

SEXUAL ASSAULT

Judge: Victim's Rights Ignored

Sentencing Is Delayed

By **JOSH KOVNER**
and **ALAIINE GRIFFIN**

jkovner@courant.com

HARTFORD — An angry Judge Kathleen E. McNamara delayed sentencing Friday morning in a sexual assault case, saying the teenage victim's rights were ignored because she was denied the opportunity to voice her objections to a plea bargain agreement and proposed sentence for her attacker.

Victims' rights lawyer James Clark had argued repeatedly for a cancellation of the plea bargain for Fernando Galvan — an agreement that would have reduced Galvan's

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felony conviction to a misdemeanor and allowed him to bypass the state's sex-offender registry.

On Friday, everything began to fall in line for Clark and the victim, now 17, as prosecutor Mirella Giambalvo agreed to vacate the plea agreement and start over, and the judge angrily denounced the progression of the case.

However, McNamara decided to hold off on erasing the agreement and sentencing after Galvan's lawyer, Damon R. Kirschbaum, argued that undoing the sentence and continuing the prosecution would be tantamount to double jeopardy. The judge asked the lawyers on all sides to submit legal arguments by Dec. 4, and set another hearing for Dec. 11. Galvan, 42, of Hartford, is free on \$55,000 bail.

McNamara said she never received a letter the victim had written in which she describes her objections to the plea bargain. The judge said she was also unaware until very recently that the victim did not want the negotiated sentence to go forward.

McNamara said that to accept the plea would be a fundamental violation of the victim's rights. Lawyer Natasha M. Pierre, the state victim advocate, joined Clark in arguing for a complete do-over. Clark, a former prosecutor, directs the Wallingford-based Victim Rights Center of Connecticut.

The judge lashed out at the deal between the state and the defense.

"I feel I was kept in a bubble in order to have a sentencing agreement [that was convenient] for some people," McNamara said from the bench. "I guarantee this won't happen again. The victim was victimized again by this system."

The victim's mother, identified in court by her first name,

Karen, said her daughter's depression and anger over what Galvan did to her has only been deepened by the proposed plea bargain.

"He sexually abused my daughter — and that hurts me a lot," she said. "He deserves to be on the sex offender registry."

The victim, who was 14 at the time of the assault, said she was not given the chance to address the court about the new agreement, a right she said victims are guaranteed in the state's constitution, according to a motion filed by Clark.

"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," Clark wrote.

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.

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 then eventually 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 had 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 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 States could lead to deportation, Clark said.