

First Judicial District Division 2 CourtRoom 5-A 100 Jefferson County Parkway Golden, Colorado 80401	▲ Court Use Only ▲
PEOPLE OF THE STATE OF COLORADO - Plaintiff v. STEVE DOUGLAS GARTIN - Defendant	Case Number: 00CR3371 Division 2 LPA CourtRoom: 5A
Defendant In Propria Persona: Steve D. Gartin 2363 ½ South Decatur Street Denver, Colorado 80219 sheriffsteve@justice.com	
RESPONSE TO PROSECUTION'S REPLY TO MOTION TO WITHDRAW COERCED GUILTY PLEA	

Comes now, Steve D. Gartin, pro se, and makes reply to the Prosecution's Response to Defendant's Motion to Withdraw Guilty Plea as follows:

Note: Prosecutor's statements are in italics, my reply is in normal typeface:

1. Ms. Langfield summarizes Rule 11 and arrives at unfounded assumptions, to-wit:

(2) *that the plea is voluntary and not the result of undue influence or coercion;*

My plea was coerced by over a year spent in overcrowded, draconian prison conditions and the threat of several more years incarcerated while the legal process run its ponderous course. (See Attachment O & T).

unless the representations are included in a formal plea agreement approved by the court; and

Attorney Miller hurriedly presented me the plea to sign without ever giving me the opportunity to read it. This is a standard ploy and one that I have observed in dozens of cases, to wit: the document is presented to the defendant when he arrives in court prior to the hearing and has virtually no time in which to read, nor question the document he is about to confirm pursuant to Rule 11. In February, 2004, Attorney Miller finally provided me with a copy of the plea agreement that I actually had the time to read for detail. The condition that I would not litigate against defendants in Federal Civil Rights action # 01-ES-1145 was not included in the copy I received.

(6) *that there is a factual basis for the plea.*

It was Attorney Miller, not I, who admitted a factual basis. Attorney Miller lied. There is no factual basis for criminal extortion and that fact is proven by the fact that those charges were dismissed against Charles H. Clements who was present during the incident giving rise to those charges and who was charged with the exact same purported crime, as well as the 16 other charges in which his name was never mentioned in the Grand Jury Transcript.

2. *A review of the record including the attached transcript of the providency hearing and the signed documents submitted in connection with the plea reveals that the court fully complied with the requirements of Rule 11.*

I fully agree that the Honorable Leland Anderson complied with every aspect of Rule 11 with every intent as he understood it. My contention is that neither he, nor I, understood the underlying layers of deceit and subterfuge that remained unspoken and unwritten and known only to the Prosecution and Defense, Petitioner excluded.

3. *In Maes v. People, 155 Colo. 570, 574 75, 396 P.2d 457, 459 (1964) the Colorado Supreme Court set forth the standards applicable to a motion to withdraw a guilty plea: One accused of crime may not, as a matter of right, have his plea of guilty withdrawn or changed. An application for the withdrawal or change of such plea is addressed to the discretion of the trial court...*

Petitioner is in complete understanding of this principle of statutory law and is willing to acquiesce to the discretion of the Honorable Leland Anderson in this regard.

To warrant the exercise of discretion favorable to the defendant concerning a change of plea, there must be some showing that justice will be subverted by a denial thereof, as where a defendant may have been surprised or influenced into a plea of guilty when he had a defense; where a plea of guilty was entered by mistake or under misconception of the charge; where such plea was entered through fear, fraud or official misrepresentation; or where it was made involuntarily for some reason. This standard was cited with approval in People v. Chavez, 730 P.2d 321, 327 (Colo. 1986).

4. *Justice is not subverted by the denial of defendant's motion to withdraw his plea where the record indicates that a defendant has simply changed his mind about the disposition to which he had agreed. See, People v. DiGuglielmo, 33 P.3d 1248, 1250 (Colo. App. 2001).*

Every person who I have spoken with concerning Walter Eugene Barrett has voiced a very unfavorable opinion of the man. My own experience with Mr. Barrett is not good. I have repeatedly told Attorney Miller that I do not want anything to do with the man and I do not want him to be involved in anything relating to me. Yet, on 8 April, 2004 Mr. Barrett gives me a glimpse of a purported Motion to Violate my probation which he claims was FAXed to him late the previous evening. Donald Estep and Gary Clyman were very friendly with Mr. Barrett on that date, particularly noteworthy is the fact that Mr. Barrett, Mr. Estep and Attorney Miller were all present in the "conference room" listening to the audio tape of the Coconino County Traffic Stop. Mr. Barrett has never been accepted as a private investigator or in any other capacity by this Petitioner. Conversely, I have repeatedly directed Attorney Miller to not include Mr. Barrett in any issue that involved me. I do not like Mr. Barrett and I do not trust him in any capacity.

