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Current Through the 2016 Regular Session

§ 17-6-70. When forfeiture occurs

(a) A bond forfeiture occurs at the end of the court day upon the failure of appearance of a principal of any bond or recognizance given for the appearance of that person.

(b) An appearance bond shall not be forfeited unless the clerk of the court gave the surety at least 72 hours' written notice, exclusive of Saturdays, Sundays, and legal holidays, before the time of the required appearance of the principal. Notice shall not be necessary if the time for appearance is within 72 hours from the time of arrest, provided the time for appearance is stated on the bond, or where the principal is given actual notice in open court.

History

Laws 1831, Cobb's 1851 Digest, p. 861; Code 1863, § 4584; Code 1868, § 4605; Code 1873, § 4702; Ga. L. 1878-79, p. 57, § 1; Code 1882, § 4702; Penal Code 1895, § 936; Penal Code 1910, § 961; Code 1933, § 27-905; Ga. L. 1966, p. 430, § 1; Code 1981, § 17-6-70; Ga. L. 1982, p. 1224, § 2; Ga. L. 1986, p. 1588, § 2; Ga. L. 1987, p. 1342, § 2; Ga. L. 1990, p. 8, § 17; Ga. L. 1992, p. 6, § 17; Ga. L. 1992, p. 2933, § 2.

Annotations

Case Notes

JUDICIAL DECISIONS

ENFORCEMENT OF CRIMINAL BONDS OR RECOGNIZANCES. --Criminal bonds or recognizances must be enforced according to the procedure prescribed by statute; i.e., by entering a rule nisi, issuing a scire facias, and entering a judgment absolute, and not by an action on the debt. Garner v. Chambers, 75 Ga. App. 756, 44 S.E.2d 507 (1947).

Trial court's denial of a surety's motion to set aside a judgment of forfeiture absolute was properly denied since: (1) the defendant and the surety were ordered to appear before the trial court and show cause why the bond should not be forfeited; (2) neither the defendant nor the surety appeared; (3) the surety did not receive notice of the judgment until five months after the hearing; (4) the trial court followed O.C.G.A. §§ 17-6-70 and 17-6-71 to the letter; and (5) even if O.C.G.A. § 15-6-21(c) obligated the trial court to serve notice of the judgment absolute, the surety failed to exercise any diligence whatsoever, and any harm the surety suffered was self-imposed. Reliable Bonding Co. v. State, 262 Ga. App. 280, 585 S.E.2d 192 (2003).

RULE NISI COMMENCES FORFEITURE PROCEEDING. --Real beginning of a forfeiture proceeding is the issuance of the rule nisi and its signature by the judge. Perkins v. Terrell, 1 Ga. App. 250, 58 S.E. 133 (1907).

VOLUNTARY BOND MAY BE FORFEITED BY SCIRE FACIAS. Smith v. Spencer, 63 Ga. 702 (1879).

NEITHER TRIAL NOR WAIVER THEREOF IS A REQUISITE TO FORFEITURE. --It is not requisite to the forfeiture of a bail that there shall have been a committing trial or an express waiver thereof by the obligor. Bird v. Terrell, 128 Ga. 386, 57 S.E. 777 (1907).

NO NEED TO ALLEGE THAT CASE CALLED IN ORDER ON THE DOCKET. --It is not necessary that it be alleged in the scire facias that the case was called in its order on the docket, or that the state had announced ready for trial. Collins v. Smith, 7 Ga. App. 653, 67 S.E. 847 (1910).

RECORD MUST SHOW THAT THE PRINCIPAL WAS CALLED AND FAILED TO APPEAR. Park v. State, 4 Ga. 329 (1848).

IT MUST APPEAR THAT THERE WAS AN OPPORTUNITY TO PRODUCE THE PRINCIPAL. Wellmaker v. Terrell, 3 Ga. App. 791, 60 S.E. 464 (1908).

BONDING COMPANY WAS GIVEN PROPER NOTICE when a copy of the trial calendar was mailed to the company ten days prior to the defendant's scheduled trial date. Taylor v. State, 194 Ga. App. 245, 390 S.E.2d 601 (1990).

RECORD MUST SHOW A JUDGMENT OF FORFEITURE before a bail can be made liable. Spicer v. State, 9 Ga. 49 (1850).

WHEN FORFEITURE NOT PREMATURE. --When a criminal recognizance is forfeited at one term, and a scire facias is issued and made returnable to a later term and is duly served before that term, and when at the term to which it is returnable the case against the principal is called, and upon the principal's failure to appear, forfeiture absolute is taken, such forfeiture is not premature. Robinson v. Brown, 146 Ga. 257, 91 S.E. 31 (1916).

TRIGGERING DATES FOR THE APPLICABLE STATUTORY NOTICE AND HEARING PROVISIONS in bond forfeiture proceedings are not limited to calculation from the date of a principal's initial time of required appearance and failure to appear; the statute allows initiation of the notice and hearing procedures after any time of required appearance and failure to appear thereat. Griffin v. State, 194 Ga. App. 624, 391 S.E.2d 675 (1990).

COMMENCING OF FORFEITURE PROCEEDINGS AFTER TRAVERSE JURORS DISCHARGED. --When, after one panel of the traverse jurors has been discharged for the term, and all cases, including criminal cases, have been continued, the solicitor general (now district attorney) cannot proceed to forfeit a recognizance and issue scire facias returnable to the next term, and at that term have final judgment of forfeiture against the surety, although the principal does not appear at either term. Lamb v. State, 73 Ga. 587 (1884).

WHEN AND WHERE SCIRE FACIAS RETURNABLE. --Scire facias required by law to be issued upon the forfeiture of a criminal bond or recognizance must be made returnable to the term of court next following the term at which the bond or recognizance was forfeited. Garner v. Chambers, 75 Ga. App. 756, 44 S.E.2d 507 (1947).

IT IS NO DEFENSE that someone without authority has informed the obligor that the obligor has been discharged. Duffey v. Harris, 19 Ga. App. 646, 91 S.E. 1006 (1917).

PLEA OF DURESS IS NOT A DEFENSE. Spicer v. State, 9 Ga. 49 (1850).

ATTACK ON INDICTMENT AGAINST PRINCIPAL. --It avails one nothing to attack the indictment returned against the principal, unless the indictment appears to be void. Williams v. Candler, 119 Ga. 179, 45 S.E. 989 (1903).

BLOOD RELATIONSHIP BETWEEN PRINCIPAL AND DISTRICT ATTORNEY AS A DEFENSE. --Fact that the solicitor general (now district attorney) who presents the indictment of the principal to the grand jury is a blood relation of the principal, and that the solicitor general's (district attorney's) successor who takes the forfeiture nisi is a relation by marriage, presents no defense when both are out of office when the case is heard. Salter v. State, 125 Ga. 760, 54 S.E. 685 (1906).

DEFENSE THAT THE DISTRICT ATTORNEY FAILED TO ANNOUNCE READY FOR TRIAL for the state has no merit when a case is called in its regular order. Collins v. Smith, 7 Ga. App. 653, 67 S.E. 847 (1910); Duffey v. Harris, 19 Ga. App. 646, 91 S.E. 1006 (1917).

CONTINUANCE DID NOT RENDER ORIGINAL NOTICE INVALID. --Final judgment of forfeiture on a criminal appearance bond posted by the surety was proper under O.C.G.A. § 17-6-70(a) because the surety received notice of the execution hearing within the statutory time period under O.C.G.A. § 17-6-71(a) and the execution hearing took place within the required window. That the state sought and obtained a continuance from the originally-scheduled date for the execution hearing did not magically render the original notice invalid; because the original notice was valid, that notice was also not later invalidated by a subsequent notice of a new hearing date. Powell v. State, 313 Ga. App. 535, 722 S.E.2d 158 (2012).

CITED in

O.K. Bonding Co. v. Carter, 133 Ga. App. 32, 209 S.E.2d 717 (1974); Ace Bonding Co. v. State, 152 Ga. App. 477, 263 S.E.2d 256 (1979); State v. Slaughter, 246 Ga. 174, 269 S.E.2d 446 (1980); Osborne Bonding Co. v. Harris, 179 Ga. App. 13, 345 S.E.2d 116 (1986); Daza v. State, 224 Ga. App. 383, 480 S.E.2d 623 (1997); Easy Out Bonding v. State, 224 Ga. App. 706, 481 S.E.2d 834 (1997); Northeast Atlanta Bonding Co. v. State, 308 Ga. App. 573, 707 S.E.2d 921 (2011).

Research References & Practice Aids

CROSS REFERENCES. --

Limitation on power of General Assembly to relieve principals or securities upon forfeited recognizances, Ga. Const. 1983, Art. III, Sec. VI, Para. VI.

OPINIONS OF THE ATTORNEY GENERAL

RELEASE OF PRINCIPAL SERVING SENTENCE ON ANOTHER CHARGE. --District attorney lacks authority to grant release to a surety on a bail bond when the principal is serving a sentence on another charge. 1969 Op. Att'y Gen. No. 69-432.

IT IS NOT NECESSARY THAT A JURY BE PRESENT FOR THE FORFEITURE OF BONDS. 1965-66 Op. Att'y Gen. No. 66-170.

AM. JUR. 2D. --

8A Am. Jur. 2d, Bail and Recognizance, § 135 et seq.

C.J.S. --

8 C.J.S., Bail; Release and Detention Pending Proceedings, §§ 220 et seq., 240 et seq.

ALR. --

Induction of principal into military or naval service as exonerating his bail for his nonappearance, 8 ALR 371; 147 ALR 1428; 148 ALR 1400; 150 ALR 1447; 151 ALR 1462; 152 ALR 1459; 153 ALR 1431; 154 ALR 1456; 156 ALR 1457; 157 ALR 1456.

Right to recover cash bail or securities taken without authority, 44 ALR 1499; 48 ALR 1430.

Failure of judgment or order forfeiting bail, or deposit in lieu thereof, to recite arraignment and plea, 90 ALR 298.

Governor's authority to remit forfeited bail bond, 77 ALR2d 988.

Appealability of order relating to forfeiture of bail, 78 ALR2d 1180.

Bail: effect on surety's liability under bail bond of principal's subsequent incarceration in same jurisdiction, 35 ALR4th 1192.

Forfeiture of bail for breach of conditions of release other than that of appearance, 68 ALR4th 1082.

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§ 17-6-71. Execution hearing on failure of principal to appear

(a) The judge shall, at the end of the court day, upon the failure of the principal to appear, forfeit the bond, issue a bench warrant for the principal's arrest, and order an execution hearing not sooner than 120 days but not later than 150 days after such failure to appear. Notice of the execution hearing shall be served by the clerk of the court in which the bond forfeiture occurred within ten days of such failure to appear by certified mail or by electronic means as provided in Code Section 17-6-50 to the surety at the address listed on the bond or by personal service to the surety within ten days of such failure to appear at its home office or to its designated registered agent. Service shall be considered complete upon the mailing of such certified notice. Such ten-day notice shall be adhered to strictly. If notice of the execution hearing is not served as specified in this subsection, the surety shall be relieved of liability on the appearance bond.

(b) If at the execution hearing it is determined that judgment should be entered, the judge shall so order and a writ of fieri facias shall be filed in the office of the clerk of the court where such judgment is entered. The provisions of this subsection shall apply to all bail bonds, whether returnable to superior court, state court, probate court, magistrate court, or municipal court.

History

Laws 1831, Cobb's 1851 Digest, p. 862; Code 1863, § 4585; Code 1868, § 4606; Code 1873, § 4703; Code 1882, § 4703; Penal Code 1895, § 937; Penal Code 1910, § 962; Code 1933, § 27-906; Ga. L. 1943, p. 282, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 452, § 1; Code 1981, § 17-6-71; Ga. L. 1982, p. 1224, § 2; Ga. L. 1983, p. 1203, § 2; Ga. L. 1986, p. 1588, § 3; Ga. L. 1987, p. 1342, § 3; Ga. L. 1989, p. 556, § 1; Ga. L. 1990, p. 8, § 17; Ga. L. 1990, p. 2336, § 1; Ga. L. 1992, p. 2933, § 3; Ga. L. 2000, p. 1589, § 3; Ga. L. 2009, p. 688, § 2/HB 147; Ga. L. 2015, p. 1217, § 2/SB 195.

