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TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783
Austin, Texas 78767
Tel. 512-354-7823
Fax: 512-532-6282

Web Site: www.texindbar.org




 Vol. 21, No. 40 - October 7, 2013

Case Name: [Israel Ytuarte Rodriguez v. The State of Texas](#)

- OFFENSE: Sexual Assault of a Child, 7x Indecency with a Child
- COUNTY: Bexar
- C/A CASE No. 04-12-00341-CR
- DATE OF OPINION: October 2, 2013
- DISPOSITION: Conviction Reversed OPINION: [Stone, CJ.](#)
- TRIAL COURT: 175th D/C; Hon. Mary Roman
- LAWYERS: [Veronica Legarreta](#) (Defense); [Nathan Morey](#) (State)

Ed Note: (Background Facts) Appellant was charged with three counts of sexual assault of a child, six counts of indecency with a child by contact, and one count of indecency with a child by exposure. The State also filed a notice of enhancement based on a prior conviction. Before trial, the State offered Appellant a plea bargain recommending that he serve ten years in prison. Based on advice from his trial counsel, Appellant declined the State's offer and proceeded to trial --he received eight (8) life sentences and a single 20 year sentence.

 **124 Right to Counsel / Ineffective Assistance of Counsel:** After trial, Appellant retained new counsel and filed a motion for new trial. The motion for new trial alleged that trial counsel provided ineffective assistance of counsel during the plea negotiations and trial, including a claim that erroneous advice led Appellant to reject a favorable plea bargain offered by the State. Attached to the motion was an affidavit by trial counsel stating that this was his first criminal jury trial and that he provided ineffective assistance due to his lack of experience and knowledge in criminal law. After a hearing, the trial judge granted Appellant's motion for new trial and also granted Appellant's motion to require the State to reinstate its plea-bargain offer of ten years. The State reinstated its ten-year offer, but the trial judge rejected the plea agreement and advised Appellant that he had the option to withdraw his guilty plea and proceed to trial or to accept a sentence of twenty-five years in prison. Appellant rejected the twenty-five year sentence. The following morning, Appellant presented a motion to recuse the trial judge based on an alleged demonstration of prejudice. That same day, the trial judge signed an order voluntarily recusing herself from the case. Appellant's case was subsequently assigned to Judge Román, and Appellant filed another motion to require the State to reinstate its plea-bargain offer of ten years. After hearing the parties' arguments regarding the motion to reinstate, Judge Román declared that "the slate was wiped clean" by the original trial judge's recusal. Thus, Judge Román stated that she had two options: (1) to accept a new plea agreement if one were reached; or (2) to proceed to trial. The State offered Appellant a plea bargain of twenty-five years in prison, and he accepted it. As part of the agreement, Appellant pled guilty to five of the counts in exchange for the State's waiver of the other five counts. This plea agreement was accepted by Judge Román, and she signed judgments of conviction on the five counts.

Holding: Although Lafler v. Cooper (No. 10-0209; March 12, 2012)(see 68, Vol. 20, No. 12; 03/26/2012) would provide support for the trial judge's rejection of the plea agreement, the discretion she exercised in rejecting the plea agreement cannot be viewed in isolation but must be considered in light of her voluntary recusal. Thus, we conclude that Appellant was entitled to have the original plea offer presented to him and, if accepted, to have the plea agreement presented to an impartial trial judge. The only plea offer/agreement presented to Appellant or Judge Román, however, was the twenty-five year offer/agreement. *** Notwithstanding the foregoing, however, we agree with the State's assertion that there is no authority supporting Appellant's contention that an impartial tribunal is required to accept a plea agreement. *** Thus, on remand, Judge Román will have the discretion to decide whether to accept or reject the plea agreement. *** Under the unique circumstances of this case, we conclude that the only way to neutralize the taint of trial counsel's ineffective assistance of counsel and the trial judge's voluntary recusal is to return Appellant to the position he would have been in prior to his counsel's improvident advice to reject a reasonable plea-bargain offer.