

CAUSE NO.

THE STATE OF TEXAS § IN THE DISTRICT COURT
VS. § 24th/377th JUDICIAL DISTRICT
 § VICTORIA COUNTY, TEXAS

DEFENDANT

PLEA MEMORANDUM

The defendant named in the above numbered and entitled cause and the defendant's attorney state that the Court has made the admonishments required by Article 26.13 of the Texas Code of Criminal Procedure (C.C.P.) in writing as set out on Exhibit A attached hereto (and any applicable attachments as noted on Exhibit "A"), and that the defendant understands the admonitions and is aware of the consequences of the defendant's plea. The defendant and defendant's attorney further state:

1. MENTAL COMPETENCY TO STAND TRIAL. The defendant understands the proceedings in this case, fully cooperated with the defendant's attorney, and certifies that no issue of mental competency to stand trial exists.
2. FREE AND VOLUNTARY PLEA. The defendant is entering his/her plea freely and voluntarily without any threats or coercion, and the defendant has not been made any promise to induce the defendant to plead which is not revealed to the Court.
3. PAROLE AND GOOD CONDUCT CREDIT. The defendant understands that it cannot accurately be predicted how the parole law or good conduct time might be applied to the defendant if the defendant is sentenced for a non-state jail felony offense to a term of imprisonment in the *Texas Department of Criminal Justice because the application of these laws will depend on decisions made by prison and parole authorities. The defendant further understands that eligibility for parole does not guarantee that parole will be granted.

The defendant understands that the parole law does not apply and the defendant does not earn good conduct time if the defendant is sentenced for a State Jail Felony offense to a term of confinement in a State Jail.

4. APPROVAL OF COUNSEL. The defendant is totally satisfied with the representation given by the defendant's attorney in this case, and the defendant was provided fully effective and competent representation.

5. WAIVER OF RIGHTS. Pursuant to Art. 1.14 C.C.P., the defendant voluntarily waives and gives up all rights given defendant by law, whether of form, substance, or procedure, including the following:

(a) WAIVER OF ARRAIGNMENT. The defendant waives: the right to have a copy of the indictment served upon the defendant; the right to have at least two (2) entire days after the day on which a copy of the indictment was served on the defendant, if it was, to be arraigned; and waives arraignment. The defendant further waives the reading of the indictment/information;

(b) WAIVER OF 10 DAYS PREPARATION. The defendant's attorney waives 10 days preparation time to prepare for a proceeding and file written pleadings, and the defendant consents to this waiver. The defendant announces ready for trial;

(c) WAIVER OF PRESENTENCE REPORT AND 48 HOUR REVIEW. The defendant and the defendant's attorney waive the right to read any presentence report at least 48 hours before the defendant's sentencing and further waive the preparation of any presentence report required by Art. 42A.252 C.C.P.;

(c-1) WAIVER OF ASSESSMENT. The defendant waives the right to have a risk and needs assessment prior to the Court determining the conditions of defendant's community supervision and requests the Court determine those conditions without said assessment.

(d) WAIVER OF JURY TRIAL. Pursuant to Art. 1.13 C.C.P., the defendant waives the right to trial by jury on both guilt and punishment in this cause in person in writing in open Court, joined by the defendant's attorney, and with the written consent and approval of the attorney representing the State as reflected by the State attorney's signature below and filed in this cause before the defendant has entered his/her plea, and the defendant requests consent and approval of the Court;

(e) STIPULATION OF EVIDENCE. Pursuant to Art. 1.15 C.C.P., the defendant consents in writing, in open Court, to waive and does waive the appearance, confrontation and cross-examination of witnesses. The defendant further consents to an oral stipulation of the evidence and testimony and to the introduction of testimony by affidavits, written statements of witnesses, and any other documentary evidence in support of the judgment of the court;

(f) WAIVER OF RIGHT AGAINST SELF-INCRIMINATION. The defendant waives the right against self-incrimination, understanding that a defendant cannot be compelled to be a witness nor give evidence against himself or herself, that a defendant has the right to remain silent, is not required to make any statement, and that any statement a defendant makes may be used against him or her. The defendant agrees to testify if called as a witness. The defendant judicially confesses under oath: that each and every allegation contained in the indictment or information which is not waived by the State is true and correct; and that each and every enhancement allegation, if any, which is not waived by the State is true and correct.

6. NEW TRIAL/NOTICE OF APPEAL. The defendant understands that in a plea bargain case, if the punishment does not exceed the punishment recommended by the prosecutor and agreed to by the defendant, a defendant may appeal only those matters raised by written motion filed and ruled on before trial or after getting the trial court's permission to appeal. A defendant may also waive the right of appeal.

Otherwise, a defendant has the right to appeal and/or ask for a new trial, to have an attorney appointed to represent him/her if he/she does not have an attorney and is not financially able to employ counsel. A motion for new trial may be filed before, but no later than 30 days after, the date the trial court imposes or suspends sentence in open court. An appeal is perfected by timely filing a notice of appeal in writing with the trial court clerk within 30 days after the day sentence is imposed or suspended in open court or after the day the trial court signs an appealable order or within 90 days after the day sentence is imposed or suspended in open court if the defendant timely files a motion for new trial. If there is an appeal, the defendant has the right to petition the Court of Criminal Appeals to review a court of appeals decision in a criminal case by filing a pro se petition (the defendant is not entitled to a court-appointed attorney for this further appeal) with the clerk of the court of appeals within 30 days after the day the court of appeals' judgment was rendered or the last day the timely motion for rehearing was overruled by the court of appeals.

If the Court follows the plea bargain agreement in this case, I also waive any right of appeal.

