

BLUE RIDGE JUDICIAL CIRCUIT
PRETRIAL DIVERSION PROGRAM (PDP)

PRETRIAL DIVERSION PACKET INSTRUCTIONS

The Pretrial Diversion Program Packet contains the following documents:

- Overview of Pretrial Diversion Program
- Participant Application
- Applicant Certification
- Petition for Pretrial Diversion
- Waivers
- Stinson Forms

<u>FOR ATTORNEYS</u>	<u>FOR PARTICIPANTS</u>
<p>If you are an attorney completing this application on behalf of a client, follow the directions below:</p> <ol style="list-style-type: none"> 1. Complete and submit the entire diversion packet via email to the Pretrial Diversion Program Coordinator in the Office of the District Attorney at pretrialdiversion@cherokeega.com. If the case has been indicted or accused, you must include the Indictment or Accusation number on each applicable document. If the case has not been indicted or accused, you must include the warrant number. 2. Retain the original documents and bring those original documents to the scheduled plea if the client is accepted into the program. Do not include any payment at this time. 3. Defense counsel will be notified in writing of the defendant’s acceptance into or denial from the program. If accepted, counsel will be notified by rule nisi of the date and time of the participant’s scheduled Stinson plea date. Program fees, conditions, and any restitution will be provided. Cherokee Probation Services will send an email with the intake date and time, which is also the time for the initial drug and alcohol screen. It is the responsibility of the participant and the defense attorney to ensure that the defendant appears at the scheduled times. Please note that the defendant MUST TEST NEGATIVE at the initial screening date for alcohol, marijuana, THC, CBD, controlled substances and all items as outlined in the testing contracts. A positive test result will result in termination from the program. 	<p>If you are a defendant and completing this application for yourself, follow the directions below:</p> <ol style="list-style-type: none"> 1. Complete and submit the entire application packet to the Pretrial Diversion Program Coordinator by email to pretrialdiversion@cherokeega.com or drop off the packet at: The Office of the District Attorney Cherokee County Courthouse 90 North Street, Suite 390 Canton, Georgia 30114 Be sure to include on each document the docket number that is listed on the cover letter. 2. Do not include any payment at this time. 3. You (the defendant) will be notified in writing of your acceptance into or denial from the program. If accepted, you will be notified in writing of the date and time of the scheduled Stinson plea date. Program fees, conditions, and any restitution will be provided. Cherokee Probation Services will send an email with the intake date and time, which is also the time for the initial drug and alcohol screen. It is the responsibility of you, and your attorney if any, to ensure that you appear at the scheduled time. Please note that you MUST TEST NEGATIVE at the initial screening date for alcohol, marijuana, THC, CBD, controlled substances and all items as outlined in the testing contracts. A positive test result will result in termination from the program. 4. You must keep a copy of these materials for your records. Copies will not be provided at orientation except by request.

BLUE RIDGE JUDICIAL CIRCUIT **OVERVIEW OF PRETRIAL DIVERSION PROGRAM**

Applications for acceptance into the Blue Ridge Judicial Circuit Pretrial Diversion Program must be made pursuant to the instruction contained in this document and should be directed to the Pretrial Diversion Program Coordinator.

The Blue Ridge Judicial Circuit Pretrial Diversion Program is an opportunity for youthful and/or first-time offenders through the criminal justice system to earn a dismissal of their eligible charges upon completion of special terms and conditions. Under the terms of the Program, Participants must enter a plea of guilty to one or more of the charges at the time of entering the program, however, sentencing will be withheld. For Participants that successfully abide by and fulfill the special conditions set forth in the written Participant Agreement/Special Conditions, the State will file an order withdrawing the plea of guilty, dismissing the eligible charges, and restricting the record as to those charges. However, should a Participant be arrested for a criminal offense during the term of the program, or fail to fully complete the Program terms and conditions, they will come back into court and be sentenced by the court on the plea of guilty.

Participants entering this Program will be required to waive their right to withdraw their guilty plea, therefore any **Participant should speak to an attorney before** entering this Program.

