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SCRU-11-0000083

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
HAWAI‘I RULES OF PENAL PROCEDURE

ORDER AMENDING RULE 43 AND FORMS C AND D
OF THE HAWAI‘I RULES OF PENAL PROCEDURE

(By: Recktenwald, C.J., Nakayama, Acoba, Duffy, and McKenna, JJ.)

IT IS HEREBY ORDERED that Rule 43 of the Hawai‘i Rules of Penal Procedure, is amended, effective July 1, 2012, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 43. PRESENCE OF THE DEFENDANT.

(d) Presence may be waived for non-felony offenses. In prosecutions for offenses other than a felony, the court may:

(1) conduct an arraignment, wherein a plea of not guilty is accepted, or conduct an evidentiary pretrial hearing in the defendant’s absence, provided the defendant consents in writing or the defendant’s counsel orally represents that the defendant consents.

(2) conduct an arraignment~~[, wherein]~~ in the defendant’s absence, if the defendant’s residence is out-of-state or on another island, the defendant consents in writing, and a plea of guilty or no contest is

(A) accepted and sentence is imposed; or

(B) offered and acceptance is deferred.~~[impose sentence in the defendant’s absence when the defendant’s permanent residence is out-of-state or~~

~~on an island other than where the offense was committed, provided the defendant consents in writing.]~~ Except for the requirement of addressing the defendant personally in open court, the court shall otherwise comply with the requirements of Rule 11 and Rule 32.

(e) Presence may be by video conference.

(1) The court may conduct by video conference, without the consent of the ~~[accused]~~defendant, an arraignment wherein it accepts a plea of not guilty;

(2) The court may conduct by video conference, with the oral or written consent of the ~~[accused]~~defendant,

~~[(i)]~~(A) an arraignment wherein it accepts a plea of guilty or no contest,

~~[(ii)]~~(B) a pre-trial evidentiary or non-evidentiary proceeding, or

~~[(iii)]~~(C) a post-conviction evidentiary or non-evidentiary proceeding,
other than a sentencing hearing.

(3) The court may conduct a sentencing hearing and impose sentence by video conference with the oral or written consent of both the prosecution and the defendant.

IT IS FURTHER ORDERED that Forms C and D, attached hereto, shall be substituted for the current Forms C and D and appended to the Hawai'i Rules of Penal Procedure, effective July 1, 2012.

IT IS FURTHER ORDERED that the trial courts are authorized to insert circuit and court identifiers, appearance information, addresses, and contact information in the form and to publish the form in print or electronic format for the respective courts and circuits.

DATED: Honolulu, Hawai'i, May 21, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna



Form C

WAIVER OF PHYSICAL PRESENCE; SUBMISSION OF PLEA

IN THE _____ COURT OF THE _____ CIRCUIT _____ DIVISION	WAIVER OF PHYSICAL PRESENCE: SUBMISSION OF PLEA	Case Number:
STATE OF HAWAI'I vs. (DEFENDANT)		Police Report Number:
CHARGE(S): VIOLATION OF H.R.S. SECTION(S)		AMENDED CHARGE(S):

In accordance with Rule 43, Hawai'i Rules of Penal Procedure:

- I understand that I have the right to be present at the arraignment, at pretrial proceedings, at the time I enter my plea and at my sentencing. I voluntarily waive (give up) my right to be present at all of these proceedings. I authorize my lawyer to represent me in all of these proceedings without my presence. I also give up my right to be questioned in open court.
- I plead: GUILTY OR NO CONTEST
to the: ORIGINAL OR AMENDED charge(s) listed above.
- My birth year is _____ and I am _____ years old.
The last four digits of my social security number are XXX-XX-_____.
I have completed _____ years of education.
I speak, read, write, and understand the English language. If this document was interpreted, it shall include the language interpreted, the interpreter's name, and the interpreter's signature.
- My mind is clear. I am not ill. I did not take any unprescribed medication, alcohol or any illegal drugs within 48 hours prior to signing this document, except _____ which does not affect my ability to understand this document.
- My lawyer explained the charge(s) against me. I understand the charge(s). I told my lawyer everything I know about the case. My lawyer explained the government's evidence against me, the facts which the government must prove in order to convict me and my possible defenses.
- I understand that by pleading I give up my right to a trial by a jury or by the court. I know that in a trial, the government is required to prove my guilt beyond a reasonable doubt, that I can see, hear and question the witnesses who testify against me, and that I can call my own witnesses to testify for me, and that I also understand that I have the right to take the stand to testify or I have the right not to testify at trial.