▼ Annotations

Notes

THE 2015 AMENDMENT, effective July 1, 2015, inserted ", issue a bench warrant for the principal's arrest," in the first sentence in subsection (a).

Case Notes

JUDICIAL DECISIONS

MORE THAN ONE SUBJECT MATTER IN BAIL LEGISLATION. --Ga. L. 1943, p. 282, while amending former Code 1933, §§ 27-904 and 27-906 (see O.C.G.A. §§ 17-6-31 and 17-6-71), which dealt with the subject of bail in criminal cases, by providing for service of the forfeiture proceeding and for relief of the surety after final judgment, did not contain more than one subject matter in violation of the Georgia Constitution (see Ga. Const. 1983, Art. III, Sec. V, Para. III). Fields v. Arnall, 199 Ga. 491, 34 S.E.2d 692 (1945).

PROCEDURE FOR RELIEF OF SURETY NOT VOID FOR UNCERTAINTY. --Former Code 1933, §§ 27-904 and 27-906 (see O.C.G.A. §§ 17-6-31 and 17-6-71) although failing to describe the procedure by which the surety may be relieved as therein provided for after final judgment, are not on this account void for uncertainty and indefiniteness as the statutes name the court in which the relief must be had as being the same court rendering the final judgment, and make it mandatory upon such court to relieve the surety, thus requiring the court to act in such manner as a court may properly act to effectually grant such relief, and to the extent that these sections are silent, the provisions of former Code 1933, § 3-105 (see O.C.G.A. § 9-2-3) may be resorted to. Fields v. Arnall, 199 Ga. 491, 34 S.E.2d 692 (1945).

ENFORCEMENT OF CRIMINAL BONDS OR RECOGNIZANCES. --Criminal bonds or recognizances must be enforced according to the procedure prescribed by statute; i.e., by entering a rule nisi, issuing a scire facias, and entering a judgment absolute, and not by an action on the debt. Garner v. Chambers, 75 Ga. App. 756, 44 S.E.2d 507 (1947).

Trial court's denial of a surety's motion to set aside a judgment of forfeiture absolute was properly denied since: (1) the defendant and the surety were ordered to appear before the trial court and show cause why the bond should not be forfeited; (2) neither the defendant nor the surety appeared; (3) the surety did not receive notice of the judgment until five months after the hearing; (4) the trial court followed O.C.G.A. §§ 17-6-70 and 17-6-71 to the letter; and (5) even if O.C.G.A. § 15-6-

21(c) obligated the trial court to serve notice of the judgment absolute, the surety failed to exercise any diligence whatsoever, and any harm the surety suffered was self-imposed. Reliable Bonding Co. v. State, 262 Ga. App. 280, 585 S.E.2d 192 (2003).

BONDS TO WHICH STATUTE APPLICABLE. --Whether the defendant was admitted to bail under former Code 1933, § 70-308 (see O.C.G.A. § 5-5-46), was pending decision on defendant's motion for new trial, or under former Code 1933, § 6-1005 (see O.C.G.A. § 5-6-45) was pending decision on defendant's appeal, the forfeiture procedures of former Code 1933, § 27-906 (see O.C.G.A. § 17-6-71) applied to the bond. State v. Slaughter, 246 Ga. 174, 269 S.E.2d 446 (1980).

PROCEDURE FOR FORFEITURE OF BOND GRANTED. --Forfeiture of an appeal or supersedeas bond granted under former Code 1933, § 6-1005 (see O.C.G.A. § 5-6-45) was accomplished pursuant to former Code 1933, § 27-906 (see O.C.G.A. § 17-6-71) by issuing a rule nisi and a writ of scire facias. State v. Slaughter, 246 Ga. 174, 269 S.E.2d 446 (1980).

FORFEITURE ALLOWED IN EVENT OF LESS THAN STRICT COMPLIANCE. --Trial court did not err in forfeiting the bond for the principal's failure to appear for arraignment even though the state served the surety 12 days after the principal's failure to appear; O.C.G.A. § 17-6-71 does not bar forfeiture in the event of less than strict compliance. Classic City Bonding Co. v. State, 256 Ga. App. 577, 568 S.E.2d 834 (2002).

TRIGGERING DATES FOR THE APPLICABLE STATUTORY NOTICE AND HEARING PROVISIONS in bond forfeiture proceedings are not limited to calculation from the date of a principal's initial time of required appearance and failure to appear; the statute allows initiation of the notice and hearing procedures after any time of required appearance and failure to appear thereat. Griffin v. State, 194 Ga. App. 624, 391 S.E.2d 675 (1990).

EXPIRATION DATE OF BOND. --It would be unrealistic to limit a bond to a single, specified date and not to require that the bond be continued in effect until the appeal is finally decided. State v. Slaughter, 246 Ga. 174, 269 S.E.2d 446 (1980).

TIME FOR ORDER AND NOTICE OF BOND FORFEITURE. --Trial court is not required to sign a forfeiture order on the same day as the defendant's failure to appear as a condition to issuing a judgment absolute. The "end of the court day" language in O.C.G.A. § 17-6-71(a) is directory and not a limitation of the court's authority, particularly when the surety is not harmed. Easy Out Bonding v. State, 224 Ga. App. 706, 481 S.E.2d 834 (1997); Anytime Bonding Co. v. State, 228 Ga. App. 232, 491 S.E.2d 399 (1997).

NOTICE. --Unlike O.C.G.A. § 17-6-71(a), which requires that a notice of the hearing be sent to the surety, § 17-6-71(b) does not expressly require that a notice of judgment be sent to the surety. Reliable Bonding Co. v. State, 262 Ga. App. 280, 585 S.E.2d 192 (2003).

NOTICE SUFFICIENT FOR FINAL JUDGMENT OF FORFEITURE. --Trial court did not err when the court entered a final judgment of forfeiture because the first occasion for the satisfaction of the notice requirement arose when the defendant failed for a second time to appear at a pretrial hearing after the hearing was rescheduled due to the fact that notice was not given to the surety. Furthermore, because notice was given to the surety within ten days of the second hearing, there was strict compliance with the statutory notice requirement under O.C.G.A. § 17-6-71(a). Northeast Atlanta Bonding Co. v. State, 308 Ga. App. 573, 707 S.E.2d 921 (2011).

SUBSTANTIAL COMPLIANCE WITH NOTICE REQUIREMENT. --Trial court properly denied a surety's motion to dismiss the state's motion for bond forfeiture regarding a principal who failed to appear as the state substantially complied with the notice requirements of O.C.G.A. § 17-6-71(a) even though the surety did not submit the surety's motion until 15 days after the failure to appear and did not serve the surety with notice of the motion until 22 days from the date of the principal's failure to appear. Further, the surety failed to show any harm from the alleged notice violation. Northeast Atlanta Sur. Co. v. Perdue, 294 Ga. App. 32, 668 S.E.2d 508 (2008).

DELAY IN EXECUTION HEARINGS. --Surety must show harm as well as error before the surety will be relieved of liability based on failure to conduct an execution hearing within the time prescribed by O.C.G.A. § 17-6-71. A surety's failure to keep track of the surety's indemnitors was not caused by delayed execution hearings, but was the result of the surety's erroneous assumption that the surety was relieved of liability under the bonds -- by operation of law -- 150 days after the principals' initial failure to appear in court. United States Bonds v. State, 224 Ga. App. 758, 481 S.E.2d 887 (1997); Osborne Bonding & Sur. Co. v. State, 228 Ga. App. 383, 491 S.E.2d 837 (1997).

Surety showed no harm when instead of setting a hearing after the principal failed to appear for trial, the trial court placed the case on a bench warrant calendar, then scheduled a hearing and gave the surety notice of the hearing after the principal failed to appear at the calendar call. Accordingly, it was proper to order forfeiture of the bond. Troup Bonding Co. v. State of Ga., 292 Ga. App. 5, 663 S.E.2d 734 (2008).

NATURE OF PROCEEDING. --Proceeding by a scire facias to forfeit a criminal recognizance is a civil case, distinctly separate from the criminal indictment, and ancillary thereto for one purpose only, the securing of the defendant's presence. Perkins v. Terrell, 1 Ga. App. 250, 58 S.E. 133 (1907).

Proceeding brought for forfeiture of a bond is a summary civil action accomplished pursuant to O.C.G.A. § 17-6-71. Farmer v. State, 199 Ga. App. 576, 405 S.E.2d 569 (1991).

JUDGMENT BY MOTION IS A MERE NULLITY. --Suit by scire facias or otherwise is necessary for entering a judgment on a recognizance bond; a judgment by motion in such a case is a mere nullity. Robinson v. Gordon, 85 Ga. 559, 11 S.E. 844 (1890); Braxton v. Candler, 112 Ga. 459, 37 S.E. 710 (1900).

JUDGMENT BY MOTION CAN BE ENTERED AT THE RETURN TERM following the issuance and service of the scire facias upon the principal and surety when neither files an answer nor shows a sufficient cause to the contrary. Coffin v. Dorsey, 27 Ga. App. 131, 107 S.E. 564 (1921).

WHILE THE FORFEITURE PROCEEDING IS A CIVIL CASE, this does not mean that a separate civil action has to be filed and that the trial court cannot summarily render the court's decision. State v. Slaughter, 246 Ga. 174, 269 S.E.2d 446 (1980).

SURETY'S AGREEMENT THAT LIABILITY BE DETERMINED UNDER STATUTE. --When the surety enters into a security bond in a criminal case, the surety impliedly agrees that the surety's liability may be determined under this section without the state's initiation of a separate action. State v. Slaughter, 246 Ga. 174, 269 S.E.2d 446 (1980).

SECURITIES BECOME QUASI-PARTIES TO THE PROCEEDINGS, and subject themselves to the jurisdiction of the court, so that summary judgment may be rendered on the securities' bonds. State v. Slaughter, 246 Ga. 174, 269 S.E.2d 446 (1980).

LACK OF NOTICE TO SURETY. --If the record shows on the record's face noncompliance with statutory service and notice requirements, the proceedings and resultant judgment must be set aside. Osborne Bonding Co. v. State, 163 Ga. App. 648, 295 S.E.2d 577 (1982) (construing section prior to 1982 amendment).

ISSUANCE OF SCIRE FACIAS GENERALLY. --Scire facias is to be issued from the court of the county in which the indictment issues, rather than that in which the bail resides. Cooper v. State, 17 Ga. 437 (1855).

County clerk (now the clerk of the court) issues the scire facias on the recognizance, returnable to the next term of court. If issued too late to be returned to the next term, a new scire facias should be issued returnable to the succeeding term. In such case, no new forfeiture of the bond need be entered. Wright v. State, 51 Ga. 524 (1874); Rowland v. Towns, 120 Ga. 74, 47 S.E. 581 (1904); Bird v. Terrell, 128 Ga. 386, 57 S.E. 777 (1907).

IT IS PROPER TO DIRECT THE SCIRE FACIAS TO ALL AND SINGULAR THE SHERIFFS OF THIS STATE. It may thus be directed to a sheriff of another county than that in which the indictment is found. Fryer v. State, 142 Ga. 81, 82 S.E. 497 (1914).

SERVICE OF SCIRE FACIAS AGAINST THE PRINCIPAL IS NOT A PREREQUISITE TO A JUDGMENT AGAINST THE PRINCIPAL'S BAIL. Fryer v. State, 142 Ga. 81, 82 S.E. 497 (1914).

WHAT IS INSUFFICIENT SERVICE OF SCIRE FACIAS. --Mere knowledge by the bondsman that the matter will be heard at a certain term, or the writing of letters to the bail bondsman by the clerk or other officials, will not suffice for service of scire facias under former Code 1933, § 27-906. Accredited Sur. & Cas. Co. v. Busbee, 137 Ga. App. 808, 224 S.E.2d 852 (1976).

