

IN THE SUPREME COURT OF OHIO  
COLUMBUS, OHIO

STATE OF OHIO,	)	OHIO SUPREME COURT
	)	CASE NO. 2009-1625
Plaintiff-Appellee,	)	
	)	On Appeal from the Ashtabula County
-vs-	)	Court of Appeals, Eleventh Appellate
	)	District
JAMES IRISH,	)	
	)	Ashtabula County Court of Appeals
Defendant-Appellant.	)	Case No. 2008-A-51

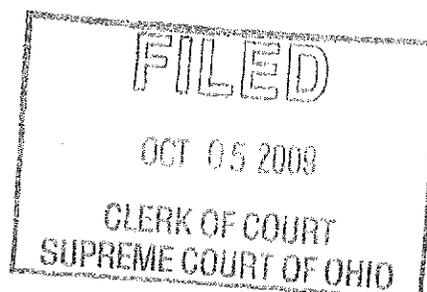
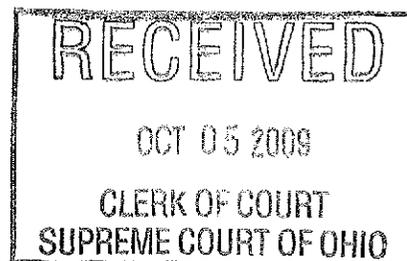
MEMORANDUM IN RESPONSE TO JURISDICTION

**THOMAS L. SARTINI (0001937)**  
**ASHTABULA COUNTY PROSECUTING ATTORNEY**

**Shelley M. Pratt (0069721) (Counsel of Record)**  
**Assistant Prosecutor**  
Ashtabula County Prosecutor's Office  
25 West Jefferson Street  
Jefferson, Ohio 44047-1092  
(440) 576-3662 Fax (440) 576-3600

COUNSEL FOR APPELLEE  
THE STATE OF OHIO

**Joseph A. Humpolick (0023665)**  
**Assistant Public Defender**  
Ashtabula County Public Defender, Inc.  
4817 State Road, Suite 202  
Ashtabula, Ohio 44004  
(440) 998-2628  
COUNSEL FOR APPELLANT  
JAMES IRISH



**TABLE OF CONTENTS**

EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION ..... 1

STATEMENT OF THE CASE AND FACTS ..... 2

ARGUMENT ..... 3

PROPOSITION OF LAW.....3  
THERE IS NO ABUSE OF DISCRETION WHERE A TRIAL COURT ENFORCES A POLICY THAT PROHIBITS PLEA BARGAINS BEYOND A CERTAIN DATE.

CONCLUSION ..... 6

CERTIFICATE OF SERVICE ..... 6

**EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR  
GREAT GENERAL INTEREST AND DOES NOT INVOLVE A  
SUBSTANTIAL CONSTITUTIONAL QUESTION**

James Irish, appellant herein, seeks to invoke this Honorable Court's jurisdiction over this discretionary appeal. For the following reasons, jurisdiction is unwarranted, and the appeal should be dismissed.

In his appeal to the Eleventh District Court of Appeals appellant argues that it was an abuse of discretion for the trial court to refuse to accept a negotiated plea that had been worked out with the State when this plea was submitted after the trial court's plea deadline. The Eleventh District Court of Appeals held that, under the circumstances of appellant's case, the trial court did not abuse its discretion in failing to accept the negotiated plea bargain. *State v. Irish*, 11<sup>th</sup> Dist. App. No. 2008-A-51 at ¶21. The court reasoned that the trial court expressed its reasons for rejecting the offer on the record and that nothing in the record justified the inability to arrive at an agreement before the deadline. *Id.* at ¶20. The court also found that appellant did not cite to any authority showing that a trial court abuses its discretion in refusing to accept a plea bargain. *Id.*

The Eleventh District Court of Appeals did not err in making this decision. The court recognized that plea bargains are encouraged, but that a trial court still has control over its docket. *Id.* The discretionary appeal at bar presents neither a constitutional violation, an issue of great public or general interest, nor an issue of first impression. Therefore, appellant's bid for jurisdiction must fail.

## STATEMENT OF THE CASE AND FACTS

The Ashtabula County Grand Jury returned an indictment on November 9, 2007 charging James Irish, appellant herein, with Domestic Violence in violation of R.C. 2919.25(A), a felony of the fourth degree. Appellant pled not guilty to the charge contained in the Indictment.

On January 28, 2008, the trial court issued a judgment entry stating that the plea cut off date for appellant's case was on April 4, 2008. The court further indicated that appellant's case was scheduled for a jury trial on April 22, 2008. That date was later continued to May 13, 2008.

On May 13, 2008, appellant withdrew his plea of not guilty and entered a plea of no contest to Domestic Violence a felony of the fourth degree. This plea was made after the trial court refused to accept a negotiated plea to a misdemeanor charge of domestic violence due to appellant's failure to comply with the court's plea cut off date. (T.p. plea hearing 3-4.)

Appellant was sentenced to a two year term of community control. (T.d. 40.)

Appellant appealed to the Eleventh District Court of Appeals. The court affirmed the decision of the trial court. *Irish* at ¶21. Appellant now seeks jurisdiction with this Honorable Court.

