

SEXUAL ASSAULT SENTENCE

A Victim's Request

Teen Asks Judge To Reject Plea Deal

By **ALAINE GRIFFIN**
agriffin@courant.com

HARTFORD — A teenage rape victim is asking a judge to reject a plea deal reached in her attacker's case, an agreement her attorney says resulted in "grossly inadequate" punishment that fails to show that a sexual assault occurred.

The 17-year-old victim, who was 14 at the time of the assault, said she was not given the chance to address the

court about the decision reached in the case of Fernando Galvan, a right she said victims are guaranteed in the state's constitution, according to a motion filed in Superior Court in Hartford that seeks to have the plea agreement vacated.

"These multiple violations of the victim's constitutional rights can best be remedied by vacating the plea and allowing the victim her opportunity to convince the court of the inadequacy of the punishment proposed by the prosecutor and defendant," says the motion, written by the victim's at-

VICTIM, A6

Continued from Page A1

torney, James Clark of the Victims Rights Center of Connecticut in Wallingford.

Galvan, 42, of Hartford, is scheduled to be sentenced Friday in Superior Court. Clark said he is planning to attend the hearing.

Galvan's attorney, Damon A. R. Kirschbaum, declined comment Thursday.

Clark said that for more than a year since Galvan's arrest, the prosecutor in the case had assured the victim that Galvan would either plead to a sex crime or face a trial, telling the victim that she would be a good witness in the case.

Galvan's initial plea to the second-degree sexual assault charge, a class B felony, would have resulted in a sentence of 10 years in prison suspended after nine months served, 10 years' probation, registration on the state's sex offender registry and possible deportation, Clark said.

Instead, Galvan pleaded guilty to misdemeanor charges in exchange for a longer prison sentence of 70 months suspended after three years served and three years' probation. Clark said he thinks the plea

deal was reached so Galvan could avoid deportation, and so he would not have to add his name to the state's sex offender registry.

"During the last week of August, the prosecutor abandoned her promise to hold the defendant accountable for the sexual assault he committed," Clark wrote in the motion.

Hartford police arrested Galvan on April 4, 2014, and charged him with second-degree sexual assault and risk of injury to a child.

According to court records, the victim told police in 2012 that a man she knew from the neighborhood gave her his address and telephone number. One night in August 2012, the girl told police, she went to the man's home where they danced and listened to music.

She told police the man hit her on the arm, neck and leg and "choked her and threw her on the bed," court records said. She said he fondled her and sexually assaulted her. In an arrest warrant affidavit, the girl is described by police as having "mental issues" and a section of the document where it appears her condition is explained is redacted.

In October 2012, Galvan talked voluntarily to police. He told them the girl had asked for his telephone number but he told her not to call him because "I did not want



problems with her," court records said. One night, he said, she entered his home through a back door and asked if they could dance.

Galvan told police the girl "hugged me and kissed me like two times and I pushed her away," court records said. That same night, he said he saw police cars in front of the girl's home and said to the girl, "look at the trouble you got me into." The girl's mother called police to report her missing when she did not see the girl at home, court records said.

Galvan agreed to give investigators a buccal swab, a way for investigators to collect DNA from the cells on the inside of a person's cheek.

According to court records, DNA found on the girl's right breast matched tests done on the sample investigators took from Galvan.

Last year, Galvan pleaded guilty to the charge of second-degree sexual assault. By law, he would have had to add his name to the state's sex offender registry.

But before he was sentenced, it was determined that Galvan during his plea was not properly advised of federal immigration laws that say conviction of certain crimes in the United State could lead to deportation, Clark said.

Galvan's U.S. citizenship status could not be determined Thursday.

Clark refers to him in the motion as a "legal resident alien," meaning he resides in the United States but does not have citizenship.

If the judge did not vacate Galvan's initial plea, Galvan's conviction could have been reversed on appeal.

At one point, the victim's mother went to see Clark at the Victims Rights Center of Connecticut because she did not understand what was going on in the case, Clark said.

During negotiations in his case, Clark said, Galvan expressed concerns about being deported.

Clark said that initially the prosecutor had insisted on a felony conviction, requiring Galvan to register as a sex offender. But when Galvan offered to accept more jail time in exchange for charges that would not cause his deportation, "the negotiations morphed into an exercise in manipulating charges to avoid federal immigration law," Clark wrote.

By September, a new plea deal was on the table. This time, Galvan agreed to plead to four counts of third-degree assault and four counts of interfering with an officer, charges Clark called in the motion "a fiction of stacked misdemeanors intended to avoid deportation. Unfortunately, that fiction also eliminated any suggestion that the defendant had sexually as-

saulted the victim."

On Sept. 4, Galvan entered his new plea before Judge Kathleen McNamara, according to the motion.

The day before, the prosecutor, Assistant State's Attorney Mirella J. Giambalvo, sent a text to Clark telling him to text her once he had spoken to the victim.

Clark, who was in Maine for his daughter's wedding, contacted the victim about the plea.

"She is very upset that he is not going to be registered as a sex offender and wants a chance to say so at the plea," Clark texted to the prosecutor. "She is sure that without [Galvan on the sex offender registry] he will hurt another child. Sorry but the victim wants to be present at the plea."

Giambalvo did not return two telephone calls for comment Thursday.

Clark said while the victim has no right under the state constitution to have the plea vacated, he said the judge does retain jurisdiction to reject it.

"Moving cases though the system too often becomes the focus of court actions, and fealty to the concept of justice often becomes blurred," Clark wrote in the motion. "That appears to be what happened in this case, and the end result is blatantly unjust."

