

IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE OF OHIO, : Case No. 2009-1423  
Appellee, : On Appeal from the  
vs. : Franklin County Court  
: of Appeals, Tenth  
: Appellate District  
: Court of Appeals  
AARON K. RICHEY, : Case No. 08AP-923  
Appellant. :

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**MERIT BRIEF OF APPELLEE, STATE OF OHIO**

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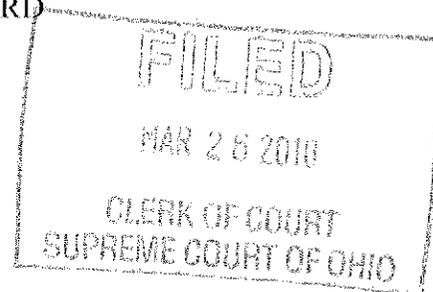


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## STATEMENT OF THE CASE AND FACTS

Appellee adopts by reference the procedural history of the case as set forth in paragraphs one through five of the Tenth District Court of Appeals' decision.

## ARGUMENT

The trial court did not abuse its discretion when it denied Appellant's post-sentence motion to withdraw his no contest plea pursuant to Crim.R. 32.1 and thus the Tenth District Court of Appeals correctly affirmed the trial court's decision. *State v. Richey*, 10<sup>th</sup> Dist. No. 08AP-923, 2009-Ohio-2988. Appellant failed to demonstrate that the changes to Revised Code Chapter 2950 under Senate Bill 10 gave rise to a manifest injustice with respect to his previous no contest plea to the charge of sexual imposition. Appellant's argument that Senate Bill 10 altered a contractual agreement between Appellant and the state is without merit. The record does not demonstrate that Appellant relied on the sex offender registration requirements as they existed in 2006 as an incentive to plead no contest to his sexual imposition charge, nor does the record support a finding that the Senate Bill 10 amendments give rise to a manifest injustice with respect to Appellant's previous no contest plea.

This Honorable Court has pending before it, in the case of *State v. Bodyke*, 121 Ohio St.3d 1438, 2009-Ohio-1638, a number of Propositions of Law pertaining to Senate Bill 10 including whether the current version of RC Chapter 2950 violates the ex-post facto clause of the United States Constitution, violates the Retroactivity Clause of the Ohio Constitution, violates the Separation of Powers of Doctrine embodied in the Ohio Constitution, or impairs the obligation of contracts as protected by the Ohio and United States Constitutions. As such, in response to the Proposition of Law accepted by this court in the instant case, Appellee has focused more narrowly on the issue of whether the court of appeals erred when it found that the

trial court did not abuse its discretion when it denied Appellant's post-sentence motion to withdraw his plea, holding that the subsequent changes to RC Chapter 2950 under Senate Bill 10 did not constitute a manifest injustice with respect to Appellant's 2006 no contest plea to the charge of sexual imposition.

### Response to Proposition of Law

**Post-conviction changes in the law affecting collateral consequences arising out of a criminal conviction do not constitute manifest injustice warranting the granting of a post-sentence motion to withdraw plea.**

Pursuant to Crim.R. 32.1, "a motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct a manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea." A defendant who seeks to withdraw a plea of guilty or no contest after imposition of sentence has the burden of establishing the existence of manifest injustice. *State v. Smith* (1977), 49 Ohio St.2d 261, 264, 361 N.E.2d 1324, paragraph one of syllabus; *State ex rel. Schneider v. Kreiner* (1988), 83 Ohio St.3d 203, 208, 699 N.E.2d 83 (manifest injustice is defined as a clear or openly unjust act). This standard permits a defendant to withdraw his guilty plea only in extraordinary cases. *Smith* at 264.

