

PRESUMPTIVE SENTENCING
GUILTY PLEA COLLOQUY

1. State your full and complete name.
2. You are represented by _____ and I want to know if you have had enough time to talk with your lawyer about all of the facts concerning your case.
3. Do you understand that you stand accused in the indictment(s) of the offense of _.
4. Have you been given a copy of the indictments(s)/has it been read to you and do you understand the indictment(s) against you.
5. Do you need for me to read or explain the indictment(s) to you.
6. Do you understand the crime(s) charged against you.

**** Show the Defendant the plea agreement, and Ireland form, **and Sentencing Standards Worksheets** and ask ****

Is this your signature on (on those applicable)

Do you understand what is contained in the contents of the documents

Do you have any questions about the content of the forms

***** Make the documents an exhibit to the file *****

7. Do you understand that the law provides that the punishment range for the crime(s) for which you are charged is as follows: **Read Sentencing Standards Forms In/out Rec and Sentencing Range. If aggravator(s) stipulated, read range applicable for that class of offense and if HFOA or enhancements are then applicable, cover ranges.**

**** Look at Ireland form for specifics of the crime and read into record ****

8. Do you understand that that if you tell me that you are guilty and the Court accepts your plea, I will impose a sentence upon you and that sentence could be a severe one. Do you understand that as to each crime charged against you, you have the right to say that you are not guilty, that you are not guilty by reason of mental disease or defect, or that you are guilty.

10. Do you understand that if you tell me that you are not guilty of a crime, you have the following Constitutional rights as to that crime:
 - a. the right to a speedy and public trial
 - b. the right to be tried by a jury
 - c. the right to see, hear and question all of the witnesses against you
 - d. the right at trial to present evidence in your favor and to either testify for yourself or to remain silent
 - e. the right to have a trial judge order into court all of the evidence and witnesses in your favor
 - f. the right to have a qualified lawyer to defend you before, during and after the trial

If stipulating to existence aggravator(s), include the following: Offer of proof and aggravator(s) should be presented on the record.

- g. **Do you understand the aggravator(s) allows the Court to consider and impose a sentence outside the range discussed in the sentencing standards.**
- h. **Do you understand that you have the right to a jury trial on the issue of the presence of the aggravator(s) and should you choose to exercise that right, the State must prove the presence of the aggravator(s) to beyond a reasonable doubt.**
- i. **If you and the state agree, the aggravator can be tried by the judge (the court) without a jury.**
- j. **Do you stipulate to the existence of the aggravator(s) _____?**

11. Do you understand that if you tell me that you are guilty of a crime, you will give up all of the constitutional rights that I have just mentioned and those contained in the Explanation of Rights and Plea of Guilty form that you previously indicated you understood. Do you also understand you will have to pay court costs and a Victim's Compensation Assessment.
 Felony a minimum of \$50 up to a maximum of \$10K
 Misdemeanor a minimum of \$25 up to a maximum of \$1K
 (If applicable, add inquiry regarding restitution, and/or bond fee)
12. Do you understand that you are waiving your right to an appeal, your right to withdraw your plea of guilty, your right to an appeal bond, or any challenges brought pursuant to Rule 32 of the Alabama Rules of Criminal Procedure, other than issues regarding representation of counsel. **(If applicable) add: your right to have aggravator(s) proven to a jury.**
13. Do you understand you are waiving all motions, defenses, objections, or requests which have been made or which could have been made in this case and that you are specifically reserving no issues for appellate review.
14. Do you understand that if you tell me that you are guilty, I could give you the same punishment as if you said that you are not guilty and then if convicted by a jury were sentenced at that time, and that I might not give you probation, **unless probation is presumptive under the sentencing standards and there are no aggravating factors.**
15. (For Blind Plea) **Do you understand that if you tell me that you are guilty, I will not set your sentencing until after I have read your past criminal record, if any and any report or recommendation of the probation officer, along with any mitigation factors you may prove to the court.**
- 15a. **Do you understand that if you are sentenced in accord with the agreement you are waiving your right to present mitigating factors for the court's consideration in sentence (except for * * * * in accordance with the agreement.)**
16. Has anyone threatened you, or promised to reward you, your family, or anyone else, to get you to say that you are guilty.
17. Has anyone told you, or promised, or suggested to you that you will receive a lighter sentence, probation or any other favor simply in exchange for a plea of guilty even if you believe you are not.
18. Have you been informed that the sentence imposed may be ordered to run consecutively or concurrently in accordance with Rule 14.4 Ala.R.Crim.P.; Hatfield v. Sate, 29 So.3d 241 (Ala.Crim.App. 2009).
19. Do you acknowledge that your guilty plea is offered without consideration by this Court of when or whether you would be entitled to early release due to good time.
20. Please state to the Court your plea to the crime(s) charged against you in the indictment(s).
 TO DEFENSE LAWYER: Do you waive offer of proof in this case.
 * If presumptive, have Lawyer stipulate to the correctness of the worksheets
 *If habitual offender have lawyer stipulate to priors.
 *If drug sale have lawyer stipulate to proximity of housing project and/or school.
 *If Aggravators, have lawyer stipulate to aggravators.

****** Stop here if sentencing is going to be put over to later date (and inform the defendant that he may submit mitigators no less than 7 days prior to the sentence hearing.)******

19. TO DEFENDANT: Do you have anything to say before I pass sentence.

****** If going to sentence now ask parties if they waive pre-sentence report******

******If going to sentence now ask the defendant if he waives the presentation of mitigating factors. ******

******Be sure you understand the contents of the plea agreement before reciting on record and in doing so state on record to the defendant that they understand that paragraph 6 of the plea agreement indicates that they are not reserving any rights for appeal.**

ORDER

Having ascertained in open Court that the defendant fully understands his constitutional rights, the nature of the crime(s) charged in the indictment(s) and the consequences of the guilty plea, and further that the defendant understandingly and voluntarily pleads guilty and waives his/her constitutional rights,

It is hereby Ordered that the defendant's plea of guilty and waiver be accepted and entered into the minutes of this Court.

Let the record reflect that I have reviewed and considered the sentencing standards in this matter.

****** If blind plea, tell defendant they have a right to appeal and it is limited to 42 days.**