All Participants will be required to submit to drug and alcohol screenings through the **Cherokee Probation Services**, located at 959 Marietta Highway, Canton, Georgia 30114, and will be required to **log into the Drug Testing Randomizer every night after 8:00 pm** to determine when to report for said screens.

The initial drug and alcohol screen will be on the **assigned intake date at Cherokee Probation Services which is scheduled for a date after the Stinson plea**. For Participants in Track I (drug track) the cost of the initial drug screen is included in Track I drug testing fee. For Participants in Track II, the cost for the initial screen will be **\$25** and shall be in the form of a money order made payable to **Cherokee Probation Services**. Participants will be required to present a picture ID at the time of each screening.

Any Participants testing positive will be contacted as to their continued eligibility for the program. All participants **must** test negative for alcohol and controlled substances and marijuana (including CBD, THC and hemp) at the time of orientation. As a general rule, any positive screen will result in **termination**. All Participants should read and ensure that they are in compliance with the requirements of the Urine Abstinence Testing and Incidental Alcohol Exposure Contract and the Urine Abstinence Testing and Incidental Drugs of Abuse Exposure Contract provided by Cherokee Probation Services.

An administrative fee of **\$405** will be assessed and must be paid **in full** by certified check, money order, or attorney's escrow check made payable to the **Cherokee County Clerk of Court prior to the scheduled intake appointment with probation. Participants must take the receipt as proof of payment to the intake appointment.**

Participants with a court appointed attorney will be required to pay **\$400** for attorney's fees and those fees must be paid **in full** by certified check, money order, or attorney's escrow check made payable to the **Cherokee County Clerk of Court prior to the scheduled intake appointment with probation. Participants must take the receipt as proof of payment to the intake appointment.**

Participants owing restitution to a victim will be provided with the amount of restitution prior to **intake with the probation office**. The restitution amount must be paid **in full** by certified check, money order, or attorney's escrow check made payable to the **Cherokee County Clerk of Court prior to the scheduled intake appointment with probation. Participants must take the receipt as proof of payment to the intake appointment.**

All moneys payable to the **Cherokee County Clerk of Court** may be combined into one certified check, money order, or attorney's escrow check.

Participants accepted and placed in **Track I (Drug Track)** will be required to submit to drug and alcohol screenings throughout the program at a cost of **\$361** (up to 9 month program) or **\$480** (12 month program) and said fee shall be payable in full at **the intake with probation** in the form of a **money order** made payable to the **Cherokee Probation Services**.

Track I participants **must** undergo a substance abuse evaluation, at their own expense, **prior to their scheduled intake date with probation**. In addition, **the evaluation report must be provided to the Probation Officer prior to the intake date**. Participants are required to attend any recommended treatment outlined in the evaluation report at their own expense.

Participants in **Track II** will be required to submit to a minimum of **three** and a maximum of **nine** random drug screens during the course of the program through the **Cherokee Probation Services**. Participants will be **called to test by the Probation Officer at random**. The cost for each screen will be **\$25** payable by money order to **Cherokee Probation Services** at the time of screening.

All payments due for program fees, attorney's fees, or restitution must be paid in full **prior to the scheduled intake date with Cherokee Probation Services, and receipts must be provided to probation at the intake appointment**. *No installment payments will be accepted under any circumstances unless approved in writing by the District Attorney*. Participants who appear without such receipts will not be allowed to attend intake or begin participation until all payments due are made in full.

A charge of driving under the influence (DUI) will not be dismissed due to the completion of this program. Other charges in the same Indictment or Accusation will not be dismissed until the DUI charge has been resolved by agreement. If there is no agreement as to the resolution of the DUI (i.e. a negotiated plea, reduction, or dismissal), then all charges will be referred to the assigned court for further prosecution. In no event will the State agree to litigate the DUI charge while dismissing the remaining charges. At the discretion of the District Attorney's Office, other charges may be ineligible for the PDP program.

Record restriction of criminal history record information for charges that are dismissed due to a successful completion of the pretrial diversion program is controlled by O.C.G.A. § 35-3-37(h)(2)(A). Participants and their attorneys should consult this code section to determine whether or not the record of their arrest can be restricted. In cases where a Participant is required to be sentenced on a charge, DUI for example, the record of the eligible PDP offenses may not be able to be restricted under O.C.G.A. § 35-3-37(h)(2)(A).

