

**IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO**

<b>STATE OF OHIO,</b>	:	<b>CASE NO. 07-CR-13898</b>
<b>Plaintiff</b>	:	
<b>vs.</b>	:	<b>Jonathan P. Hein, Judge</b>
<b>LOUIS RODRIGUEZ</b>	:	
<b>Defendant.</b>	:	<b><u>JUDGMENT ENTRY</u> - Dismissal of Indictment</b>

This matter came before the Court for pretrial conference pursuant to notice. The state of Ohio was represented by Phillip D. Hoover. The Defendant appeared and was represented by Matthew Chapel, Esq.

On May 8, 2007, the Court conducted an inquiry of both counsel in open Court. The State was questioned about the circumstances of this case, including background on the investigation and purposes to be accomplished by this prosecution. The Defense was questioned about the consequences of the prosecution on both the Defendant as well as his spouse and child.

Thereafter, the Court provided counsel with a 10 day opportunity to supplement their arguments with additional pleadings; the time for any filings has since expired and no additional pleadings have been submitted. The matter is ready for adjudication.

### **Case Facts**

The Defendant and the victim both admit that they engaged in a consensual sexual relationship in approximately March, 2006. At this time, the Defendant was 21 years of age and the victim was 15 years of age. This conduct resulted in the victim becoming pregnant.

Thereafter, the victim sought health assistance from the Department of Job and Family Services. The Department recognized the age differences between the Defendant and his girlfriend and referred the matter to law enforcement for an investigation.

On January 9, 2007, the Defendant and victim were married by their own agreement and with consent of both the victim's parents. On January 29, 2007, the Defendant was indicted for Unlawful Sexual Conduct with a Minor, a fourth degree felony. On January 31, 2007, Louis Rodriquez, Jr. was born. Since their marriage, this family has lived together in their own home with the Defendant being actively engaged in raising the child and being fully employed to provide support for the family.

The Court inquired of Mr. Hoover about the public purpose to be served by prosecuting the Defendant. The Court was advised that this prosecuting was consistent with other cases with similar facts. Also, Mr. Hoover argued that there would be a public deterrence by prosecution of these cases.

Upon inquiry, Mr. Chapel advised that the victim did not want to prosecute this matter and that she was not consulted about the filing of charges. She acknowledged the consensual relationship leading to her pregnancy. Additionally, she was fearful that a conviction for this offense would cause her husband to lose his employment and the attendant consequences of no income.

## **Legal Analysis**

Several ethical standards are first articulated and considered by the Court:

### **National District Attorneys Association Standards:**

1.1 The primary responsibility of the prosecution is to see that justice is done.

1.3 The prosecutor should at all times be zealous in the need to protect the rights of individuals, but must place the rights of society in a paramount position in exercising prosecutorial discretion in individual cases and in the approach to the larger issues of improving the law and making the law conform to the needs of society.

1.4 At a minimum, the prosecutor should abide by all applicable provisions of the Rules of Professional Conduct or Code of Professional Responsibility as adopted by the state of his jurisdiction.

### **Ohio Ethical Considerations:**

7-13: The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as the selection of cases to prosecute; (2) [intentionally omitted]; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts....

7-14: A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation what is obviously unfair...

Two reasons for pursuing this case were mentioned by the Assistant Prosecutor.

First, he claims there is parity with other cases. However, the Court does not find parity with any prior cases since no prior case has these unique facts. The prior case mentioned by the Assistant Prosecutor involved marriage after the Defendant's conviction for the purpose of avoiding community control sanctions. Also, the former Defendant was not supporting the child and its mother. Since the prior case mentioned was considerably different, the Court cannot

agree that parity is a legitimate reason for pursuing this case.

Second, the Assistant Prosecutor asserts that there is a deterrence to others by prosecuting this case. Certainly, the Court agrees that there can be a deterrent purpose accomplished by prosecution of criminal cases. However, there may not really be a significant decrease in further cases as a result of filing charges against someone else. While there have been many more criminal cases filed in recent years, there is no proof that crime rates have decreased. Also, deterrence toward this Defendant is not likely since he is already accepting responsibility for his conduct. The deterrence argument is theoretical at best.

On the other hand, the Court agrees with the Defendant that the only sure outcome from the filing of this case will be the alienation of the relationship between the spouses and the impoverishment of the child and his mother. Convicting the Defendant will require his extradition to Mexico in spite of his current legal status in the United States and his long work history. Either the parties will be forced into a divorce or the victim and her child will be forced to move to Mexico and a lower standard of living. Additional factors which mitigate in favor of the Defendant include the victim's desire to not prosecute a case against her husband and the Defendant's acceptance of responsibility for his conduct, both morally and legally. All these reasons combined clearly outweigh any possible benefits that are claimed by the prosecution.

If there was some ulterior motive suspected of the Defendant, prosecution could have been delayed to see if the Defendant's marriage to the victim and his providing support were merely a self-serving ruse. However, the Assistant Prosecutor sought an indictment before the child was even born. And the Assistant Prosecutor has not articulated any additional reasons for the prosecution of this case in the additional time since the hearing.

The Court readily admits that the state can produce evidence to meet the elements of the crime charged herein. However, as recently stated by Montgomery County Prosecutor Mathias Heck as the current president of the National District Attorney's Association: "The recent case [of the lacrosse players from Duke University] has affirmed the importance of the ethical standards of America's prosecutors and serves as a reminder that the primary ethical duty of a prosecutor is to seek justice, not merely to convict." The Court strongly believes that more than the elements of a case should be considered when deciding whether resources should be spent to prosecute a case.

### **Conclusion**

On its own motion, following an articulation of these principles and reasons in open court before all parties, and pursuant to Criminal Rule 48(B), the Court finds that insufficient reasons exist for the prosecution of the Defendant. While deference is usually given to the charging decisions of the prosecutor, such deference is not unlimited.

**IT IS THEREFORE ORDERED AND DECREED** that the Indictment herein is dismissed, with costs taxed to the State. **FINAL APPEALABLE ORDER.**

---

**JONATHAN P. HEIN, Judge**

cc: Prosecuting Attorney's Office  
Matthew Chapel, Attorney for Defendant (via fax)  
DCSO, Detective Section (via fax)