**In the Iowa District Court for Polk County**

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| **State of Iowa,**  *Plaintiff*,  v.  **,**  *Defendant*. | **Criminal No:**  **Sentencing Order**  **Possession of a Controlled Substance**  **(Chapter 124)**  Defendant in custody. |

Defendant appears on the charge of  in violation of Iowa Code Section(s) .

At the request of the State, the charge(s) is/are amended to ***THEFT FIFTH***, in violation of Iowa Code § 714.2(5).

The State is represented by ***.***

The Defendant is represented by counsel, .

The parties personally appeared.

Defendant has knowingly, voluntarily and intelligently waived the right to counsel.

Defendant has knowingly, voluntarily, and intelligently waived the right to be present for PLEA and SENTENCING.

Defendant also appears with interpreter: ***.***

Defendant waives court reporting and any record or transcription of this proceeding.

Defendant **PLEADS GUILTY** to the offense set out above. The Court has reviewed the signed petition to plead guilty and considered the statements of Defendant. The Court finds Defendant understands the charge, the penal consequences and the constitutional rights being waived. Based on the statements of Defendant, statements of the prosecutor, and the minutes of testimony accepted as true by Defendant and considered by the Court, the plea has a factual basis and is knowingly, voluntarily and intelligently made. **DEFENDANTS PLEA IS ACCEPTED.**

Defendant **PLEADS GUILTY** to the offense set out above pursuant to **North Carolina v. Alford,** 400 U.S. 25 (1970). The Court has reviewed the signed petition to plead guilty and considered the statements of Defendant. The Court finds Defendant understands the charge, the penal consequences and the constitutional rights being waived. The Court further **FINDS** that Defendant has concluded that his/her interests require entry of a guilty plea and Defendant received a substantial benefit in return for the entry of the guilty plea. Defendant has nothing to gain by a trial and much to gain by entry of the plea. By reviewing the Trial Information, Minutes of testimony, police reports and considering statements of Counsel, the Court **FINDS** that there is strong evidence of Defendant’s guilt which substantially negates Defendant’s claim of innocence. **DEFENDANT’S PLEA IS ACCEPTED.**

Defendant was **FOUND GUILTY** following a trial to the Court by a trial jury.

**Matters Related to Sentencing**

Defendant **SEEKS IMMEDIATE SENTENCING** and waives time before sentencing and a presentence investigation report.

Defendant **APPEARS FOR SENTENCING** having previously been determined to be guilty of the offense set out above.

On inquiry, no legal cause has been shown to prevent sentencing on this date. Defendant was given an opportunity to speak in

mitigation of the sentence. The sentence is based on all of the available **SENTENCING CONSIDERATIONS** set out

in Iowa Code § 907.5. The court finds the following factors the most significant in determining this particular sentence:

The nature and circumstances of the crime Statutory sentence requirements Victim impact statement

Protection of the public from further offenses Defendant’s statement Defendant’s age and character

Defendant’s criminal history Defendant’s mental health history Defendant’s employment

Defendant’s substance abuse history Defendant’s family circumstances The plea agreement

Defendant’s propensity for further criminal acts Maximum opportunity for rehabilitation

**JUDGMENT IS DEFERRED. Defendant shall pay a** **$*430*** **civil penalty**. The Clerk of Court shall expunge Defendant’s record in this matter including any other related dismissed charges upon successful completion of all terms of probation, successful discharge from probation and payment in full of all financial obligations associated with this case.

**DEFENDANT IS ADJUDGED GUILTY** and is**fined $.** Defendant is also ordered to pay a **CRIME SERVICES SURCHARGE** of 15% on any portion of the fine which is not suspended.

The **fine is suspended** due to Defendant’s incarceration.

**DEFENDANT IS ADJUDGED GUILTY** and **sentenced to**  **hours IN JAIL**.

Credit Defendant with ***ANY*** hours previously served.

**Probation is denied** based on the sentencing considerations set out above.

**DEFENDANT IS ADJUDGED GUILTY** and **sentenced to**  **DAYS IN JAIL**.

This sentence is suspended.

All but days of this sentence are suspended.

Credit Defendant with days previously served.

Defendant shall serve from  at am pm to  at  am pm in jail.

**Probation is denied** based on the sentencing considerations set out above.

**DEFENDANT IS ADJUDGED GUILTY** and shall be **INCARCERATED FOR A PERIOD NOT TO EXCEED TWO YEARS.** Credit Defendant with  days served.

This sentence is suspended.

