**In the Iowa District Court In and For Polk County**

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| **STATE OF IOWA,**  Plaintiff,  v.  ,  Defendant. | Criminal No(s).  **ORDER**  (Plea/Sentencing Order –Felony Drug)  Defendant in custody |

**Now On**      , the State is represented by      . Defendant appears  **in person**  **remotely (waived presence)** and with counsel,      , on charge(s) of:

|  |  |  |  |
| --- | --- | --- | --- |
| **Case Number** | **Count** | **Crime** | **In violation of Iowa Code section(s):** |
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|  |  |  |  |
|  |  |  |  |

Defendant also appears with an Interpreter,      .

**MATTERS RELATED TO THE PLEA**

Defendant has filed a **WRITTEN PETITION TO PLEAD GUILTY** to the crime(s) set out above. By review of the petition, the Court finds that defendant understands the charge(s), the penal consequences, and the rights being waived. Based upon the parties’ and attorneys’ statements and the minutes of testimony as applicable, the Court finds that there is a factual basis for the plea and that the plea is knowing and voluntary. **Defendant’s guilty plea is accepted.**

Defendant **PLEADS GUILTY** to the crime(s) set out above. By direct conversation with Defendant on the record, the Court finds that Defendant understands the charge(s), the penal consequences, and the rights being waived. Based upon Defendant’s statements, the prosecutor’s statements and the applicable minutes of testimony, the Court finds there is a factual basis for the plea and the plea is knowing and voluntary. **Defendant’s guilty plea is accepted.**

**ALFORD PLEA**. Defendant enters a plea to the crime(s) set out above pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970) and *State v. Knight*, 701 N.W.2d 832 (Iowa 2005). By direct conversation with Defendant on the record, the Court finds Defendant understands the charge(s), the penal consequences, and the rights being waived. The Court further finds there is a factual basis for the plea and the plea is knowing and voluntary. The Court further finds Defendant has acknowledged that: 1) it is in Defendant’s best interest to enter this plea, 2) Defendant has nothing to gain at trial and will gain much more by pleading, 3) there is strong evidence of actual guilt, and 4) Defendant wishes to take advantage of the State’s plea offer. **Defendant’s plea is accepted**.

**PRE-SENTENCE INVESTIGATION (PSI) REPORT**. Except where Defendant is in custody, he/she ***is ordered to call the Department of Correctional Services (DCS), at 242-6602*** within two work days to schedule a pre-sentence investigation (PSI) interview. If Defendant is in custody, he/she shall be retained by the Polk County Sheriff until the Fifth Judicial Department of Correctional Services has completed the PSI interview. DCS shall submit a PSI report by       (at least three days before sentencing).

**SENTENCING IS SET FOR**       at       in Courtroom      , Polk County Criminal Court Building. ***Defendant is ordered to appear in person for sentencing.*** At the end of this case, you may be assessed restitution. This may include three different categories of restitution; monetary damages to victims (referred to as pecuniary damages); fines, penalties, or surcharges (referred to as Category A restitution); and repayment for your legal defense, crime victim assistance reimbursement, court costs, contribution to a local anticrime organization, or restitution to the medical assistance program pursuant to chapter 249A (referred to as Category B restitution). With respect to Category B restitution items, you may  
request the Court to determine whether you have the reasonable ability to pay the full amount of those items.  
If you do not request the Court to make that determination, the Court will presume you have the  
ability to pay the full amount of Category B restitution and will order you to do so. You will also lose any  
chance to challenge your ability to pay the full amount of the Category B restitution ordered.

**BOND** is continued pending sentencing, or      .

**BOND** is unavailable pending sentencing pursuant to Iowa Code section 811.1(1).

**PLEA AGREEMENT.** Barring any new criminal activity or violation of this order, at sentencing the parties will recommend: . The State will recommend dismissal of . On any new criminal charge or violation of this order, established by a preponderance of evidence, the State is not bound by this agreement.

**VORP**.Defendant is ordered to participate in and cooperate with a VORP session to allow the victim to inform Defendant of the consequences of the crime, to determine the amount of victim pecuniary damages (VPD) owed, and to establish a payment schedule. If VPD cannot be resolved in the VORP session, the County Attorney is ordered to file a statement of VPD and Defendant shall have 30 days from the date of the filing to contest the amount of damages claimed. Defendant shall call 286-3057 within three (3) working days to arrange this VORP session. (Session required only if victim wishes to participate).

