

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2008-A-0051
JAMES J. IRISH,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2007 CR 400.

Judgment: Affirmed.

Thomas L. Sartini, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Joseph A. Humpolick, Ashtabula County Public Defender, Inc., 4817 State Road, Suite 202, Ashtabula, OH 44004-6927 (For Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} Appellant, James J. Irish, appeals the decision of the Ashtabula County Court of Common Pleas denying his request to accept a plea bargain, after the court-imposed deadline. We affirm the judgment of the trial court.

{¶2} Irish was charged with a violation of R.C. 2919.25(A), domestic violence, a felony of the fourth degree. Irish plead not guilty.

{¶3} On January 28, 2008, the trial court issued a judgment entry stating:

{¶4} “The State’s offer is to plead to the Indictment and there will be a recommendation of community control.

{¶5} “The plea cutoff date is April 4, 2008, and jury trial is scheduled for April 22, 2008, at 9:00 A.M.”

{¶6} On April 7, 2008, the trial court issued a judgment stating:

{¶7} “April 4, 2008, was [Irish’s] cutoff date. ***

{¶8} “[Irish] does not want to accept the plea offer.

{¶9} “This matter has previously been scheduled for a jury trial on May 13, 2008, at 9:00 A.M.”

{¶10} On May 13, 2008, Irish attempted to accept a negotiated plea to a first-degree misdemeanor charge of domestic violence. However, the trial court refused, indicating that Irish failed to comply with the court’s cutoff date. Thereafter, Irish withdrew his plea of not guilty and entered a plea of no contest to domestic violence, a felony of the fourth degree. Irish was sentenced to a two-year term of community control.

{¶11} Irish filed a timely notice of appeal and asserts the following assignment of error:

{¶12} “Ashtabula County Common Pleas Court Judge Alfred Mackey abused his discretion when he refused to accept a negotiated plea to the first degree misdemeanor of domestic violence in violation of Revised Code 2919.25 that had been worked out between appellant through defense counsel and Assistant Ashtabula County Prosecutor Gene Barrett.”

{¶13} On appeal, Irish maintains that the trial court erred by refusing to accept the plea bargain negotiated between himself and the prosecutor. We find this argument as advocated by Irish unpersuasive.

{¶14} “It is well established that the decision whether or not to accept a plea bargain is within the sound discretion of the trial court. *** When the trial court rejects a recommended plea bargain, it should state reasons for its decision. ***.” *State v. Stephenson* (Apr. 30, 1997), 9th Dist. No. 17752, 1997 Ohio App. LEXIS 1738, at *5. (Internal citations omitted.) “The term “abuse of discretion” *** implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *State v. White*, 118 Ohio St.3d 12, 2008-Ohio-1623, at ¶46, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157. (Secondary citations omitted.)

{¶15} On the day of trial, Irish’s counsel moved the trial court to accept a negotiated plea to a lesser offense of domestic violence, a first-degree misdemeanor. Irish’s counsel indicated the offer was extended the previous day. The trial court denied the request, stating:

{¶16} “And we discussed this and the fact that if these plea cutoff dates are going to mean anything, we have to hold with what the recommendation was.

{¶17} “If there was a counteroffer that had been made and that was quickly agreed to by the State, that would be another thing, but we were here on January 25th, 2008, and the recommendation was plea to the Indictment, recommendation of community control.

{¶18} “The plea cutoff date was April 4th ***.

{¶19} In addition, the trial court questioned the prosecution as to why it had changed the recommendation on the eve of trial. The prosecution assured the trial

court that there were not any “problem[s] with this case as far as the witnesses, the willingness or availability ***.”

{¶20} As noted, the trial court expressed, on the record, its reasoning in refusing to accept the plea bargain. Irish was aware that the trial court imposed an April 4, 2008 deadline for accepting a plea. Certainly, plea bargains should not be discouraged; however, there is nothing in the record to justify the inability of the state and Irish to arrive at an agreement by the deadline imposed by the court. It is a well-established principle that a trial court has wide discretion in control of its docket. *State v. Berner*, 9th Dist. No. 3275-M, 2002-Ohio-3024, at ¶14. (Citation omitted.) Moreover, Irish has not cited to any authority that stands for the proposition that a trial court abuses its discretion in refusing to accept a plea bargain.

{¶21} Under the facts and circumstances of the instant case, the trial court did not abuse its discretion in refusing to accept the negotiated plea, and the judgment of the Ashtabula County Court of Common Pleas is hereby affirmed.

MARY JANE TRAPP, P.J., concurs

DIANE V. GRENDALL, J., dissents with a Dissenting Opinion.

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{¶22} The trial court abused its discretion by summarily refusing to accept the plea bargain negotiated between Irish and the prosecutor. The trial court arbitrarily failed to consider particular circumstances and issues presented, specifically the fact that the plea was offered by the prosecution to Irish’s counsel the day before the trial

and, had the plea been offered earlier, Irish stated he would have accepted the agreement.

{¶23} “[T]he prosecution’s recommendations ought not to be summarily rejected and *** the trial judge ought to exercise a sound discretion before refusing to accept or departing from such recommendations.” *Akron v. Ragsdale* (1978), 61 Ohio App.2d 107, 109 (emphasis omitted).

{¶24} In *State v. Raymond*, 10th Dist. No. 05AP-1043, 2006-Ohio-3259, the trial court gave no reason for refusing to accept the appellant’s plea other than “a blanket policy of not accepting ‘pleas from people that don’t think they did anything wrong.’” *Id.* at ¶11. The appellate court found that “[u]nder these circumstances, the trial court’s refusal to accept appellant’s plea was an abuse of discretion, or more precisely, it was a refusal to exercise the court’s discretion. The trial court arbitrarily refused to consider the facts and circumstances presented, ‘but instead relied on a fixed policy established at its whim.’” *Id.* (citation omitted). The appellate court held that when the “trial court used an overarching policy instead of its own discretion based on the particular circumstances and issues presented in this case, it abused its discretion.” *Id.*; *State v. Carter* (1997), 124 Ohio App.3d 423, 428 (“[w]e find that the trial court’s policy of not accepting no-contest pleas constituted an abuse of discretion in that the trial court arbitrarily refused to consider the facts and circumstances presented, but instead relied on a fixed policy established at its whim”).

{¶25} Similar to *Raymond* and *Carter*, in the instant case, nothing in the transcript indicates that the trial court based its decision to reject Irish’s plea on anything pertaining to the facts and circumstances of his case; rather, the court apparently based its decision solely on a blanket policy.

{¶26} Although the trial court has the discretion to refuse to accept the plea, “it must exercise its discretion based on the facts and circumstances before it, not on a blanket policy that affects all defendants regardless of their situation.” *State v. Graves* (1998), 10th Dist. No. 98AP-272, 1998 Ohio App. LEXIS 5608, at *9 (citation omitted). Cf. *Billington v. Cotner* (1972), 32 Ohio App.2d 277, 280, reversed on other grounds (1974), 37 Ohio St.2d 17, 20 (“[i]t is within the appellate ambit to determine that a trial judge must exercise his discretion though refraining from telling him how to do it”).

{¶27} Applying the above cases to the instant action, when the trial court used an overarching policy instead of its own discretion based on the particular circumstances and issues presented in this case, it abused its discretion. Therefore, I respectfully dissent.