

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 12AP-1067
 : (C.P.C. No. 12 CR-08-3961)
 Michael P. Johnson, :
 : (ACCELERATED CALENDAR)
 Defendant-Appellant. :

D E C I S I O N

Rendered on April 25, 2013

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

The Law Office of Jennifer L. Coriell, LLC, *Jennifer L. Coriell* and *Samantha M. Makar*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Michael P. Johnson is appealing from a pretrial ruling in the trial court. The trial court judge ruled that Johnson could no longer be represented by his attorney of choice. A single assignment of error is presented for our review:

THE TRIAL COURT ABUSED ITS DISCRETION IN DETERMINING THAT A CONFLICT OF INTEREST EXISTED THAT WOULD PRECLUDE DEFENSE COUNSEL FROM REPRESENTING APPELLANT IN THE CASE BELOW.

{¶ 2} Johnson is one of 47 defendants in state court in what is alleged to be a drug conspiracy. Johnson hired Javier H. Armengau to represent him on the charges.

{¶ 3} The State filed a motion in the trial court and asked that Armengau be prevented from representing Johnson in particular because of Armengau's past

representation of a person called a confidential informant or "CI." More specifically, Armengau represented the CI in a drug conspiracy case in federal court which resulted in the CI entering into a plea bargain. As with all federal plea bargains, the CI agreed to be debriefed by federal and/or State narcotics officers on the subject of any illegal activities of which the CI was aware. The CI agreed to testify about such matters. As a part of federal sentencing law, the CI can have his federal prison sentence significantly reduced if the CI provides substantial assistance to federal or state law enforcement personnel.

{¶ 4} As a result of Armengau's prior representation of the CI, Armengau has extensive knowledge of confidential information about the CI and the CI's past activities.

{¶ 5} The State has alleged that it will call the CI to the witness stand to testify against Johnson if the case goes to trial. There is no reason to doubt that allegation. Assuming the CI is placed on the witness stand and testifies while Armengau represents Johnson, an un-resolvable conflict exists. Armengau cannot damage his former client's credibility through use of privileged information. At the same time, Armengau must diligently represent Johnson's interests by damaging the CI's credibility.

{¶ 6} The record reflects that ethical problems have already arisen in this case. Armengau admits that he has already had a meeting with the CI since Armengau was retained by Johnson. The CI claims Armengau told him that he (the CI) did not have to testify against Johnson. Given the potential benefit to the CI of assisting law enforcement personnel, such advice benefited Johnson, but not the CI. Armengau denies the content of the conversation, but not the meeting itself.

{¶ 7} Since the conflict in Armengau's ethical duties cannot be resolved, the trial judge had no choice but to bar Armengau from continued representation of Johnson.

{¶ 8} The single assignment of error is overruled. The ruling of the Franklin County Court of Common Pleas is affirmed and the case is remanded for further appropriate proceedings.

Judgment affirmed.

DORRIAN and McCORMAC, JJ., concur.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the authority of Ohio Constitution, Article IV, Section 6(C).
