

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CRIMINAL DIVISION
DOCKET NUMBER. 430-4-16 WNCR

motion 2b
FILED

STATE OF VERMONT

V.

NOV 14 2017

ERNEST PHILLIPS, DEFENDANT

VERMONT SUPERIOR COURT
WASHINGTON

DEFENDANT'S MOTION TO ACCEPT THE PLEA AGREEMENT

Defendant moves the Court to accept the plea agreement as submitted. The plea agreement of a deferred sentence on two counts of prohibited conduct for three years was bargained for by State and the Defendant after extensive and lengthy litigation spanning approximately twenty one months that included more than two dozen depositions, twenty five motions, and twenty nine other pleadings. Several substantive motions, specifically, a motion to sever, a motion to exclude recording inside the courtroom, and a motion to dismiss are outstanding.

This isn't a straightforward case. Mr. Phillips has never adopted the alleged victims' allegations of sexual assault. The alleged victims themselves repeatedly denied any sexual contact between themselves and Mr. Phillips to law enforcement and DCF during the initial investigation into case in 2012. Four years later, in response to a question posed as part of a standard interviewing process, alleged victim two changed her story and stated that she had not been honest with the police previously and that she did have sexual relations with the Defendant. There is no physical evidence. There are no witnesses. The expansive date range alleged provides no opportunity for the Defendant pursue an alibi defense. This is a complicated and difficult case for both parties.

The plea agreement was long negotiated and bargained for. The Court was made aware by the State and Defendant that the alleged victims did not support agreement prior to the plea colloquy. The Court indicated that it would accept the agreement when it sua sponte required that modifications to the probation conditions be agreed to by the

Defendant or else would not be accepted. After consultation with counsel and clarification of the proposed condition from the Court, the Defendant indicated that he would accept the additional probation condition proposed by the Court so that the Court would accept the plea agreement. The Court made no indication that it would not accept the plea agreement if Mr. Phillips assented to the additional probation condition.

This case has received extensive and ongoing media coverage. Defendant will not experience the benefit of a deferred sentence in a traditional sense, thus making it that much more important for him to receive the sentence as agreed upon. Traditionally, all records of the charges are expunged at the completion of the deferred. Mr. Phillips will never experience that luxury. The Court may expunge his record, but the internet will never. Media outlets ran, wrote front page articles, and posted to their websites video and audio of Mr. Phillips' guilty pleas.^{1,2,3} See attached exhibits for exact reporting. This case has been reported on throughout New England and even nationally since arraignment.⁴

¹ Article on wcax.com posted November 9, 2017 at url:
<http://www.wcax.com/content/news/Plea-deal-for-dance-instructor-put-on-hold-456481453.html>:

BARRE, Vt. (WCAX) A judge put a plea deal on hold for a former dance teacher charged with sex crimes against kids.

"This is a man that uses his position of authority to lure women into a sense of safety and then takes advantage of their innocence," said Kienan Christianson, an attorney representing an alleged victim

Ernest "E-knock" Phillips tried to plead guilty to two counts of prohibited acts Thursday.

"Did you expose your genitals to victim number two?" questioned the judge.

Phillips replied, "Yes I did."

But after hearing the victim's statements, the judge wouldn't move forward.

² The story was featured on the nightly and daily news on WCAX on, at least, November 9, 2017 and November 10, 2017.

³ On November 10, 2017, the following story ran on the front page of the Barre Times Argus and is available at the following url:

<https://www.timesargus.com/articles/states-attorney-criticized-for-deal/>

⁴ See

<https://www.usatoday.com/story/news/2016/04/13/dance-teacher-suspected-sex-crime/82971640/>

<https://www.necn.com/news/new-england/Former-Dance-Instructor-Accused-of-Sexually-Abusing->

The citations provided in this motion present a fraction of the reporting on this case since April 2016. The Defendant faced racist death threats on social media. Defendant worried he would be unable to get a fair trial as afforded him by the Sixth Amendment of the United States Constitution and Articles 10 and 12 of the Vermont State Constitution. After the airing of his guilty pleas on the internet and on television throughout Vermont that fear is now an undeniable reality. Mr. Phillips cannot get a fair trial if the Court does not accept this plea deal. With that backdrop, any modification to the proposed deal by the Court cannot be bargained for. Mr. Phillips cannot move forward to a fair trial if the Court fails to accept the plea deal. Additionally, Mr. Phillips Fifth Amendment rights have been violated. By providing sworn testimony and pleading guilty to the prohibited acts charges he can no longer testify in his own defense without risking perjury charges or impeachment on cross examination. Even if the Court were to fashion protections, his Fifth Amendment cannot be protected from an errant juror exploring a few Google clicks to unearth the video and audio of the guilty pleas.

