

**IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

IND/ACC NO. _____

Defendant

PETITION FOR PRETRIAL DIVERSION PROGRAM

Comes now, _____, defendant in the above-styled case, and shows the Court the following:

1.

Defendant is charged with the offense(s) of _____.

2.

Defendant further shows he/she is _____ years of age and has never pled guilty to nor been adjudicated guilty of a felony.

3.

Defendant has been advised of the Blue Ridge Judicial Circuit District Attorney's Pretrial Diversion Program and is able and willing to meet all criteria necessary to enter said program. The defendant has further been advised that he/she will be required to enter a plea of guilty to one or more of the eligible charges at the time of entering the program; however, sentencing will be withheld. Defendant has been advised that upon successful completion of the program, the State will, on the record, move to withdraw the plea of guilty and dismiss the eligible charges and the record for those charges will be restricted, except a charge of Driving Under the Influence. The defendant has been advised that if he/she fails to successfully complete the program, he/she will come back to court and be sentenced on the plea of guilty.

4.

The defendant understands that if he/she is not accepted into the program, prior to entry of a plea, this case will be returned to the normal criminal justice system for prosecution.

5.

The defendant understands his/her constitutional rights outlined below and understands that he/she is required to waive certain of these rights in order to enter the program.

- The defendant understands that he/she has a right to assistance of counsel during a trial.
- The defendant understands that he/she has a right to plead **NOT GUILTY** to every charge filed against him/her.
- Defendant understands that if he/she pleads **NOT GUILTY** he/she would have a right to a speedy and public trial by a judge and jury.
- Defendant understands that if he/she pleads **NOT GUILTY** he/she would have a right to confront, that is to see, hear, question, and cross examine, the witnesses called to testify against him/her at trial.
- Defendant understands that if he/she pleads **NOT GUILTY** he/she would have a right to use the subpoena power of the Court to require the attendance of any witnesses on his/her behalf, whether they want to come or not.
- Defendant understands that if he/she pleads **NOT GUILTY** he/she would have the right to testify or not testify, as he/she chose, that he/she could not be required to testify and that if he/she does not testify the jury cannot take that as evidence against him/her.
- Defendant understands that if he/she pleads **NOT GUILTY** he/she would be presumed to be innocent and that before he/she could be convicted the prosecution will have the duty of proving his/her guilt beyond a reasonable doubt.
- Defendant understands that in the event he/she was convicted in a trial he/she would have the right to appeal his/her conviction.

6.

It is agreed that the defendant, if accepted into this program and appointed an attorney, will pay \$400 appointed attorney's fees, or other amount provided in advance as assessed on the defendant's behalf by the Office of Indigent Defense.

So moved this _____ day of _____, 20_____.

Defendant

Attorney for Defendant

**BLUE RIDGE JUDICIAL CIRCUIT PRETRIAL DIVERSION PROGRAM
DISTRICT ATTORNEY'S OFFICE**

STATE OF GEORGIA

v.

IND/ACC NO. _____

Defendant

CONSENT FOR DISCLOSURE OF CONFIDENTIAL INFORMATION

I, _____, having requested to participate in the Pretrial Diversion Program, hereby consent to communication, within or outside my presence, regarding my medical, psychological, or substance abuse history among any of the following individuals: any evaluator or counselor, physician, psychiatrist, or psychologist who participates in any counseling or treatment required as a condition of this program, any representative of the District Attorney's Office designated by the District Attorney, and my attorney. I further consent to the release of the results of any drug testing required as a condition of this program to the individuals described above, and that such results may be made part of the public record of my case in the event that such testing results in my termination from the program.

I understand and agree that the purpose and need for this disclosure is to assist the District Attorney's Office in evaluating and determining my eligibility to participate in the Pretrial Diversion Program as well as my counseling needs, compliance, and progress in accordance with program criteria. I hereby agree to hold such individuals harmless and relieve and release such individuals from any and all liability regarding any such communication.

Recipients of this information may not re-disclose it except in connection with my counseling or treatment, or otherwise as permitted by federal law and rules. I understand that this consent will remain in effect and cannot be revoked by me until there has been a formal and effective termination of my involvement with the Pretrial Diversion Program, and/or a formal discontinuation of court proceedings regarding my case.

This the _____ day of _____, 20____.

Defendant

Attorney for Defendant

**IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

IND/ACC NO. _____

Defendant

WAIVER OF RIGHT TO WITHDRAW GUILTY PLEA

COMES NOW, _____, Defendant in the above-styled case and waives his/her right to withdraw his/her plea of guilty.