**Probation is denied** based on the sentencing considerations set out above. **Defendant is committed to the custody of the Director of the Iowa Department of Corrections** (DOC) for a determination of the appropriate place of confinement, all as provided by Iowa Code Sections 901.7 and 902.5. The Court has determined that this sentence will provide reasonable protection of the public. Pending Defendant’s transfer to the custody of the Director of the Iowa Department of Corrections at the reception center, Defendant shall remain in the custody of the sheriff. The sheriff shall transport Defendant to the State institution accompanied by a person of the same sex. Defendant’s term of incarceration may be reduced from the maximum sentence because of statutory earned time, work credits and program credits. Defendant may be eligible for parole before the sentence is discharged.

The Counts are **Consecutive Concurrent** to one another for a **TOTAL PERIOD OF INCARCERATION NOT TO EXCEED**  **YEARS**.

The sentences are consecutive based upon:

the separate and serious nature of the offenses;

in order to carry out the plea agreement;

to provide defendant maximum incentive to comply with the terms and conditions of probation;

crime is an escape under § 719.4 or a crime committed while defendant confined at a detention facility or penal institution (consecutive sentences are mandatory under Iowa Code § 901.8);

the crime was committed while defendant was on parole/probation.

Sentence entered herein is **Consecutive Concurrent** to the sentence imposed in  for a **TOTAL PERIOD OF INCARCERATION NOT TO EXCEED**  **YEARS**.

The sentences are consecutive based upon:

the separate and serious nature of the offenses;

in order to carry out the plea agreement;

to provide defendant maximum incentive to comply with the terms and conditions of probation;

crime is an escape under § 719.4 or a crime committed while defendant confined at a detention facility or penal institution (consecutive sentences are mandatory under Iowa Code § 901.8);

the crime was committed while defendant was on parole/probation.

**Defendant is placed on probation** beginning from the date of this order, or, if a term of incarceration is imposed, immediately upon defendant’s release from custody, for a period of  year(s) to be supervised by the Department of Correctional Services (DCS). The length of probation is based on the sentencing considerations set out above. The level of supervision shall be determined by DCS. Defendant is to comply with all term of probation as set forth herein and any terms imposed by DCS as required by the Intermediate Criminal Sanctions Program. Defendant is ordered to obey all federal, state or city laws or ordinances while on probation. Defendant is to notify his/her probation supervisor immediately upon any arrest or change of address. Defendant shall pay any probation administration fees. A violation of this paragraph or this order is a violation of probation. This probation is subject to revocation by the Court under Iowa Code Chapter 908, on notice and an opportunity for hearing and a finding that Defendant has failed to fairly live within the terms of probation and the law. Such a finding may result in revocation of probation and incarceration or a finding of Contempt of Court under Iowa Code Section 665.4 for which Defendant could receive up to six months in jail, a $500 fine, or both.

Defendant is ordered to **report to the probation office** on the 1st floor of the Criminal Courts Building immediately after sentencing or immediately after Defendant’s release from custody to enter into a probation agreement. If the probation office is closed, Defendant shall report to the probation office by 10:00 a.m. the next business day. **However, if Defendant is at elevated risk of transmitting COVID-19, Defendant SHALL CALL (515) 286-3925 INSTEAD of reporting in person to sign up for probation.**

Defendant is ordered to reside at the gender appropriate  **DCS Residential Facility**  **BRIDGES OF IOWA PROGRAM** until maximum benefits are received. Defendant’s probation officer shall schedule this placement. Violation of facility rules is a violation of probation.

Defendant shall remain in jail until space is available at the assigned facility. The sheriff shall transport Defendant to the facility when space is available. DCS shall notify the sheriff when space is available.

Defendant has received a substance abuse evaluation. If a recommendation was received, Defendant shall pay for, cooperate with and complete the **recommended SUBSTANCE ABUSE programming**. Defendant shall begin programming within 30 days of this order. Defendant shall file proof of compliance and completion with his/her probation officer.

Defendant shall complete a **substance abuse evaluation** within 7 days of the date of this order. Failure to complete the evaluation shall constitute a violation of probation. If a recommendation is received, Defendant shall pay for, cooperate with and complete the **recommended SUBSTANCE ABUSE programming**. Defendant shall begin programming within 30 days of the evaluation. Defendant shall file proof of compliance and completion with his/her probation officer.

Defendant shall pay for, cooperate with and complete a **psychological evaluation & any recommended treatment,** education, or aftercare.Defendant shall schedule this evaluation within three working days of this Order or release from jail and begin any recommended treatment within30days of the recommendation.

Defendant is ordered to participate in and successfully complete the **IOWA Domestic Abuse Program (IDAP)** as a condition of probation**.** Defendant is ordered to schedule a needs assessment at the time s/he signs up for probation. Defendant shall pay for, cooperate with and complete the **Women’s  Men’s program**, as well as any recommended treatment or aftercare program. The intake fee and orientation fee must be paid at the intake appointment. **Contact 515-242-6590 or 5th.idap@iowa.gov to schedule the required IDAP orientation and or to be placed in the appropriate program**. Defendant is ordered to start the Iowa Domestic Abuse Program within 30 days of this order.

