

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CRIMINAL ACTION NO.</b>
	)	
<b>Plaintiff,</b>	)	<b>7:02-CR-12-ALL</b>
	)	
<b>v.</b>	)	
	)	
<b>XXX XXXX,</b>	)	
	)	
<b>Defendant.</b>	)	
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**MOTION TO WITHDRAW GUILTY PLEA**

XXX XXXX seeks to withdraw his guilty plea. In support of this motion he requests a hearing at which he could show that it is in the interest of justice for the Court to allow him to withdraw his guilty plea.

1. When XXXX was arrested the circumstances admittedly suggested guilt. In short, he was driving a car that was following a recreational vehicle in which several individuals were transporting ten kilograms of cocaine. XXX XXXX was carrying a firearm for which he had a license.

2. From the outset, XXXX maintained his innocence. He claimed that he had been duped into undertaking the journey by Guadalupe Gonzalez, his companion in the car he was driving.

3. Gonzalez's lawyer informed counsel that his client maintained that he had, in fact, duped XXXX. Gonzalez, who had confessed and was confronted with possibly a fifteen year prison sentence, declined to cooperate at least in part because he would not implicate XXXX.

4. Gonzalez, and the other co-defendants in the case, all executed affidavits stating that XXXX had no knowledge of the true nature of the trip.

5. If convicted at trial, XXXX would face at least a fifteen year prison sentence. The government, nevertheless, offered XXXX a plea agreement by which he would receive only a five year sentence.

6. Despite this attractive plea agreement, XXXX continued to maintain his innocence and the offer was initially declined.

7. At a meeting with XXXX's family, counsel informed them, that in counsel's estimation, that given the totality of the circumstances of the case, XXXX's chances at prevailing at trial were no better than 50%. Given the risk of losing and the penalty if the trial was lost, the family decided to try to persuade XXXX to plead guilty. Counsel stated that he thought the decision should be left to XXXX.

8. Two days later XXXX informed counsel that he wanted to enter the plea agreement after having visited with his mother. Although counsel advised XXXX that he would hear no more protestations of innocence from XXXX if he signed the plea agreement, counsel was uncomfortable with the situation, because, counsel believed XXXX's mother had placed undue influence on him. Counsel perceived that the relationship between the mother and son were such that the mother could wield such undue influence.

9. At the arraignment, Magistrate Stickney, asked counsel if the plea was consistent with counsel's advice. Counsel, feeling awkward, replied, "This is solely the decision of my client."

10. Recently, counsel learned that XXXX wanted to withdraw the plea. Apparently, XXXX had written the Court expressing his dissatisfaction with the situation, but the district clerk's office erroneously sent a copy of the letter to Francisco

Hernandez, XXXX's prior counsel. Mr. Hernandez then faxed a copy of the letter to counsel.

11. Counsel then met with XXXX and learned that XXXX was not really distressed with counsel as the letter seemed to suggest, but mostly concerned with withdrawing his plea. After that meeting, counsel agreed to file this motion on XXXX's behalf.

12. Rule 32(e) of the Federal Rules of Criminal Procedure provide that a district court may grant a motion to withdraw a guilty plea prior to sentencing if the defendant shows "any fair and just reason."

13. In *United States v. Carr*, 740 F.2d 339, 344 (5th Cir.1984), the Court held that in reviewing the denial of a motion to withdraw a guilty plea, the Court would consider the following factors:

- a) whether the defendant asserts his innocence;
- b) whether the withdrawal would prejudice the government;
- c) whether the defendant delayed in making the request;
- d) whether the withdrawal would inconvenience the court;
- e) whether adequate assistance of counsel was available;
- f) whether the plea was knowing and voluntary;
- g) whether the withdrawal would waste judicial resources.

The burden of establishing a "fair and just reason" falls on the defendant. *United States v. Brewster*, 137 F.3d 853, 858 (5<sup>th</sup> Cir. 1998).

14. In this case, the defendant is asserting his innocence, and would like to present the testimony of his mother, in addition to his own and his counsel's at a hearing on this motion.

15. In addition, this Court should consider that this is not the usual motion being made after a defendant is disappointed with his presentence report. If anything, this Court should consider rejecting the plea agreement because it is too favorable to the

defendant. Whereas the other co-defendants are receiving sentences of approximately thirteen years, XXXX, who, if guilty, is guilty of the same crime, is receiving a sentence of five years.

Respectfully submitted,

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Attorney for Defendant  
XXX XXXX

**CERTIFICATE OF SERVICE**

I, Mick Mickelsen, certify that on April 23, 2002, I caused the foregoing document to be served by hand-delivery, on Chad E. Meacham, Assistant United States Attorney, 1100 Commerce Street, Third Floor, Dallas, Texas 75244.

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Mick Mickelsen

**CERTIFICATE OF CONFERENCE**

I conferred with Chad Meecham on this motion and he opposes it.

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Franklyn Mickelsen

**UNITED STATES DISTRICT COURT  
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**ORDER**

XXX XXXX request that his plea be withdrawn. After holding a hearing on the motion, the Court finds that it is in the best interest of justice to withdraw the plea. It is SO ORDERED.

Trial on this matter is set for: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE  
JERRY BUCHMEYER