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

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

Defendant is charged with in violation of Iowa Code §’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 .

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

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

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

[ ]  Defendant also appears with interpreter: .

[ ]  Defendant waives 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. **DEFENDANT’S 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. 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(s) set out above.

[ ]  A **presentence investigation report** has been completed and reviewed by the Court, Defendant, Defendant’s attorney and the County Attorney. Any exceptions and/or corrections are on the record or on the face of the report.

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 of the available **SENTENCING CONSIDERATIONS** set out

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

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

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

[x] Defendant’s criminal history [ ] Defendant’s mental health history [ ] Defendant’s employment

[ ] Defendant’s substance abuse history [ ] Defendant’s family circumstances [x] The Plea Agreement

[x] Defendant’s propensity for further criminal acts [x] Maximum opportunity for rehabilitation [ ]

**DEFENDANT IS ADJUDGED GUILTY** and shall be **INCARCERATED FOR A PERIOD NOT TO EXCEED TWO YEARS.** The court has determined that this sentence will provide maximum opportunity for rehabilitation of Defendant and reasonable protection of the public.

[ ] Credit Defendant with  days served.

**Probation is denied** based on the sentencing considerations set out above. The Court has determined that this sentence will provide reasonable protection of the public. **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. 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.

[ ]  The Sentence entered herein is [ ] **Consecutive** [ ] **Concurrent** to the sentence imposed in  based on the sentencing considerations listed above for a **TOTAL PERIOD OF INCARCERATION NOT TO EXCEED** .

[ ]  **DEFENDANT IS** **fined $855.** 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.

[ ]  **Domestic OR sexual abuse RELATED CRIMES surcharge**. Pursuant to Iowa Code section 911.2B, Defendant is assessed the domestic or sexual abuse related crimes surcharge ($90) to each above-listed violation of Iowa Code chapter 709, or §’s 708.2A, 708.11, 710A.2, or Chapter 236.

[ ]  **HUMAN TRAFFICKING VICTIM SURCHARGE FOR PROSTITUTION/BUYER, PIMPING, PANDERING OR HUMAN TRAFFICKING.** Pursuant to Iowa Code section 911.2A, Defendant is assessed a human trafficking victim surcharge of $1000 for each above-listed violation of Iowa Code §’s 725.1(2), 725.2, 725.3, or 710A.2.

[ ]  **AGRICULTURAL PROPERTY OFFENSE SURCHARGE**. Pursuant to Iowa Code section 911.5 Defendant is assessed a surcharge ($500) for each above-listed violation of Iowa Code §714.2(1), 714.2(2), 714.2(3), 716.3, 716.4 or 716.5 involving agricultural property.

[ ]  **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*. (“TBD” means “to be determined” which means that the final, accurate VPD amounts are not available at this time. When such amounts are available, the State may apply for VPD and a supplemental VPD order will follow.)* Defendant has 30 days to contest the amount of VPD. 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      . ***DEFENDANT SHALL NOT BE DISCHARGED FROM PROBATION UNTIL VICTIM RESTITUTION DUE IS PAID IN FULL.***

[ ]  **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. 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.

[ ]  **No Contact Order (NCo)**. Defendant is ordered to comply with the separately entered NCO. This NCO may remain in effect even after a prison sentence is completed and/or parole is discharged. See the NCO for the expiration date.

[ ]  Defendant is ordered to complete **substance abuse treatment** while in prison.

[ ]  Defendant is ordered to attend the **Iowa Domestic Abuse Program** while in prison.

**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**

[ ]  **RIGHT TO CARRY WEAPONS.** If checked, pursuant to §§724.31A, 724.15(2)(d) notice is hereby given that defendant is prohibited from acquiring a pistol or revolver. Defendant is subject to this notice because:

[ ]  Defendant is ineligible for a permit to carry, or to carry, a dangerous weapon under §§724.8, 724.8B because:

[ ]  Defendant is convicted of a serious or aggravated misdemeanor under Chapter 708. §§724.8B, 724.8(2).

[ ]  Defendant is found to be addicted to alcohol. §724.8(2).

[ ]  Probable cause exists to believe, based on documented specific actions of the defendant, with at least one of the actions occurring within two years, that the defendant is likely to use a weapon unlawfully or in such a manner as would endanger defendant or others. §724.8(3).

[ ]  Defendant is found to be an unlawful drug user or addict. §§724.8(6), 724.8B, 18 U.S.C. 922(g)(3).

[ ]  Defendant is ineligible for a permit to carry, or to carry, a dangerous weapon, under §§724.8, 724.8B, and it will be a felony under Iowa Code §724.26 for defendant to exercise dominion and control over a firearm, as Defendant is:

[ ]  Convicted of a felony. §724.26.

[ ]  Convicted of an aggravated misdemeanor involving a firearm. §§724.25(1), 724.26.

[ ]  **DOMESTIC VIOLENCE –** Convicted of a misdemeanor crime of domestic violence. §724.26(2)(a). Defendant shall **NOT** possess, ship, transport, or receive a firearm, offensive weapon or ammunition effective immediately pursuant to Iowa Code § 724.26(2)(a). Defendant shall deliver all firearms, ammunition and offensive weapons to the Polk County Sheriff, 6023 NE 14th Street, Des Moines, Iowa. This conviction may affect the right to possess or acquire a firearm or ammunition under federal and state law under 18 USC. § 922(d)(8), (g)(8) and Iowa Code Section 724.25(1).

[ ]  **NO CONTACT ORDER – INTIMATE PARTNER –** Subject to a protective order involving an intimate partner. §724.26(2)(a). Defendant shall **NOT** possess, ship, transport, or receive a firearm, offensive weapon or ammunition effective immediately pursuant to Iowa Code § 724.26(2)(a). Defendant shall deliver all firearms, ammunition and offensive weapons to the Polk County Sheriff, 6023 NE 14th Street, Des Moines, Iowa. This conviction may affect the right to possess or acquire a firearm or ammunition under federal and state law under 18 USC. § 922(d)(8), (g)(8) and Iowa Code Section 724.25(1).

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.

If this crime was committed while defendant was eighteen years of age or older, and was not a violation of Chapter 321, **DEFENDANT SHALL SUBMIT A DNA SAMPLE** pursuant to Iowa Code Chapter 81 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 § 81.4(3).**

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.

[ ]

[ ]  The **NCO** previously in effect in this case **IS** **TERMINATED** as of today’s date ***(A SEPARATE NCO CANCELLATION ORDER IS REQUIRED).***

[ ] 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: DAJCC, ***the Defendant***