STRICT POLICY THAT PROHIBITS PLEA BARGAINS BEYOND A CERTAIN DATE THAT DOESN'T ALLOW FOR EXCEPTIONAL CIRCUMSTANCES.

Plea bargaining is a recognized fact of life in the criminal justice system. It is an approved method of disposing of criminal law cases. See Akron v. Ragsdale, 61 OA 2d 107, 109 (9<sup>th</sup> Dist., 1978). Courts over the years have recognized the need for prosecutors and defense counsel to engage in good faith plea negotiations to resolve their cases. Ibid. State of Ohio v. Denes, 2008 Ohio 3506, ¶ 23 (9<sup>th</sup> Dist., July 14, 2008).

The final decision to accept or reject a proposed plea negotiation rests with the trial judge. Akron v. Ragsdale, 61 OA 2d at 109. That decision should be exercised with sound discretion. Ibid. No proposed plea bargain should be summarily rejected. Ibid. See also U.S. v. Ammidown, 497 F 2d 615, 622 (D.C. Circuit, 1972). Also a court can condemn a proposed plea bargain as a trespass on judicial authority only in blatant and extreme cases. See U.S. v. Ammidown, 497 F 2d at 622.

In the trial court below, Appellant was indicted in the Ashtabula County Court of Common Pleas on one count of domestic violence in violation of Ohio Revised Code 2919.25, a felony of the fourth degree because of a prior conviction of the same section of the law. TD 2. A jury trial was set for May 13, 2008. TD 31. On May 12, 2008 defense counsel and counsel for the Ashtabula County Prosecutor's Office reached an agreement to have Appellant plead guilty to a lesser offense of domestic violence as a misdemeanor of the first degree. TP at 2-3. Appellant informed defense counsel that he would accept the plea when he spoke to defense counsel that afternoon. Defense counsel then called the trial court to inform it of the agreement. Ibid.

On May 13, 2008 the day of trial, defense counsel offered to have Appellant plead to the reduced charge pursuant to the agreement. TP at 2-3. However, Ashtabula County Common Pleas Court Judge Alfred Mackey refused to accept the plea because it was tendered past a deadline that was set for negotiated pleas in this case on April 4, 2008. TP at 3-4. See TD 22.

Counsel submits that Judge Mackey abused his discretion when he did so. He didn't allege that the prosecutor abused his discretion when he made the offer to resolve the case the way he did on the eve of trial. Counsel submits that the plea agreement wasn't an extreme and blatant attack on the court's authority.

Counsel also informed the court that the offer wasn't made prior to the plea cutoff date so he could comply with the court's cutoff date for pleas negotiations. TP at 3. He also informed the court of the negotiation on the eve of the trial date so jurors could be called off. See TP at 2-3.

Accordingly counsel submits that the plea as reached in this case did not diminish whatever integrity there was to the court's guidelines or their purpose. It wasn't like the plea offer was made prior to the April 4<sup>th</sup> deadline and Appellant waited until the eve of trial to accept it. Counsel informed the court that he would have recommended that his client accept the plea had it been made prior to the cutoff date. TP at 3.

Accordingly, counsel submits that the court abused its discretion when it refused to allow Appellant to fo forward with the plea deal that had been worked out with the prosecutor.

Unfortunately the majority opinion in the Appellate court below found nothing wrong with Judge Mackey's decision. *State v. James Irish*, 2008-A-0051 at page 4, ¶ 20. However in her dissent, Judge Grendell felt the court abused its discretion when it applied an overarching policy without taking into account the particular circumstances and issues in this case. *State v. James Irish*, 2008-A-0051 at

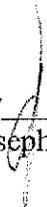
page 6, ¶ 27. In particular Judge Grendell felt that Judge Mackey didn't consider that the plea offer came from the prosecutor not Appellant. Ibid at page 4-5, ¶ 22.

Counsel submits that Judge Grendell's reasoning makes more sense considering the facts and circumstances of this case. After all, why should Appellant be prejudiced for respecting a rule that the State violated. That's why he argues that this case should be reversed and remanded to the trial court and that Judge Mackey should be ordered to allow Appellant the benefit of the plea bargain that had been worked out before the court refused to allow it.