7. I understand that the maximum penalties are: \$ _____ fine or _____ days/months/year in jail or both.
8. INITIAL ONE:
 After discussing all the evidence and receiving advice from my lawyer, I plead GUILTY because (give a brief factual statement of what the Defendant did):
- After discussing all the evidence and receiving advice from my lawyer, I plead NO CONTEST because I do not wish to contest the charge(s) against me.
9. I plead of my own free will. No one is pressuring or threatening me or anyone close to me to force me to plead. I am not taking the blame or pleading to protect someone else from prosecution.
10. I have reached the following agreement with the Prosecuting Attorney (give a brief statement):

INITIAL ONE:

- I understand that the court is not bound by this agreement. If the court does not follow the agreement, I cannot withdraw my plea.
- No one has promised me any kind of deal or favor or leniency if I plead.
11. I understand that the court is not required to grant any request for a deferred acceptance of a guilty or no contest plea.
12. I consent to the court imposing sentence without my being present. I further understand that non-compliance with the court's judgment or order will result in the issuance of a bench warrant, subjecting me to being arrested and having to appear in court.
13. I understand that if I am not a citizen of the United States, a conviction of this or these offenses may result in deportation, exclusion from admission to the United States, or denial of naturalization.
14. I declare under penalty of perjury, that I am the person charged with these offenses and affix my fingerprint hereto. I further acknowledge that I signed this form after reviewing it with my attorney. I am satisfied with my attorney's advice and representation.

DATED this _____ day of _____, 20 ____.

Defendant's Signature: _____
Address: _____

Phone No.: _____
Language Interpreted: _____
Interpreter's Name: _____
Interpreter's Signature: _____



Defendant must affix right thumbprint
in above box with black ink

DECLARATION OF COUNSEL

As counsel for the defendant and as an officer of the Court, I certify the following:

1. I explained the defendant's right to be present.
2. The defendant represented to me that he/she does not wish to be present and that he/she wishes the proceedings to be conducted in his/her absence.
3. I read and explained this document to the defendant.
4. The statements contained herein conform with my understanding of the defendant's position.
5. I believe the defendant understands the document in its entirety.
6. The defendant's plea is voluntary.
7. The defendant understands the nature of the charge and the possible consequences.

DATED this ____ day of _____, 20__.

Approved and so ordered:

Attorney for the Defendant

Judge of the Above Entitled Court

Form D

**WAIVER OF PHYSICAL PRESENCE; SUBMISSION OF PLEA;
PRO SE DEFENDANT**

IN THE _____ COURT OF THE _____ CIRCUIT _____ DIVISION	WAIVER OF PHYSICAL PRESENCE; SUBMISSION OF PLEA; PRO SE DEFENDANT	Case Number:
STATE OF HAWAII vs. (DEFENDANT)		Police Report Number:
CHARGE(S): VIOLATION OF H.R.S. SECTION(S)		AMENDED CHARGE(S):

In accordance with Rule 43, Hawai'i Rules of Penal Procedure:

1. I am proceeding without an attorney and I have full knowledge of the following:
(Each box must be initialed by Defendant).

I understand that I have a right to representation by counsel. I also understand that if I am financially unable to afford counsel the court will appoint one at no cost to me.

The complaint(s) and/or indictment(s) set(s) out what the State claims I did. I have read the complaint(s) and/or indictment(s). I know the State must prove what is stated in the complaint(s) or indictment(s) in order to convict me.