Mr. Barrett had conducted a 45 minute interview with Mr. Clyman on 2 February, 2004 and only provided a two page report wherein Mr. Clyman purportedly refused to remove the "jacket" from the police databases and inter alia complemented Attorney Miller on how well he had controlled his client, me. Mr. Chas Clements was present in Attorney Miller's home when Walter Eugene Barrett delivered the congratulations from Gary Clyman on how well he had managed to control me and to keep me from pursuing lawful litigation against Ms. Langfield, Mr. Clyman, Mr. Estep and the Bonilla Family. Attorney Miller was dancing around the room with bounding joy and self congratulation. Mr. Miller had no control issue with me except to prevent me from prosecuting the R.I.C.O. action, to-wit: 01-ES-1145 against Ms. Langfield, Mr. Clyman, Mr. Estep and the Bonilla Family and other defendants named in that action.

These facts, coupled with the last-minute change of judge and Attorney Miller's pathetic performance in court made me realize that Ms. Langfield, Mr. Clyman and Mr. Estep had no intention to cease the hostilities against me and that the conviction in this case would forever give them a lever to use against me. (See Exhibits: A, B, C, D, E, F, G, H, I, J, L, M, O & T)

I did not “simply” change my mind. Until 8 April, 2004 I had faith that Ms. Langfield, Mr. Clyman and Mr. Estep had changed **their** minds and were going to act with some integrity and perhaps a modicum of professional ethics. The events at the courthouse dashed my fondest hopes and left me with no recourse except to withdraw my guilty plea and prepare for a jury trial in order to exonerate myself and correct the record. I did not extort anyone and I did not offer any false instruments and it is my right to have those allegations challenged before a jury of my peers.

5. *"A guilty plea should not be withdrawn at the instance of a defendant unless he carries his burden of demonstrating that a 'fair and just reason' exists to justify withdrawal. ABA Standard Relating to Pleas of Guilty § 2. 1 (b)." People v. Martinez, 533 P.2d 926, 928 (Colo. 1975). See, People v. Lewis, 849 P.2d 855, 856 (Colo. App. 1992); People v. DiGuglielmo, supra. Further, "a guilty plea should not be set aside if the record shows that there is a factual basis for the plea, that the defendant was aware of the elements of the offense, and that he entered the plea voluntarily." People v. Hawkins, 543 P.2d 99, 100 (Colo. App. 1975).*

Gary Clyman, Hector Bonilla, Arabella Bonilla and Faye Griffith committed perjury before the Statewide Grand Jury in order to taint the jury and return an indictment. Donald Estep perjured himself before Magistrate Coan in order to get a warrant for Unlawful Flight to Avoid Prosecution. Donald Estep then called S.A. Frank Loturco at the San Francisco F.B.I. office (a defendant in case #97D1036) in order to deploy a S.W.A.T. team upon my martial arts school at my home in Fairfax, California on 13 March 2001. Those charges were dismissed on my birthday, seven days later. I was then transferred to maximum security at Santa Rita and held incommunicado and without charges until 4 April, 2001 when Jefferson County Sheriffs Deputies kidnapped me, without lawful extradition, to the Jefferson County Detention Facility where I was held another six days without arraignment. Due to the Prosecution's deliberate obstruction of justice and refusing to comply with Rule 16 discovery until 7 December, 2001 (See Exhibit N), Petitioner was not arraigned until 1 February, 2002.