**MATTERS RELATED TO SENTENCING**

**IMMEDIATE SENTENCING.** Consistent with the record made herein, Defendant knowingly and voluntarily waives time before sentencing, the right to file a motion in arrest of judgment and use of the pre-sentence investigation (PSI) report and requests immediate sentencing. The Court accepts Defendant’s waivers and request. The Department of Correctional Services is ordered to prepare a PSI, file it with the Clerk of Court, and distribute copies as required by law.

**WRITTEN SENTENCING**. Consistent with the record made herein, Defendant knowingly and voluntarily waives right to be present and make a formal record at sentencing and requests the Court instead proceed on this matter in writing and adopt the parties joint sentencing recommendation as set forth in the parties’ filings. The Defendant has been advised of the right to make a statement to the Court in mitigation of sentence by way of allocution. The Defendant waives the right to allocute and requests disposition be entered pursuant to the agreement of the parties. The Court accepts Defendant’s waivers and request. The Court shall adopt the parties’ joint sentencing recommendation and shall proceed in this matter based on the filings of the parties and pursuant to the authority granted by the orders of the Iowa Supreme Court.

**POST-PSI SENTENCING**. Defendant was previously determined to be guilty of the charge(s) set out above. The Court has received and studied the pre-sentence report and afforded counsel an opportunity to examine the report.

**ALLOCUTION**. Defendant was given an opportunity to speak in mitigation of the sentence and has exercised or knowingly waived the right to make allocution to the Court. On inquiry made, and based on the record set forth by the parties, no legal cause has been shown why sentence should not be pronounced.

**JUDGMENT IS DEFERRED** and Defendant is granted probation on the terms and conditions set forth in this order**.** Defendant shall pay a $      civil penalty which is due immediately and is considered delinquent after 30 days (said penalty shall not be less than the minimum fine for the offense charged). Said penalty is payable through the Polk County Clerk of Court. Defendant’s criminal record in this matter shall be expunged upon discharge from probation and payment of all financial obligations, in accordance with Iowa Code section 907.9(4)(b).

**DEFENDANT IS ADJUDGED GUILTY** of the charge(s), in violation of the Code sections, set out above and is sentenced as follows, pursuant to Iowa Code sections 902.9 and 902.3 [Insert additional Code sections, if applicable]:

|  |  |  |  |
| --- | --- | --- | --- |
| **Case Number** | **Count** | **Crime** | **Defendant shall be imprisoned for a period not to exceed:** |
|  |  |  | years |
|  |  |  | years |
|  |  |  | years |

Defendant shall receive credit against the(se) sentence(s) for any days served in custody on the(se) individual offense(s) since arrest.

**MINIMUM SENTENCE** (Felony Controlled Substance Offenses – use appropriate paragraph(s) below).

Pursuant to Iowa Code §’s 124.413 and 901.10(1), Defendant is required to serve a mandatory one-third of the maximum indeterminate sentence prior to being eligible for parole [on Count(s)      ] as Defendant has been convicted of violating Iowa Code § 124.401(1)(a), (b), (e), or (f).

Pursuant to Iowa Code §’s 902.8 and 902.9(1)(c), Defendant is required to serve a mandatory three (3) years of the maximum indeterminate sentence prior to being eligible for parole [on Count(s)      ] as Defendant has been convicted as a habitual offender.

Pursuant to Iowa Code § 901.10(2), the minimum sentence shall be reduced by one-third as Defendant is convicted of violating Iowa Code § 124.401(1)(a) or (b), the substance is amphetamine or methamphetamine, and Defendant pled guilty.

Pursuant to Iowa Code § 901.10(2), Defendant’s mandatory minimum sentence is further reduced as follows:       (up to one-half the remaining mandatory minimum sentence). [only when defendant is convicted of violating Iowa Code § 124.401(1)(a) or (b), the substance is amphetamine or methamphetamine, Defendant pled guilty, and upon recommendation of the County Attorney].

Pursuant to Iowa Code §’s 124.413(3) and 901.11(1), the Court finds no further reduction of the mandatory minimum contained within Iowa Code § 124.413(1) is warranted.

