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No Sex Registry For Defendant After Child Rape Charge Reduced To Assault



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In CT case, No Sex Registry For Defendant After Assault Plea Is Accepted

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HARTFORD — When it became apparent that her daughter's attacker would not be included in Connecticut's sex offender registry following his sentencing Friday in Superior Court, the mother could no longer contain her composure.

"That's what I want," the frustrated mother yelled from the courtroom gallery in a last-ditch grasp for justice for her 17-year-old daughter, who she said still carries the scars of a sexual assault she endured when she was 14.

"I know that. I know that now," Judge Kathleen E. McNamara replied from the bench. "I wasn't aware of that before."

It was too late. The charges Fernando Galvan pleaded guilty to in September and went to prison for on Friday did not require that he register on the website.

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Minutes before the outburst, the victim's attorney, James Clark of the Victims Rights Center of Connecticut in Wallingford, repeated his plea to McNamara for a do-over of Galvan's sentencing so that the teenager could get a chance to voice her objections to a plea bargain agreement and proposed three-year sentence for Galvan on charges that no longer reflect that a sexual assault took place.

"This proceeding is the culmination of an institutional attitude that has given lip service to victims' rights but actually considers victims to be an annoyance," Clark, a former prosecutor, said. "It's a

system that has lost track of the idea of justice" and instead pushes cases too quickly to resolution.

"At every stage of these proceedings the state's attorney capitulated to every demand of the defendant while trampling on the rights and wishes of the victim, who our constitution says has rights available to her," Clark said.

At Galvan's first sentencing hearing in October, an angry McNamara delayed disposing of the case, saying the teenage victim's rights were ignored because she was denied the opportunity to speak.

McNamara said accepting the plea would be a fundamental violation of the teen's rights. The judge said she was unaware that the victim did not want the sentence to go forward and never received a letter the victim had written in which she spoke against the reduction of Galvan's felony conviction to a misdemeanor that allowed him to bypass the state's sex-offender registry.

The hopes of the victim and her mother were further bolstered in October when prosecutor Mirella Giambalvo agreed to vacate the plea agreement and start over, a move the judge put the brakes on after Galvan's lawyer, Damon A.R. Kirschbaum, argued that continuing the prosecution would be tantamount to double jeopardy. McNamara asked the lawyers to submit legal arguments before Galvan's second scheduled sentencing hearing Friday.

In a motion she filed before the hearing, Giambalvo backed away from what she said at the October hearing. She wrote that "the victim does not have standing to vacate" Galvan's plea and that the court "should therefore enforce the terms of that plea."

She wrote that vacating the plea would begin a lengthy appeals process with an uncertain outcome.

"The state understands the victim's desire for a different result, but is mindful that the road to the victim's desired result is replete with legal potholes," Giambalvo wrote. "The uncertainty of the appellate process, coupled with the possibility of an outcome that allows the defendant to go unpunished for his crimes, leads the state" to push for sentencing.

Giambalvo did not speak about the case in court Friday. Instead, Supervisory Assistant State's Attorney Carl Ajello, who said he was not involved with the case at the time the plea bargain was made, said the sentencing "was the appropriate action," after an attempt by all of the parties to reach a compromise.

He noted that Galvan, 42, of Hartford, would be locked up for three years and would undergo sex offender treatment as well as be on probation for three years after his release. He will also be

prohibited from contact with anyone under 16 and a criminal protective order prohibits him from ever having contact with the victim.

"It wasn't an attempt to push the case through," Ajello said. "It was a myriad of issues by a variety of parties that led, without a question, to the victim's right to be heard to be trampled on. I agree with Attorney Clark. It's unfortunate."

Ajello said he "took exception" to Clark's statement that prosecutors consider victims "an annoyance," saying, "I spent my career doing just the opposite."

Galvan's attorney, Kirschbaum, said Clark portrayed a "false representation" of how the case was handled and called his comments about the prosecutors "false and defamatory."

Though the judge agreed to accept the plea deal cut for Galvan and sentenced him Friday, she said that she was "very troubled" that the victim was not made aware of the plea bargain and was not able to voice her objections to it.

If she had known that, McNamara said she would have waited until the victim had the chance to speak.

"To say that I was surprised and disappointed is an understatement," McNamara said. "I expect that victims have a right to be heard. I expect that victims have a right to tell the court how they feel about things and whether the court agrees or not is beside the point. Victims still have a right to be heard."

McNamara said her legal research showed that the court's acceptance of the plea deal was unequivocal, rather than conditional, and that vacating the plea could raise issues about double jeopardy, which prohibits multiple punishments for one crime.

"I've spent many sleepless nights over it," McNamara said. "I don't think there is a satisfactory answer for anybody in this case."

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 show. 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 said he went outside to talk to the police and turned over his phone voluntarily. He also 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 as part of a plea deal that would result in a 10-year prison sentence suspended after nine months served, and 10 years probation, Clark said. By law, he would have had to register his name in the state's sex-offender registry.

But before he was sentenced, it was determined that Galvan, who is not an American citizen, was not properly advised during his plea of federal immigration laws that say conviction of certain crimes in the United States could lead to deportation. If the judge did not vacate Galvan's initial plea, Galvan's conviction could have been reversed on appeal.

On Sept. 4, Galvan agreed to plead to four counts of third-degree assault and four counts of interfering with an officer. The day before, 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."

But the state went ahead with the plea for Galvan without the victim being heard.

Clark has called the charges Galvan pleaded to "a fiction of stacked misdemeanors intended to avoid deportation. Unfortunately, that fiction also eliminated any suggestion that the defendant had sexually assaulted the victim."

And it eliminated any chance of Galvan's name being part of the sex-offender registry.

"I just wanted his name to be on there so people would know," the mother said outside the courtroom Friday. "Someday he's going to get out. And there will be other kids in the community near him. And now parents will not know."

Both Clark and Natasha M. Pierre, the state victim advocate who also asked the judge at Friday's hearing not to go through with the sentencing, said this case shows that victims in Connecticut should have a right to challenge denial of their rights.

"This happens all the time," Pierre said after the hearing. "Victims are treated as an accessory to the process. They're not treated as an important part of this process."

She said a review of victim's case showed that she was treated fairly throughout the case until the plea deal called for Galvan to plead guilty to nonsexual counts.

"Then all of a sudden she was excluded from the process," Pierre said. "We really need enforcement in this state. We need to get out of the constitution that victims don't have the right to appeal because there's no penalty at all except for people to say they are sorry."

In the meantime, Pierre said she was heartened by a short discussion she had with McNamara, who called her to the bench after the hearing.

"She said she was sorry that this happened," Pierre said. "She said she had wished she had been informed prior to all of the mistakes in this case and that she is going to make sure that other judges really know the importance of this. And that's wonderful that people feel that way. But it doesn't help the victim."

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