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

|  |  |
| --- | --- |
| **State of Iowa,** *Plaintiff*,v.**,** *Defendant*. | **Criminal No:** **Probation Order**[ ] *Defendant is in custody.* |

The State is represented by .

[x] The Defendant is represented by counsel, . [ ]  The parties personally appeared.

[ ] Defendant also appears with interpreter, .

[ ] Defendant knowingly, voluntarily, and intelligently waives his/her right to an attorney.

[x] Defendant knowingly, voluntarily, and intelligently waives his/her right to be present at stipulation and disposition

[x] Defendant waived reporting and any record of the probation hearing.

**Findings of the Court**

Defendant [ ]  **STIPULATES** **AND IS FOUND** [ ]  **IS FOUND** [ ]  **IS FOUND NOT** to have violated the terms of his/her probation as reported in the ***Report of Violations dated:*** .

**Scheduling**

[ ]  Hearing is continued from  until  at in Courtroom [ ] 120 [ ] 210 [ ] 220 [ ] Jail Court. Defendant is notified if Defendant received court appointed legal assistance for this probation matter, the Court will determine Defendant’s reasonable ability to pay restitution for said legal assistance at the conclusion of the probation matter.

[ ]  Dispositional hearing is set on  at in Courtroom [ ] 120 [ ] 210 [ ] 220 [ ] Jail Court. Defendant is notified if Defendant received court appointed legal assistance for this probation matter, the Court will determine Defendant’s reasonable ability to pay restitution for said legal assistance at the conclusion of the probation matter.

[ ]  This is an evidentiary hearing. An Assistant County Attorney and probation officer shall be present.

**Summary Dispositions**

[ ]  The maximum permissible term of probation has **expired** and Defendant has outstanding court debt pursuant to Iowa Code § 602.8107. Defendant is currently ***on a wage assignment*** or a payment plan pursuant to Iowa Code § 602.8107.

[ ]  The maximum permissible term of probation has **expired** and Defendant has outstanding Court debt pursuant to Iowa Code § 602.8107. Defendant is ***not eligible or is unable (due to incarceration) to enter into a payment plan*** with the County Attorney’s Office. Therefore, the Clerk of Court shall immediately submit this case to the County Attorney, the Department of Revenue and the Polk County Treasurer for collection of all outstanding Court Ordered financial obligations herein. Defendant is also financially responsible for monies owed to the Department of Correctional Services.

[ ]  Defendant is **discharged unsuccessfully** from probation.

[ ]  Defendant is **discharged successfully** from probation. If judgment was deferred and all financial obligations in connection with this case have been paid, the clerk shall expunge the appropriate records. The probation violation allegations are dismissed.

**Contempt**

[ ]  Defendant is found in contempt of court and ordered to serve  in the Polk County Jail with credit for  previously served previously served. Mittimus on the remaining jail days shall issue immediately.

[ ]  Defendant may purge this **contempt** time by complying with the following provisions:.

[ ]  Hearing to determine if Defendant has purged contempt time is set for  at  in Courtroom . Defendant shall be personally present at this hearing.

[ ]  Contempt time previously entered is purged.

**Suspended Sentence Violations**

[ ]  Defendant is continued on probation subject to any original terms of probation in addition to any and all terms set out below.

[ ]  Defendant’s probation is **revoked**. Defendant is ordered to serve  days in the Polk County Jail with credit for  days served. Mittimus on remaining time to issue immediately.

**Deferred Judgment Violations**

[ ]  Defendant is continued on probation subject to any original terms of probation in addition to any and all terms set out below.

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 following sentence is based on all 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 [ ]

[ ] Defendant’s deferred judgment is revoked and Defendant is adjudged guilty of  in violation of Iowa Code § .

 [ ] Defendant shall be incarcerated for [ ]   years [ ]  days. Credit Defendant with  days served.

[ ] Defendant’s sentence is suspended except for  days.

[ ]  The Sentence entered herein is [ ] **Consecutive** [ ] **Concurrent** to the sentence imposed in **.**

[ ] Defendant’s civil penalty is converted to a fine of $*.* Defendant is also ordered to pay a **CRIME SERVICES SURCHARGE** of 15% on any portion of the fine which is not suspended. Defendant shall be given credit for any civil penalty Defendant has previously paid in this matter.

[ ] Bond on appeal is set at $ cash only.

**Electronic Monitoring**

[ ]  Defendant [ ] shall not [ ] may be considered for **electronic monitoring** [ ]  after serving  days in jail.

**Terms of a New or Continued Probation**

[ ]  Defendant shall report to PO: .

[ ]  **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 Polk County Sheriff shall transport Defendant to the facility when space is available. DCS shall notify the sheriff when space is available

[ ]  Defendant shall complete a **substance abuse evaluation** within 7 days. If Defendant is in custody, the evaluation shall be done by EFR in the Polk County Jail. Defendant shall begin any recommended treatment or programming within 30 days.

[ ]  Defendant shall remain in custody pending transport to **MECCA**. Upon entry into impatient treatment at MECCA, Defendant shall be released from the custody of the Polk County Sheriff. Defendant shall successfully complete MECCA inpatient treatment and any recommended aftercare. Defendant shall report to PO by phone  within one working day of entry into MECCA facility.

[ ]  Defendant shall remain in custody pending transport by PCSO to [ ] **IRTC**, Mt. Pleasant, IA. [ ] **Community Family Resources,** 726 South 17th St., Fort Dodge, IA for **Inpatient substance abuse treatment** and shall follow all aftercare requirements which may include a halfway house placement. EFR to provide transport date to PCSO. Upon completion of the Inpatient portion of treatment, the PCSO shall return Defendant to the Polk County Jail and place Defendant’s name on the Initial Appearance List to ensure a prompt hearing will be scheduled.

[ ]  Pursuant to Iowa Code § 901.5, the Court hereby orders the Iowa Department of Transportation to **revoke Defendant’s privilege to operatE** a motor vehicle for a period of one hundred eighty (180) days after Defendant is eligible for a motor vehicle license. If the person’s operating privileges are suspended or revoked at the time of sentencing this order provides that180 day revocation period shall not begin until other suspensions or revocations have terminated.

[ ]

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

***This section applies to the current probation revocation matter only. It does not change any prior restitution order entered, or any reasonable ability to pay determination made, by the court previously with respect to the underlying charges.***

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 regarding 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**

If a Deferred Judgment was revoked and sentence imposed, there are two ways **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.

For information regarding his/her right to vote and hold public office in Iowa and restoration of firearms rights and a pardon, please refer to the following link: http://www.governor.iowa.gov/constituent-services/restoration-of-citizenship-rights. **(Felony and Aggravated Misdemeanor convictions ONLY).**

Any mittimus shall issue immediately.

[ ]  **RECALL WARRANT**

[ ]

[x]  Defendant was personally served with a copy of this order.

[ ]   was personally served with a copy of this order.

[x] In addition to all other persons entitled to a copy of this order, the Clerk shall provide a copy to the following: ***THE DEFENDANT***.