A reviewing court will not reverse a decision to grant or deny a motion to withdraw a plea absent an abuse of discretion. *State v. Xie* (1992), 62 Ohio St.3d 521, 584 N.E.2d 715. "An abuse of discretion connotes more than an error of law or judgment; it implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable." *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144. When applying the abuse of discretion standard, a reviewing court is not free to merely substitute its judgment for that of the trial court. *In re Jane Doe I* (1990), 57 Ohio St.3d 135, 138, 566 N.E.2d 1181, citing *Berk v. Matthews* (1990), 53 Ohio St.3d

161, 169, 559 N.E.2d 1301. In the instant case, the trial court was not unreasonable or unconscionable when it determined that the subsequent changes to R.C. Chapter 2950 did not constitute a manifest injustice requiring the withdrawal of Appellant's no contest plea.

Consideration of a defendant's post-sentence motion to withdraw a plea necessarily hinges upon the unique, specific set of circumstances surrounding the defendant's guilty or no contest plea, along with the specific reasons enumerated by the defendant in desiring the plea to be withdrawn. A defendant's good faith and credibility with respect to his claims are essential factors for the trial court to consider and indeed are matters best resolved by the trial court. *Smith*, at paragraph two of syllabus. Additionally, an undue delay between the occurrence of the alleged cause for withdrawal and the filing of the motion is a factor adversely affecting the credibility of the movant and mitigating against granting the motion. *Smith*, at paragraph three of syllabus; *Okansen v. United States*, 362 F.2d 74 (C.A.8, 1966).

**A. Appellant did not specifically rely on the provisions of RC Chapter 2950 as they existed in 2006 when deciding to plead no contest and thus Appellant did not enter into an agreed upon bargain with the state.**

In the instant case, Appellant moved to withdraw his no contest plea nearly two years after his conviction. Appellant alleged in his Crim.R. 32.1 affidavit, and argued to the trial court at his hearing, that when he entered his no contest plea to the charge of sexual imposition he had no idea the extent of the corresponding sex offender registration requirements that would attach upon his conviction. Applt. Affidavit in support of motion to withdraw ¶¶7-8, trial record #30. Appellant alleged the aforementioned despite signing a sex offender registration notification form at his sentencing, which specifically detailed the requirements of his sex offender registration. Trial Record #22. Despite signing this form, Appellant alleged that had he known

about the corresponding sex offender registration requirements, he would not have entered a no contest plea to the sexual imposition charge.

Appellee notes from the outset that criminal defendants do not have a reasonable expectation that all possible collateral consequences of their plea will be spelled out for them prior to the plea, such as the possibility of discharge from the armed services, automatic loss of a job upon conviction, loss of the right to vote or right to possess a firearm. *Meaton v. United States*, 328 F.2d 379 (5th Cir. 1964), *cert. denied*, 380 U.S. 916, 13 L. Ed. 2d 801, 85 S. Ct. 902 (1965); *United States v. Crowley*, 529 F.2d 1066 (3<sup>rd</sup> Cir. 1975), *cert. denied* 425 U.S. 995, 48 L. Ed.2d 820, 96 S. Ct. 2209. Nor does a knowing plea require that a defendant be aware of all relevant circumstances with respect to the plea, such as the fact that his conviction could be used to enhance any subsequent charges to a felony. *State v. Taylor*, 8<sup>th</sup> Dist. No. 90674, 2008-Ohio-5255, ¶21 (the trial court erred when it imposed a requirement that defendant know that a conviction would enhance subsequent charges when determining whether defendant's plea was voluntary); *State v. Dumas*, 10<sup>th</sup> Dist. Nos. 08AP-179, 08AP-180, 2008-Ohio-4896, ¶14 (the fact that the trial court did not inform appellant that his conviction for intimidation of a crime witness would constitute a crime of violence that could be used to enhance future federal sentences does not mean that appellant's plea was not made knowingly, voluntarily, and intelligently.)