Pursuant to Iowa Code §’s 124.413(3) and 901.11(1), the Court finds Defendant shall not be eligible for parole until he/she has served       percent of the mandatory minimum contained within Iowa Code § 124.413(1).

Other.

**CONSECUTIVE/CONCURRENT.** Pursuant to Iowa Code §§ 901.5(9)(c) and 901.8, the sentence(s) of incarceration shall run:

concurrent to      ,

consecutive to      ,

**for a total period 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 on parole/probation;

other     .

**THE SENTENCE(S) IS/ARE SUSPENDED.**

**DEFENDANT IS PLACED ON PROBATION** for a period of       year(s) from the date of this order to be supervised by the Department of Correctional Services (DCS) on terms and conditions of probation as required by DCS under the Intermediate Criminal Sanctions Program pursuant to Iowa Code Chapter 901B. The length of probation is based on the sentencing considerations set out herein. The level of supervision shall be determined by DCS. 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. ***Defendant is ordered to***:

* **Report to the probation office on the first floor** of the Polk County Criminal Courts Building immediately following sentencing to enter into a probation agreement. If the probation office is closed, Defendant shall report to the probation office by 10:00 a.m. of the next working day. **However, if the Defendant is at elevated risk of transmitting COVID-19, the Defendant SHALL CALL (515) 286-3925 INSTEAD of reporting in person to sign up for probation.**
* Pay any probation administration fees; and
* Comply with all terms of probation imposed by DCS and complete programming recommended by DCS; and
* Complete the following (check if appropriate):

obtain a mental health evaluation and follow treatment recommendations; and

obtain a substance abuse evaluation and follow treatment recommendations; and

complete recommended substance abuse and/or mental health treatment and aftercare; and

obtain and maintain full-time employment, pursue a full-time course of GED or post-secondary study, or a full-time combination of employment and study, to the degree reasonably able to do so; and

comply with urinalysis as requested by the probation officer; and

Other:      .

**Violation of any terms and conditions ordered above is a violation of probation.**

**PROBATION IS DENIED.** Defendant is committed to the custody of the Director of the Iowa Department of Corrections for a determination of the appropriate place of confinement, all as provided by Iowa Code sections 901.7 and 902.5. Defendant shall be delivered by the sheriff to the designated reception center which is: (1) the Iowa Medical Classification Center in Oakdale, Iowa for adult males; (2) the Iowa Correctional Institution for Women for any females; and (3) the Anamosa State Penitentiary in Anamosa, Iowa if Defendant is a male under the age of 18. The sheriff shall transport Defendant to the State institution accompanied by a person of the same sex. Pending Defendant’s transfer to the custody of the Director of the Iowa Department of Corrections (DOC) at the reception center, Defendant shall remain in the custody of the sheriff. 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 subject to statutory restrictions or sentence reductions. Probation is deniedbased on the sentencing considerations set out herein.

**SENTENCING CONSIDERATIONS.** The Court determines this sentence will provide maximum opportunity for Defendant’s rehabilitation and protection of the community from further offenses. Pursuant to Iowa Code § 907.5, the Court considered the following factors:

Defendant’s age; and

Defendant’s prior record of convictions and deferments of judgment, if any; and

Defendant’s employment circumstances; and

Defendant’s family circumstances; and

Defendant’s mental health and substance abuse history and treatment options available in the community and the correctional system; and

the nature of the offense committed; and

the plea agreement; and

statutory sentencing requirements; and

other factors as follows      .

**DEFENDANT SHALL SUBMIT A DNA SAMPLE** to DCS pursuant to Iowa Code Chapter 81. Failure to comply may constitute contempt, pursuant to Iowa Code section 81.4(3).

**FINE & CRIME SERVICES SURCHARGE**. Defendant shall pay a fine of $      . If checked, this fine is suspended due to Defendant’s incarceration, [insert other reason]. Defendant is also ordered to pay a crime services surcharge of 15% of any portion of the fine which has not been suspended.

**victim PECUNIARY DAMAGES (vpd).**  Defendant is ordered to pay VPD in the amount of $      for the costs inflicted on the victim(s) of this crime. Payment(s) shall be made to the Clerk of Criminal Court, Criminal Courts Building, 110 6th Avenue, Des Moines, IA 50309.The Clerk shall forward payment(s) to      . If the amounts of VPD are not available at the time of sentencing, a supplemental order will follow.