The record does **not** show that there is a factual basis for the plea, there is only Attorney Miller's bare bone statement, and Mr. Miller has a very well documented history of lying, particularly during the past two years, although his history is replete with lies, unlawful conversion even by the Private Attorney Association, where Mr. Miller mis-appropriated funds and was defrocked as the Administrator and was charged with unlawful wiretaps even before Mr. Miller became an attorney. Several Private Investigators are willing to testify as to Mr. Miller's nefarious activities during his brief stint as a private investigator. Attorney Miller and Attorney Langfield (See Exhibit R) both have active cases before the Attorney Regulatory Commission, and both have lied in open court, on the record. Mr. Miller's record is replete with unethical and criminal behavior and Petitioner has witnesses willing to step forth and testify in open court and on the record, to confirm every detail. Ms. Langfield's record is currently under investigation. See Federal Civil Rights Actions: 95CV2767 & 95CV2768.

6. *Mr. Gartin's Motion to Withdraw Guilty Plea fails to allege any deficiency that would entitle him to the exercise of discretion he seeks.*

The allegations of deficiency are contained with the Honorable Court's record, but since Attorney Miller has failed, neglected and refused to read them, I will incorporate several un-rebutted Affidavits as attachments in this response. See Exhibits A through R, attached and incorporated as if fully reproduced within the four corners of this pleading.

7. *Mr. Gartin seeks withdrawal of his plea of guilty on the basis that a purported stipulation that he refrain from filing lawsuits against Gary Clyman, Don Estep, Marleen Langfield, or the Bonilla family "could be construed as fraudulent or possibly extortion".*

In this instant matter, the conduct and actions of Marleen Langfield, Thomas C. Miller, Walter Eugene Barrett, Donald L. Estep, Gary Clyman, Dennis Hall, Fred Van Dusen, Arabella Bonilla, Hector Bonilla, Carlos Bonilla, Roscoe Glen Anstine II, Terrell Wayne Sisson, Mark Holstlaw and others named in Federal Civil Rights action 01-ES-1145 can be proven to a jury to be a malicious, vindictive, retaliatory action in furtherance of a R.I.C.O. conspiracy to obstruct justice, intimidate witnesses, and to conduct a malicious, vindictive and retaliatory prosecution against Petitioner and witnesses to the unlawful acts complained of in Federal R.I.C.O. action 01-ES-1145 and the unlawful actions in furtherance of that conspiracy, to-wit:

18-3-207. Criminal extortion - aggravated extortion. (1) A person commits criminal extortion if:

(a) The person, without legal authority and with the intent to induce another person against that other person's will to perform an act or to refrain from performing a lawful act, makes a substantial threat to confine or restrain, cause economic hardship or bodily injury to, or damage the property or reputation of, the threatened person or another person; and

(b) The person threatens to cause the results described in paragraph (a) of this subsection (1) by:

(I) Performing or causing an unlawful act to be performed; or

(II) Invoking action by a third party, including but not limited to, the state or any of its political subdivisions, whose interests are not substantially related to the interests pursued by the person making the threat.

(2) A person commits aggravated criminal extortion if, in addition to the acts described in subsection (1) of this section, the person threatens to cause the results described in paragraph (a) of subsection (1) of this section by means of chemical, biological, or harmful radioactive agents, weapons, or poison.

(3) For the purposes of this section, "substantial threat" means a threat that is reasonably likely to induce a belief that the threat will be carried out and is one that threatens that significant confinement, restraint, injury, or damage will occur.

(4) Criminal extortion, as described in subsection (1) of this section, is a class 4 felony.

Aggravated criminal extortion, as described in subsection (2) of this section, is a class 3 felony.

Petitioner believes, and therefore alleges, that the facts in this case provide prima facie evidence of aggravated criminal extortion and the conspiracy to commit criminal extortion, witness intimidation, unlawful imprisonment, fraud, and a litany of criminal actions yet undefined.

Petitioner can prove to a jury that both Marleen Langfield and Thomas C. Miller as well as others were aware of the stipulation that during probation, Petitioner could not file or prosecute any legal action. The fact that it was not written in the Probation Agreement only serves to confirm the conspiracy to unlawfully extort Petitioner from performing a lawful act.

State of Ohio Plaintiff-Appellee v. Lowell Moreland Defendant-Appellant: No. 87CA0048

Court of Appeals of Ohio, Second Appellate District, Greene County 1988 Ohio App. LEXIS 616 states inter alia: "The terms of probation should be made a part of the final order, journalized as such, and be made a part of the records in the case.