Accordingly, trial courts are under no obligation to advise defendants of the collateral consequences of sex offender registration at the time they enter a guilty or no contest plea. *State v. Cupp*, 2<sup>nd</sup> Dist. No. 21176 & 21348, 2006-Ohio-1808; *State v. Perry*, 8<sup>th</sup> Dist. No 82085, 2003-Ohio-6344, ¶9 (The registration and notification requirements prescribed by former RC Chapter 2950 were collateral consequences of a defendant's guilty plea to a sex offense and did not need to be explained at a plea proceeding.); *State v. Paris* (June 16, 2000), 3<sup>rd</sup> Dist. No. 2-

2000-04, 2000 Ohio App. LEXIS 2711, \*3 (“because a sexual predator determination is a collateral consequence of the underlying criminal offense, the trial court had no duty pursuant to Crim. R. 11 to inform defendant of the registration and notification requirements and therefore the defendant’s guilty plea cannot be said to be involuntary and unknowing.”); *State v. Lambert* (May 25, 1999), 10<sup>th</sup> Dist. No. 98AP-941, \*1-2 (trial court not required to inform defendant of RC Chapter 2950 requirements and failure to do so does not invalidate plea); *State v. Perry*, 8<sup>th</sup> Dist. No. 82085, 2003-Ohio-6344, ¶9 (sexual predator registration and reporting requirements do not need to be explained at a plea proceeding since they are remedial and not punitive in nature).

Despite Appellant’s averment that he did not know about his sex offender registration requirements at the time of his plea, Appellant argues that the registration requirements as they existed in 2006 were part of a specific contractual bargain Appellant agreed to when he entered his plea and thus the Senate Bill 10 changes to his registration requirements altered his agreed to bargain and constitute a manifest injustice. Indeed, principals of contract law are generally applicable to the interpretation and enforcement of plea agreements. *Santobello v. New York* 404 U.S. 257, 262; *State v. Bethel* 110 Ohio St.3d 416, 200-Ohio-4853, 854 N.E.2d 150. Thus, a prosecutor’s failure to comply with the terms of a plea agreement may, in some circumstances, render a defendant’s plea involuntary and undermine the constitutional validity of a conviction based upon that plea. *Blackledge v. Allison* 431 U.S. 63, 92 S. Ct. 1621. In the instant case, though, Appellant did not enter into a binding plea agreement with the state with respect to his sex offender classification and registration requirements.

In order to determine whether a plea agreement has been breached, courts must examine what the parties reasonably understood at the time the defendant entered his guilty plea. *United*

*States v. Partida-Parra* (C.A.9, 1988) 859 F.2d 629; *Smith v. Stegall* (6<sup>th</sup> 2004), 385 F.3d 993,999; *State v. Rodgers*, 5<sup>th</sup> Dist. No. 2009-CA-00177, 2010-Ohio-140. A court must identify the terms of the plea agreement before it can determine if the state breached the agreement. *Id.* To this end, a plea agreement should be treated as a fully integrated contract, and should not infer agreement from silence. *United States v. Anderson* (C.A. 1, 1990), 921 F.2d 335, 338. Additionally, courts should not “imply” terms into a plea agreement. *United States v. Benchimol* (1985), 471 U.S. 453, 456, 105 S.Ct. 2103, 85 L.Ed.2d 462.

Appellant concedes that not every change in the potential consequences attaching to a plea would warrant vacating the plea. App. Brief at 9. But, according to Appellant, if it appears reasonable that the defendant would not have entered the plea given the change in the attached consequences, then the plea should be vacated pursuant to Crim.R. 32.1 in order to “correct manifest injustice”. Appellant has made no credible showing that his inducement to plead no contest to sexual imposition in 2006 was premised in any part on the sex offender classification system as it existed under former R.C. Chapter 2950. Nor does the record support a finding with any reasonable certainty that Appellant would not have entered a no contest plea to the sexual imposition charge in light of the Senate Bill 10 amendments to RC Chapter 2950.