**VICTIM OFFENDER DIALOG (VOD)**.Defendant is ordered to participate in and cooperate with a VOD session to allow the victim to inform Defendant of the consequences of the crime, to determine the amount of victim pecuniary damages (VPD) owed, and to establish a payment schedule. If VPD cannot be resolved in the VOD session, the County Attorney is ordered to file a statement of VPD and Defendant shall have 30 days from the date of the filing to contest the amount of damages claimed. Defendant shall call 286-3057 within three (3) working days to arrange this VOD session. (Session required only if victim wishes to participate). Any No-Contact Order currently in effect shall be temporarily suspended for the VOD session. No-Contact Order shall be in full force and effect upon conclusion of VOD session.

**ADDITIONAL TERMS OF PROBATION**

**RESIDENTIAL FACILITY**. Defendant is ordered to reside at the       Facility until maximum benefits are received. Defendant’s probation officer shall schedule this program. Violation of program rules is a violation of probation.

Defendant shall remain in jail until space is available at the assigned facility. (**Applicable only if Defendant is already confined in the county jail at the time of sentencing.)**  *State v. Cotrell*, No. 14–0594, 2014 WL 7343448 (Iowa Ct. App. Dec. 24, 2014).

**COMMUNITY SERVICE PROGRAM (CSP).** Defendant is ordered to complete       hours of community service within       days of the date of this order. Defendant is ordered to report to the probation office on the first floor of the Polk County Criminal Courts Building immediately following sentencing to register for community service. If incarcerated at the time of sentencing, Defendant shall report to the probation office within 24 hours of release. Defendant is ordered to pay a fee for each placement granted through CSP.

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.

**OTHER**:      .

**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.

Category B is estimated to be $\_\_\_\_\_\_\_\_\_\_\_ at this time.

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 stating that defendant does not have a reasonable ability to pay ***Category B Restitution*** **within 30 days of this order** and asking for a hearing. The motion must be accompanied by a financial affidavit which must also be served on the prosecutor. If you fail to file a financial affidavit, you waive your claim that you have less than a full ability to pay Category B Restitution. The Court shall then set a hearing. *“Financial* *affidavit”* means a signed affidavit under penalty of perjury that provides financial information about the defendant to enable the sentencing court or the department of corrections to make a determination regarding the ability of the offender to pay Category “B” Restitution. It includes the defendant’s income, physical and mental health, age, education, employment, inheritance, other debts, other amounts of restitution owed, family circumstances, and any assets subject to execution, including but not limited to cash, accounts at financial institutions, stocks, bonds, and any other property which may be applied to the satisfaction of judgments. The affidavit form for applying for court-appointed counsel is not sufficient for purposes of determining reasonable ability to pay. Before the Court can modify this order, ***the defendant*** must prove that defendant does not have a reasonable ability to pay Category B Restitution.

Defendant requests a finding of less than a full ability to pay Category B Restitution. The Defendant furnished a completed financial affidavit to the Court and the prosecutor and has been subject to cross examination on the financial affidavit. 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.*** 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 restitution according to Iowa Code §910.2(1). If there are multiple cases, the clerk shall divide restitution costs equally between cases where appropriate. If the 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.

**ALL PARAGRAPHS BELOW APPLY**

**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 the 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.

Case numbers       is/are being dismissed by this order are related cases to the charge(s) for which Defendant is receiving a deferred judgment (for purposes of expungement of records)

**OTHER MATTERS – FIREARMS NOTICE (Check Boxes if applicable):**

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 the Defendant is a felon for the purposes of Iowa Code sections 724.25 and 724.26, and the Defendant is otherwise ineligible under Iowa Code sections 724.8 and 724.8B. 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.

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:.

**OTHER MATTERS – APPEAL (DISCRETIONARY REVIEW):**

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.

Bond on appeal is set at $ CASH ONLY.

Bond on appeal is NO BOND, as bond is unavailable pursuant to Iowa Code section 811.1(1).

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

**SO ORDERED this** **day of** **,** **.**

The Defendant was personally served with a copy of this order.

      was personally served with a copy of this order.

The clerk shall provide a copy of this order to the PSI preparer.

In addition to all other persons entitled to a copy of this order, the clerk shall provide a copy to the following: Felony Criminal Case Coordinator.