SCIRE FACIAS UPON A CRIMINAL RECOGNIZANCE IS AMENDABLE AT THE TRIAL TERM, so as to make it conform in the description to the bond upon which it issued. Myrick v. State, 13 Ga. 190 (1853).

CONTINUANCE DID NOT RENDER ORIGINAL NOTICE INVALID. --Final judgment of forfeiture on a criminal appearance bond posted by the surety was proper because the surety received notice of the execution hearing within the statutory time period under O.C.G.A. § 17-6-71(a) and the execution hearing took place within the required window. That the state sought and obtained a continuance from the originally scheduled date for the execution hearing did not magically render the original notice invalid; because the original notice was valid, it was also not later invalidated by a subsequent notice of a new hearing date. Powell v. State, 313 Ga. App. 535, 722 S.E.2d 158 (2012).

AMENDMENT OF RULE NISI BY COUNTY COURT TO ACQUIRE JURISDICTION. --See Warren v. Slaton, 14 Ga. App. 734, 82 S.E. 307 (1914).

SCIRE FACIAS AS ISSUED MAY NOT BE AMENDED to make scire facias returnable at a different term. Warren v. Slaton, 14 Ga. App. 734, 82 S.E. 307 (1914).

WHEN AND WHERE SCIRE FACIAS RETURNABLE. --Scire facias required by law to be issued upon the forfeiture of a criminal bond or recognizance must be made returnable to the term of court next following the term at which the bond or recognizance was forfeited. Garner v. Chambers, 75 Ga. App. 756, 44 S.E.2d 507 (1947).

RESPONSE TO FORFEITURE AND ISSUANCE OF SCIRE FACIAS. --When a criminal recognizance has been duly forfeited and a scire facias has been issued and served, the principal has until the state case against the principal has been called at the next term to appear and answer the charge, and the surety has until that time to produce the principal to answer the charge against the principal. If the principal fails to appear, or the surety fails to produce the principal and shows no sufficient excuse or reason for not doing so, it is proper for the court to enter against them a judgment absolute upon the scire facias. Coffin v. Dorsey, 27 Ga. App. 131, 107 S.E. 564 (1921).

WHEN JURY TRIAL REQUIRED. --Jury trial is not required when a bond is forfeited, unless the trial court agrees that there are genuine issues of material fact to be resolved. State v. Slaughter, 246 Ga. 174, 269 S.E.2d 446 (1980).

WHEN JUDGMENT MAY BE RENDERED. --Judgment may not be rendered before the time is up for the surety to produce the principal. Russell v. State, 45 Ga. 9 (1872); Boswell v. Colquitt, 73 Ga. 63 (1884).

Judgment may be rendered at the term to which the scire facias is returnable, if no sufficient reason is shown to the contrary. Bird v. Terrell, 128 Ga. 386, 57 S.E. 777 (1907).

THERE MAY BE A JUDGMENT OF DISMISSAL AND FOR COSTS ONLY, but this does not invalidate the appearance bond of the defendant or relieve defendant's sureties. Perkins v. Terrell, 1 Ga. App. 250, 58 S.E. 133 (1907).

AMOUNT OF THE BOND NEED NOT BE SPECIFIED IN THE JUDGMENT. Spicer v. State, 9 Ga. 49 (1850).

RELIEF OF SURETY UPON SURRENDER OF PRINCIPAL AND PAYMENT OF COSTS. --Former Code 1933, §§ 27-904 and 27-906 (see O.C.G.A. §§ 17-6-31 and 17-6-71) were mandatory upon the court to relieve the surety from liability after final judgment had been entered, when the surety had surrendered the principal to the court and paid all the costs in the forfeiture proceeding. Fields v. Arnall, 199 Ga. 491, 34 S.E.2d 692 (1945).

FORFEITURE JUDGMENT NOT SET ASIDE UPON SURRENDER OF PRINCIPAL AND PAYMENT OF COSTS. --Former Code 1933, §§ 27-904 and 27-906 (see O.C.G.A. §§ 17-6-31 and 17-6-71), while making it mandatory upon the court, after rendering final judgment of forfeiture of a criminal bond, to relieve the surety from liability thereunder upon the surety surrendering the principal into court and paying all costs, did not authorize in such a case the setting aside of such final judgment, and motion praying only that such judgment be set aside because the principal had been surrendered into court and costs paid, was properly dismissed on demurrer. Fields v. Arnall, 199 Ga. 491, 34 S.E.2d 692 (1945).

SURETY NOT RELIEVED BY ARREST AND DETENTION BY ANOTHER STATE. --While ordinarily, if an act of the state prevents the appearance of the principal for trial, the surety is relieved of the liability under the bond, such rule does not apply as to an arrest and detention by another state. Walls v. State, 111 Ga. App. 337, 141 S.E.2d 606 (1965).

Fact that the principal in a bail bond, given for appearance in the courts of this state for trial of an offense committed in this state, is unable to appear because the principal is confined in jail in another state for a violation of the laws of that state, is not a defense to a scire facias issued against the principal and the principal's surety pursuant to a forfeiture of the bond. Walls v. State, 111 Ga. App. 337, 141 S.E.2d 606 (1965).

APPEAL FROM DENIAL OF SURETY IS MOTION TO DISMISS AND JUDGMENT FOR STATE. --When a surety orally objected during a bond forfeiture hearing to reinitiated bond forfeiture proceedings under O.C.G.A. § 17-6-70, and the trial court issued judgment rule absolutes in the state's favor and denied the surety's motion to dismiss, the matter was properly treated as a direct appeal. Griffin v. State, 194 Ga. App. 624, 391 S.E.2d 675 (1990).

APPELLATE JURISDICTION FROM FORFEITURE ORDER WAS PROPER. --Contrary to the state's contention, a direct appeal was authorized from an order forfeiting a surety's criminal appearance bond because the trial court entered a final judgment of forfeiture pursuant to O.C.G.A. § 17-6-71(b) after conducting an execution hearing; thus, appellate jurisdiction was proper. Anytime Bail Bonding, Inc. v. State, 299 Ga. App. 695, 683 S.E.2d 358 (2009), cert. denied, No. S10C0045, 2010 Ga. LEXIS 154 (Ga. 2010).

CITED in

Green v. Spires, 189 Ga. 719, 7 S.E.2d 246 (1940); B & J Bonding Co. v. Bell, 232 Ga. 623, 208 S.E.2d 555 (1974); Stitt v. Busbee, 136 Ga. App. 44, 220 S.E.2d 59 (1975); Dubs v. State, 139 Ga. App. 236, 228 S.E.2d 213 (1976); Ace Bonding Co. v. State, 152 Ga. App. 477, 263 S.E.2d 256 (1979); Osborne Bonding Co. v. Harris, 179 Ga. App. 13, 345 S.E.2d 116 (1986); ACE Bonding Co. v. State, 180 Ga. App. 261, 349 S.E.2d 15 (1986); Jam Bonding Co. v. State, 184 Ga. App. 246, 361 S.E.2d 238 (1987); AAA Bonding Co. v. State, 192 Ga. App. 684, 386 S.E.2d 50 (1989); Spring-U Bonding Co. v. State, 200 Ga. App. 533, 408 S.E.2d 831 (1991); Smith v. Deering, 880 F. Supp. 816 (S.D. Ga. 1994).

Research References & Practice Aids

LAW REVIEWS. --

For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 212 (1989).

OPINIONS OF THE ATTORNEY GENERAL

BOND FORFEITURES REDUCED TO JUDGMENT. --In the absence of any specific statutory authority, bond forfeitures which have been reduced to judgment by a rule absolute may not be settled or satisfied by a compromise agreement. 1989 Op. Att'y Gen. U89-14.

AM. JUR. 2D. --

8A Am. Jur. 2d, Bail and Recognizance, § 150 et seq.

C.J.S. --

8 C.J.S., Bail; Release and Detention Pending Proceedings, § 323 et seq.

ALR. --

Induction of principal into military or naval service as exonerating his bail for his nonappearance, 8 ALR 371; 147 ALR 1428; 148 ALR 1400; 150 ALR 1447; 151 ALR 1462; 152 ALR 1459; 153 ALR 1431; 154 ALR 1456; 156 ALR 1457; 157 ALR 1456.

Right to recover cash bail or securities taken without authority, 44 ALR 1499; 48 ALR 1430.

Failure of judgment or order forfeiting bail, or deposit in lieu thereof, to recite arraignment and plea, 90 ALR 298.

Appealability of order relating to forfeiture of bail, 78 ALR2d 1180.

Dismissal or vacation of indictment as terminating liability or obligation of surety or bail bond, 18 ALR3d 1354.

Bail: duration of surety's liability on pretrial bond, 32 ALR4th 504.

Bail: duration of surety's liability on posttrial bail bond, 32 ALR4th 575.

Bail: effect on liability of bail bond surety of state's delay in obtaining indictment or bringing defendant to trial, 32 ALR4th 600.

Propriety of applying cash bail to payment of fine, 42 ALR5th 547.

Hierarchy Notes:

Title Note

Hierarchy Notes:

Chapter Note

OFFICIAL CODE OF GEORGIA ANNOTATED
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§ 17-6-72. Conditions not warranting forfeiture of bond for failure to appear; remission of forfeiture

(a) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown to the satisfaction of the court by the written statement of a licensed physician that the principal on the bond was prevented from attending court due to a mental or physical disability or the principal on the bond was receiving inpatient treatment as involuntary treatment, as such terms are defined in Code Section 37-3-1.

(b) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown to the satisfaction of the court that the principal on the bond was prevented from attending because he or she was detained by reason of arrest, sentence, or confinement in a penal institution or jail in the State of Georgia, or so detained in another jurisdiction, or because he or she was involuntarily confined or detained pursuant to court order in a mental institution in the State of Georgia or in another jurisdiction. An official written notice of the holding institution in which the principal is being detained or confined shall be considered proof of the principal's detention or confinement. Such notice may be sent from the holding institution by mail or e-mail or delivered by hand or by facsimile machine. Upon the presentation of such written notice to the clerk of the proper court, the prosecuting attorney, and the sheriff or other law enforcement officer having jurisdiction over the case, along with a letter of intent to pay all costs of returning the principal to the jurisdiction of the court, such notice and letter shall serve as the surety's request for a detainer or hold to be placed on the principal. Should there be a failure to place a detainer or hold within ten business days of the surety's service of a detainer or hold request, and after such presentation of such notice and letter of intent to pay costs, the surety shall then be relieved of the liability for the appearance bond without further order of the court.

(c) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown to the satisfaction of the court that prior to the entry of the judgment on the forfeiture the principal on the bond is in the custody of the sheriff or other responsible law enforcement agency. An official written notice of the holding institution in which the principal is being detained or confined shall be considered proof of the principal's detention or confinement. Such notice may be sent from the holding institution by mail or e-mail or delivered by hand or by facsimile machine. Upon presentation of such written notice to the clerk of the proper court, the prosecuting attorney, and the sheriff or other law enforcement officer having jurisdiction over the case along with a letter of intent to pay all costs of returning the principal to the jurisdiction of the court, such notice and letter shall serve as the surety's request for a detainer or hold to be placed against the principal. Should there be a failure to place a detainer or hold within ten business days of the surety's service of a detainer or hold request, and after presentation of such notice and letter of intent to pay costs, the surety shall then be relieved of the liability for the appearance bond without further order of the court.

(c.1) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown to the satisfaction of the court that the principal on the bond was prevented from attending because he or she was deported or removed from the United States by federal authorities. Official documentation from a federal official or agency shall be considered proof of the principal's deportation or removal. Such documentation may be delivered by mail or e-mail or delivered by hand or by facsimile machine.