Evidenced by Appellant’s affidavit in support of his motion to withdraw his plea and by the transcript of Appellant’s plea hearing, Appellant did not specifically contemplate at the time he entered his no contest plea any of the terms of his sex offender registration requirements, i.e. that his registration requirements would terminate after 10 years or that failing to register would be punishable only as a misdemeanor offense. Applt. Crim.R. 32.1 Affdvt. at ¶¶7-8, Trial record #30, Plea Hearing Tr. at 2-6. Accordingly, the record does not support a finding that Appellant

was in any way induced to plead no contest by the specific provisions of RC Chapter 2950 as they existed in 2006.

To the contrary, the record demonstrates that at the time of his no contest plea, Appellant did not engage in any specific discussion with the court regarding his expectations with respect to his sex offender registration requirements; and the prosecution did not make any agreement with Appellant regarding his sex offender classification or registration requirements. Plea Hearing Tr. at 2-6. As such, changes in Appellant's registration requirements by virtue of Senate Bill 10 did not alter a bargain agreed to by Appellant.

Because there was no meeting of the minds between Appellant and the state, no bargain existed between the state and Appellant with respect to his sex offender registration requirements. *Episcopal Retirement Homes v. Ohio Dept. of Indus. Relations* (1991), 61 Ohio St.3d 366, 369 ("In order to declare the existence of a contract, both parties must consent to its terms, there must be a meeting of the minds of both parties; and the contract must be definite and certain.") Without a breach of a relied upon term, Appellant has not demonstrated that the passage of S.B. 10 created a manifest injustice requiring the trial court to allow him to withdraw his no contest plea.

**B. Appellant had no reasonable expectation that his sex offender classification and registration requirements would not be subject to change in the future.**

A sex offender's classification pursuant to RC Chapter 2950 is a collateral consequence of the offender's criminal acts rather than a form of punishment per se and a sex offender has no reasonable expectation of finality with respect to his classification and registration requirements. *State v. Ferguson* (2008), 120 Ohio St.3d 7, 14, 2008-Ohio-4824, 896 N.E.2d 110. The record in the instant case does not support a finding that Appellant had a reasonable or settled expectation, even if erroneous and only in his own mind, that his sex offender status and registration

requirements would never be subject to change. To the contrary, Appellant specifically averred to the trial court in his motion to withdraw his plea that at the time he entered his plea, he had no idea of the collateral consequences that would attach regarding his sex offender status. To this end, Appellant cannot credibly argue that he relied on the provisions of RC Chapter 2950 as they existed in 2006 as an inducement to plead no contest to his sexual imposition charge. Nor can Appellant credibly argue that he reasonably believed that the sex offender classification and registration provisions in former RC Chapter 2950, provisions Appellant claims to have not known about when he entered his no contest plea, would never change.

Assuming, arguendo, that Appellant did specifically contemplate the sex offender registration requirements as they existed in 2006 when he decided to enter his no contest plea, the Senate Bill 10 amendments to RC Chapter 2950 do not render Appellant's plea involuntary and create a manifest injustice. As stated previously, a sex offender's classification pursuant to RC Chapter 2950 is a collateral consequence of the offender's criminal acts rather than a form of punishment per se and a sex offender has no reasonable expectation of finality with respect to his classification and registration requirements. *Ferguson, supra*. As such, the provisions of SB 10 do not affect any plea agreement previously entered into between the offender and the State.