The Court raised several concerns about the potential lack of involvement of alleged victims participation in negotiating the plea. The Court's delay in imposing the sentence is expressly prohibited by the law that it relied upon to do so. 13 VSA § 5321(b) makes clear that the "change of plea hearing or sentencing shall not be delayed

[Minors-375516021.html](#)

<https://vtdigger.org/2016/04/13/reality-tv-dancer-charged-with-sexual-assault/#.WgdRERNSyi4>

<https://www.ypad4change.org/e-knock-sexual-assault-charges/>

<http://www.burlingtonfreepress.com/story/news/2016/04/13/dance-teacher-suspected-sex-crime/82971640/>

<http://www.mynbc5.com/article/dance-instructor-accused-of-sex-assault/3326861>

http://www.stowetoday.com/waterbury_record/news/local_news/sex-case-a-shock/article_6fc62434-07c3-11e6-9f83-3fc0311b1ba0.html

<http://www.mychamplainvalley.com/news/vermont-state-police-reopen-sexual-assault-investigation/428677771>

WPTZ news reporting available on YouTube <https://www.youtube.com/watch?v=kso6xvLQA5c>

or voided by reason of the failure to give the victim the required notice or the failure of the victim to appear.” The sentencing was delayed and the agreement potentially voided by the Court precisely because of an alleged lack of notice about the agreement from the State’s Attorneys Office to the alleged victims. The statute makes clear that such a lack “shall not” be an acceptable reason for the Court to delay or void the hearing. This further compounds the prejudice to the Defendant. The alleged victims are not a party, they do not have any procedural rights, including “any right to request a delay or rescheduling of any proceeding.” 13 VSA § 5319. V.R.Cr.P. 32(a)(1) also requires that the “sentence shall be imposed without unreasonable delay.”

Should the Court decide not to accept the anticipated agreement, the only remedy that the Defendant has is to withdraw his guilty plea pursuant to V.R.Cr.P. 32(d). Effectively, Mr. Phillips cannot withdraw his guilty plea. It has been broadcast throughout New England, repeatedly. He admitted to exposing his genitals to two underaged women. He cannot, at this juncture, receive a fair trial. For the reasons outlined in this motion, the Defendant requests that the Court accept the agreement.

Respectfully Submitted,

11/14/17
Date

JLB
Jessica L. Burke, Esq.

Cc: Washington County State’s Attorney Scott Williams, Esq.

2017

Plea deal for dance instructor put on hold

FILED

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VERMONT SUPERIOR COURT
WASHINGTON

Plea deal for dance instructor put on hold

PLEA DEAL ON HOLD



Priscilla Liguori | Posted: Thu 6:06 PM, Nov 09, 2017 | Updated: Fri 11:12 AM, Nov 10, 2017

ARRE, VL. (WCAX) A judge put a plea deal on hold for a former dance teacher charged with sex crimes against kids.



11/13/2017

Plea deal for dance instructor put on hold

Phillips replied, "Yes I did."

But after hearing the victim's statements, the judge wouldn't move forward

Both victims said Washington County State's Attorney Scott Williams did not talk to them about the deal and that they think Phillips should face stricter consequences.

"It's no different than what happened with Harvey Weinstein. It's no different than what happened with Bill O'Reilly. It's no different than what happened with Kevin Spacey," said Christianson.

"The defendant should be put on the sex offender registry to better protect the young girls he encounters in the future. This sentence is unfair to me, and the other victims," said victim advocate Holly Leach.

Under the deal, Phillips would have been placed on probation for three years and banned from teaching underage girls.

The judge gave Williams one week to speak with the victims.

"Victims, while they're not parties explicitly, they do have the right at least to be consulted and to be apprised of the proposed probation conditions. The court is not saying that it will or will not accept the plea agreement," Vt. Superior Court Judge Howard VanBenthuyssen said.

Phillips originally pleaded not guilty to six felony charges for allegedly having sex with two teenage dance students when he taught at Green Mountain Dance Academy in Waterbury.

"The alleged victims first said when this was first investigated that this did not occur, that they were not assaulted, that they did not have any relations with Mr. Phillips. It wasn't until court years later that they changed that allegation," said Jessica Burke, Phillips' attorney.

Before the charges were filed, Phillips was a popular name in the Chittenden County dance community. WCAX interviewed the aspiring entertainer when he worked at the Vermont Ninja Warrior Program.

"It's basically like a playground for adults," Phillips said at the time.