Defendant is ordered to contact Des Moines Area Community College at **515-964-6800**, (8:00 am to 4:00 pm Mon - Fri) or at ce.dmacctraining.com within **three** working days of this Order or release from jail to enroll in the program checked below. Defendant shall pay the class fee at the time of registration and complete class within 90 days. There is no same day registration.

**FIRST-TIME OFFENDER** Class **ASSAULTIVE BEHAVIOR** Class

**REPEAT OFFENDER** Class **LICENSE UNDER SUSPENSION** Class

**DRINKING DRIVER’S** Class **DRIVER IMPROVEMENT** Class

**VICTIM IMPACT AWARENESS** **PROGRAM**

Defendant is ordered to complete  hours of **community service** within  days of the date of this order. Defendant shall sign up for community service when signing up for probation. Defendant shall pay required placement fees.

**DEFENDANT SHALL SUBMIT A DNA SAMPLE** to DCS pursuant to Iowa Code Chapter 81. The Defendant shall submit a DNA sample to one of the following agencies: (1) DCS if Defendant is being sentenced to prison or probation; or (2) the Polk County Sheriff’s Office if Defendant is being sentenced to jail time or a fine without probation.  If Defendant is not returning to the custody of the Polk County Jail following this sentencing hearing, Defendant is ORDERED to immediately report to Room 101, Polk County Criminal Courts Building, 110 Sixth Avenue, Des Moines, IA 50309 *with a copy of this order and government issued identification* to submit a DNA sample. **Failure to comply may constitute contempt, pursuant to Iowa Code section 81.4(3).**

**Category B Restitution and Reasonable Ability to Pay Analysis**

Iowa law separates restitution into three categories. ***Victim Pecuniary Damages*** includes the damages done to a victim in the course of a crime as set out in Iowa Code § 910.1(3). ***Category A Restitution*** includes fines, surcharges and penalties. Defendant must pay all ***Victim Pecuniary Damages*** and ***Category A Restitution*** and that duty is not subject to a reasonable ability to pay analysis.

***Category B Restitution*** includes court costs, crime victim assistance program reimbursement, expenses incurred by public agencies under Iowa Code §321J.2(13)(b), medical assistance program restitution pursuant to Iowa Code chapter 249A, contributions to a local anti-crime organization and legal assistance fees, (including the expense of a public defender) pursuant to Iowa Code §815.9.

According to Iowa Code §910.2A, Defendant is presumed to have the reasonable ability to pay all ***Category B Restitution and is therefore ordered to pay all Category B Restitution.*** Defendant can challenge the obligation to pay ***Category B Restitution*** by filing a motion within 30 days of this order stating that defendant does not have a reasonable ability to pay ***Category B Restitution*.** The motion must be accompanied by a financial affidavit which must also be served on the prosecutor. Defendant must prove that defendant does not have a reasonable ability to pay ***Category B Restitution*** or the court cannot legally reduce the order to pay such fees.Failure to file a motion or a financial affidavit waives any claim of an inability to pay Category B Restitution. *“Financial* *affidavit”* means a signed affidavit sworn under penalty of perjury that provides specific financial information about Defendant to enable the sentencing court to determine defendant’s reasonable ability to pay Category B Restitution.The affidavit form applying for court-appointed counsel is not sufficient for purposes of determining reasonable ability to pay.

Defendant requests a finding of less than a full ability to pay Category B Restitution. Defendant furnished a completed financial affidavit to the Court and the prosecutor had the opportunity to cross examination on the financial affidavit. Evidence of the amount of attorney fees was presented. The Court therefore makes the following finding with regard to Category B Restitution:

**NO ABILITY TO PAY:**  Defendant has no ability to pay ***Category B Restitution*** in any amount.

**PARTIAL ABILITY TO PAY:**  Defendant has the reasonable ability to pay, and is ordered to pay, up to $ for ***Category B Restitution***

**FULL ABILITY TO PAY:**  Defendant has a full ability to pay, and is ordered to pay, all ***Category B Restitution***.

***Defendant is ordered to pay any and all assessed restitution, fines, surcharges, and court costs.*** All payments shall be made to Clerk of Criminal Court, Polk County Criminal Courts Building, 110 6th Avenue, or the Polk County Justice Center, 222 Fifth Avenue, Des Moines, Iowa 50309 or online at [www.iowacourts.gov](http://www.iowacourts.gov). Defendant shall call the Clerk of Court at 286-3772 to verify amounts owed. ***These amounts are delinquent 30 days after all costs are assessed.*** The Clerk shall pay down Category B Restitution according to Iowa Code §910.2(1). If there are multiple cases, the clerk shall divide Category B Restitution costs equally between cases where appropriate. If Defendant fails to pay the total financial obligation due, the case will be transferred for collection. The State of Iowa may withhold any State income tax refund, vehicle registration and/or driver’s license issuance for unpaid court ordered financial obligations.