CONCLUSION

For the reasons argued herein, Appellant's counsel prays that this court accept this case for further review.

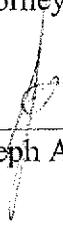
Ashtabula County Public Defender, Inc.  
Attorney for Defendant-Appellant

By  \_\_\_\_\_  
Joseph A. Humpolick, Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing personally delivered to the office of Thomas L. Sartini, Ashtabula County Prosecutor, 25 W. Jefferson St., Courthouse, Jefferson, Ohio, on this the 11<sup>th</sup> day of September, 2009.

Ashtabula County Public Defender, Inc.  
Attorney for Defendant-Appellant

By  \_\_\_\_\_  
Joseph A. Humpolick, Attorney

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APPENDIX

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INDICTMENT - ONE COUNT

STATE OF OHIO

)

CASE NO. 2007-CR-

)

COUNTY OF ASHTABULA

)

STATE OF OHIO VS. JAMES J. IRISH

Of the September Term, November 8th Recall, in the year Two Thousand Seven:

THE JURORS OF THE ASHTABULA COUNTY GRAND JURY of the State of Ohio on their oaths,

in the name and authority of the State of Ohio, do find and present that:

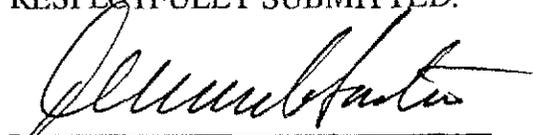
COUNT ONE

On or about the 6th day of September, 2007, in the Township of Monroe, County of Ashtabula, and State of Ohio, one **JAMES J. IRISH** did knowingly cause or attempt to cause physical harm to Valerie R. Howland, a family or household member.

This act, to-wit: Domestic Violence, constitutes a felony of the fourth degree, the defendant having been previously been convicted of domestic violence in Conneaut Municipal Court, Case No. 03CRB497, on November 12, 2003, contrary to and in violation of the Ohio Revised Code, Title 29, §2919.25; and against the peace and dignity of the State of Ohio.

RESPECTFULLY SUBMITTED:

BY:



THOMAS L. SARTINI, 0001937  
PROSECUTING ATTORNEY



Therefore, it is the order of this Court that the Defendant's plea of "No Contest" to Count One "Domestic Violence," a felony of the fourth degree, in violation of Ohio Revised Code Section 2919.25 (A) is hereby accepted by the Court and entered of record, and upon the presentation of the evidence by the Prosecutor, the Court finds the Defendant guilty of said offense.

Sentencing is passed from day to day thereafter for the purpose of allowing sufficient time for the processing of a Pre-Sentence Investigative Report.

Bond as previously set is hereby continued.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
JUDGE ALFRED W. MACKAY

**Pursuant to Civil Rule 58(B), the Clerk of this Court is ordered to serve copies of this Judgment Entry upon the following parties: Thomas L. Sartini, Prosecutor; Attorney Joseph A. Humpolick; Adult Parole Authority/Probation Department; and Jean A. Whitney, Assignment Commissioner.**

FILED  
IN THE COURT OF COMMON PLEAS  
ASHTABULA COUNTY, OHIO  
2008 JUL 16 A 11:55

RECEIVED  
JUL 18 2008  
By

THE STATE OF OHIO,  
PLAINTIFF

CAROL A. HEAD )  
CLERK OF COURTS )  
ASHTABULA CO. OH )

CASE NO. 2007-CR-400  
JUDGE MACKAY

vs.

JAMES J. IRISH,  
DEFENDANT

**JUDGMENT ENTRY**  
*Sentencing*

On this day, the 15<sup>th</sup> of July, 2008, Defendant's Sentencing Hearing was held pursuant to O.R.C. Section 2929.19. Defense Attorney, Joseph A. Humpolick, and Assistant County Prosecutor, Gene Barrett, were present, as was the Defendant, who was afforded all rights pursuant to Criminal Rule 32. There was no one present from the Adult Parole Authority/Probation Department. The Court has considered the record, oral statements, as well as the principles and purposes of sentencing under O.R.C. Section 2929.11, has balanced the seriousness and recidivism factors under O.R.C. Section 2929.12, and has considered the factors under O.R.C. Section 2929.13(B).