The documents included in this packet may be amended or supplement at any time in the discretion of the District Attorney's Office; therefore, a new packet must be obtained for each participant. **Copies should not be kept for future use.**

BLUE RIDGE JUDICIAL CIRCUIT PRETRIAL DIVERSION PROGRAM (PDP)

PARTICIPANT APPLICATION

Date of referral: _____ Requested by: _____
 Indictment or warrant number: _____ Date of arrest: _____
 ADA: _____ Defense attorney: _____
 Case status: _____ Restitution: _____

APPLICANT INFORMATION

Applicant's full name: _____ Race/gender: _____
 DOB: _____ SSN: _____ County of residence: _____
 Current residential address: _____
 Is applicant currently incarcerated? Y/N Where: _____
 Is applicant currently on probation? Y/N If so, what and where: _____
 Current employer name and address: _____
 Highest level of education completed: _____
 Has applicant participated in any pretrial diversion program? Y/N
 If so, when: _____ Where: _____ Offense: _____
 Was program completed? Y/N Completion date: _____
 No. of previous arrests: _____ No. of misdemeanor convictions: _____ No. of felony convictions: _____
 Any pending charges? Y/N If so, what and where: _____
 Any previous history of substance abuse? Y/N If so, list all substances: _____
 Any previous treatment? Y/N If so, when and where: _____
 Currently taking medication? Y/N If so:

Medication	Dosage/Frequency	Reason for Medication

Last date of usage of any marijuana, CBD, hemp, alcohol, or controlled substance:

Substance	Last Usage Date	How long have you been using the substance?

BLUE RIDGE JUDICIAL CIRCUIT PRETRIAL DIVERSION PROGRAM

APPLICANT CERTIFICATION

(Please check below. Do not submit this application unless each of these can be checked truthfully.)

- I understand that the Pretrial Diversion Policy and Procedure Manual can be found online at www.cherokeega.com/District-Attorneys-Office under the heading “Pretrial Diversion” and that I should consult that document if I have any questions about this program;
- I am prepared to enter a plea of guilty to the charges and I understand that I will NOT be sentenced, but given an opportunity to successfully complete this program to earn a dismissal of eligible charges and a record restriction.
- I am prepared to pay the \$405 administrative fee **prior to the intake appointment with Cherokee Probation Services.**
- If on Track I, I am prepared to pay \$336 or \$480 drug screening fee on the date of my program intake appointment with Cherokee Probation Services; if on Track II, I am prepared to pay \$25 for the initial drug screen at the intake appointment, and \$25 every time I am called in for drug testing. I understand that based upon my test results, I may be required to wear a sweat patch for a period of two weeks at an additional expense to me of \$50.
- Out of county travel may be approved at the discretion of the Probation Officer. If approved, I am prepared to report for a drug and alcohol screen the day immediately following return from travel and pay an additional \$25 for said screen.**
- I am prepared to pay the \$400 attorney’s fee, **prior to the intake appointment with Cherokee Probation Services**, should I have a court-appointed attorney, or other appointed attorney’s fee amount communicated to me should that amount differ from the standard fee.
- I have either discussed with my attorney or been advised by the Pretrial Diversion Program Coordinator whether restitution to any victim will be required, and I will be prepared to pay such restitution in full **to the Clerk of Court prior to the intake appointment with Cherokee Probation Services.**
- I have a valid, current, state-issued identification card;
- I have a permanent address within the State of Georgia and will be able and willing to report to the Cherokee Probation Services for drug screening when instructed to do so;
- I have discussed with my doctor any prescription medications that I take and I understand that I cannot take any medication or other product, which may cause a positive drug screen.
- I understand that I **must** test negative for any alcohol, marijuana, any substance that tests similar to marijuana such as hemp or CBD, or controlled substance at my intake date in order to enter the program.
- I have read the Urine Abstinence Testing and Incidental Alcohol Exposure Contract **and** the Urine Abstinence Testing and Incidental Drugs of Abuse Exposure Contract provided by Cherokee Probation Services and understand what substances I cannot take when in the program.
- I understand that record restriction of criminal history record information for charges that are dismissed due to a successful completion of the pretrial diversion program is controlled by O.C.G.A. § 35-3-37(h)(2)(A). I understand that my attorney and I should consult this code section to determine whether or not the record of my arrest can be restricted. I understand that if my disposition requires me to be sentenced on a charge, DUI for example, the record of the eligible PDP offenses may not be able to be restricted under O.C.G.A. § 35-3-37(h)(2)(A).