**Dismissal of Other Counts and Cases**

**DISMISSAL OF OTHER COUNTS AND CASES**. Upon the State’s recommendation, the following counts/cases are dismissed: .  State to pay costs. Pursuant to the plea agreement adopted by the court, Defendant is ordered to pay court costs and any victim restitution associated with these counts and/or cases.

Iowa Code Section 901C.1 allows Defendant to request that a dismissed case be removed from the public record.  Before the request is made or granted each of the following must be true:

1. All charges in the caseare dismissed.
2. At least 180 days have passed since the dismissal or Defendant proves, and the court finds, good cause to act sooner.
3. The dismissal was not based on a finding that Defendant was incompetent or not guilty by reason of insanity.
4. All court costs, fees, or other financial obligations ordered by the court have been paid.

Dismissed case number(s)  are related to a deferred judgment.

**Other Matters**

Based on the information available to the court in the record, and the disposition or adjudication in this case, the court finds the Defendant qualifies as an “unlawful drug user or addict,” as defined by Iowa Code section 724.8(6) and 18 U.S.C. 922(g)(3). Pursuant to Iowa Code sections 724.31A and 724.15(2)(d) notice is given that the Defendant is prohibited from acquiring or carrying a firearm or a dangerous weapon as they are ineligible. Pursuant to Iowa Code section 724.31A, subsection 2, the Defendant named above may submit a written request to the Iowa Department of Public Safety to update, correct, modify, or remove the Defendant’s record in any database that the department of public safety makes available to the national instant criminal background check system.  The finding of the court is based the criteria set forth in 27 CFR § 478.11 (Unlawful user of or addicted to any controlled substance) and specifically on the following considerations:

Defendant has received a conviction, adjudication, or deferred judgment within the past year for controlled substance offense(s) under Iowa Code chapter 124;

Defendant has received a conviction, adjudication, or deferred judgment within the past year for controlled substance offense(s) under Iowa Code chapter 453B;

Defendant has received a conviction, adjudication, or deferred judgment within the past year for offense(s) under any state or federal statute relating to controlled substances;

The Defendant has multiple arrests in the past five years, with the most recent arrest being within one year, for controlled substances offenses under Iowa Code chapter 124 or 453B;

The Defendant through a chemical drug test, provided within the past year, has been found to use controlled substances unlawfully under Iowa Code chapter 124;

The Defendant has made admissions to recent or ongoing unlawful drug usage in violation of Iowa Code chapter 124;

Recent usage of a controlled substance shown by other evidence:\_\_\_\_\_\_\_\_\_\_\_\_.

Defendant has been advised and understands that if s/he is not a citizen of the United States that a criminal conviction or deferred judgment may result in Deportation and affect re-entry into the United States or have other adverse **immigration consequences** under federal immigration laws.

If Defendant is out of custody and the crime of conviction (or for which judgment has been deferred) is a domestic assault, theft, or harassment, Defendant is **ORDERED** to immediately report to Room 101, Polk County Criminal Courts Building, 110 Sixth Avenue, Des Moines, IA 50309 *with a copy of this order and government issued identification* to **submit to fingerprinting and booking** procedures.   Failure to comply may constitute contempt, pursuant to Iowa Code Section 81.4(3) and could result in the revocation of any probation granted.The Polk County Sheriff’s Office (PCSO) is ordered to fingerprint Defendant if Defendant has not previously been fingerprinted with respect to this offense.   If Defendant is in custody, the PCSO office is ordered to fingerprint Defendant on this charge before release if such procedures have not already been completed.

Unless judgment was deferred, **to** **challenge THIS judgment** defendant must file for EITHER 1) Appeal OR 2) Discretionary Review -- either must be filed with the clerk of court within 30 days or the request will be denied as untimely.  Defendant has a right to Appeal except after a guilty plea which waives the right absent good cause.  Grounds for Discretionary Review are limited by Iowa Code § 814.6(2).  A copy of the Notice of Appeal must be served on the Iowa Attorney General. If Defendant cannot afford the expense of Appeal and qualifies financially, an attorney and necessary documents will be furnished at State expense.

Any mittimus shall issue immediately.

**RECALL WARRANT**

Bond on appeal is set at $ CASH ONLY.

Bond on appeal is not applicable, as the defendant has received a deferred judgement.

Defendant was personally served with a copy of this order.

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In addition to all other persons entitled to a copy of this order, the Clerk shall provide a copy to the following: DAJCC, ***the defendant***