

STATE OF INDIANA)
) SS:
COUNTY OF PORTER)

IN THE PORTER SUPERIOR COURT
DIVISION 4
VALPARAISO, INDIANA

STATE OF INDIANA)
)
)
VS.)
)
)
DAVID WICHLINSKI)
Defendant)

64D04-0706-CM-5744

Order Denying Defendant’s Motion for Change of Judge

In the case of *Deurloo v. State*, 690 N.E.2d 1210 at 1213, Judge Sullivan of the Indiana Court of Appeals in his concurring opinion wrote the following:

*“A pre-trial diversion agreement is required to be filed with the court. I.C. 33-14-1-7(a)(3); furthermore, the statute speaks in terms of “if the **court** withholds prosecution” under Section 7. It is clear, therefore, that the court is not merely a disinterested bystander with regard to the diversion agreement. For this reason, I would hold that the trial court was mistaken in its conclusion that it totally lacked responsibility or authority with regard to the agreement **or with respect to whether any of the conditions of the agreement had been violated.**”* (Emphasis added).

Therefore, given the tenor of Judge Sullivan’s concurrence, it is the court’s obligation and responsibility to determine compliance with pretrial diversion agreements. What purpose and what message would the court be sending if pretrial diversion agreements were willingly violated and there appeared no sanction, no return to the active docket, and no accountability? The Defendant moves for a change of judge because the judge has observed its role, as announced by Judge Sullivan, to maintain and determine compliance.

Likewise, it was determined in *Mueller v. State*, 837 N.E.2d 198 (Ind. App. 2005) that it is the court’s obligation to be vigilant in the use of pre-trial diversions and that the court take an active role in how they are offered, to whom they are offered and whether compliance has been obtained.

The Defendant further argues in his motion that the court has overstepped its boundaries in determining non-compliance and that the court should recuse itself from the case. The Defendant should note that when allegations surfaced earlier that defendant had violated the pre-trial diversion agreement, the court did nothing, waiting for verification from the State. When the State did not re-docket, based upon the allegations, the court assumed the allegations were unfounded.

Finally, when the court's alcohol education service provider notified the Court of non-reporting and non-compliance with a Montgomery County alcohol education program, the court followed its statutory duty and re-docketed the case for MDC Hearing. Should the defense feel that defendant strictly followed the terms of the pre-trial diversion, it can ask the State to re-enter the diversion program and pay the appropriate fee of \$50.

The Court does not know this defendant from any other defendant and the defense attorney's carping about not signing the diversion agreement as an indication of prejudice is specious, at best. The defense should note that when the pre-trial diversion agreement was entered, citing the defendant's desire to attend Wabash University, the court released the defendant's cash bond of \$750 so that defendant could use the funds for books and the like.

The remainder of the defendant's motion deserves no further mention and is summarily **denied**.

DATED THIS _____ DAY OF _____, 200_____

JUDGE, Porter Superior Court IV

cc: Vojslavik/State