The Court finds that the Defendant, JAMES J. IRISH, has been convicted of Count One (1) of the Indictment, "DOMESTIC VIOLENCE," in violation of Ohio Revised Code Section 2929.25 (A), a felony of the fourth degree.

**It is hereby ORDERED** that the Defendant, JAMES IRISH, be sentenced to Two (2) years of Community Control.

The supervision of the offender by the Adult Parole Authority/Probation Department is specifically to include:

X  a fine of \$  \$100.00

X  Basic supervised time of  2 years  (term)

electronic monitoring for   (term)

\_\_\_\_\_ work release for \_\_\_\_\_(term)

\_\_\_\_\_ Correctional Treatment Facility, \_\_\_\_\_

\_\_\_\_\_ Correctional Center of Northwest Ohio for \_\_\_\_\_(term)

**X Other As a condition of Community Control, the Defendant is ordered to remain law-abiding and gainfully employed. Further, the Defendant is to submit to a mental health evaluation and follow-up on any recommended counseling; is to be evaluated for alcohol and/or drug assessment and any follow-up treatment as recommended. Defendant shall also be responsible for payment of any fees associated with said treatment.**

Defendant was also advised a violation of this sentence may lead to a longer or more restrictive sanction for the Defendant; including a prison term of Fourteen (14) months. If the Defendant violates the conditions of his Community Control and is sent to prison, the Court advised the Defendant shall be subject to Post-Release Control for a period of three (3) years. As a part of the sentence herein, the Parole Board and any judge having jurisdiction while the Defendant is subject to Post-Release Control may, pursuant to ORC Section 2967.11 and ORC Section 2967.28, extend the prison term. Under such authority the Parole Board may return the Defendant to prison for violations of Post-Release control not exceeding 50% of this sentence or Seven(7) months.

Further, the Court advised the Defendant that under federal law, persons convicted of a felony can never lawfully possess a firearm and it should be understood that if a convicted felon is ever found with a firearm, even one belonging to someone else, that person will be prosecuted by federal authorities and subject to imprisonment for several years.

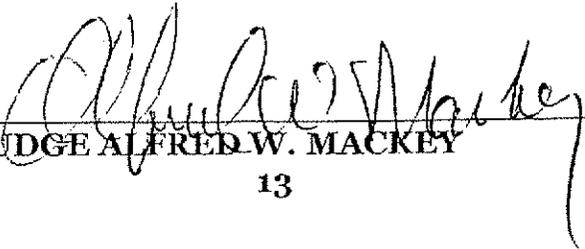
Defendant is, therefore, **ORDERED**, to report to the Ashtabula County Adult Parole Authority/Probation Department forthwith.

Bond as previously set is hereby cancelled and held for naught, less any Clerk's fees which may

be applicable.

Costs herein are assessed to Defendant.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
JUDGE ALFRED W. MACKAY

13

**Pursuant to Civil Rule 58(B), the Clerk of this Court is ordered to serve copies of this Judgment Entry upon the following parties: Thomas L. Sartini, Prosecuting Attorney; Attorney Joseph A. Humpolick; Adult Parole Authority/Adult Probation Department; Jean A. Whitney, Assignment Commissioner.**



COURT OF APPEALS

STATE OF OHIO

FILED  
)SS.

IN THE COURT OF APPEALS

COUNTY OF ASHTABULA

2009 AUG -3 P 2:32 ELEVENTH DISTRICT

STATE OF OHIO,

CAROL A. MEAD  
CLERK OF COURTS  
COMMON PLEAS COURT  
ASHTABULA CO. OH

Plaintiff-Appellee,

JUDGMENT ENTRY

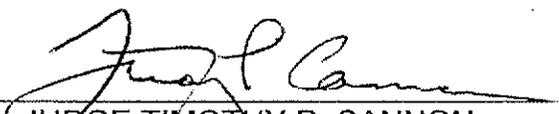
- vs -

CASE NO. 2008-A-0051

JAMES J. IRISH,

Defendant-Appellant.

For the reasons stated in the opinion of this court, appellant's assignment of error is overruled. It is the judgment and order of this court that the judgment of the Ashtabula County Court of Common Pleas is affirmed. Costs to be taxed against appellant.