## ARGUMENT

### PROPOSITION OF LAW

THERE IS NO ABUSE OF DISCRETION WHERE A TRIAL COURT ENFORCES A POLICY THAT PROHIBITS PLEA BARGAINS BEYOND A CERTAIN DATE.

“Plea bargaining is a recognized fact of life in today’s criminal justice system. It is accepted and approved as a method of disposing of criminal cases.” *State v. Ridgeway*, 66 Ohio App.3d 270, 276, 583 N.E.2d 1123 quoting *State v. Giffey* (1972), 29 Ohio App.2d 246, 250. However, a criminal defendant does not have a constitutional right to have his guilty plea accepted. *State v. Jackson*, 68 Ohio App.2d 35, 36, 426 N.E.2d 528.

Crim R. 11 “vests a measure of discretion in the trial court in determining whether to accept a plea.” *Id.* Crim. R. 11(C)(2) provides:

In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally \* \* \*

In Ohio, the decision to accept or refuse a defendant’s guilty plea in felony cases is within the sound discretion of the trial court. *State v. Fulaytar*, 11<sup>th</sup> Dist. App. No. 9-147 at \*2, 1983 WL 6113. “An abuse of discretion is more than an error in judgment or law; it implies an attitude on the part of the trial court that is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Furthermore, when applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court.” *State v. Moore*, 11<sup>th</sup> Dist. App. No. 2007-L-055, 2007-Ohio-6409 at ¶7 citing *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

“A court may reject a plea in exercise of sound discretion.” *Fulaytar* at \*2 quoting

*Santabello v. New York* (1971), 404 U.S. 247. However, “[a] guilty plea that is made voluntarily and intelligently should not be rejected without good reason.” *Jackson* at 37 citing *McCoy v. United States* (C.A.D.C., 1966), 363 F.2d 306, 308. “When a recommended plea bargain is rejected, the court ought to state reasons for his rejection. In some cases, however, the facts themselves speak so eloquently that no statement by the judge is required.” *Ridgeway* at 276 quoting *Akron v. Ragsdale* (1978), 61 Ohio App.2d 107, 109, 399 N.E.2d 119.

Appellant argues that the trial court judge abused his discretion when he rejected appellant’s plea which was made after the plea cut off date. The record reveals that this argument is without merit.

At the plea hearing, appellant’s counsel requested that the court accept his plea to a first degree misdemeanor. Counsel stated that the plea was offered the day before and his client indicated that he would accept it. Counsel apologized to the court for accepting a plea a such a late date and once again indicated that the offer was only made to him the day before the hearing. (T.p. plea hearing 2-3.)

The court then indicated it would not accept appellant’s plea. (T.p. plea hearing 3.) The court indicated that the plea cut off date was April 4, 2008. (T.p. plea hearing 4.) The court stated “these plea cut off dates have to mean something, otherwise, this is just going to be another exercise in futility where the court has a hearing and then it ends in people continuing to negotiate.” (T.p. plea hearing 4.)

Clearly, the record shows that, in rejecting appellant’s plea, the trial court was adhering to its guidelines which establish plea cut off dates in all criminal cases. At least one other Ohio court has followed similar logic. In *State v. McMullen*, 5<sup>th</sup> Dist. App. No. CA-459, 1992 WL

397630, the Fifth District Court of Appeals upheld a trial court's decision to reject a plea made after a plea cut off date. *Id.* at \*2. The court stated, "[h]ere, the record supports the trial court's decision that the proposed plea bargain was not timely under the aforementioned Local Rule. We, as a reviewing court, cannot conclude that the trial court's reasons, including its maintenance of the trial docket, for refusing the proposed plea bargain as untimely was an abuse of discretion." *Id.*

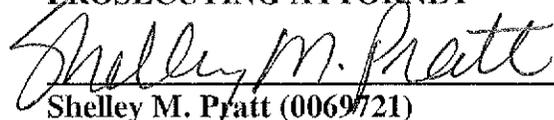
Accordingly, the trial court did not abuse its discretion in refusing to accept appellant's plea. Appellant's Proposition of Law is without merit.

**CONCLUSION**

For the foregoing reasons, the State of Ohio respectfully requests this Honorable Court to deny jurisdiction and dismiss the discretionary appeal at bar.

Respectfully submitted,

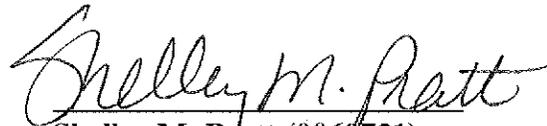
**THOMAS L. SARTINI (0001937)  
PROSECUTING ATTORNEY**

  
Shelley M. Pratt (0069721)

**Assistant Prosecutor**  
Ashtabula County Prosecutor's Office  
25 West Jefferson Street  
Jefferson, Ohio 44047  
(440) 576-3662 Fax (440) 576-3600

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing Memorandum in Response to Jurisdiction has been served via ordinary U.S. Mail, postage prepaid, this 2nd day of October, 2009, upon Joseph A. Humpolick, Counsel for Appellant, at 4817 State Road, Suite 202, Ashtabula, Ohio 44004.

  
Shelley M. Pratt (0069721)  
**Assistant Prosecutor**