The Defendant acknowledges that pursuant to O.C.G.A. § 17-7-93(b), the Defendant has a right at any time before judgment is pronounced to withdraw a plea of guilty. By entering into a plea of guilty in the above-styled case and consenting to enter into the Blue Ridge Judicial Circuit Pretrial Diversion Program as to Count(s) _____, the Defendant hereby waives the right to withdraw his/her plea of guilty and consents to the Court withholding sentencing while the Defendant is a participant in the Blue Ridge Judicial Circuit Pretrial Diversion Program.

The Defendant acknowledges that if he/she violates the terms and conditions of the Blue Ridge Judicial Circuit Pretrial Diversion Program or is terminated from the Blue Ridge Judicial Circuit Pretrial Diversion Program for any reason, the Defendant will be brought before the Court for a sentencing hearing. The Court will have discretion in imposing a sentence that could be up to the maximum punishment authorized by law for the offense to which the Defendant has pled guilty. The Defendant also acknowledges that he/she is not entitled to credit from the date the plea of guilty was entered towards the sentence for time served in the Blue Ridge Judicial Circuit Pretrial Diversion Program.

The Defendant further acknowledges that upon successful completion of the Blue Ridge Judicial Circuit Pretrial Diversion Program, the State of Georgia, by and through the District Attorney, consents to the Defendant being allowed to withdraw the plea of guilty, as to those counts subject to this agreement, whereby the State will present a nolle prosequi to the Court dismissing those eligible counts and restricting the record in the above-styled case. However, this agreement will not apply to any charge of driving under the influence (D.U.I) or other charges excepted from this agreement as those charges will not be dismissed. Participants and their attorneys should consult O.C.G.A. § 35-3-37 to determine whether or not the record of their arrest can be restricted in cases where Defendant is required to be sentenced on a charge.

This the _____ day of _____, 20_____.

Judge, Superior Court
Blue Ridge Judicial Circuit

Consented to:

Defendant

Assistant District Attorney

Attorney for Defendant

**IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

IND/ACC NO. _____

Defendant

ORDER WITHHOLDING SENTENCE

The Defendant has entered a plea of guilty to (count/s _____) (all counts) of the above-styled Indictment/Accusation, and has been accepted as a pre-adjudication participant in the Pretrial Diversion Program. IT IS THEREFORE ORDERED that sentencing as to (count/s _____) (all counts) is WITHHELD pending the defendant's completion of said program and **said case shall not appear on any trial calendars**. The State has stated its intention, should the Defendant successfully complete said program, to move that this guilty plea be withdrawn and request an order of nolle prosequi be entered as to those eligible counts and the record restricted as permitted by O.C.G.A. § 35-3-37. And the Defendant agrees that the State may present that nolle prosequi to the Court without the Defendant's presence. However, should the Defendant fail to successfully complete the Pretrial Diversion Program for any reason, this case shall be placed on the active calendar of this court for sentencing through a rule nisi issued from the Calendar Clerk, without further Order from this Court.

SO ORDERED this the _____ day of _____, 20____.

Judge, Superior Court
Blue Ridge Judicial Circuit

Consented to:

Defendant

Assistant District Attorney

Attorney for Defendant

**IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

IND/ACC NO. _____

Defendant

WAIVER OF JURY TRIAL

NOW COMES the Defendant, _____, and herewith waives his/her right to a jury trial and agrees to proceed with this case before the judge and without a jury.

This the _____ day of _____, 20____.

Judge, Superior Court
Blue Ridge Judicial Circuit

Consented to:

Defendant

Assistant District Attorney

Attorney for Defendant

**IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

IND/ACC NO. _____

_____, Defendant

PETITION TO ENTER PLEA OF GUILTY

I, the above named defendant, hereby state to the Court that I wish to enter a plea of **GUILTY** to the above numbered indictment. In connection with that plea of **GUILTY**, I inform the Court that the answers to the following questions are true:

1. What is your name? _____ Age? _____
2. How much education have you had? _____ Are you able to read and write? Yes ☐ No ☐
3. Are you now under the influence of any alcohol, intoxicants, or any drugs? Yes ☐ No ☐
4. To your knowledge, do you now suffer from any mental or emotional disability? Yes ☐ No ☐
5. Have you received a copy of the charging document (indictment/accusation) in this case? Yes ☐ No ☐
6. Have you read it or had it read and explained to you? Yes ☐ No ☐
7. Do you fully understand the charges against you? Yes ☐ No ☐
8. Have you had enough time to talk with your lawyer about your case? Yes ☐ No ☐
9. Have you discussed your case fully and explained everything you know about it to your lawyer including all of the facts and circumstances surrounding any statement, confession, or other evidence obtained from you by anyone? Yes ☐ No ☐
10. Has your lawyer advised you of the nature of the charges against you and any possible defenses you may have including the right to challenge the legality of any statement, confession, or other evidence obtained or seized from you? Yes ☐ No ☐
11. Has your attorney discussed your eligibility for first offender treatment and the benefits/risks therein? Yes ☐ No ☐
12. Do you understand that you have a right to assistance of counsel during trial? Yes ☐ No ☐
13. Do you understand that you have a right to plead **NOT GUILTY** to every charge filed against you? Yes ☐ No ☐
14. Do you understand that if you plead **NOT GUILTY** you have a right to a speedy and public trial by a judge and jury? Yes ☐ No ☐
15. Do you understand that if you plead **NOT GUILTY** you have a right to confront, that is to see, hear, question, and cross examine, the witnesses called to testify against you at trial? Yes ☐ No ☐
16. Do you understand that if you plead **NOT GUILTY** you have a right to use the subpoena power of the Court to require the attendance of any witnesses on your behalf, whether they want to come or not? Yes ☐ No ☐
17. Do you understand that if you plead **NOT GUILTY** you have a right to testify or not testify, as you choose, that you cannot be required to testify and that if you do not testify the jury cannot take that as evidence against you? Yes ☐ No ☐
18. Do you understand that if you plead **NOT GUILTY** you will be presumed to be innocent and that before you can be convicted the prosecution will have the duty of proving your guilt beyond a reasonable doubt? Yes ☐ No ☐
19. Do you understand that in the event you were convicted in a trial you would have the right to appeal your conviction? Yes ☐ No ☐
20. Do you understand that if you plead **GUILTY** you will have waived, that is, given up, each of the rights mentioned in questions 11 through 18? Yes ☐ No ☐
21. Do you realize that if you plead **GUILTY** the Court may impose the same punishment as if you had pleaded **NOT GUILTY** and been convicted? Yes ☐ No ☐
22. Do you know that the sentence you will receive is solely a matter for the judge to decide? Yes ☐ No ☐
23. Have you been advised of the maximum and mandatory minimum punishment provided by law for the offense or offenses to which you want to plead **GUILTY**? Max: _____ Mandatory Minimum: _____ Yes ☐ No ☐
24. Do you realize that if you plead **GUILTY** the Court may sentence you to the maximum punishment authorized by law for the offense or offenses to which you plead **GUILTY**? Yes ☐ No ☐
25. No other assurances have been made to me by my attorney or anyone else that I will likely make parole within any designated time. I acknowledge that any discussion with my attorney on the subject is, at most, an estimate, not an assurance, is not binding on the Court nor agency of the government, and is NOT a basis for any plea agreement in this case. Do you understand? Yes ☐ No ☐
26. Has anyone made guarantees to you concerning collateral consequences of your plea? If so, what? _____ Yes ☐ No ☐
27. Do you understand that any adverse consequences of your plea shall not be a basis for voiding your conviction? Yes ☐ No ☐
28. If you are now on probation or parole, do you know that by pleading **GUILTY** here your probation or parole may be revoked and you may be required to serve time in that case in addition to the sentence imposed upon you in this case? Yes ☐ No ☐
29. If you are now serving another sentence, do you know that the sentence in this case could be made to follow the sentence that you are now serving? Yes ☐ No ☐
30. Has any person used any threats, force, pressure, or intimidation to make you plead **GUILTY**? Yes ☐ No ☐
31. Has any promise, other than a plea agreement, been made by anyone which causes you to plead **GUILTY**? Yes ☐ No ☐
32. Has any person suggested to you or led you to believe that you will be placed on probation or be given a lighter sentence or otherwise rewarded for pleading **GUILTY**? Yes ☐ No ☐