Every appellate district in Ohio examining this issue has concluded that changes in the registration and notification requirements of RC Chapter 2950 do not violate the contract clauses of the United States and Ohio Constitutions. *Burbrink v. State*, 1<sup>st</sup> Dist. no. C-081075, 2009-Ohio-5346; *State v. Desbiens*, 2<sup>nd</sup> Dist. No. 22489, 2008-Ohio-3375; *Holcomb v. State*, 3<sup>rd</sup> Dist. Nos. 8-08-23, 8-08-23, 8-08-25, 2009-Ohio-782; *State v. Sewell*, 4<sup>th</sup> Dist. No. 08CA3042, 2009-Ohio-594; *Sigler v. State*, 5<sup>th</sup> Dist. No. 08-CA-79, 2009-Ohio-2010; *State v. Ohler*, 6<sup>th</sup> Dist. No. H-08-010, 2009-Ohio-665; *In re J.M.*, 8<sup>th</sup> Dist. No. 91800, 2009-Ohio-2880; *State v. Harley*,

(May 16, 2000), 10<sup>th</sup> Dist. No. 99AP-374; *State v. Adamson*, 11<sup>th</sup> Dist. No. 2008-L-045, 2009-Ohio-6996<sup>1</sup>; *Ritchie v. State*, 12th Dist. No. CA1008-007-073, 2009-Ohio-1841.

Civil sex offender registration and notification statutes do not create a contract, whether express or implied, with offenders when they enter a plea to a qualifying offense. At the time of his conviction, Appellant's sex offender classification was by operation of law. Upon his conviction to the offense of sexual imposition in 2006, Appellant was automatically designated a sexually oriented offender. Former 2950.01(D)(1)(b)(i). Neither the trial court nor the prosecution had the discretion to alter this fact. Once Appellant entered his plea and the court sentenced him, both Appellant and the state had performed their respective parts of any plea agreement. *Burbrink* at ¶11; *In re J.M.* at fn. 10. Consequently, no action by the state after this date could have breached any plea agreement.

**C. The subsequent changes to RC Chapter 2950 did not create a manifest injustice with respect to Appellant's no contest plea.**

Among the several arguments in support of Appellant's original motion to withdraw his plea was Appellant's concern that under Senate Bill 10 the penalty for failing to register as a sex offender had been elevated from a misdemeanor offense to a felony offense, and in fact at the time Appellant filed his motion to withdraw his plea, he was facing a felony prosecution for failing to register as a sex offender – a consequence Appellant did not foresee when he entered his plea in 2006. According to Appellant, had he known that the consequence for failing to register would subsequently be elevated to a felony offense, he would not have entered his no contest plea.

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<sup>1</sup> The Eleventh District Court of Appeals has conflicting opinions on this issue. See *State v. Garner*, 11<sup>th</sup> Dist. No. 2008-L-087, 2009-Ohio-4448, accepted for review by the Supreme Court of Ohio in *State v. Garner*, 123 Ohio St.3d 1507, 2009-Ohio-6210, 917 N.E.2d 810; *Pollis v. State*, 11<sup>th</sup> Dist. No. 2008-T-0055, 2009-Ohio-5058, accepted for review by the Supreme Court of Ohio in *Pollis v. State*, 2009-Ohio-799.

The fact that Senate Bill 10 changed the penalty for failing to register from a misdemeanor offense to a felony offense does not mean that Appellant's no contest plea was flawed or now results in a manifest injustice. Felons and misdemeanants, but for constitutional protections against ex post facto laws, have no reasonable right to expect that their conduct will never thereafter be made the subject of legislation. *State ex rel. Matz v. Brown* (1988), 37 Ohio St.3d 279, 281-282.

Appellant's circumstance regarding his subsequent felony charge for failing to register is not unlike that experienced by defendants who chose to plead guilty to certain misdemeanor offenses of violence prior to 1996, only to find years later that new legislation allowed their conviction to serve as the basis to enhance to a felony a subsequent charge for the same or different offense.<sup>2</sup> The increased felony penalty for failing to register as required by RC Chapter 2950 only attached to Appellant upon his commission and conviction of a wholly new offense. As such, simply because Appellant did not consider at the time of his plea that he might break the law again in the future and that the penalty for such violation might someday be increased does not render Appellant's 2006 plea invalid or reveal a fundamental flaw in his plea proceeding. Again, Appellant has not demonstrated that at the time he entered his no contest plea in 2006 he had a reasonable, settled expectation that the collateral consequences of his plea would never be subject to change, especially in light of the fact that Appellant claims to have had no knowledge at the time he made his plea of the collateral sex offender classification and registration consequences that would follow.