(d) In cases in which subsection (e) of this Code section is not applicable, on application filed within 120 days from the payment of judgment, the court shall order remission under the following conditions:

(1) Provided the bond amount has been paid within 120 days after judgment and the delay has not prevented prosecution of the principal and upon application to the court with prior notice to the prosecuting attorney of such application, said court shall direct remission of 95 percent of the bond amount remitted to the surety if the principal is produced or otherwise appears before the court that has jurisdiction of the bond within such 120 day period. Should the surety, within two years of the principal's failure to appear, locate the principal in the custody of the sheriff in the jurisdiction where the bond was made or in another jurisdiction causing the return of the principal to the jurisdiction where the bond was made, apprehend, surrender, or produce the principal, if the apprehension or surrender of the principal is substantially procured or caused by the surety, or if the location of the principal by the surety causes the adjudication of the principal in the jurisdiction in which the bond was made, the surety shall be entitled to a refund of 50 percent of the bond amount. The application for 50 percent remission shall be filed no later than 30 days following the expiration of the two-year period following the date of judgment; or

(2) Remission shall be granted upon condition of the payment of court costs and of the expenses of returning the principal to the jurisdiction by the surety.

(e)

(1) If, within 120 days from payment of the judgment, the surety surrenders the principal to the sheriff or responsible law enforcement officer, or said surrender has been denied by the sheriff or responsible law enforcement officer, or the surety locates the principal in custody in another jurisdiction, the surety shall only be required to pay costs and 5 percent of the face amount of the bond, which amount includes all surcharges. If it is shown to the satisfaction of the court, by the presentation of competent evidence from the sheriff or the holding institution, that said surrender has been made or denied or that the principal is in custody in another jurisdiction or that said surrender has been made and that 5 percent of the face amount of the bond and all costs have been tendered to the sheriff, the court shall direct that the judgment be marked satisfied and that the writ of fieri facias be canceled.

(2) (A) The court shall direct that the judgment be marked satisfied and that the writ of fieri facias be canceled, if within 120 days from payment of the judgment, the surety:

(i) Tenders an amount equal to 5 percent of the face amount of the bond and all costs to the sheriff; and

(ii) Provides, in writing, the court and the prosecuting attorney for the court that has jurisdiction of the bond with competent evidence giving probable cause to believe that the principal is located in another jurisdiction within the United States and states that it will provide for the reasonable remuneration for the rendition of the principal, as estimated by the sheriff; and

(B) The prosecuting attorney for the court that has jurisdiction of the bond:

(i) Declines, in writing, to authorize or facilitate extradition; or

(ii) Within ten business days of the notice provided pursuant to division (2)(A)(ii) of this subsection, fails to enter the appropriate extradition approval code into the computerized files maintained by the Federal Bureau of Investigation National Crime Information Center thereby indicating an unwillingness to extradite the principal.

History

Ga. L. 1965, p. 266, §§ 1-3; Code 1981, § 17-6-72; Ga. L. 1982, p. 1224, § 2; Ga. L. 1982, p. 1658, § 2; Ga. L. 1983, p. 3, § 14; Ga. L. 1983, p. 1203, § 3; Ga. L. 1985, p. 982, § 1; Ga. L. 1986, p. 1588, § 4; Ga. L. 1987, p. 1342, § 4; Ga. L. 1989, p. 556, § 2; Ga. L. 1990, p. 2336, § 2; Ga. L. 1992, p. 2933, § 4; Ga. L. 1996, p. 1233, § 3; Ga. L. 2009, p. 688, § 2A/HB 147; Ga. L. 2013, p. 1106, § 1/SB 225; Ga. L. 2015, p. 1217, § 3/SB 195.

▼ Annotations

Notes

THE 2013 AMENDMENT,

effective July 1, 2013, in subsection (a), substituted "court due to a" for "by some" near the middle, and added "or the principal on the bond was receiving inpatient treatment as involuntary treatment, as such terms are defined in Code Section 37-3-1" at the end; in the last sentence of subsections (b) and (c), substituted "ten business days of the surety's service of a detainer or hold request" for "15 days, excluding Saturdays, Sundays, and legal holidays"; in subsection (d), in the introductory paragraph, substituted "subsection (e) of this Code section" for "paragraph (3) of this subsection"; in paragraph (d)(1), substituted "principal is produced or otherwise appears before the court that has jurisdiction of the bond within such 120 day period" for "surety locates the principal in the custody of the sheriff in the jurisdiction where the bond was made or in another jurisdiction causing the return of the principal to the jurisdiction where the bond was made, apprehends, surrenders, or produces the principal, if the apprehension or surrender of the principal was substantially procured or caused by the surety, or if the location of the principal by the surety caused the adjudication of the principal in the jurisdiction in which the bond was made" in the first sentence; in paragraph (d)(2), substituted a period for "; or" at the end; redesignated former paragraph (d)(3) as paragraph (e)(1); in paragraph (e)(1), in the first sentence, substituted "from payment of the judgment" for "after judgment" near the beginning, and inserted "the" preceding "surety" in the middle, and substituted "fieri facias" for "execution, fi. fa.," in the last sentence; and added paragraph (e)(2).

THE 2015 AMENDMENT, effective July 1, 2015, near the middle of subsections (b) and (c), substituted "confinement. Such notice" for "confinement and such notice" and inserted "e-mail or"; and, in subsection (c.1), inserted "or removed from the United States" in the first sentence, and in the second sentence, substituted "Official documentation" for "An official written notice of such deportation" at the beginning, inserted "or agency" near the middle, and added "or removal. Such documentation may be delivered by mail or e-mail or delivered by hand or by facsimile machine" at the end.

Case Notes

JUDICIAL DECISIONS

CONSTITUTIONALITY. --O.C.G.A. § 17-6-72 does not violate the anti-gratuities clause of the Georgia Constitution since by apprehending absconded criminals and delivering the criminals to the state bail bonding companies perform a valuable service for the state inasmuch as the companies relieve law enforcement officers from the duty, thereby permitting officers to direct their energies to other areas of law enforcement. AAA Bail Bonding Co. v. State, 259 Ga. 411, 383 S.E.2d 125 (1989).

The 1987 and 1989 versions of O.C.G.A. § 17-6-72(f) violated the right to due process under the state and federal constitutions to the extent the statute required the surety to pay the judgment in full before being permitted to present arguments in support of remission. State v. Johnson, 261 Ga. 363, 404 S.E.2d 563 (1991).

PURPOSE. --Intention of the General Assembly in enacting Ga. L. 1965, p. 266, §§ 1-3 (see O.C.G.A. § 17-6-72) was to supply a remedy for the exigency of former Code 1933, § 27-906 (see O.C.G.A. § 17-6-71). Stitt v. Busbee, 136 Ga. App. 44, 220 S.E.2d 59 (1975).

TIME FOR FILING. --O.C.G.A. § 17-6-72 sets a limited time period for filing and measures the time from the surety's payment of judgment on the bond rather than from the apprehension of the principal. This is required even when the principal is found and returned at some time beyond that period. State v. Hightower, 199 Ga. App. 770, 406 S.E.2d 117 (1991).

Surety was not entitled to any remission of the bond payment because the surety did not apply for remission within 90 days of paying the judgment as the surety could have done inasmuch as the principal had been apprehended with the surety's help 34 days after payment. State v. Hightower, 199 Ga. App. 770, 406 S.E.2d 117 (1991).

FORFEITURE EXCEPTION IN O.C.G.A. § 17-6-72(B). --Deportation of an illegal alien to Mexico with an inability to return to the United States is not the functional equivalent of a "sentence" and resulting "detention" as contemplated by O.C.G.A. § 17-6-72(b). Vargas v. State, 243 Ga. App. 725, 534 S.E.2d 173 (2000).

CONSTRUCTION OF § 17-6-72(D)(1). --Because the purpose of O.C.G.A. § 17-6-72(d)(1) was remedial and had to therefore be construed in favor of the surety in interpreting the statute and avoiding a meaningless result, the trial court properly allowed a surety a remission of 50 percent of the bond amount since the surety filed the surety's application for the remission at any time within 30 days following the expiration of the two-year period following the date of judgment. State of Ga. v. Free At Last Bail Bonds, 285 Ga. App. 734, 647 S.E.2d 402 (2007).

LOCATION OF PRINCIPAL IN ANOTHER JURISDICTION. --Surety met the requirements of O.C.G.A. § 17-6-72(d)(1) by locating the principal in custody under an alias in another jurisdiction and placing a "hold" or detainer on the principal. Osborne Bonding & Sur. Co. v. State, 224 Ga. App. 459, 480 S.E.2d 900 (1997).

REMISSION OF FORFEITURE. --Surety who advised both the county where the bond was issued and the county where the principal was arrested of the principal's status and identity substantially procured or caused the principal's apprehension and return under the terms of the 1992 version of O.C.G.A. § 17-6-72. Osborne Bonding & Sur. Co. v. State, 224 Ga. App. 590, 481 S.E.2d 578 (1997).

Since a surety on four criminal bonds did not pay the judgments on its forfeited bonds, O.C.G.A. § 17-6-72(d)(3), allowing reduction, rather than O.C.G.A. § 17-6-72 (d)(1), allowing remission, controlled. Because the individuals were all arrested by county authorities without any involvement of the surety, the surety failed to show that the surety was entitled to a remission of the bonds. Confidential Bonding Co. v. State of Ga., 279 Ga. App. 794, 632 S.E.2d 684 (2006).

Under the plain and ordinary language of O.C.G.A. § 17-6-72(d)(1), a bondsman who failed to assist in the arrest of the principal of its bond was not entitled to a 50 percent remission of the bond, and the district attorney's consent to the bondsman's motion had no legal effect as such was not accepted by the trial court. Joe Ray Bonding Co. v. State of Ga., 284 Ga. App. 687, 644 S.E.2d 501 (2007).

CONSENT TO REDUCTION. --State's participation in a proposed consent order to allow reduction of the payment on a forfeited bond did not conclusively establish that one of the statutory conditions for reduction was met and the court was authorized to require that such fact be established by the surety through the prescribed evidence. Osborne Bonding & Sur. Co. ex rel. Castaneda v. State, 225 Ga. App. 896, 485 S.E.2d 235 (1997).

JUDGMENT OF FORFEITURE NOT SET ASIDE. --Surety, which did not receive notice of the entry of a judgment of forfeiture in time to obtain remission of the forfeited sum, under O.C.G.A. § 17-7-72(d)(10), was not entitled to have the judgment set aside as the surety received notice of the hearing at which the forfeiture was considered and chose not to appear or determine whether a judgment was entered following the hearing. Reliable Bonding Co. v. State, 262 Ga. App. 280, 585 S.E.2d 192 (2003).

FORFEITURE EXCEPTIONS DID NOT APPLY. --Bond forfeiture exceptions found in O.C.G.A. § 17-6-72(b), (c) did not apply to an alien's bond forfeiture because the alien's failure to appear at an arraignment was because the alien had been deported, not because the alien was in a penal institution or jail because of an arrest or sentence, was confined to a mental institution because of a court order, or was in the custody of a sheriff or other responsible law enforcement agency. Gomez-Ramos v. State, 297 Ga. App. 113, 676 S.E.2d 382 (2009).

CRIMINAL HISTORY CALCULATION. --Sentence imposed for defendant's 2008 bank robbery was vacated and the case was remanded for resentencing because the defendant's bond forfeiture should not factor into the calculation of the defendant's criminal history under U.S. Sentencing Guidelines Manual § 4A1.2(a) (2008) if the defendant's failure to attend the February 2008 arraignment was involuntary under O.C.G.A. § 17-6-72(b), and the district court, assuming that all Georgia bond forfeitures should be considered convictions for purposes of calculating criminal history under the sentencing guidelines pursuant to O.C.G.A. § 40-13-58, did not determine whether the defendant's failure to attend the arraignment was willful or involuntary. United States v. Daniel, 358 Fed. Appx. 79 (11th Cir. 2009).

CITED in

Stitt v. Busbee, 136 Ga. App. 44, 220 S.E.2d 59 (1975); Caffey v. State, 140 Ga. App. 275, 231 S.E.2d 77 (1976); AAA Bonding Co. v. State, 192 Ga. App. 684, 386 S.E.2d 50 (1989); Smith v. Deering, 880 F. Supp. 816 (S.D. Ga. 1994); Northeast Atlanta Bonding Co. v. State, 308 Ga. App. 573, 707 S.E.2d 921 (2011).

