

THE STATE OF TEXAS

No. _____

§

IN THE DISTRICT COURT OF

VS.

§

TOM GREEN COUNTY, TEXAS

§

_____ JUDICIAL DISTRICT

COURT’S WRITTEN ADMONITIONS UNDER ARTICLE 26.13(d), CODE OF CRIMINAL PROCEDURE

The Court hereby admonishes you, the defendant, as follows, and instructs you to place your initials in the box by each item, if you fully understand it.

You stand charged with the offense of:

which is classified as a:

- () felony of the _____ degree
- () State Jail felony.

So that you may understand the punishment provided for by law for the offense with which you are charged, or any lesser included offense or offenses, the applicable ranges of punishment are set out below. (The “Institutional Division of the Department of Criminal Justice” is referred to as “TDCJ”.)

- (a) First Degree Felony: Confinement in TDCJ for Life or any term not more than 99 years, or less than 5 years; in addition there may be assessed a fine not to exceed \$10,000.00.
- (b) Second Degree Felony: Confinement in TDCJ for any term not more than 20 years, or less than 2 years; in addition there may be assessed a fine not to exceed \$10,000.00.
- (c) Third Degree Felony; Confinement in TDCJ for any term not more than 10 years, or less than 2 years; in addition there may be assessed a fine not to exceed \$10,000.00.
- (d) State Jail Felony: Confinement in a State Jail for any term of not more than 2 years or less 180 days; in addition there may be assessed a fine not to exceed \$10,000.00. Sentence shall be suspended and the defendant placed on community supervision for up to 5 years if the defendant has no prior felony convictions (including deferred adjudication) and is convicted of an offense under the Health and Safety Code for possession of a controlled substance of less than 1 gram under penalty group 1 or 2, possession of a controlled substance of less than 20 units under penalty group 1A, possession of marijuana of more than 4 ounces but less than 1 pound, or possession of a prescription for Schedule II or III drugs or prescription form by fraud.

(e) Repeat or Habitual Offender:

(f) Other:

- (1) The recommendation, if any, of the prosecuting attorney or any plea bargain is not binding on the Court.
- (2) If there is any plea bargain agreement between the State and you, the Court will inform you whether it will follow such agreement before making any finding on your plea.
- (3) If the Court rejects the plea bargain agreement, you will be permitted to withdraw any plea of guilty or nolo contendere.
- (4) If the punishment assessed by the Court does not exceed the punishment recommended by the prosecuting attorney, and agreed by you and your attorney, you must obtain the permission of the trial court before you may prosecute an appeal on any matter in this case except for those matters raised by you by written motion filed and not withdrawn prior to trial. You are further advised that if the Court accepts and follows the plea bargain the Court will probably not give permission to appeal.
- (5) If you are not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense with which you are charged in this case may result in your deportation, or your exclusion from admission to this country, or your denial of naturalization under federal law.
- (6) Under the law, the Court cannot accept a plea of guilty or nolo contendere, unless you are sane and mentally competent. A plea of guilty or nolo contendere must be made freely and voluntarily.
- (7) If you are convicted of a felony or misdemeanor involving family violence, as defined by Section 71.004, Family Code, it is illegal for you to possess or transfer a firearm or ammunition.

STATEMENTS AND WAIVERS OF THE DEFENDANT

The undersigned, defendant in the above numbered and entitled cause makes the following statements and waivers prior to entering any plea in this case and prior to the Court accepting any plea.

- (1) I am sane and mentally competent. I understand the nature of the charge against me; I was sane at the time of the commission of the offense with which I am charged.
- (2) I understand the admonishments of the trial Court set out above.
- (3) My citizenship status is as follows:
- I AM a citizen of the United States.
- I AM NOT a citizen of the United States, and I understand that I have the right to have a consular or diplomatic official of my country notified of my confinement and the charge against me. I understand if I want to exercise this right I must tell the Judge that I want such notification to be made.
- (4) I hereby WAIVE the right to have the trial Court orally admonish me; I do however understand that the Court may give me further oral admonishments or explanations.
- (5) I hereby WAIVE the right to have a court reporter record my plea and these proceedings.

(6) PLEA BARGAIN. With respect to the existence of a plea bargain I represent to the Court:

(a) There is no plea bargain in existence and I enter my plea without having been promised anything and with no understanding of any agreed recommendation by the prosecuting attorney;

OR

(b) The entire terms of the plea bargain are as set out below, and except as stated in writing in this statement, there are no other terms and conditions of the agreement. The State will make the following plea bargain agreement and recommendation under Article 26.13 Code of Criminal Procedure:

In exchange for the defendant's plea of _____ to the offense of _____, a felony of the _____ degree, the State recommends:

Confinement in _____ for a term of _____;

Probation: _____ years;

Fine: \$ _____

Restitution: \$ _____, as further set out in the Stipulation;

Time to be credited to sentence under Art. 42.03, TRCP:

From:	To:

Other terms:

I understand the consequences, as set out in the Court's admonishments above, if the trial Court accepts or refuses to accept the plea bargain or plea without an agreed recommendation.