In support of this alleged error, the appellant also argues that the failure of the trial court to include the unwritten condition in its final order along with the sixteen written conditions renders such condition unenforceable, and this argument has some support from the case of State v. Myers, Clark App. No. 1067, which was decided by this court on May 25, 1977. In the Myers case, the court held that the terms of probation should be a part of the final order, journalized, and made a part of the record. Likewise, in the case of *Cox v. Fogle*, 84 Ohio App. 179, this court relied upon the fundamental rule that a court speaks through its journal entries in concluding that "the terms of probation should be made a part of the final order, journalized as such, and be made a part of the records in the case". See also, *City of Lima v. Beer*, 90 Ohio App. 524."

8. A review of the transcript of the guilty plea and the related documents contains no reference to any stipulation that Mr. Gartin refrain from filing any lawsuits. Nor is the undersigned special deputy district attorney

aware of any such stipulation or even any discussion of such a stipulation. Perhaps, Mr. Miller advised Mr. Gartin that it might be in his best interest to refrain from filing any further frivolous claims in view of the nature of the conduct that formed that basis of the charges in this case.

Special Deputy District Attorney Ms. Langfield is not speaking the truth. This Petitioner would seek the opportunity to place Attorney Miller and Private Investigator Walter Eugene Barrett on the stand to determine the veracity of her statement.

Ms. Langfield committed Perjury on 8 April, 2004 in Judge Munsinger's courtroom when she asserted that case #01-ES-1145 was dismissed three weeks after filing and that there was no conflict of interest in placing defendants in that action, to-wit: Gary Clyman and Marleen Langfield in charge of my probation. The record reflects that case was dismissed on 6 June, 2002 for failure to prosecute. My failure to prosecute Ms. Langfield and Mr. Clyman was based upon detrimental reliance on the conditions of probation as related to me by Attorney Miller. Attorney Miller refused to present me with a copy of that agreement until February 2004.

9. *Next, Mr. Gartin asserts that he should be permitted to withdraw his plea because Mr. Miller advised him that he was not required to pay the \$4,000 restitution, ad vice that Mr. Gartin characterizes as "erroneous, and may be construed as official misconduct."*

Attorney Miller advised me on numerous occasions that the wording of the agreement was "may pay" and not "shall pay" and that the difference was significant. When I finally received a copy of the probation agreement, the wording was "shall pay." I maintain that Attorney Miller's oft-stated advice was deliberately deceitful.

10. *Both the Plea Agreement, which was signed by Mr. Gartin and the Stipulation for Unsupervised Deferred Judgment and Sentence, which contains Mr. Gartin's signature specifically provide for the payment of restitution. Further, during the providency hearing the defendant assured the court that he had read through the terms and conditions of the stipulation, understood them and was willing to abide by them. See, Attached Transcript page 17, lines 3-20. Perhaps, Mr. Miller correctly advised Mr. Gartin that his deferred judgment and sentence would not be revoked for failure to pay restitution in the event he was unable to meet that obligation in spite of his best efforts.*

I agree with Ms. Langfield's statement of the law, and I freely admit that due to the malicious prosecution instituted by Fred Van Dusen and Deputy District Attorney Dennis Hall, Mr. Van Dusen's breach of contract and Attorney Miller's breach of contract, I am indeed unable to pay \$4000 restitution. Yet, on 8 April, 2004 at 9:30 A.M. Mr. Walter Eugene Barrett showed me a motion to revoke my probation based in part upon my failure to pay restitution. Mr. Barrett claimed to have received that motion via FAX "late last night" and would not provide me with a copy. Mr. Barrett is in no way connected with my case and I'm certain that such communication between he and Marleen Langfield is a breach of attorney/client privilege. I realize that Attorney Miller is lately (See Exhibit Q) deliberately uncommunicative by any electronic means, but I cannot find any justification for Ms. Langfield to send a motion for revocation of my probation to Mr. Barrett, who is in no way involved in my case.

I do, however, appreciate Ms. Langfield providing me a copy of the only transcript in this case I did not have and I also appreciate Ms. Lavelett preparing it as always. Attorney Miller would never provide me with such a copy, maintaining that it was "unnecessary."