Phillips was also a contestant on "The Amazing Race."

"I get to incorporate my strength. I love showing off my muscles," he had said.

But back in the courtroom, Williams says the lack of physical evidence, among other factors, would make it difficult to bring this case to trial.

"I take no pleasure from standing here today with this outcome but I do think it is the least-bad outcome that could be fashioned given all of the variables," said Williams.

The judge plans to pick up the case again next Thursday.

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ONLINE

Monday, November 13, 2017

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VERMONT SUPERIOR COURT
WASHINGTON

State's attorney criticized for deal

The Times Argus | November 10, 2017

By ERIC BLAISDELL
STAFF WRITER

BARRE — Washington County State's Attorney Scott Williams is taking heat for entering into a plea deal in a case involving a former dance instructor who is accused of having sex with his teenage students, a deal that a judge has yet to accept.

Ernest Phillips, 30, of Essex Junction, is facing four counts of sexual assault on a victim younger than 16 years old and two counts of sexual exploitation of a minor, all felonies. Phillips pleaded not guilty to the charges in Washington County criminal court in Barre in April 2016. He faces a maximum sentence of 90 years in prison.

One of the victims told police she and Phillips began a sexual relationship when she was 17 years old that continued past her 18th birthday. She told police they had sex at two of his residences in Waterbury and another in Berlin. The other victim told police she began a sexual relationship with Phillips when she was 15 years old that continued until she was 16. The girl told police she and Phillips had sex at Phillips' residence in Waterbury, his residence in Barre and her home in Berlin.

A change of plea hearing was scheduled for Thursday. The deal called for two of the charges to be amended down to misdemeanor prohibited acts in which Phillips would admit to exposing himself to the victims in exchange for the other charges being dropped. Phillips, who is being represented by Attorney Jessica Burke, would be given a three-year deferred sentence and placed on probation for three years. He pleaded guilty to the two misdemeanor charges Thursday, but Judge Howard E. VanBenthuyssen has not accepted the plea.

Williams said in court Thursday he agreed to enter into the plea deal because there was a lack of physical evidence of Phillips' crimes. He said while he hates the phrase, it was a case of "he-said, she-said." Williams said because there were people involved in the case that had changed their stories over time, there was a substantial risk that a jury could find Phillips not guilty.

Menu

"That's why I'm elected, and that's why I get the big bucks," he said. "So that I can make decisions that people can be angry about, feel bad about, criticize me about. But I always try to have as a guiding principle justice in the largest sense that I can possibly imagine."

The two victims were not happy about the agreement.

Victim's Advocate Holly Leach read a statement from one of the victims.

"Your honor, I beg of you to reject this plea deal," the victim wrote. "This crime has impacted every facet of my life. I am in counseling because I suffer from severe anxiety, depression and PTSD."

She went on to describe how Phillips left her feeling worthless, used and broken. She wrote she couldn't be in the courtroom Thursday because she felt overwhelmed and disappointed in the plea deal. She wrote that Phillips was not getting the punishment he deserved and was getting away with what he did to the two victims.

"My life will never be the same. I cannot go back to being 15 years old again, and I cannot erase what this person did to me. If you accept this sentence, I will continue to be the victim. There is no healing for me or for the others," she wrote.

The victim is being represented by attorney Jon Valsangiacomo, who said in court Thursday that neither he nor his client were consulted about the plea deal.

Attorney Kienan Christianson represented the other victim in the case. Christianson said his client was not consulted about the deal either, and Williams did not ask for her input. Christianson also gave a statement, arguing this is not a case of "he-said, she said" as Williams had presented it.

"This is (a case of) he-said, she-said, and she-said, and she-said and she-said. And the question becomes how many more women have to come forward before the defendant is held accountable for his actions?" Christianson said.

He then referred to the recent allegations against Hollywood producer Harvey Weinstein, actor Kevin Spacey and political pundit Bill O'Reilly regarding sexual assault and harassment of women.

"This is a man who uses his position of authority to lure women into a sense of safety and takes advantage of their innocence," he said.

Williams said a victim has a right to be heard at sentencing. But he said it's not the victims' role to determine what the sentence should look like and they have no right to be involved in plea negotiations.

Judge VanBenthuyzen noted while victims of a crime don't have the power to veto a plea deal, state statute does require a prosecutor to inform victims in advance of the proposed probation conditions the offender will receive. Also, he said, the prosecutor is supposed to keep the victim involved throughout the plea agreement process.

VanBenthuyzen said the case would be heard again next week, at which time he will decide whether to accept the plea deal or not.

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