If so, who made the suggestion and exactly what was suggested? _____

33. Has any plea agreement been made by you with anyone which causes you to plead **GUILTY**? Yes ☐ No ☐
If so, exactly what is that agreement as you understand it? _____
34. Did you commit the unlawful acts set forth in the charge or charges to which you want to plead **GUILTY**? Yes ☐ No ☐
Specifically, what unlawful acts did you commit? _____
35. Has your lawyer gone over with you all these questions and your answers to them? Yes ☐ No ☐
36. Are you satisfied with your lawyer and the way you were represented in the case? Yes ☐ No ☐
37. Do you understand all the questions? If not, which ones do you not understand? _____ Yes ☐ No ☐
38. Is there any other information or advice you want before you enter a plea of **GUILTY**? Yes ☐ No ☐
39. Do you understand that if you plead **GUILTY** the Court may place you under oath and ask you questions about the offense or offenses to which you have pled and the answers to these questions may later be used against you in a prosecution for perjury or false statement or in any proceedings challenging the entry of your plea? Yes ☐ No ☐
40. Is your plea of **GUILTY** given voluntarily and of your free will and accord? Yes ☐ No ☐
41. Do you now want to plead **GUILTY**? Yes ☐ No ☐
42. Are you both eligible and requesting sentencing as a **First Offender** (OCGA 42-8-60)? Yes ☐ No ☐
43. Are you a U.S. citizen? Yes ☐ No ☐
44. Do you understand that, if you are not a citizen of the United States, your entry of a plea, even a plea under First Offender or Conditional Discharge, will in all likelihood have adverse immigration consequences, including deportation, exclusion from this country and denial of naturalization? Yes ☐ No ☐
45. Has your attorney discussed with you the impact of entering this plea on your immigration status? Yes ☐ No ☐
46. Having been advised of the adverse consequences and having discussed them with your attorney, do you still wish to proceed with the entry of this plea of **GUILTY**? Yes ☐ No ☐

I therefore petition the Court to accept my plea of **GUILTY**.

This _____ day of _____, 20 ____.

Defendant

Sworn to and subscribed before me this the _____ day
of _____, 20 ____

Notary Public

CERTIFICATE OF COUNSEL

I, as attorney for the defendant, hereby certify that:

1. I have read and fully explained to the defendant all of the charges contained in the charging document in this case.
2. I have explained and discussed with defendant the facts and elements of the case which the prosecution must prove and the defenses that may be available to the charge or charges.
3. I have explained to the defendant the maximum and minimum penalty provided by law for the offense or offenses to which the defendant offers a plea of guilty and the possible consequences of a plea of guilty (including immigration consequences).
4. The plea of guilty offered by the defendant to the charge or charges accords with my understanding of the facts the defendant has related to me, is consistent with my advice to the defendant, and in my opinion is voluntarily and understandably made.
5. To the best of my knowledge and belief the statements, representations, and declarations made by the defendant in the foregoing petition are in all respects accurate and true.
6. I do not know of any reason why the Court should not accept the plea of guilty.

This the _____ day of _____, 20 ____

Attorney for Defendant

ORDER

After examination by the Court, the Court ascertains, determines, and adjudges that the plea of guilty by the defendant is freely, knowingly, and voluntarily made and was made without undue influence, compulsion, or duress and without promise of leniency. It is therefore ordered that his/her plea of guilty be entered on the minutes and that this Transcript and Certificate be filed with the Charging Document.

This _____ day of _____, 20 ____

Judge, Superior Court, Blue Ridge Judicial Circuit

**IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

IND/ACC NO. _____

Defendant

NOTICE OF POST-CONVICTION REMEDIES AND ADVISEMENT OF RIGHTS

You have certain remedies and rights to challenge your conviction and plea of guilty, but there are time limitations on each of these remedies and rights. **Failure to timely assert any of these rights will likely result in a waiver of these rights.** Whether to pursue any of these remedies and rights is your decision.

NOTICE OF APPEAL (O.C.G.A. §§ 5-6-33; 5-6-38; 5-6-39)

You have a right to appeal the judgment of conviction on your guilty plea and sentence. ***A notice of appeal must be filed within 30 days after entry*** of the judgment of conviction and sentence. Failure to timely assert such notice of appeal will likely result in the waiver of this right to appeal. You have a right to counsel and your attorney is obligated to continue to represent you until the time this post-conviction remedy expires (30 days) or until he or she is permitted by the Court order to withdraw or is replaced by substitute counsel. As long as you are represented by counsel, you cannot file a notice of appeal on your own behalf (otherwise known as a Pro Se notice), and this can result in failure to timely assert your right.