Research References & Practice Aids

CROSS REFERENCES. --

Corresponding provision relating to civil procedure, § 9-10-11. Conditioning of appearance bond or recognizance on appearance by accused before court at time fixed for arraignment, § 17-6-17.

LAW REVIEWS. --

For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 212 (1989).

OPINIONS OF THE ATTORNEY GENERAL

FORFEITURE DATE DEPENDS ON WORDING OF BOND. --Date of forfeiture of the appearance bond depends entirely upon the wording of each particular bond. In the event the bond indicates an appearance at a term of court, forfeiture does not occur until the end of that particular term of court. However, if the bond is returnable on a specific date, then the 60-day provision commences to run from that date. 1965-66 Op. Att'y Gen. No. 66-30.

AM. JUR. 2D. --

8A Am. Jur. 2d, Bail and Recognizance, § 180.

C.J.S. --

8 C.J.S., Bail; Release and Detention Pending Proceedings, §§ 156 et seq., 267 et seq., 342.

ALR. --

Induction of principal into military or naval service as exonerating his bail for his nonappearance, 8 ALR 371; 147 ALR 1428; 148 ALR 1400; 150 ALR 1447; 151 ALR 1462; 152 ALR 1459; 153 ALR 1431; 154 ALR 1456; 156 ALR 1457; 157 ALR 1456.

Right to recover back cash bail or securities taken without authority, 48 ALR 1430.

Bail: effect on surety's liability under bail bond of principal's subsequent incarceration in other jurisdiction, 33 ALR4th 663.

Bail: effect on surety's liability under bail bond of principal's subsequent incarceration in same jurisdiction, 35 ALR4th 1192.

Forfeiture of bail for breach of conditions of release other than that of appearance, 68 ALR4th 1082.

Hierarchy Notes:

Title Note

Hierarchy Notes:

Chapter Note

Procedure pursuant to O.C.G.A. § 16-11-129(e) – Weapons Carry Law[1]

A criminal defendant shall be asked whether he has a weapons carry license in the following situations:

- Conviction[2] of:
  - DUI Drugs or DUI Drugs and alcohol[3]
  - Carrying a weapon without a license[4]
  - Carrying a weapon or long gun in an unauthorized location[5]
  - Any misdemeanor involving the use or possession of a controlled substance
  - Misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33)
- When addressing any person hospitalized as an inpatient in any mental hospital or alcohol or drug treatment center pursuant to the guidelines set forth in O.C.G.A. § 16-11-129(b)(2)(J)
- When addressing any criminal defendant adjudicated mentally incompetent to stand trial
- When addressing any criminal defendant adjudicated not guilty by reason of insanity
- When addressing a person who is an unlawful user or addicted to any controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)
- When addressing any person who is subject to a restraining order as described in 18 U.S.C. 922(g)(8).

If the answer is yes, ask what county the license was issued in. Also ask whether it has ever been renewed, and, if so, in what county it was most recently renewed.

In the event the defendant has such a permit, you are to notify the judge of the Probate Court of the appropriate county.

---

[1] Based loosely on the Proposed Uniform Rule that is being tossed around. I have some conceptual problems with the rules because I think it that if it is adopted it will require us to go further than the law requires. Also, I have left out the requirement that the procedure apply in felony cases since we don't handle those.

[2] Conviction does not include an order of discharge and exoneration pursuant to Article 3 of Chapter 8 of Title 42. But it probably does include the period between entry of the plea and the discharge.

[3] This is based on the input of a Probate Court judge, reported on our listserve, that DUI Drugs does count as a conviction, presumably because that also puts them in one of the other categories automatically. I'm not sure I agree with that.

[4] OCGA§16-11-126

[5] OCGA§16-11-127

IN THE STATE COURT OF COBB COUNTY

STATE OF GEORGIA

STATE OF GEORGIA	)	
	)	
vs.	)	CASE NO.: _____
	)	
_____	)	
	)	
Defendant.	)	

NOTICE REGARDING FIRST OFFENDER SENTENCING
PURSUANT TO OCGA § 42-8-61

The Defendant is hereby notified of the provisions of Georgia law regarding first offender sentencing.

Future first offender treatment. If you are sentenced as a first offender in this case, you cannot receive first offender treatment under OCGA § 42-8-60 for any other case you may ever have. No one may be sentenced as a first offender more than once. **YOU SHOULD VERY CAREFULLY CONSIDER, THEREFORE, IF THIS IS THE CASE FOR WHICH YOU SEEK TO USE YOUR ONLY OPPORTUNITY FOR FIRST OFFENDER TREATMENT.** Additionally, if you have previously been sentenced as a first offender under OCGA § 42-8-60, you cannot request first offender sentencing in this case.

Eligibility. You may qualify for first offender sentencing if you have not previously been convicted of a felony or previously been sentenced as a first offender under OCGA § 42-8-60.

Court's discretion. The Court has the discretion to accept or reject any Defendant's request for first offender sentencing.

Effect, generally. A first offender sentence prevents you from having a criminal conviction, unless you violate the conditions of the sentence or commit a new offense during the period of the sentence. Upon successful completion of your sentence, the Court will enter an order discharging you from the offense(s) without an adjudication of guilt. The discharge will completely exonerate you of any criminal purpose and will not affect any of your civil rights or liberties, and you will not be considered to have a criminal conviction.

Effect on future employment or appointment. The discharge may not be used to disqualify you in any application for employment or appointment to office in either the public or private sector except that certain sex offenses may disqualify you from employment in a school or facilities offering care of the elderly, mentally ill, or developmentally disabled; and discharge pertaining to a crime involving a dishonest or immoral act may be used to disqualify you from peace officer certification or employment.

Adjudication of guilt. If you violate the terms of probation, or commit another crime during the period of probation, or should the Court determine that you are or were not eligible for first offender sentencing, **your first offender status may be revoked and the Court may enter adjudication of guilt. The Court may then resentence you up to the maximum sentence** for the offense charged, with credit for time previously served in custody or on probation.

DEFENDANT'S ELECTION REGARDING FIRST OFFENDER SENTENCING

I have read the above notice regarding first offender sentencing and hereby advise the Court:

____ I **do not request** to be sentenced in this case as a first offender under OCGA § 42-8-60.

____ I **request** to be sentenced in this case as a first offender under OCGA § 42-8-60 and I (circle one) am/am not a convicted felon and I (circle one) have/have not previously been sentenced as a first offender under OCGA § 42-8-60.

_____ _____

DEFENDANT DATE

The Court finds that the Defendant has been advised pursuant to OCGA 42-8-61.

_____

ERIC A. BREWTON, JUDGE, STATE COURT OF COBB COUNTY

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Rule 33.1. Alternatives.

(A) A defendant may plead guilty, not guilty, or in the discretion of the judge, nolo contendere. A plea of guilty or nolo contendere should be received only from the defendant personally in open court, except when the defendant is a corporation, in which case the plea may be entered by counsel or a corporate officer. In misdemeanor cases, upon the request of a defendant who has made, in writing, a knowing, intelligent and voluntary waiver of his right to be present, the court may accept a plea of guilty in absentia.

(B) A defendant may plead nolo contendere only with the consent of the judge. Such a plea should be accepted by the judge only after due consideration of the views of the parties and the interest of the public in the effective administration of justice. Procedurally, a plea of nolo contendere should be handled under these rules in a manner similar to a plea of guilty.

Annotations

Research References & Practice Aids

OPINIONS OF THE ATTORNEY GENERAL

PLEAS IN ABSENTIA BY MISDEMEANOR DEFENDANTS. -- Pleas in absentia may be made pursuant to this rule by any misdemeanor defendant and are not limited only to those who reside some distance from where the case is pending. 1986 Op. Att'y Gen. No. U86-29.

GEORGIA RULES OF COURT ANNOTATED
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Georgia Court Rules > **UNIFORM RULES FOR THE SUPERIOR COURTS** > **RULE 33. PLEADING BY DEFENDANT**

Rule 33.2. Aid of counsel -- Time for deliberation.

(A) A defendant shall not be called upon to plead before having an opportunity to retain counsel, or if defendant is eligible for appointment of counsel, until counsel has been appointed or right to counsel waived. A defendant with counsel shall not be required to enter a plea if counsel makes a reasonable request for additional time to represent the defendant's interest, or if the defendant has not had a reasonable time to consult with counsel.

(B) A defendant without counsel should not be called upon to plead to any offense without having had a reasonable time to consider his decision. When a defendant without counsel tenders a plea of guilty or nolo contendere to an offense, the **court** should not accept the plea unless it is reaffirmed by the defendant after a reasonable time for deliberation, following the advice from the **court** required in section **33**.8.

▼ Annotations

Case Notes

JUDICIAL DECISIONS

NONCOMPLIANCE WITH **RULE** DID NOT REVERSE CONVICTION. -- Since the record indicated beyond a reasonable doubt that no harm resulted in accepting defendant's plea of not guilty in the absence of defense counsel, noncompliance with this **rule** did not require reversal of the defendant's conviction. Bache v. State, 208 **Ga**. App. 591, 431 S.E.2d 412 (1993).

ABSENCE OF COUNSEL AT ARRAIGNMENT HARMLESS ERROR. -- Since a record indicated beyond a reasonable doubt that no harm resulted in accepting defendant's plea of not guilty in the absence of defense counsel, noncompliance with this **rule** did not require reversal of defendant's conviction. Coney v. State, 316 **Ga**. App. 303, 728 S.E.2d 899 (2012).

CITED in

Williams v. State, 221 **Ga**. App. 291, 470 S.E.2d 922 (1996).

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Rule 33.3. Propriety of plea discussions and plea agreements.

(A) In cases in which it appears that the interests of the public in the effective administration of criminal justice (as stated in section **33**.6) would thereby be served, the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement. The prosecuting attorney should engage in plea discussions or reach a plea agreement with the defendant only through defense counsel, except when the defendant is not eligible for or does not desire appointment of counsel and has not retained counsel.

(B) The prosecuting attorney, in reaching a plea agreement, may agree to one or more of the following, as dictated by the circumstances of the individual case:

(1) to make or not to oppose favorable recommendations as to the sentence which should be imposed if the defendant enters a plea of guilty or nolo contendere;

(2) to seek or not to oppose dismissal of the offense charged if the defendant enters a plea of guilty or nolo contendere to another offense reasonably related to defendant's conduct; or,

(3) to seek or not to oppose dismissal of other charges or potential charges against the defendant if the defendant enters a plea of guilty or nolo contendere.

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Rule 33.4. Relationship between defense counsel and client.

(A) Defense counsel should conclude a plea agreement only with the consent of the defendant, and should ensure that the decision to enter or not enter a plea of guilty or nolo contendere is ultimately made by the defendant.

(B) To aid the defendant in reaching a decision, defense counsel, after appropriate investigation, should advise the defendant of the alternatives available and of considerations deemed important by him in reaching a decision.

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Rule 33.5. Responsibilities of the trial judge.

(A) The trial judge should not participate in plea discussions.

(B) If a tentative plea agreement has been reached, upon request of the parties, the trial judge may permit the parties to disclose the tentative agreement and the reasons therefor in advance of the time for the tendering of the plea. The judge may then indicate to the prosecuting attorney and defense counsel whether the judge will likely concur in the proposed disposition if the information developed in the plea hearing or presented in the presentence report is consistent with the representations made by the parties. If the trial judge concurs but the final disposition differs from that contemplated by the plea agreement, then the judge shall state for the record what information in the presentence report or hearing contributed to the decision not to sentence in accordance with the plea agreement.

(C) When a plea of guilty or nolo contendere is tendered or received as a result of a plea agreement, the trial judge should give the agreement due consideration, but notwithstanding its existence, must reach an independent decision on whether to grant charge or sentence leniency under the principles set forth in section **33**.6 of these **rules**.

Annotations

Case Notes

JUDICIAL DECISIONS

COURT DID NOT INJECT ITSELF INTO PLEA NEGOTIATIONS by merely informing the defendant of the available options, i.e., enter a non-negotiated plea or go to trial since the plea negotiations failed to secure a plea. Brassfield v. State, 242 **Ga**. App. 747, 531 S.E.2d 148 (2000).