  
JUDGE TIMOTHY P. CANNON

MARY JANE TRAPP, P.J., concurs,

DIANE V. GRENDALL, J., dissents with a Dissenting Opinion.

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AUG 06 2009  
By \_\_\_\_\_

FILED  
2009 AUG -3 P 2:32  
CAROL A. MEAD  
CLERK OF COURTS  
COMMON PLEAS COURT  
ASHTABULA CO. OH

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

2009 AUG -3 P 2:32

CAROL A. MEAD  
CLERK OF COURTS  
COMMON PLEAS COURT  
ASHTABULA CO. OH

STATE OF OHIO,

:

OPINION

Plaintiff-Appellee,

:

CASE NO. 2008-A-0051

- vs -

:

JAMES J. IRISH,

:

Defendant-Appellant.

:

Criminal Appeal from the Court of Common Pleas, Case No. 2007 CR 400.

Judgment: Affirmed.

*Thomas L. Sartini*, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

*Joseph A. Humpolick*, Ashtabula County Public Defender, Inc., 4817 State Road, Suite 202, Ashtabula, OH 44004-6927 (For Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} Appellant, James J. Irish, appeals the decision of the Ashtabula County Court of Common Pleas denying his request to accept a plea bargain, after the court-imposed deadline. We affirm the judgment of the trial court.

{¶2} Irish was charged with a violation of R.C. 2919.25(A), domestic violence, a felony of the fourth degree. Irish plead not guilty.

{¶3} On January 28, 2008, the trial court issued a judgment entry stating:

{¶14} “The State’s offer is to plead to the Indictment and there will be a recommendation of community control.

{¶15} “The plea cutoff date is April 4, 2008, and jury trial is scheduled for April 22, 2008, at 9:00 A.M.”

{¶16} On April 7, 2008, the trial court issued a judgment stating:

{¶17} “April 4, 2008, was [Irish’s] cutoff date. \*\*\*

{¶18} “[Irish] does not want to accept the plea offer.

{¶19} “This matter has previously been scheduled for a jury trial on May 13, 2008, at 9:00 A.M.”

{¶10} On May 13, 2008, Irish attempted to accept a negotiated plea to a first-degree misdemeanor charge of domestic violence. However, the trial court refused, indicating that Irish failed to comply with the court’s cutoff date. Thereafter, Irish withdrew his plea of not guilty and entered a plea of no contest to domestic violence, a felony of the fourth degree. Irish was sentenced to a two-year term of community control.

{¶11} Irish filed a timely notice of appeal and asserts the following assignment of error:

{¶12} “Ashtabula County Common Pleas Court Judge Alfred Mackey abused his discretion when he refused to accept a negotiated plea to the first degree misdemeanor of domestic violence in violation of Revised Code 2919.25 that had been worked out between appellant through defense counsel and Assistant Ashtabula County Prosecutor Gene Barrett.”

{¶13} On appeal, Irish maintains that the trial court erred by refusing to accept the plea bargain negotiated between himself and the prosecutor. We find this argument as advocated by Irish unpersuasive.

{¶14} "It is well established that the decision whether or not to accept a plea bargain is within the sound discretion of the trial court. \*\*\* When the trial court rejects a recommended plea bargain, it should state reasons for its decision. \*\*\*." *State v. Stephenson* (Apr. 30, 1997), 9th Dist. No. 17752, 1997 Ohio App. LEXIS 1738, at \*5. (Internal citations omitted.) "The term "abuse of discretion" \*\*\* implies that the court's attitude is unreasonable, arbitrary or unconscionable." *State v. White*, 118 Ohio St.3d 12, 2008-Ohio-1623, at ¶46, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157. (Secondary citations omitted.)

{¶15} On the day of trial, Irish's counsel moved the trial court to accept a negotiated plea to a lesser offense of domestic violence, a first-degree misdemeanor. Irish's counsel indicated the offer was extended the previous day. The trial court denied the request, stating:

{¶16} "And we discussed this and the fact that if these plea cutoff dates are going to mean anything, we have to hold with what the recommendation was.

{¶17} "If there was a counteroffer that had been made and that was quickly agreed to by the State, that would be another thing, but we were here on January 25th, 2008, and the recommendation was plea to the Indictment, recommendation of community control.