NOTICE TO WITHDRAW A PLEA OF GUILTY (URSC 33.12; O.C.G.A. § 15-6-3)

After sentence is pronounced by the Court, you have a right to move to withdraw your plea of guilty. ***A motion to withdraw a plea of guilty must be filed before the end of the term of court in which the plea is entered.*** A new term of court for the Blue Ridge Judicial Circuit begins on the second Monday in January, May, and September. You have a right to counsel and your attorney is obligated to continue to represent you until the time this post-conviction remedy expires (end of the term of court) or until he or she is permitted by the Court order to withdraw or is replaced by substitute counsel. As long as you are represented by counsel, you cannot file any motion on your own behalf (otherwise known as a Pro Se motion). If you file a motion to withdraw your plea while represented by counsel, this can result in failure to timely assert your right.

NOTICE OF HABEAS CORPUS RIGHTS—NON DEATH CASES (O.C.G.A. §§ 9-14-42; 40-13-33)

You have a right to challenge the proceedings that have resulted in your conviction if you believe that there was a substantial denial of your rights under the United States Constitution or the Constitution of Georgia. Also, you have a right to challenge the composition of the grand jury or trial jury in your case. ***However, you must make such a challenge within the following time limits: 180 days for traffic offense convictions, one (1) year for misdemeanor convictions, and four (4) years for felony convictions.***

The time limit is measured from the date of your conviction becoming final (i.e., the judgement of conviction becoming final by the conclusion of direct review or appeal or the expiration of time for seeking such review, which would be calculated as thirty (30) days from sentencing, or ruling on motion for new trial, or ruling on motion for out of time appeal), the date which an impediment to filing a petition was created by State action in violation of the United States or Georgia Constitution is removed; the date the right asserted was initially recognized by the United States Supreme Court or Supreme Court of Georgia where the right applies retroactively to cases on collateral review or the date which the facts supporting the claims presented could have been discovered through exercise of due diligence.

Your attorney is **not** obligated to represent you in any Habeas Corpus action. Failure to timely assert such a challenge constitutes a waiver of claims.

ACKNOWLEDGMENT

My attorney has advised me of my post-conviction remedies and rights, including the extent of my attorney's continued representation beyond the Court's imposition of sentence, and I acknowledge the same.

Respectfully submitted this _____ day of _____, 20____.

Defendant

Attorney for Defendant

**IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

IND/ACC NO. _____

Defendant

POSSIBLE EFFECTS OF MY CONVICTION

I acknowledge that the conviction in the above styled case may result in collateral consequences beyond the control of my attorney and the court. Such consequences may include but not be limited to the following:

The plea may be used against me and may affect my probation or parole status in this or other courts;

I will likely lose my right to vote or hold elective office;

I will permanently lose my right to ship, transport, possess or receive any firearm or ammunition for any misdemeanor involving domestic violence (18 U.S.C. § 922(g)(9)) or for any felony;

The conviction may affect my immigration status;

The conviction may prevent me from being licensed in some occupations or skills;

The conviction may affect custody disputes in which I am a party or household member;

The conviction may affect my employment;

The conviction may affect many other factors which I may not now be able to anticipate;

I understand that these consequences can occur even in cases of “First Offender” discharge and acquittal, and that some other State and Federal jurisdictions or agencies do not recognize a “First Offender” discharge and acquittal;

I have received no assurances from my lawyer or any other third party, including, but not limited to state or law enforcement agencies to the contrary. I acknowledge that these issues form no part of any negotiation nor agreement as an incentive for a plea. Any adverse affect of my conviction in any of these or similar areas shall not be basis for voiding my conviction.

This the _____ day of _____, 20____.

Defendant

Assistant District Attorney

Attorney for Defendant

**IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

IND/ACC NO. _____

Defendant

WAIVER OF FOURTH AMENDMENT RIGHTS

Comes now _____, Defendant in the above styled case, and states to the court the following:

I understand that I have rights that protect me from unreasonable search and seizure.

I understand that these rights are guaranteed by the Fourth Amendment to the United States Constitution, as well as the Georgia Constitution.

I also understand that I can voluntarily give up these rights as part of a negotiated plea agreement as an acceptable alternative to prison.

I do hereby waive and give up the rights listed above, and do hereby consent to a search of my person, papers, personal effects, residence, vehicle, and bodily substances. I further consent that such a search may be conducted by my probation officer or by any law enforcement officer. I agree that such a search may be conducted without a warrant and without probable cause, articulable suspicion, or reasonable grounds. I consent to the use of any evidence seized during such a search in any prosecution that may arise' from said search.

Respectfully submitted, this _____ day of _____, 20__.

Defendant

Assistant District Attorney

Attorney for Defendant