

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

STATE OF FLORIDA

CASE No. 01-7975
JUDGE LEONARD E. GLICK

VS.

SEAN CASEY, DEFENDANT

ORDER DENYING MOTION TO VACATE CONVICTION AND SENTENCE

THIS MATTER CAME BEFORE THIS COURT ON THE DEFENDANT'S MOTION TO VACATE THE CONVICTION AND SENTENCE. THE COURT REVIEWED THE MOTION, CONSIDERED THE TRANSCRIPT AND HELD AN EXTENSIVE EVIDENTIARY HEARING ON THE ISSUES ALLEGED. THE DEFENDANT, SEAN CASEY, WAS REPRESENTED AT THE HEARING BY ATTORNEY DAVID S. MARKUS.

THE COURT HEREBY DENIES THE MOTION FOR POST CONVICTION RELIEF AND FINDS

- (1) THE DEFENDANT ENTERED INTO A NEGOTIATED PLEA WITH THE STATE ON OCTOBER 17TH, 2006. THE DEFENDANT WAS REPRESENTED BY ATTORNEY MILTON HIRSCH AND MICHAEL HABER. **THIS PLEA WAS MEMORIALIZED IN A PLEA COLLOQUY, A TRANSCRIPT OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF.**
- (2) THE DEFENDANT FILED THIS MOTION WITHDRAW THE PLEAS OF GUILTY ON NOVEMBER 6TH, 2006.
- (3) THE DEFENDANT'S CLAIM IS REFUTED BY THE ENTIRE PLEA DIALOGUE, SPECIFICALLY THOSE PORTIONS DEALING WITH THE SATISFACTION WITH THE WORK AND ADVICE OF HIS COUNSEL. THE DEFENDANT ACKNOWLEDGED THAT NO PERSON, INCLUDING ANY ATTORNEY, HAD FORCED HIM OR THREATENED HIM IN ORDER TO GET HIM TO ENTER THIS PLEA.
- (4) THE DEFENDANT IS A SOPHISTICATED AND HIGHLY INTELLIGENT ADULT.
- (5) AT THE EVIDENTIARY HEARING, TESTIMONY WAS RECEIVED BY THIS COURT FROM TRIAL COUNSEL, MILTON HIRSCH, MICHAEL HABER AND DR. MICHAEL RAPPAPORT. THE DEFENDANT WAS CALLED AS WITNESS AS WAS HIS MOTHER. THE COURT EVALUATED THE CREDIBILITY OF EACH WITNESS AND THE NATURE OF THEIR TESTIMONY AND FOUND THE TESTIMONY OF THE DEFENDANT AND HIS MOTHER, ON ALL POINTS COMPLAINED OF, TO BE UNWORTHY OF BELIEF.
- (6) WITH RESPECT TO THE ISSUE OF THE DEFENDANT'S FAILURE TO TESTIFY OR PRESENT WITNESSES AT ANY PRE-TRIAL HEARINGS, THE COURT FINDS THAT THESE WERE STRATEGIC OR TACTICAL DECISIONS MADE BY THE DEFENDANT AND HIS ATTORNEY.

THIS COURT FINDS, AS TO ALL ISSUES RAISED IN THE PLEADINGS, COMPETENT AND SUBSTANTIAL EVIDENCE, FROM THE TESTIMONY PRESENTED, THAT THE ACTIONS OF TRIAL COUNSEL WERE STRATEGIC OR TACTICAL DECISIONS MADE IN THE BEST INTERESTS OF THE PETITIONER.

THERE IS NO CREDIBLE EVIDENCE OF A CONFLICT OF INTEREST ON THE PART OF TRIAL COUNSEL THAT WOULD JUSTIFY THE VACATING OF THIS PLEA.

THIS COURT FINDS THAT TRIAL COUNSEL, MILTON HIRSCH AND MICHAEL HABER WERE NOT IN CONFLICT WITH, NOR INEFFECTIVE IN THEIR REPRESENTATION OF, SEAN CASEY.

THE PETITIONER HAS NOT MET HIS BURDEN IN SHOWING PREJUDICE OR ACTS OF HIS ATTORNEYS THAT WERE SO DEFICIENT AS TO REQUIRE A VACATING OF THE PLEA OF DECEMBER 19TH, 2006.

THE COURT FINDS THE PLEA WAS KNOWINGLY, FREELY AND VOLUNTARILY ENTERED INTO AND DENIES THE MOTION TO VACATE SAID PLEA.

THE DEFENDANT IS HEREBY NOTIFIED THAT HE HAS THIRTY (30) DAYS IN WHICH TO APPEAL THIS ORDER TO THE THIRD DISTRICT COURT OF APPEAL.

DONE AND ORDERED AT MIAMI, DADE COUNTY, FLORIDA, THIS 2 DAY OF MARCH, 2007.


LEONARD E. GLICK
CIRCUIT COURT JUDGE

XC: SEAN CASEY, DEFENDANT
DAVID S. MARKUS, ATTORNEY FOR THE DEFENDANT
GAIL LEVINE, ASSISTANT STATE ATTORNEY, STATE ATTORNEYS OFFICE
MILTON HIRSCH, FORMER ATTORNEY FOR THE DEFENDANT
MICHAEL HABER, FORMER ATTORNEY FOR THE DEFENDANT

I HEREBY CERTIFY THAT A COPY OF THIS ORDER HAS BEEN FURNISHED TO THE DEFENDANT, BY MAIL, THIS 6th DAY OF MARCH, 2007.


LEW GAUDIN
DEPUTY CLERK