By signing below, I certify that each of the above statements is true and correct. I understand that should any of these statements be found to be incorrect my application to enter this program will be denied.

Participant

Date

Defense Attorney (if applicable) Date

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

THE STATE OF GEORGIA

*

CASE NO. /WARRANT NO.

v.

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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 defendant will return to Court and 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

Defense Attorney

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

STATE OF GEORGIA

v.

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IND/ACC NO. _____

WAIVER OF RIGHTS

I, _____, understand that I am guaranteed by the United States and Georgia Constitutions the following rights:

1. A speedy trial;
2. A trial by jury;
3. The right to confront the witnesses against me;
4. The right not to incriminate myself or give any information which could be used against me;
5. The right to call witnesses and present evidence on my own behalf, and to use the power and process of the court to compel the attendance of such witnesses and evidence;
6. The right to have an attorney represent me at all stages of the criminal process,

and that as a condition of acceptance into, and participation in, the Pretrial Diversion Program, I hereby expressly waive (that is, give up) those rights.

I also understand that if I am not accepted in the Pretrial Diversion Program, or voluntarily withdraw from it, my waiver of the rights listed above will also be withdrawn. I also understand that any statements given by me as part of the Pretrial Diversion assessment process will not be used against me in later court proceedings should I voluntarily withdraw from the program.

This the _____ day of _____, 20____.

Defendant

Attorney for Defendant

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

STATE OF GEORGIA

v.

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IND/ACC NO. _____

RELEASE AND WAIVER

I, _____, hereby authorize the release of such confidential information as may be necessary for the District Attorney's Office to determine eligibility for the Pretrial Diversion Program. I agree to hold harmless, and relieve and release from any liability with regard to such information, the Pretrial Diversion Coordinator and/or any other authorized representative of the District Attorney's Office.

I understand that the Pretrial Diversion Program is operated under the supervision of a sworn Assistant District Attorney, and that my acceptance into and participation in this program may require interaction with such person and other representatives of the District Attorney's Office without the presence of my attorney. I hereby expressly waive my right to have my attorney present during such interaction for the limited purpose of completing a program orientation, periodic status reports, and such other interaction as may be necessary to facilitate my participation in this program.

I also understand that any statements given by me as part of the Pretrial Diversion assessment process will not be used against me in later court proceedings should I voluntarily withdraw from the program.

This the _____ day of _____, 20__.

Defendant

Attorney for Defendant

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

STATE OF GEORGIA

v.

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IND/ACC NO. _____

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.

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IND/ACC NO. _____

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

Defense Attorney

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

STATE OF GEORGIA

v.

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IND/ACC NO. _____

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.

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IND/ACC NO. _____

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 ____ day of _____, 20____.

Consented to:

Assistant District Attorney

Attorney for the Defendant

Defendant

Judge, Superior Court
Blue Ridge Judicial Circuit

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

STATE OF GEORGIA

* **CASE NO.** _____

v.

_____, Defendant

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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 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 all of these questions and your answers to them with you? 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 that 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 _____ 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 _____ 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.

DEFENDANT

*
*
*
*

CASE NO. : _____

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

*

INDICTMENT NO.

VS.

*

*

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

ATTORNEY FOR DEFENDANT

(ASST.) DISTRICT ATTORNEY

IN THE SUPERIOR COURT OF CHEROKEE COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

*

INDICTMENT NO.

VS.

*

*

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

Attorney for Defendant

Assistant District Attorney
Blue Ridge Judicial Circuit