Trial **court** did not enter into plea negotiations and neither promised nor implied that the **court** would only give the defendant a 10-year sentence, or that the **court** would give the defendant a higher sentence if no plea was entered; thus, the trial **court** did not improperly insert itself into the plea negotiation process. Boccia v. State, 335 **Ga**. App. 687, 782 S.E.2d 792 (2016).

COURT DISCRETION REGARDING PLEA NEGOTIATION PROCESS. -- While there is no harm in the **court**'s merely communicating to defense counsel its willingness or lack of willingness to accept a particular plea agreement independently negotiated by the parties, it is clearly inappropriate for the **court** to go further by making statements which have the effect of inserting it into the negotiation process itself. Skomer v. State, 183 **Ga**. App. 308, 358 S.E.2d 886 (1987).

ENTRY OF PLEA IN DISTRICT ATTORNEY'S ABSENCE. -- Where the district attorney was not present in **court** when a plea was entered and did not consent to it, the trial **court** was without authority to accept a plea to an offense different from the one alleged in the accusation. State v. Dawson, 203 **Ga**. App. 854, 419 S.E.2d 30 (1992).

TRIAL **COURT**'S STATEMENTS RENDERING GUILTY PLEA INVOLUNTARY. -- Repeated statements by the trial **court** about its reluctance to impose a death sentence and giving 90% odds on a sentence of life without parole if permitted to impose sentence constituted participation in the plea negotiation process that rendered the resulting guilty plea involuntary. McDaniel v. State, 271 **Ga**. 552, 522 S.E.2d 648 (1999).

Trial **court** erred in denying the defendant's plea withdrawal motion based on the trial judge's act of improperly entering into the plea bargaining process and telling the defendant that the same sentence considerations would not be given if the defendant went to trial as opposed to if the defendant entered a plea. Gibson v. State, 281 **Ga**. App. 607, 636 S.E.2d 767 (2006).

CITED in

Baldwin v. State, 217 **Ga**. App. 866, 460 S.E.2d 80 (1995); Taylor v. State, 248 **Ga**. App. 715, 548 S.E.2d 414 (2001); Vanegas v. State, 249 **Ga**. App. 76, 547 S.E.2d 718 (2001); In re S.F., 312 **Ga**. App. 671, 719 S.E.2d 558 (2011); Leverette v. State, 291 **Ga**. 834, 732 S.E.2d 255 (2012).

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Rule 33.6. Consideration of plea in final disposition.

(A) It is proper for the judge to grant charge and sentence leniency to defendants who enter pleas of guilty or nolo contendere when the interests of the public in the effective administration of criminal justice are thereby served. Among the considerations which are appropriate in determining this question are:

(1) that the defendant by entering a plea has aided in ensuring the prompt and certain application of correctional measures;

(2) that the defendant has acknowledged guilt and shown a willingness to assume responsibility for conduct;

(3) that the leniency will make possible alternative correctional measures which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant from the form of conviction;

(4) that the defendant has made public trial unnecessary when there are good reasons for not having the case dealt with in a public trial;

(5) that the defendant has given or offered cooperation when such cooperation has resulted or may result in the successful prosecution of other offenders engaged in equally serious or more serious criminal conduct;

(6) that the defendant by entering a plea has aided in avoiding delay (including delay due to crowded dockets) in the disposition of other cases and thereby has increased the probability of prompt and certain application of correctional measures to other offenders.

(B) The judge should not impose upon a defendant any sentence in excess of that which would be justified by any of the rehabilitative, protective, deterrent or other purposes of the criminal law merely because the defendant has chosen to require the prosecution to prove the defendant's guilt at trial rather than to enter a plea of guilty or nolo contendere.

Annotations

Case Notes

JUDICIAL DECISIONS

FACTORS CONSIDERED IN SENTENCING. -- This **rule** does not require a trial **court** to sentence a defendant to the same sentence that would have been appropriate had a guilty plea been entered, but the **court** may determine from a consideration of the evidence and observations of the defendant that leniency is unwarranted. Johnson v. State, 224 **Ga**. App. 568, 481 S.E.2d 268 (1997); Arnold v. State, 228 **Ga**. App. 470, 491 S.E.2d 819 (1997).

VINDICTIVE SENTENCE NOT SHOWN. -- There was no showing that the defendant's sentences for enticing a minor for indecent purposes, statutory rape, and contributing to the delinquency of a minor were vindictively enhanced in violation of **Ga**. Unif. Super. Ct. R. **33**.6(B) after the defendant was allowed to revoke a guilty plea because, inter alia, the trial judge found that an enhanced sentence was warranted based on material differences between the facts presented regarding the nature of the crimes during the plea hearing and the trial; the concurrent sentences of 15 years to serve for enticing a minor for indecent purposes and statutory rape, plus 12 concurrent months for contributing to the delinquency of a minor were within statutory limits and valid. There was no absolute constitutional bar to imposing a more severe sentence upon re-sentencing. Hawes v. State, 298 **Ga**. App. 461, 680 S.E.2d 513 (2009), cert. denied, No. S09C1769, 2010 **Ga**. LEXIS 15 (**Ga**. 2010).

SENTENCE NOT IMPROPERLY ENHANCED BECAUSE DEFENDANT CHOSE TRIAL. -- Trial **court** did not impose an unjustifiably lengthy sentence merely because a defendant chose to require the prosecution to prove the defendant's guilt at trial rather than to enter a plea of guilty because the trial **court** sentenced defendant to the maximum term of 20 years in prison for kidnapping and on each of the aggravated assault counts, the trial **court** also exercised the **court**'s discretion to run all of the counts concurrently instead of consecutively; the defendant's claim that the trial **court** punished the defendant for exercising the defendant's right to a jury trial was not supported by the transcript, which revealed that the sentence imposed by the trial **court** was based on the defendant's lack of remorse. Brown v. State, 299 **Ga**. App. 782, 683 S.E.2d 874 (2009).

SENTENCE WITHIN THE STATUTORY LIMITS. -- Although the judge did not indicate the rationale for sentencing defendant to the maximum penalty for the convicted crime, there was no evidence that the judge was motivated to do so merely because defendant refused to enter a guilty plea, and the sentence was within the minimum and maximum sentences prescribed by law. West v. State, 241 **Ga**. App. 877, 528 S.E.2d 287 (2000).

After a defendant declined a plea bargain then was convicted and sentenced to longer prison terms which were to run consecutively, but were within the statutory guidelines, there was no showing of vindictiveness by the trial **court** against the defendant for having chosen to proceed to trial to require reversal pursuant to **Ga.** Unif. Super. Ct. R. **33**.6(B). Green v. State, 277 **Ga.** App. 867, 627 S.E.2d 914 (2006).

SENTENCE IMPROPER. -- Despite enumerating such as error, a five-year concurrent sentence imposed against the defendant upon a conviction of misdemeanor cruelty to children was reversed, and the case was remanded for resentencing, as it was not authorized by law. Price v. State, 281 **Ga.** App. 844, 637 S.E.2d 468 (2006).

CITED in

Lee v. State, 199 **Ga.** App. 246, 404 S.E.2d 598 (1991).

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Rule 33.7. Determining voluntariness of plea.

The judge shall not accept a plea of guilty or nolo contendere without first determining, on the record, that the plea is voluntary. By inquiry of the prosecuting attorney and defense counsel, the judge should determine whether the tendered plea is the result of prior plea discussions and a plea agreement, and, if it is, what agreement has been reached. If the prosecuting attorney has agreed to seek charge or sentence leniency which must be approved by the judge, the judge must advise the defendant personally that the recommendations of the prosecuting attorney are not binding on the judge. The judge should then address the defendant personally and determine whether any other promises or any force or threats were used to obtain the plea.

Annotations

Case Notes

JUDICIAL DECISIONS

FAILURE TO MAKE INQUIRY. -- The **court** abused its discretion in denying defendant's motion to withdraw his guilty plea where the **court** failed to follow the inquiry set forth in this section to ascertain whether defendant's guilty plea was voluntary and defendant was unrepresented. Williams v. State, 221 **Ga**. App. 291, 470 S.E.2d 922 (1996).

NO HEARING MANDATED. -- Despite the defendant's contrary contention, **Ga**. Unif. Super. Ct. R. **33**.7 did not require the trial **court** to conduct a hearing if the defendant indicated that he wanted to enter a plea, but merely set forth the procedure for determining whether a plea was voluntary; hence, even if the appellate **court** construed the defendant's apparent indecision as a coherent request to plead guilty, the defendant failed to show that the trial **court** was required to accept that plea. Hicks v. State, 281 **Ga**. App. 217, 635 S.E.2d 830 (2006).

VOLUNTARINESS OF PLEA SUPPORTED BY THE RECORD. -- Where the **court** specifically asked whether there had been any promises, force, or threats of any kind to get him to plead guilty, and defendant replied, "No, sir," the trial **court** did not err in accepting his guilty plea to one count of sale of cocaine. McCloud v. State, 272 **Ga**. App. 609, 612 S.E.2d 907 (2005).

Requirements of **Ga**. Unif. Super. Ct. R. **33**.7 were met in that the trial **court** was aware that the plea was negotiated and what agreement had been reached, the trial **court** made inquiry about promises or threats inducing the plea and was told there were none, and the trial **court** determined in colloquy with the defendant that the plea was voluntary. Brown v. State, 280 **Ga**. 658, 631 S.E.2d 687 (2006).

With regard to a defendant's convictions for voluntary manslaughter and possession of a firearm by a convicted felon after entry of a guilty plea, because the record showed that before the trial **court** accepted the plea, the state clearly advised the defendant of the maximum possible sentence and told the defendant that the recommendations of the state were not binding, and the defendant indicated that defendant understood, a reviewing **court** found no merit in the defendant's contention on appeal that the trial **court** erred by not following proper procedure in accepting the defendant's guilty plea. LaFette v. State, 285 **Ga**. App. 516, 646 S.E.2d 725 (2007).

DEFENDANT'S PLEA HELD VOLUNTARY. -- Assertions that the defendant did not knowingly waive the defendant's constitutional rights when pleading guilty, did not understand a recidivist sentence could be imposed, and was subjected to a threat that defense counsel would "abandon the case" if the defendant did not plead guilty, were belied by the transcript of the plea hearing and directly contradicted by counsel. The transcript established that the defendant's plea was freely and voluntarily entered, that the defendant understood the nature of the charges, and that the defendant was aware of the consequences of the plea. Williams v. State, 296 **Ga**. App. 270, 674 S.E.2d 115 (2009).

MOTION TO WITHDRAW PLEA PROPERLY DENIED. -- Trial **court** did not abuse its discretion in denying the defendant's post-sentence motion to withdraw a guilty plea, because the defendant failed to show the ineffective assistance of trial counsel in incorrectly assessing the strength of the state's case, and recognizing the existence of exculpatory evidence; moreover, any coercion the defendant experienced did not manifest itself from counsel's actions, but arose from the circumstances the defendant felt during the entire hearing process. Collier v. State, 281 **Ga**. App. 646, 637 S.E.2d 72 (2006).

WITHDRAWAL OF GUILTY PLEA PROPERLY DENIED. -- Because: (1) the facts of the case as narrated by the prosecutor presented a sufficient factual basis for the defendant's pleas; (2) the trial **court** informed the defendant of the consequences of the guilty pleas, waiver of certain constitutional and statutory rights, and the minimum and maximum possible sentences for the crimes charged; and (3) the defendant admitted guilt and to entering the guilty plea freely and voluntarily, the trial **court** did not abuse its discretion in denying withdrawal of said pleas. Foster v. State, 281 **Ga**. App. 584, 636 S.E.2d 759 (2006).

Because: (1) the record evidence adequately showed that the defendant voluntarily entered a non-negotiated guilty plea, with a full understanding of rights waived and the sentence which could have been imposed; (2) the trial **court** reviewed the relevant Boykin questions; and (3) the defendant had ample time to discuss the same with counsel and was not rushed or forced to enter the plea, the trial **court** did not err in denying withdrawal of said plea. Brown v. State, 285 **Ga**. App. 119, 645 S.E.2d 606 (2007).