{¶18} "The plea cutoff date was April 4th \*\*\*.

{¶19} In addition, the trial court questioned the prosecution as to why it had changed the recommendation on the eve of trial. The prosecution assured the trial

court that there were not any “problem[s] with this case as far as the witnesses, the willingness or availability \*\*\*.”

{¶20} As noted, the trial court expressed, on the record, its reasoning in refusing to accept the plea bargain. Irish was aware that the trial court imposed an April 4, 2008 deadline for accepting a plea. Certainly, plea bargains should not be discouraged; however, there is nothing in the record to justify the inability of the state and Irish to arrive at an agreement by the deadline imposed by the court. It is a well-established principle that a trial court has wide discretion in control of its docket. *State v. Berner*, 9th Dist. No. 3275-M, 2002-Ohio-3024, at ¶14. (Citation omitted.) Moreover, Irish has not cited to any authority that stands for the proposition that a trial court abuses its discretion in refusing to accept a plea bargain.

{¶21} Under the facts and circumstances of the instant case, the trial court did not abuse its discretion in refusing to accept the negotiated plea, and the judgment of the Ashtabula County Court of Common Pleas is hereby affirmed.

MARY JANE TRAPP, P.J., concurs

DIANE V. GRENDALL, J., dissents with a Dissenting Opinion.

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DIANE V. GRENDALL, J., dissents with a Dissenting Opinion.

{¶22} The trial court abused its discretion by summarily refusing to accept the plea bargain negotiated between Irish and the prosecutor. The trial court arbitrarily failed to consider particular circumstances and issues presented, specifically the fact that the plea was offered by the prosecution to Irish’s counsel the day before the trial

and, had the plea been offered earlier, Irish stated he would have accepted the agreement.

{¶23} “[T]he prosecution’s recommendations ought not to be summarily rejected and \*\*\* the trial judge ought to exercise a sound discretion before refusing to accept or departing from such recommendations.” *Akron v. Ragsdale* (1978), 61 Ohio App.2d 107, 109 (emphasis omitted).

{¶24} In *State v. Raymond*, 10th Dist. No. 05AP-1043, 2006-Ohio-3259, the trial court gave no reason for refusing to accept the appellant’s plea other than “a blanket policy of not accepting ‘pleas from people that don’t think they did anything wrong.’” *Id.* at ¶11. The appellate court found that “[u]nder these circumstances, the trial court’s refusal to accept appellant’s plea was an abuse of discretion, or more precisely, it was a refusal to exercise the court’s discretion. The trial court arbitrarily refused to consider the facts and circumstances presented, ‘but instead relied on a fixed policy established at its whim.’” *Id.* (citation omitted). The appellate court held that when the “trial court used an overarching policy instead of its own discretion based on the particular circumstances and issues presented in this case, it abused its discretion.” *Id.*; *State v. Carter* (1997), 124 Ohio App.3d 423, 428 (“[w]e find that the trial court’s policy of not accepting no-contest pleas constituted an abuse of discretion in that the trial court arbitrarily refused to consider the facts and circumstances presented, but instead relied on a fixed policy established at its whim”).

{¶25} Similar to *Raymond* and *Carter*, in the instant case, nothing in the transcript indicates that the trial court based its decision to reject Irish’s plea on anything pertaining to the facts and circumstances of his case; rather, the court apparently based its decision solely on a blanket policy.



{¶26} Although the trial court has the discretion to refuse to accept the plea, “it must exercise its discretion based on the facts and circumstances before it, not on a blanket policy that affects all defendants regardless of their situation.” *State v. Graves* (1998), 10th Dist. No. 98AP-272, 1998 Ohio App. LEXIS 5608, at \*9 (citation omitted). Cf. *Billington v. Cotner* (1972), 32 Ohio App.2d 277, 280, reversed on other grounds (1974), 37 Ohio St.2d 17, 20 (“[i]t is within the appellate ambit to determine that a trial judge must exercise his discretion though refraining from telling him how to do it”).

{¶27} Applying the above cases to the instant action, when the trial court used an overarching policy instead of its own discretion based on the particular circumstances and issues presented in this case, it abused its discretion. Therefore, I respectfully dissent.