I understand the charge(s) against me.

I understand that I have the right to be present at the arraignment, at pretrial proceedings, at the time I enter my plea and at my sentencing. I voluntarily waive (give up) my right to be present at all of these proceedings. I also give up my right to be questioned in open court.

I understand that by pleading I give up my right to a speedy and public trial by the court or by a jury, if the law so provides. I know that, in a trial, the State is required to prove my guilt beyond a reasonable doubt, that I can see, hear and question witnesses who testify against me, and that I can call my own witnesses to testify for me. I also understand that I have the right to take the stand to testify or I have the right not to testify at trial.

- I understand that a lawyer can help me: (a) investigate my case, call witnesses, and obtain evidence; (b) research the law and present legal issues on my behalf and present defenses to the charge(s); (c) know and explain courtroom procedures and argue my case; and (d) negotiate with the Prosecuting Attorney for a reduced charge or lesser sentence. I understand that, if I give up my right to a lawyer, I will not have that assistance and will have to do these things by myself.
- I understand my right to be represented by a lawyer. I can either hire my own lawyer or ask the court to appoint one if so required. I choose to give up my right to a lawyer and I desire to represent myself.
- My mind is clear. I am not ill. I did not take any unprescribed medication, alcohol or any illegal drugs within 48 hours prior to signing this document, except _____ which does not affect my ability to understand this document.
- I understand that the maximum penalties are: \$ _____ fine or _____ days/months/year in jail or both. (If you are being prosecuted for multiple offenses, complete Form E.)

2. (INITIAL ONE) I plead: GUILTY OR NO CONTEST
 (INITIAL ONE) to the: ORIGINAL OR AMENDED charge(s)
 listed above.

3. My birth year is _____ and I am _____ years old.
 The last four digits of my social security number are XXX-XX-_____.
 I have completed _____ years of education.

I speak, read, write, and understand the English language.

I do not speak, read, write, and understand the English language. This document was interpreted as indicated below:

- a. Language Interpreted: _____
- b. Interpreter's Name (print): _____
- c. Interpreter's Signature: _____

4. INITIAL ONE: I am am not on probation or parole; I know that this plea might provide a basis for revocation of my probation or parole.

5. I offer my plea freely and voluntarily and with full understanding of all the matters set forth in the complaint. No one is pressuring or threatening me or anyone close to me to force me to plead. I am not taking the blame or pleading to protect someone else from prosecution.

6. INITIAL ONE:

I plead GUILTY because (Give a brief factual statement of what you did):

I plead NO CONTEST because I do not wish to contest the charge(s) against me.

7. I understand that the Prosecuting Attorney may provide reports or information to establish a factual basis for the plea and/or for sentencing recommendations.

8. I have reached the following agreement with the Prosecuting Attorney (give a brief statement):

INITIAL ONE:

I understand that the court is not bound by this agreement. If the court does not follow the agreement, I cannot withdraw my plea.

No one has promised me any kind of deal or favor or leniency if I plead.

9. I have full knowledge of the following: (Each box must be initialed)

- I consent to the court imposing sentence without my being present and without my making a statement. I waive (give up) the right to have a presentence report presented to the court, if required by law. I further understand that non-compliance with the court's judgment or order will result in the issuance of a bench warrant, subjecting me to being arrested and having to appear in court.
- I understand that if I am not a citizen of the United States, a conviction of this offense or these offenses may result in deportation, exclusion from admission to the United States, or denial of naturalization.
- I declare under penalty of perjury, that I am the person charged with the offense(s) listed above and affix my fingerprint hereto.

DATED this _____ day of _____, 20 ____.

Defendant's Signature: _____

Address: _____

Phone No.: _____



Defendant must affix right thumbprint
in above box with black ink

Prosecutor

- Objects
- Does not object
- Takes no position

Approved and so ordered:

Judge of the Above Entitled Court (Date)