11. *If a defendant receives advice, either from counsel or the providency court, that is different from the information contained in the written plea documents, he must request clarification from the court when given the opportunity to do so, rather than assert the discrepancy as the basis for postconviction relief People v. DiGuglielmo, supra at 125 1.*

Ms. Langfield has failed to comprehend that I am not seeking postconviction relief. I am seeking a jury trial.

Shortly after getting released from jail, when I first requested a copy of the probation agreement, Attorney Miller quite proudly conceded that he had placed it with the entire "gigantic Gartin File" out on the curb to be recycled because he was not going to read any of that information anyway and it was the best use of such a volume of paperwork. Mr. Miller continued to assert that I could not file any lawsuits until it became obvious that Fred Van Dusen had "set me up" to divert attention from his insurance fraud and Renita O'Ferrill's embezzlement (See JeffCo Case # 03CR1311). At that time, Attorney Miller allegedly contacted Marleen Langfield concerning my right to sue Fred Van Dusen and purportedly received her blessings. Mr. Miller failed to prosecute as he promised to do.

Concomitantly, Attorney Miller accepted Chas Clements as a client on 20 January, 2003 and received a retainer of \$3750.00 to handle Mr. Clements' claims for damages arising from the very conspiracy complained of in several federal actions, to include 01-ES-1145 to which Ms. Langfield is a defendant and Chas Clements is a witness. Mr. Clements claims, inter alia, witness intimidation and extortion against Ms. Langfield, Gary Clyman, Donald Estep and others.

Attorney Miller accepted a large box full of evidence to support Mr. Clements' claims and explained that he would prepare the case during the period of my probation, but would not file the case until 9 April, 2004 due to the stipulation in my probation agreement that I would not file any lawsuits and that Mr. Clements' suit would endanger my probation based upon the vindictive and retaliatory history of Ms. Langfield, Mr. Clyman and Mr. Estep, their malicious nature and willingness to spend vast sums of STATE funds to advance their agenda. Several witnesses were present and heard Attorney Miller make this assertion on numerous occasions and are willing to testify or submit affidavits to support this fact.

On 4 March, 2004 Attorney Miller and I visited Mr. Clements at his home to discuss his case. During that meeting, Attorney Miller informed Mr. Clements that he was "welshing" and renegeing on their contract and agreement and that he could not pay Mr. Clements the retainer back. Mr. Clements is Welsh and received this information as doubly insulting.

It was during this meeting that I became aware that what I had observed Attorney Miller doing to his other clients, he was now preparing to do to me. Attorney Miller was manic about getting the Motion for Forgiveness and Petition to Seal done that day so that Ms. Langfield would have ample time to prepare for the 8 April, 2004 hearing. Mr. Miller refused to provide me with a final copy of that motion, and hasn't to this day. He led me to believe that all my issues would be addressed through that motion on 8 April, 2004. They were not.

Upon arriving at the courthouse on 8 April, I proceeded to the Honorable Leland Anderson's courtroom and observed an on-going trial. The Honorable Judge Anderson noted my appearance. Walter Eugene Barrett arrived and explained that the motion hearing had been changed to Judge Munsinger's courtroom. Mr. Barrett then revealed the FAX he had received from Ms. Langfield late the night before, motioning to revoke my probation. As in all my court appearances, Gary Clyman and Donald Estep were present and seemed quite friendly with Mr. Barrett. My suspicion was piqued. Attorney Miller and Walter Eugene Barrett then sequestered me and railed on and on about what a terrible thing my Private Investigator, Frank Pugliese had done in contacting "the judge," and how it had "torpedoed" my case. Mr. Barrett was livid, he was having difficulty speaking due to his uncontrollable anger.

When the case was ultimately called, Attorney Miller's performance was deplorable. He had chosen the wrong statutes to support the Motion to Seal, he did not understand, nor communicate, the fact that it was I who offered the forgiveness to Ms. Langfield, Mr. Clyman and Mr. Estep and would not sue them for the atrocities they have committed against me, not me asking for forgiveness from the court, which Judge Munsinger was forthcoming to provide.

Attorney Miller could not provide answers to any of Judge Munsinger's questions, and to add insult to injury, Attorney Miller insisted upon performing the "sonnet" he had prepared for the Honorable Leland Anderson before Judge Munsinger even though the judge asked him not to. Mr. Miller did, however, enter a verbal motion to file a 35c for post-conviction relief.