7. WITHDRAWING FUNDS FROM INMATE TRUST ACCOUNT. I understand and have been notified that if I am sentenced to the Texas Department of Criminal Justice or State Jail, the law permits the Court to order that funds be withdrawn from my Texas Department of Criminal Justice inmate trust account to pay any court costs (including court-appointed attorney fees), restitution, fine, and other fees that I have not paid. I waive my right to dispute any amount owed not raised in Court at the time sentence is imposed.

8. CONFINEMENT NOTICE IF RECEIVING COMMUNITY SUPERVISION. If I receive community supervision, I understand that the judge determines the conditions of community supervision and may at any time alter or modify the conditions, which includes the following confinement conditions for a felony: a maximum 180 days confinement in the county jail in 1 or more blocks; up to 24 months in a community correctional facility ["CCF"] (if a subsequent CCF confinement, total county jail & CCF confinement not > 36 months); and 90 days to 1 year in a substance abuse felony punishment facility ["SAFPF"], a secure facility operated by the Texas Department of Criminal Justice [Penal Code §21.11, §22.011, §22.021 offenses (or criminal attempted offense) not eligible for SAFPF].

*Effective 9/1/2009, "Institutional Division, TDCJ" was renamed Texas Department of Criminal Justice in law punishment provisions.

STATE OF TEXAS }
COUNTY OF VICTORIA}

On this day the defendant in the above-captioned cause appeared before me, the undersigned clerk, and after being duly sworn stated under oath: "I am the defendant in this cause. I have read this PLEA MEMORANDUM, including Exhibit A and any attachments, understand all the information in it, am waiving the rights as stated in it, and swear that all the allegations of fact contained in it are true and correct."

Defendant

SUBSCRIBED AND SWORN TO before me by the Defendant in this cause on

CATHY STUART
Victoria County District Clerk

By _____

Consented to and Agreed (including, before the entry of defendant's plea, the attorney representing the State consenting to and approving the defendant's waiver of jury trial in this cause):

Defendant's Attorney

State's Attorney

O R D E R

On this day the Defendant appeared before me in open Court and the Court hereby consents to and approves in writing: the waiver of trial by jury; the waiver of the appearance, confrontation, and cross-examination of witnesses; an oral stipulation of the evidence and testimony and/or the introduction of testimony by affidavits; written statements of witnesses, and any other documentary evidence in support of the judgment of the Court; and the other waivers as set forth in this Plea Memorandum.

Signed _____

JUDGE PRESIDING

ADMONISHMENTS BY COURT TO DEFENDANT REQUIRED
BY ART. 26.13, TEXAS CODE OF CRIMINAL PROCEDURE

Prior to accepting defendant's plea of guilty or nolo contendere to the offense listed below, the Court admonishes the defendant as follows:

1. OFFENSE: _____

The range of punishment attached to the above offense [including any enhancement(s) not abandoned by the State] is checked below:

- () First Degree Felony (Penal Code §12.32): imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 5 years; and in addition, a fine may be assessed not to exceed \$10,000.
- () Second Degree Felony (Penal Code §12.33): imprisonment in the Texas Department of Criminal Justice for any term of not more than 20 years or less than 2 years; and in addition, a fine may be assessed not to exceed \$10,000.
- () Third Degree Felony (Penal Code §12.34): imprisonment in the Texas Department of Criminal Justice for any term of not more than 10 years or less than 2 years; and in addition, a fine may be assessed not to exceed \$10,000.
- () State Jail Felony (Penal Code §12.35): confinement in a state jail for any term of not more than 2 years or less than 180 days; and in addition, a fine may be assessed not to exceed \$10,000.
- () Class A Misdemeanor (Penal Code §12.21): a fine not to exceed \$4,000; confinement in jail for a term not to exceed one year; or both such fine and confinement.
- () Class B Misdemeanor (Penal Code §12.22): a fine not to exceed \$2,000; confinement in jail for a term not to exceed 180 days; or both such fine and confinement.

() Other(_____): imprisonment in the Texas Department of Criminal Justice [for life, or] for any term of not more than _____ years or less than _____ years; and (in addition), a fine (may be assessed) not to exceed \$_____.

2. Driver's license suspension admonishment for the following:
Penal Code §38.04 Evading Arrest or Detention offenses;
Penal Code Chapter 49 Intoxication offenses;
Health & Safety Code Ch. 481 Controlled Substances offenses;
Health & Safety Code Chapter 483 Dangerous Drug offenses;
Accident Involving Personal Injury or Death, Transportation Code §550.021; motor vehicle law felonies (check, if applies):

() Yes, applies in this case [add Attachment "A"].

3. The recommendation of the prosecuting attorney as to punishment is not binding on the Court. The Court will inquire as to the existence of a plea bargain agreement between the State and the defendant and, if an agreement exists, the Court will inform the defendant whether the Court will follow or reject the agreement in open court and before any finding on the plea. Should the Court reject any such agreement, then the defendant will be permitted to withdraw the defendant's plea of guilty or nolo contendere.

4. If the punishment assessed by the Court does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and the defendant's attorney, the Trial Court must give its permission to the defendant before the defendant may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial.

5. If the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law.

6. ADDITIONAL ADMONISHMENTS FOR SEX OFFENDER (check, if applies):

() Yes, applies in this case [add Attachment "B"].

7. ADDITIONAL ADMONISHMENTS FOR DEFERRED ADJUDICATION COMMUNITY SUPERVISION (check, if applies):

() Yes, applies in this case [add Attachment "C"].

These admonitions, including any applicable attachments, delivered to the defendant in writing in open court on this date -

JUDGE PRESIDING

Note - additional oral admonishment under C.C.P. Art. 26.13(a)(6) if defendant convicted of a misdemeanor involving family violence.