Even if this court were to find that Appellant did enter his 2006 no contest plea in specific consideration of the provisions of former RC Chapter 2950, the Senate Bill 10

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<sup>2</sup> Defendants who pleaded guilty to child endangering, negligent assault or menacing offenses found themselves in this situation after the state domestic violence statute, RC 2919.25, was amended in 1996 to include the aforementioned offenses as enhanceable prior convictions for purposes of felony domestic violence charges .

amendments to RC Chapter 2950 affecting Appellant do not give rise to a manifest injustice. Under SB 5, in effect at the time Appellant entered his no contest plea in 2006, Appellant was required to register yearly for a term of ten years. Former RC 2950.04(A)(1), RC 2950.06(B)(2) and RC 2950.07(B)(3). Appellant was required to register in his county of residence, employment and attendance at an institution of higher learning, if applicable. Former RC 2950.04(A)(1). Appellant was not subject to community notification. Former RC 2950.11. Appellant's conviction information, photograph and residential address were subject to public inspection and inclusion in a statewide internet sex offender database. Former RC 2950.08(A), RC 2950.13. Further, Appellant was prohibited from residing within 1,000 feet of school premises. Former RC 2950.031. Failing to register as required by RC 2950.04 was punishable as a misdemeanor offense. Former RC 2950.99.

With the passage of SB 10, Appellant is now classified as a Tier I offender and is required to register yearly for fifteen years, instead of ten. R.C. 2950.01(E)(1)(a), R.C. 2950.06(B)(1), R.C. 2950.07(B)(3). At the end of ten years, though, Appellant may apply to the court of common pleas of the county in which he resides and request that his duty to register be terminated. RC 2950.15. The number of counties in which Appellant is required to register has not been expanded, Appellant is still required to register in his county of residence, employment and attendance at an institution of higher learning, if applicable. RC 2950.04(A)(2). As was the case for Appellant under former RC 2950.11, the Senate Bill 10 amendments do not require community notification for Tier I offenders. RC 2950.11(F). Under Senate Bill 10, the prohibition against Appellant residing within 1,000 feet of school premises has been expanded to include pre-schools or daycare centers. RC 2950.034. Appellant's name, conviction information, address and photograph are subject to public inspection and inclusion in a statewide

database, as they were under former RC 2950.13; additionally a description of Appellant's car is also now included on the public database. RC 2950.081, RC 2950.13. A violation of Appellant's duty to register is punishable as a fourth degree felony, rather than a misdemeanor. RC 2950.99(A)(1)(a)(iii).

Appellant concedes that not every change in the potential consequences attaching to a plea would warrant vacating the plea. App. Merit Brief at 9. But, according to Appellant, if it appears reasonable that the defendant would not have entered the plea given the change in the attached consequences, then the plea should be vacated pursuant to Crim.R. 32.1 in order to "correct manifest injustice". Appellant did not demonstrate to the trial court that the Senate Bill 10 amendments to RC Chapter 2950 were of such drastic import as to create a manifest injustice with respect to Appellant's decision to plead no contest to the charge of sexual imposition in 2006. The increase in penalty for failing to register as a sex offender only affects Appellant if he commits and is convicted of an entirely new offense. Nothing in the Senate Bill 10 amendments automatically saddles Appellant with a felony designation.