Upon leaving the courthouse, Attorney Miller advised that he was unprepared for Judge Munsinger's questions because he had never read any of my pleadings, briefs, exhibits, affidavits or anything. Attorney Miller suggested that we claim ineffective assistance of counsel and that he would get another \$25,000 to \$50,000 from Brian Shaha at Alternative Defense Counsel to prosecute post-conviction relief due to the vast number of constitutional issues raised in my pleadings. That is why, in my motion to withdraw my guilty plea, I noted that Attorney Miller was willing to remain "on the case." Attorney Miller subsequently filed a Motion to Withdraw on 15 April, 2004. Although the issue is probably moot at this point, I would prefer to rely upon my own competence to present my case to a jury than to rely on Attorney Miller now that I am aware of his slight diligence, nefarious nature and criminal conduct.

However, because of the intrigue and subterfuge that I witnessed at the courthouse on 8 April, 2004, I went home and immediately drafted my Motion to Withdraw Guilty Plea and FAXed it to the Honorable Court before the end of business on the last day of my probationary period in order to clear the perjury while the case was still open. I then mailed the motion to Attorney Miller and Attorney Langfield.

12. *Next, Mr. Gartin asserts that he should be permitted to withdraw his guilty plea because Attorney Miller erroneously advised him that all the charges would be dismissed at the end of the two year probation and that the record would be sealed.*

Upon finally reading the probation agreement in February 2004, I see that I am to be allowed to withdraw my guilty plea to the felony. Yet, even that issue was not addressed by Attorney Miller on 8 April, 2004 during the final hearing in case 00CR3371, assuming Mr. Miller got the right case.

13. *Again, a review of the record reveals that Mr. Gartin's claim lacks merit. During the providency hearing the Court carefully and clearly explained to Mr. Gartin that the deferred judgment applied only to the felony extortion charge. With respect to the misdemeanor plea the Court advised Mr. Gartin as follows: "the misdemeanor is a straight plea to a misdemeanor, that would be a misdemeanor conviction on your record, that's permanent; do you understand that?" Mr. Gartin replied, "Yes, sir." See Attached Transcript page 13, lines 7-24.*

And again, Attorney Miller advised me that the misdemeanor charge would be removed after close of probation by a 35c action. Attorney Miller advised me to agree with everything the Honorable Leland Anderson asked me and to not ask any questions or I would "blow it." I acted on his advice and agreed with everything and then lied, as Attorney Miller directed me to do, when it came time to plead guilty.

14. *If Mr. Gartin was receiving conflicting information from Mr. Miller and was confused he had an obligation to request clarification when he had an opportunity to do so, rather than assert the discrepancy as the basis for postconviction relief.*

My first opportunity to request clarification was on 8 April, 2004. Judge Munsinger had no knowledge of this matter, nor would he be in a position to offer clarification. Once I realized the depths of deceit that Attorney Miller, Attorney Langfield, Gary Clyman, Donald Estep and Walter Eugene Barrett's collusion and conspiracy signified, I immediately appealed to the Honorable Leland Anderson to withdraw my guilty plea and schedule a jury trial. I am not asking for postconviction relief ~ I want a jury trial.

15. *Next, Mr. Gartin asserts that he is entitled to withdraw his guilty plea because he lied to this court when he admitted that he had committed the crimes to which he pled guilty.*

When a plea is coerced by the threat of remaining incarcerated for years during the proceedings and the appeals when the prosecution looses, in draconian – overcrowded conditions with sub-standard food and a deliberate denial of exercise and sunshine, it is indeed my right to withdraw my guilty plea. But notice must be taken that I fully served the sentence imposed by the Honorable Court before seeking to withdraw my guilty plea. I am not attempting to avoid punishment, even though I have committed no crime. I am seeking to clear my conscience and to rebuild my destroyed reputation. The lie that I told to escape immoral imprisonment is weighing on my soul and must be purged.

