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APACHE COUNTY SUPERIOR COURT

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...to do justly, to love mercy, and to walk humbly with God. Micah 6:8

**IN THE SUPERIOR COURT
IN AND FOR THE COUNTY OF APACHE, STATE OF ARIZONA**

In re the matter of:)
ROMERO, Christian Ryan) **CASE NO. JV 2008-065**
A person under eighteen years of age)
) **MOTION TO ENFORCE THE PLEA**
) **AGREEMENT**
)

The Juvenile, through counsel and pursuant to Rule 28 of the Rules of Juvenile Procedure, the 4th, 5th, 6th, 8th and 14th amendments to the United States Constitution, Article 2 §'s 4 and 10 of the Arizona Constitutions, moves the Court to honor the agreement tendered and accepted by the Court at the change of plea. No provision of the plea, the rules of Procedure in Juvenile Court or the applicable statutes allows the Court, once a plea has been accepted and entered of record, to reject it.

The juvenile in this matter plead guilty to Negligent Homicide with a stipulated disposition to have the juvenile placed on probation with an array of treatment and analytical protections added to the agreement to govern literally all aspects of the juvenile's life while he is on probation. The Court heard the plea, explained the plea to the juvenile, asked him questions regarding his understanding of the plea, and then heard facts that would have supported the plea. The Court then accepted the plea and entered of record. At disposition, the Court attempted to reject the plea in favor of a commitment to the juvenile department of corrections, a disposition

not permitted by the plea, and ordered the parties to seek and to make satisfactory arrangements for that alternate disposition, now designed appropriate by the Court.

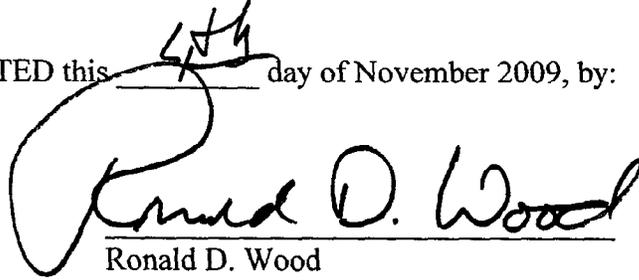
Rule 28 (c)(a) of the Rules of Procedure in Juvenile Court allows the Court to hear a plea from the juvenile and to hear facts that would allow the Court to accept it. No provision in the Rules of Procedure allows the Court to reject the plea once it is accepted, although the Court can defer acceptance of the plea until the time of disposition. *In re Timothy M.* 197 Ariz. 394, 396-399, 4 P.3d 449, 451 - 454 (Ariz.App. Div. 1,2000) discussed at length the due process considerations that are embodied in the adult rules that apply to the same proceedings in the juvenile court. The Court also discussed the need for protection in ascertaining that the juvenile understands the plea, and that the plea is voluntary under the principals articulated in *In re Gault*, 387 U.S. 1, 30-31, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); *Maricopa County Juv. Action No. JV-508488*, 185 Ariz. 295, 299, 915 P.2d 1250, 1254 (App.1996). *Pinal County Juv. Action No. J-985*, 155 Ariz. 249, 250, 745 P.2d 996, 997 (App.1987) and *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) The court in *Timothy M.* concluded that a plea can be revoked at any time prior to acceptance by the court. (emphasis added) No Court in Arizona, including *Timothy M.* authorizes a court to accept a plea and then reject it as the Court attempted to here.

Further, during the change of plea proceeding, the Court did not explain any provision of the plea to the juvenile that if the Court did not agree with the plea or if the Court found the plea to be inappropriate for any reason, then it could reject the plea and permit the juvenile to withdraw. These safeguards are provided to an adult, but because of the different focus in the juvenile court—rehabilitation rather than punishment—there is no similar provision that gives the judge the leeway to do as he chooses at disposition once the plea has been accepted.

In light of the lack of authority the Court has in a juvenile matter to reject an accepted plea, the juvenile would ask the Court honor the agreement made and accepted and proceed to disposition as agree to by the parties and the Court at the change of plea.

Having now pleaded, if the Court refuses to honor the agreement, the charges should be dismissed with prejudice on double jeopardy grounds.

RESPECTFULLY SUBMITTED this 4th day of November 2009, by:

A handwritten signature in black ink that reads "Ronald D. Wood". The signature is written in a cursive style with a large, looping initial "R".

Ronald D. Wood
201 S. White Mountain Rd.
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COPY of the foregoing handed/faxed/mailed this 4 day of November 2009, to:
Assigned Judge
Michael Whiting, Apache County Attorney's Office
Marsha Gregory, GAL
Steve Williams, Attorney for the Mother