Defendant's motion to withdraw defendant's plea was properly denied because the transcript showed compliance with the procedures required by **Ga**. Unif. Super. Ct. R. **33** in order to establish that the plea was knowing, intelligent, and voluntary; the record specifically refuted the defendant's claim that the defendant believed the defendant had "recourse" under the Alford doctrine to prove the defendant's innocence. Jackson v. State, 299 **Ga**. App. 662, 683 S.E.2d 623 (2009).

CITED in

King v. State, 270 **Ga**. 367, 509 S.E.2d 32 (1998); Graham v. State, 236 **Ga**. App. 673, 512 S.E.2d 921 (1999); Jackson v. State, 271 **Ga**. 705, 523 S.E.2d 871 (1999); Wiggins v. State, 245 **Ga**. App. 527, 538 S.E.2d 180 (2000); Vanegas v. State, 249 **Ga**. App. 76, 547 S.E.2d 718 (2001); Barlow v. State, 282 **Ga**. 232, 647 S.E.2d 46 (2007).

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Georgia Court Rules > UNIFORM RULES FOR THE SUPERIOR COURTS > RULE 33. PLEADING BY DEFENDANT

Rule 33.8. Defendant to be informed.

The judge should not accept a plea of guilty or nolo contendere from a defendant without first:

(A) Determining on the record that the defendant understands the nature of the charge(s);

(B) Informing the defendant on the record that by entering a plea of guilty or nolo contendere one waives:

(1) the right to trial by jury;

(2) the presumption of innocence;

(3) the right to confront witnesses against oneself;

(4) the right to subpoena witnesses;

(5) the right to testify and to offer other evidence;

(6) the right to assistance of counsel during trial;

(7) the right not to incriminate oneself; and that by pleading not guilty or remaining silent and not entering a plea, one obtains a jury trial;

(C) Where a defendant is not represented by counsel, informing the defendant of his right to be assisted by counsel in entering the plea, as well as at trial, and that the defendant is knowingly and voluntarily waiving that right; and

(D) Informing the defendant on the record:

(1) of the terms of any negotiated plea;

(2) that a plea of guilty may have an impact on his or her immigration status if the defendant is not a citizen of the United States;

(3) of the maximum possible sentence on the charge, including that possible from consecutive sentences and enhanced sentences where provided by law; and/or

(4) of the mandatory minimum sentence, if any, on the charge.

This information may be developed by questions from the judge, the prosecuting attorney or the defense attorney or a combination of any of these.

Annotations

Case Notes

JUDICIAL DECISIONS

RECORD MUST SHOW UNDERSTANDING AND VOLUNTARINESS. -- While the trial **court** is not necessarily required to address each issue listed in this **rule**, the record as a whole must show that the defendant understood the rights he was waiving and that the plea was entered voluntarily. Watt v. State, 204 **Ga**. App. 839, 420 S.E.2d 769 (1992), cert. denied, 204 **Ga**. App. 922, 420 S.E.2d 769 (1992).

Withdrawal of defendant's plea of guilty to an aggravated assault charge was necessary where there was no determination on the record of defendant's actual understanding of the nature of the charges against him and whether this guilty plea was motivated by his trial counsel's erroneous suggestion that he might be retried on a rape charge. McKibben v. State, 212 **Ga**. App. 866, 443 S.E.2d 640 (1994).

RECITAL OF **RULE** TO THE LETTER NOT NECESSARY. -- A defendant had properly been advised of his rights before entering a guilty plea as the state did not have to show that **Ga**. Unif. Super. Ct. R. **33**.8 was recited to the letter to rebut an attack on a guilty plea; both the defendant and defense counsel had signed a plea form

stating that the defendant had the right to testify, that the defendant did not have to testify, and that if the defendant chose not to testify, this could not be used as evidence against the defendant. Moon v. State, 286 **Ga**. App. 360, 649 S.E.2d 355 (2007).

State need not show that **Ga**. Unif. Super. Ct. R. **33**.8 was recited to the letter to rebut an attack on a guilty plea. Askew v. State, 318 **Ga**. App. 454, 734 S.E.2d 222 (2012).

NO DUTY TO PERSONALLY INFORM DEFENDANT OF ELEMENTS OF CRIME. -- The law does not require the trial **court** to personally inform the accused of the elements of the crime to which he is pleading guilty. Mock v. State, 218 **Ga**. App. 514, 462 S.E.2d 429 (1995); Thompson v. State, 240 **Ga**. App. 539, 524 S.E.2d 239 (1999).

FAILURE TO ADVISE OF EFFECT ON IMMIGRATION STATUS WAS NOT BASIS TO SET ASIDE PLEA. -- Although a trial **court** did not comply with O.C.G.A. § 17-7-93(c) and **Ga**. Unif. Super. Ct. R. **33**.8(C)(2) when the **court** failed to advise a resident alien that the alien's guilty but mentally ill plea could have an impact on immigration status, the immigration consequences were collateral consequences, the asserted fact that defendant was not a citizen was not apparent from the record, there was no record evidence that defendant was not aware of the potential immigration consequences from some other source and, therefore, defendant did not show resulting harm or manifest injustice. Smith v. State, 287 **Ga**. 391, 697 S.E.2d 177 (2010).

VOLUNTARINESS OF PLEA SUPPORTED BY RECORD. -- Although the trial **court** did not specifically address each issue found in this **rule**, the **court**'s determination of voluntariness may be found clearly supported by the record. McClendon v. State, 256 **Ga**. 480, 350 S.E.2d 235 (1986); Johns v. State, 223 **Ga**. App. 553, 479 S.E.2d 388 (1996); Raley v. State, 241 **Ga**. App. 713, 527 S.E.2d 590 (2000).

Where appellant enumerates as error the trial **court**'s failure to comply with **Rules 33**.7, **33**.8 and **33**.9, asserts that this flaw in his sentencing hearing requires reversal of the lower **court**'s **ruling**, and the record reveals that the trial **court** did not comply fully with the requirements of **Rule 33**.8, this error was harmless where appellant's counsel satisfactorily explained his constitutional rights and the consequences of his plea, and the record as a whole demonstrated that appellant's action was known and voluntary. Wood v. State, 190 **Ga**. App. 179, 378 S.E.2d 520 (1989).

When the hearing record affirmatively reflects that a defendant has consulted with counsel regarding his guilty plea, and on appeal an ineffective assistance of counsel claim is not timely asserted in regard to the plea, it may be presumed (subject to rebuttal) that counsel has adequately advised his client regarding the meaning and effect of the subsequently offered plea. And such consultation constitutes an additional factor which may be considered in determining plea validity. Scurry v. State, 194 **Ga**. App. 165, 390 S.E.2d 255 (1990).

Even though the trial **court** did not mention all of the rights defendant was waiving, it was clear that the **court** determined the voluntariness of his plea. Moore v. State, 225 **Ga**. App. 860, 485 S.E.2d 552 (1997); Manues v. State, 232 **Ga**. App. 454, 501 S.E.2d 826 (1998).

Although a better practice is to discuss every essential right a defendant is waiving by entering a plea of guilty on the record with that defendant, where the preprinted form which the defendant signed adequately established that he understood the rights he was waiving and the preprinted form defendant's counsel signed showed that he had reviewed both the preprinted form and the various ramifications of the plea with his client, the plea was held to be knowing and voluntary. Stephens v. State, 235 **Ga**. App. 756, 510 S.E.2d 575 (1998).

Even though there were inconsistencies in the two written plea agreements, it was established that defendant fully understood the maximum and minimum sentences for the counts charged despite the errors. Brown v. State, 271 **Ga**. 550, 522 S.E.2d 230 (1999).

Because the record, which included the "advice and waiver of rights" form reflected that the defendant was represented by counsel who advised him of all of his rights and of the consequences of entering the plea, the state has carried its burden of showing that the plea was knowingly and intelligently entered. Wiggins v. State, 245 **Ga**. App. 527, 538 S.E.2d 180 (2000).

The record was sufficient to show that the defendant was adequately informed of all his relevant constitutional rights and that his plea of guilty was intelligently and voluntarily entered; however, the **court** strongly urged trial judges to explicitly inform defendants, on the record, of each right which would be waived by pleading guilty, as listed in the **rule**. Navarro v. State, 247 **Ga**. App. 645, 545 S.E.2d 53 (2001).

Defendant's contention that his failure to give a verbal response while nodding his head affirmatively indicated that his plea was not knowing, intelligent, and voluntary failed because the record showed that he understood the nature of the charges against him and the consequences of the entry of a guilty plea, and that the plea was not induced by coercion. Motley v. State, 273 **Ga**. 732, 546 S.E.2d 468 (2001).

Defendant's guilty plea to murder, robbery, and concealment was knowingly, intelligently and voluntarily entered, as the trial **court** ensured that defendant understood the rights being waived by the plea, the nature of the charges against defendant, the maximum and mandatory minimum sentences on those charges, and the terms of defendant's negotiated plea. Wright v. State, 275 **Ga**. 497, 570 S.E.2d 280 (2002).

While the requirements of **Ga**. Unif. St. Ct. R. **33** are mandatory, a **court** need not specifically address each issue found in **Ga**. Unif. St. Ct. R. **33**.8; the State met its burden of showing that defendant's plea was entered voluntarily and intelligently and that defendant had an understanding of the nature of the charges against him and the consequences of the plea by showing from the record that defendant was cognizant of the rights he was waiving and of the possible consequences of his plea where the record contained a transcript of the plea hearing and a sworn statement signed by defendant, which revealed that defendant informed the trial **court** that he was not under the influence of any alcohol or drugs, that he knew the offenses he was charged with, that he understood the maximum penalties for the offenses, that he understood that the State had made no recommendation of sentence, that he understood all the various jury trial rights he would waive by pleading guilty, that no one had influenced his guilty plea by making threats or promises to him, that his plea was voluntary, that he had adequate time to consult with his lawyer, that he was satisfied with his lawyer's service, and that he was in fact guilty of the crimes charged. Voils v. State, 266 **Ga**. App. 738, 598 S.E.2d **33** (2004).

Trial **court**'s colloquy with the defendant regarding the charges against the defendant and the rights the defendant was giving up satisfied the requirements of **Ga**. Unif. Super. Ct. R. **33**.8(a), (b). Brown v. State, 280 **Ga**. 658, 631 S.E.2d 687 (2006).

Question on a motion to withdraw a guilty plea was not whether the trial **court** followed the letter of **Ga**. Unif. Super. Ct. R. **33**.8 but if the record as a whole affirmatively showed that the defendant's plea was knowing and voluntary; under the circumstances, including plea forms signed by the defendant, the defendant's appropriate and cogent answers to questions posed by the trial **court** at the plea hearing, defense counsel's testimony about the defendant's competency on the day of the pleas, and evidence that a psychologist had concluded that the defendant was competent, the trial **court** was entitled to find that the pleas were knowing and voluntary. David v. State, 279 **Ga**. App. 582, 631 S.E.2d 714 (2006).

Defendant's motion to withdraw the defendant's guilty plea was properly denied as withdrawal of the plea was not necessary to correct a manifest injustice and the state showed that the defendant's plea was knowing, intelligent, and voluntary since; (1) the defendant was not under the influence of alcohol or drugs, was 20 years old, had completed the ninth grade, and was able to read and write, (2) the defendant acknowledged that the defendant had had ample time to discuss the case with the defense counsel and was satisfied with the defense counsel's representation, (3) the sentencing **court** advised the defendant of the mandatory minimum and possible maximum sentences for each offense and enumerated all the rights the defendant waived by entering a guilty plea, (4) the sentencing **court** ascertained the factual basis for the plea, and (5) at the sentencing hearing, the defendant was given an opportunity to withdraw the plea prior to the pronouncement of the sentence. Brown v. State, 280 **Ga**. App. 767, 634 S.E.2d 875 (2006).