I understand that if the Court accepts the plea bargain, the terms and conditions of community supervision (probation) shall be determined by the Court and are not subject to plea bargaining.

- (7) WAIVER OF INDICTMENT AND CONSENT TO BE TRIED BY INFORMATION. I have not been indicted by a grand jury. I understand that I can refuse to proceed to trial until or unless a properly impaneled grand jury has returned an indictment against me. I WAIVE grand jury indictment and consent to the filing and prosecution by information.
- (8) WAIVER OF SERVICE OF INDICTMENT OR INFORMATION (ARTICLE 25.02 AND ARTICLE 26.03 Code of Criminal Procedure). I understand that I have a right to be served with a copy of the indictment or information at least 2 days before any arraignment or further proceedings in this case. I hereby WAIVE such service and the 2 day time period.
- (9) WAIVER OF ARRAIGNMENT. I am one and the same person named in the indictment or information and I WAIVE the right to an arraignment in open court. I also WAIVE the right to have the indictment or information read in open court.
- (10) WAIVER OF 10 DAYS (ARTICLE 27.11 Code of Criminal Procedure). I and my attorney have had adequate time to prepare for trial. I am aware that I am entitled to ten days to prepare for trial and I WAIVE such 10 day period and I affirmatively represent to the Court that I desire to proceed now.
- (11) WAIVER OF RIGHT TO TRIAL BY JURY. I understand that I have a right to enter a plea of not guilty, or any other plea authorized by law, and to have the case tried before a jury. I have the right to be found not guilty unless and until ALL jurors selected unanimously find me guilty beyond a reasonable doubt. I need not prove anything and the State has the burden to prove me guilty beyond a reasonable doubt. I have the right to remain silent and the prosecuting attorney cannot allude to my failure to testify. I have the right to a speedy public trial in which I and the jury can observe all witnesses. I have a right to confront and cross examine all witnesses. I have the right to enter a plea of guilty or nolo contendere before a jury and have the jury assess punishment. I have the right to have the jury determine guilt, and if found guilty I have the option of having either the Court or the Jury assess punishment. Knowing all of this I WAIVE all rights to a jury trial and I request that the entire case be tried before the Court.
- (12) CONSEQUENCES OF MY PLEA. I fully understand the consequences of my plea herein, and after having fully consulted with my attorney, I request the trial Court to accept my plea. My plea is free and voluntary; I have not been pressured, threatened, abused or mistreated in any manner whatsoever that caused me to enter such plea. My plea is entered without persuasion. I understand that the ONLY lawful promise which can be made to a defendant is the presentation to the Court of a plea bargain, and that must be presented in full to the Court. Any other promises to a defendant to induce a plea are UNLAWFUL. I represent to the Court that no such unlawful promises have been made to me in connection with my plea. I am entering my plea because I am guilty of the offense to which I am pleading and for no other reason.
- (13) PRELIMINARY MOTIONS. Any and all preliminary motions filed by me or my attorney prior to the entry of this plea are withdrawn and WAIVED, except as may be specifically set out in the plea bargain.
- (14) I have been informed that I do not have to sign, say or do anything which might incriminate me. I further understand that evidence against me may be agreed to and stipulated if I consent in writing, in open Court to waive the appearance, confrontation, and cross-examination of witnesses, and further consent to either an oral stipulation of the evidence and testimony, or to the introduction of testimony by affidavits, written statement of witnesses, and other documentary evidence. As to the guilt/innocence phase of my trial as well as in the punishment phase of my trial, I waive the appearance, confrontation, and cross-examination of witnesses and I consent to either (1) an oral stipulation of the evidence

and testimony, (2) the introduction of testimony by affidavits, written statement of witnesses, and other documentary evidence, or (3) both.

(15) Except as noted in the space provided for below, I am satisfied with the legal representation I have received in this case; this includes my attorney making all of the investigation(s) and interviews of witnesses that were indicated or requested by me, and explaining to me the laws and procedures; the only exceptions or reservations to this statement are as follows:

(16) I have freely, knowingly and voluntarily signed this statement in open Court on the date shown below, with the consent and approval of my attorney. I swear that all paragraphs of this instrument which bear my initials and that all recitations and statements contained in such paragraphs are true and correct.

(17) I read, write, and understand the _____ language; the foregoing admonishments, statements and waivers, as well as the written waiver of Constitutional Rights, Agreement to Stipulation and Judicial Confession which will be used in this case was read by me / read to me and explained to me in that language by my attorney / an interpreter namely _____, before I signed them and I consulted fully with my attorney before entering this plea.

Defendant

SWORN TO AND SUBSCRIBED before me on this day of _____.

Anthony Monico, District Clerk of
Tom Green County, Texas

Deputy

APPROVED:

The State approves the jury waiver
and confirms the recitations made
regarding plea bargaining.

Attorney for Defendant

Attorney for the State of Texas

Approved: _____
Judge Presiding