16. *It is incongruous that Mr. Gartin seeks the exercise of this court's discretion in his favor and seeks a finding that justice will be subverted absent a withdrawal of his guilty plea because the court relied upon Mr. Gartin's purported lies. Mr. Gartin can not derive a "fair and just reason" to justify the withdrawal of his guilty plea from his own asserted misconduct. Indeed, this situation appears to be akin to situations that give rise to the invited error doctrine, which provides that when a court acquiesces in a course of conduct urged by the defendant, he is estopped on appeal from raising as error that conduct or its result.*

I am not asserting that the Honorable Court is in error. I am asserting that there has been an unethical alliance and collusion between Attorney Miller and Attorney Langfield in a meeting of the minds to devise a scheme whereby they could toll the statute of limitations and prevent the prosecution of the R.I.C.O. action in which Ms. Langfield, Gary Clyman and Donald Estep are named defendants.

17. *In any event, a claim of innocence is not, by itself, reason to allow a defendant to withdraw his plea. People v. Valdez, 928 P.2d 1387, 1392 (Colo. App. 1996).*

Valdez is charged with sexual assault and he wants to suppress confessions made in initial interview. This case is completely off point. The discretion to allow the withdrawal of a guilty plea rests with the Honorable Leland Anderson. He is well acquainted with the myriad Constitutional deprivations I have been subjected to and well understands that my innocence is not my only issue. The un-rebutted Affidavits attached to this pleading provide a clear picture of the range of my issues, and the letter to Ms. Langfield my willingness to find an equitable solution (See Exhibit T).

18. *Finally, Mr. Gartin makes a bald assertion that his attorney, Mr. Miller was ineffective. Mr. Gartin provides no basis for his assertion. Rather, he indicates his interest in having Mr. Miller continue to represent him, a position that would appear to be inconsistent with a claim that Mr. Miller is ineffective.*

Mr. Miller offered to get funds from Brian Shaha to get a copy of the entire case file that he had wantonly destroyed, and further, to take a year or so that he felt would be required to read the material, that he should have already read, and to prepare a 35c action. Attorney Miller only communicates VIA U.S. Postal Service, so I could not consult with him in time to file my Motion to Withdraw Guilty Plea on 8 April, 2004. I assumed that he would be amenable to going to trial on this case. When he finally received the Motion in the mail, he responded by tendering a Motion to Withdraw. This issue is moot.

19. A trial court may deny a motion for post conviction relief without an evidentiary hearing and may decline to appoint counsel if the motion, the files, and the record establish that the defendant is not entitled to relief as a matter of law. *People v. Moriarity*, 8 P.3d 566, 569 (Colo. App. 2000); *People v. Hartkemeyer*, 843 P.2d 92 (Colo. App. 1992). This includes motions that claim ineffective assistance of counsel. *People v. DiGuglielmo*, *supra*, at 125 1.

The court file contains many sworn Affidavits alleging a plethora of Constitutional violations perpetrated by Ms. Langfield, Mr. Clyman, Mr. Estep and the obstruction of justice complaints leveled against Detention Facility Staff (See Exhibit S). I have attached several Affidavits in the interest of expediting retrieval. I am not asking for postconviction relief, I am asking for a jury trial.

20. To establish a claim of ineffectiveness of counsel, a defendant must show that:
(1) counsel's performance was outside the wide range of professionally competent assistance; and

Refusing to read the case file, destroying the case file by placing it out on the street to be recycled, providing erroneous advice, colluding with the Prosecution, failing to provide a vigorous defense, failing to prepare for motions or hearings, refusing to answer a client's questions or provide copies of motions, refusing to communicate with a client, falsifying conditions of probation and violating attorney/client confidentiality and privilege surely fall outside accepted standards of attorney conduct.

Attorney Miller has even bragged to various individuals that he was "getting a job with the AG." His over-joyous reception of the news from Walter Eugene Barrett that State Attorney General Investigator Gary Clyman had complimented him on controlling his client speaks to a conflict of interest that cannot be ignored.

(2) the defendant was prejudiced by counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984); *People v. Cole*, 775 P.2d 551 (Colo. 1989). The *Strickland* test also applies in the context of a guilty plea. *People v. DiGuglielmo*, *supra*, at 125 1. Mr. Gartin has failed to meet this burden.