Additionally, Appellant was not reclassified as a Tier II or Tier III offender with lifetime registration requirements, restrictions or community notification requirements which might present more significant burdens on him. In fact, pursuant to RC 2950.15, Appellant may petition the court for an order terminating his duty to register after ten years -- the original term of his registration duties under former RC 2950.07(B). Further, in his Crim.R. 32.1 affidavit and at his hearing on the motion, Appellant did not allege that his ability to find housing was negatively impacted by the expansion of RC 2950.034 to include pre-schools and daycare centers in addition to school premises. To this end, other than his felony charge, Appellant did not articulate a single specific example of how the additional Senate Bill 10 amendments to RC

Chapter 2950 negatively impacted him. Nor did Appellant identify a single specific former RC Chapter 2950 classification or registration requirement that he relied on when deciding to enter a no contest plea which was then subsequently altered by Senate Bill 10. As such, Appellant has not demonstrated that the subsequent changes to RC Chapter 2950 under Senate Bill 10 constitute a manifest injustice.

**D. Appellant's credibility was properly questioned by the trial court regarding the merits of Appellant's Crim.R. 32.1 motion.**

Appellant waited two years after his conviction and nearly one year after the Senate Bill 10 provisions took effect before filing a motion to withdraw his no contest plea. This delay in time mitigates against Appellant and was properly considered by the lower court when reviewing his motion to withdraw his plea. 10-16-08 JE and Decision at 8. The trial court noted in its decision denying Appellant's motion that at the time of his sentencing in 2006, Appellant signed two forms which explicitly detailed his sex offender status and registration requirements. 10-16-08 JE and Decision, trial record #22. Appellant did not move to withdraw his no contest plea at that time. Nor did Appellant directly appeal his conviction. Furthermore, Appellant was reclassified as a Tier I sex offender in January of 2008 and did not move to withdraw his plea at the time of his reclassification. It was not until nine months later that Appellant filed a motion to withdraw his no contest plea, and it is clear from the record that Appellant's Crim.R. 32.1 motion was motivated by his July 2008 guilty plea to attempted failure to register as a sex offender; a plea Appellant hoped to set aside if he could successfully withdraw his 2006 sexual imposition plea. 10-2-2008 Crim.R. 32.1 Hearing transcript at 22.

The record before the trial court belied Appellant's argument that he immediately regretted pleading no contest upon learning of the collateral consequences of his plea and more accurately supported the conclusion that it was not until Appellant was actually charged with a

felony for failing to register that he began to regret his no contest plea and its corresponding collateral requirements to register as a sex offender. Crim.R. 32.1 Hearing Tr.,18.

Because Appellant's good faith and credibility regarding his reasons for wanting to withdraw his plea and his assertions regarding his state of mind when he entered the plea were important factors for the court to consider when reviewing a post-sentence motion to withdraw a plea, the trial court did not abuse its discretion when it denied Appellant's motion to withdraw his plea.

### CONCLUSION

For the foregoing reasons, this Honorable Court should find that the Tenth District Court of Appeals correctly determined that the trial court did not abuse its discretion when it denied Appellant's Crim.R. 32.1 post-sentence motion to withdraw his plea. Because Appellant did not demonstrate that he relied on any specific provision of Ohio's sex offender classification and registration statute when he chose to enter his no contest plea and because Appellant had no reasonable expectation that the terms of his sex offender status and registration requirements would never be subject to change, this Court should find that the subsequent Senate Bill 10 amendments to RC Chapter 2950 do not constitute a manifest injustice. Further, the trial court did not abuse its discretion when it properly questioned Appellant's credibility with respect to the merits of Appellant's motion to withdraw his plea given Appellant's delay in filing the motion. Thus, this Court should affirm the judgment of the Tenth District Court of Appeals.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing Merit Brief of Plaintiff-Appellee was hand-delivered to Ron O'Brien and Barbara F. Farnbacher, Franklin County Prosecutors Office, 373 South High Street, 13th Floor, Columbus, Ohio 43215, Counsel for Amicus Curiae, and John W. Keeling, Franklin County Public Defenders Office, 373 South High Street, 12th Floor, Columbus, Ohio 43215, Counsel for Appellant, this 26th day of March, 2010.



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