Once again Ms. Langfield wants to characterize my Motion to Withdraw Guilty Plea as some sort of postconviction remedy like DiGuglielmo with a 32(d) and 35(c). I have fully served my probationary period, Ms. Langfield now wants to violate my probation. Now I want a jury trial in order to clear my reputation and to prevent Ms. Langfield, Gary Clyman and Donald Estep from continuing to persecute me with false, frivolous and vexatious charges.

I have a record based upon the wrongful outcome of this case that prevents me from getting a job. A record that will haunt me the rest of my life based upon a conviction for a crime I did not commit. I have a record based upon the fraud and collusion between Marleen Langfield, Donald L. Estep, Gary Clyman and the Bonilla Family, and Thomas C. Miller that will forever tarnish my otherwise sterling reputation. I have a "jacket" placed upon me by Gary Clyman that causes any police officer I encounter to view me prejudicially as a "danger to police officers." I have just completed two years of probation on a case that I could have won at a jury trial. I have indeed been prejudiced.

Ms. Langfield has quoted a lot of case law that does not apply to this case, even in the most remote manner. All of her case law is completely off-point. In none of her quoted authorities has a "defendant" fully served the probationary period before seeking to withdraw a guilty plea. This may well be a unique situation that requires a judicial determination on its merits alone. The closest case law Ms. Langfield relies upon is *People v. Cole* 775 P.2d 551, which speaks to the same ineffective assistance of counsel that I have been plagued with, his lawyer was disbarred.

“ . . . The bad thing about the case, as I said, is that we're not talking about some negligence, really, on the part of counsel or -- Well, we're not talking about what you might term as negligent but innocent blunders, we're talking about [perpetrating] a fraud, in a sense doing to Mr. Cole the very same thing that Mr. Cole is accused of doing in this case, taking money from -- for a nonexistent product. I just don't believe the People of the State of Colorado and the courts of this state can be a party to that kind of business. The result might have been the same, but I simply -- I simply cannot assume that.” *People v. Cole* 775 P.2d 551

In my case, Attorney Miller and Attorney Langfield's actions precisely define the crime of aggravated criminal extortion. Gary Clyman, Donald Estep and Mark Holstlaw's involvement add the deadly weapon aspect, and together, the conspiratorial aspect of a R.I.C.O. is clearly defined.

WHEREFORE, the People of the State of Colorado respectfully request that this court deny defendant's motion without an evidentiary hearing.

Wherefore, the Petitioner, Steve Gartin, Pro-Se prays that this forthwith Motion to withdraw Guilty Plea be immediately granted and a trial by jury scheduled. In the alternative, Petitioner requests a hearing on the merits.

Respectfully submitted in good faith,
Tuesday, May 11, 2004



Steve D. Gartin – Pro-Se
2363 ½ South Decatur Street
Denver, Colorado 80219

Index to Affidavits:

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First Judicial District Division 2 CourtRoom 5-A 100 Jefferson County Parkway Golden, Colorado 80401	▲ Court Use Only ▲
PEOPLE OF THE STATE OF COLORADO - Plaintiff v. STEVE DOUGLAS GARTIN - Defendant	Case Number: 00CR3371 Division 2 - L.P.A. CourtRoom: 5A
ORDER	

This matter comes before the Court on Defense's **Motion to Withdraw Guilty Plea**, dated April 8, 2004.

The Court finds that it has jurisdiction and hereby orders that said motion be:

_____.

SO ORDERED this _____ day of _____, 2004.

BY THE COURT:

 Leland P. Anderson
 District Court Judge

Certificate of Service by United States Postal Service

I, Steve D. Gartin, undersigned, do hereby certify that a true and correct copy of the foregoing, Response to Prosecution's Reply to Motion to Withdraw coerced Guilty Plea was personally deposited on the Seventh day of the Fifth month in the Year of our Lord Two Thousand and Four, with sufficient postage attached and addressed to the following parties:

The Honorable Leland P. Anderson
Division 2 First Judicial District
100 Jefferson County Parkway
Golden, Colorado 80401

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Counselor At Law
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Marleen M. Langfield, Esquire
Deputy State Attorney General
Special Prosecutions Unit
d.b.a. "Special" Jefferson County Deputy District Attorney
c/o District Attorney David J. Thomas, Esquire
Jefferson County District Attorney's Office
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AF Pugliese Investigations and Security
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Steve Gartin