Defendant's plea of guilty to armed robbery and kidnapping charges was knowing and voluntary under Ga. Unif. Super. Ct. R. 33.8 based on defense counsel's testimony at the hearing on the motion to withdraw, a pre-printed form signed by the defendant, and the trial court's litany of questions asked of the defendant regarding the defendant's rights. Shuler v. State, 306 Ga. App. 820, 703 S.E.2d 382 (2010).

Record showed that guilty plea hearing showed that the defendant knowingly, intelligently, and voluntarily waived the defendant's rights as counsel testified that the defendant was advised as to the length of sentence. Arnold v. State, 292 Ga. 95, 734 S.E.2d 382 (2012).

Defendant was not entitled to appeal the defendant's guilty plea to felony murder based on alleged non-compliance with Ga. Unif. Super. Ct. R. 33.8 because the record contained a document signed by the defendant and a certification by the trial court in which the defendant waived the defendant's Boykin rights. Lewis v. State, 293 Ga. 544, 748 S.E.2d 414 (2013).

COUNSEL'S FAILURE TO ADVISE DEFENDANT OF INELIGIBILITY FOR PAROLE. -- Defendant was entitled to advice from counsel about parole ineligibility and failure to provide such required remand to determine whether such deficient performance prejudiced the defendant rendering the defendant's guilty plea involuntary. Alexander v. State, 297 Ga. 59, 772 S.E.2d 655 (2015).

State met the state's burden of showing that the defendant's plea was freely and voluntarily entered, that the defendant understood the nature of the charges, and that the defendant was aware of the consequences of a guilty plea because the possibility of a nonrecidivist sentence never was presented to or considered by the court; the defendant's response showed that the defendant understood that a nonrecidivist sentence was not a possibility; and trial counsel testified that the defendant and counsel had discussed what the term recidivism meant, and that counsel had explained to the defendant the difference between recidivist and nonrecidivist sentencing several times. Ranger v. State, 330 Ga. App. 578, 768 S.E.2d 768 (2015).

VOLUNTARINESS OF PLEA NOT SUPPORTED BY RECORD. -- Defendant's guilty plea was neither knowing, intelligent, nor voluntary in the absence of evidence that he fully understood the constitutional rights he was waiving, and counsel's informing him that he could withdraw his plea and have a jury trial did not remedy the failure of the trial court to inform him of his rights. Knight v. Sikes, 269 Ga. 814, 504 S.E.2d 686 (1998).

MOTION TO WITHDRAW PLEA PROPERLY DENIED. -- Trial court did not abuse its discretion in denying the defendant's post-sentence motion to withdraw a guilty plea, because the defendant failed to show the ineffective assistance of trial counsel in incorrectly assessing the strength of the state's case, and recognizing the existence of exculpatory evidence; moreover, any coercion the defendant experienced did not manifest itself from counsel's actions, but arose from the circumstances the defendant felt during the entire hearing process. Collier v. State, 281 Ga. App. 646, 637 S.E.2d 72 (2006).

The trial court properly denied the defendant's plea withdrawal motion, as it fully informed the defendant that the sentence it intended on imposing would be without parole, despite failing to advise the defendant of the same prior to the acceptance of the plea. Thomas v. State, 287 Ga. App. 500, 651 S.E.2d 801 (2007).

Trial court properly denied the defendant's motion to withdraw the defendant's guilty pleas because the court determined that a factual basis existed for the pleas pursuant to Ga. Unif. Super. Ct. R. 33.9 and that the defendant understood the nature of the charges to which the defendant was pleading pursuant to Ga. Unif. Super. Ct. R. 33.8(A); the plea transcript affirmatively showed that the district attorney advised the defendant that by pleading not guilty or remaining silent and not entering a plea, the defendant would obtain a jury trial and that by entering pleas of guilty, the defendant was waiving the right to a jury trial and other rights, and the defendant stated that no one had threatened or coerced the defendant in any way into entering the defendant's guilty pleas. Loyd v. State, 288 Ga. 481, 705 S.E.2d 616 (2011), cert. dismissed, 132 S. Ct. 474, 181 L. Ed. 2d 309 (U.S. 2011).

HARMLESS ERROR. -- Trial court's failure to comply fully with this rule is harmless, where the record as a whole demonstrates that appellant's plea was knowing and voluntary. King v. State, 215 Ga. App. 139, 449 S.E.2d 870 (1994).

Although defendant was not properly informed of the minimum sentence for his guilty plea to criminal attempt to commit child molestation, as required by Ga. Unif. Super. Ct. R. 33.8(C), the error was harmless because defendant testified at the plea withdrawal hearing that the correct information would not have made any difference to him. Hubbard v. State, 301 Ga. App. 388, 687 S.E.2d 589 (2009), cert. denied, No. S10C0602, 2010 Ga. LEXIS 351 (Ga. 2010).

WAIVER OF RIGHT TO COUNSEL AT PLEA HEARING. -- A judge must be present before a defendant may waive his or her constitutional right to be represented by counsel at plea hearing. Penney v. Vaughn, 870 F. Supp. 1093 (M.D. Ga. 1994).

DEFENDANT'S CLAIM THAT HE DID NOT UNDERSTAND RIGHTS WAS IMPLAUSIBLE. -- In reviewing the validity of a guilty plea, the question was not whether the judge followed the letter of Ga. Unif. Super. Ct. R. 33.8, but rather, was whether the record, as a whole, affirmatively showed that the defendant's plea was knowing and voluntary; before entering the guilty plea, defendant had been represented by appointed counsel for two and a half months, and had signed a petition swearing that the defendant, had fully discussed the case with that lawyer, making it implausible that the defendant did not understand that the attorney would have represented the defendant throughout trial, and that defendant gave up that representation by entering the guilty plea. Lee v. State, 277 Ga. App. 887, 627 S.E.2d 901 (2006).

STATE WAS NOT REQUIRED TO SHOW THAT RULE WAS RECITED TO LETTER TO REBUT ATTACK ON GUILTY PLEA. -- Denial of the defendant's motion for an out-of-time appeal was proper because the defendant failed to show that the defendant's guilty plea was not knowingly and voluntarily entered and, inter alia, the record showed that the defendant understood the rights the defendant was waiving and the possible consequences of the plea; the effect of the plea on the defendant's immigration status was a "collateral consequence" of the plea, and any failure to advise the defendant of this effect pursuant to O.C.G.A. § 17-7-93(c) was not a basis to set aside the plea. The state was not required to show that Ga. Unif. Super. Ct. R. 33.8 was recited to the letter to rebut an attack on a guilty plea. Smith v. State, 298 Ga. App. 458, 680 S.E.2d 516 (2009), aff'd, 287 Ga. 391, 697 S.E.2d 177 (2010).

DEFENDANT'S PLEA KNOWINGLY ENTERED. -- Assertions that the defendant did not knowingly waive the defendant's constitutional rights when pleading guilty, did not understand a recidivist sentence could be imposed, and was subjected to a threat that defense counsel would "abandon the case" if the defendant did not plead guilty, were belied by the transcript of the plea hearing and directly contradicted by counsel. The transcript established that the defendant's plea was freely and voluntarily entered, that the defendant understood the nature of the charges, and that the defendant was aware of the consequences of the plea. Williams v. State, 296 Ga. App. 270, 674 S.E.2d 115 (2009).

DEFENDANT NOT UNDER INFLUENCE OF DRUGS AT TIME OF PLEA. -- Defendant's guilty plea to murder was voluntarily and intelligently entered because defendant stated that defendant was not under the influence of alcohol, drugs, or any intoxicants, and the trial court specifically advised defendant of defendant's right to remain silent and thereby not incriminate oneself as required under Ga. Unif. Super. Ct. R. 33.8(B)(7). Although defendant later stated that defendant was taking Paxil and another psychotropic drug, defendant's attorneys were unaware of the drug and did not observe signs of intoxication. Jackson v. State, 285 Ga. 840, 684 S.E.2d 594 (2009).

Although defendant contended that the trial court erred by denying defendant's motion for out-of-time appeal, and argued that the language used by the prosecutor in informing defendant of defendant's rights at the guilty plea hearing failed to convey to defendant that the defendant would be waiving defendant's privilege against compulsory self-incrimination, that contention was belied by the transcript, which revealed that, at the guilty plea hearing, the assistant district attorney adequately conveyed to appellant the core principles of the privilege against compulsory self-incrimination guaranteed by the fifth amendment. To the extent defendant distinguished the "right to remain silent" as separate from the privilege against self-incrimination, that right was not one of the enumerated rights that had to be explained to a defendant during a Boykin colloquy; moreover, nothing in Ga. Unif. Super. Ct. R. 33.8, which set forth the procedure for trial courts to follow before

accepting a plea of guilty, required a defendant to be informed of that right, and thus, defendant's guilty plea was not rendered invalid for that reason. Adams v. State, 285 **Ga**. 744, 683 S.E.2d 586 (2009).

CLAIM PROCEDURALLY BARRED. -- Defendant's claim that his guilty plea should be vacated because the trial **court** had not informed him, on the record, of the mandatory minimum and maximum possible sentences for each offense for which he was convicted was rejected, as the claim was procedurally barred because defendant had neither sought to withdraw his guilty plea nor filed a direct appeal until after the expiration of the term of **court** in which his plea was accepted. Thompson v. State, 275 **Ga**. App. 566, 621 S.E.2d 475 (2005).

PLEA NOT INVALID WHEN DEFENDANT RECEIVED BARGAINED-FOR SENTENCE. -- Because a defendant received the sentence for which the defendant bargained, the defendant could not reasonably claim that the defendant was unaware of the consequences of entering the guilty plea; the plea was not invalidated because the defendant had allegedly not been advised under **Ga**. Unif. Super. Ct. R. **33**.8(c) of the maximum possible sentences and any mandatory minimum sentences. Rocha v. State, 287 **Ga**. App. 446, 651 S.E.2d 781 (2007).

Although the record did not reveal that the defendant was advised of the mandatory minimum sentences on the charges to which the defendant pled guilty, as contemplated by **Ga**. Unif. Super. Ct. R. **33**.8(C)(4), given that the defendant received the sentence the defendant bargained for, the defendant could not establish that the defendant suffered adverse consequences from not knowing the mandatory minimum sentences for armed robbery and kidnapping. Belcher v. State, 304 **Ga**. App. 645, 697 S.E.2d 300 (2010).

DEFENDANT CLEARLY INFORMED OF BOTH MAXIMUM AND MINIMUM SENTENCE. -- Because defendant was clearly informed of both the maximum and minimum sentence for the crime prior to the sentence being entered, there was no error. Johnson v. State, 242 **Ga**. App. 89, 528 S.E.2d 861 (2000).

Trial **court** did not abuse its discretion in denying the defendant's motion to withdraw a guilty plea to charges of trafficking in methamphetamine and possession of marijuana, as the defendant acknowledged, and the record showed, that the trial **court** advised the defendant of the maximum allowable sentence on both a trafficking in methamphetamine and possession of marijuana charge, as well as the mandatory minimum sentence on the former offense; further, despite the fact that the waiver of rights form the defendant signed incorrectly stated that the maximum term of imprisonment was 30 years, rather than 31 years, given the aforementioned, the mistake did not amount to a manifest injustice requiring reversal of the **court**'s refusal to allow withdrawal. Rodriguez v. State, 280 **Ga**. App. 423, 634 S.E.2d 182 (2006).

INFORMATION SUFFICIENT. -- Defendant entered a negotiated guilty plea and received the sentence for which defendant bargained, and although defendant challenged the amount of information the defendant was provided regarding consecutive and enhanced sentencing, **Ga**. Unif. Super. Ct. R. **33**.8 (C), a defendant's otherwise voluntary guilty plea was not invalidated merely because the range of punishment on the plea was never recited to the defendant, when the defendant made no claim that the defendant was disadvantaged by the omission or even that the defendant was in fact unaware of the possible sentence which could be imposed. Adams v. State, 285 **Ga**. 744, 683 S.E.2d 586 (2009).

HABEAS RELIEF PROPERLY GRANTED. -- Because the record failed to contain some affirmative evidence that either the trial **court** or trial counsel entered into a colloquy with an inmate and explained the inmate's Boykin rights, but merely provided the state's speculation that trial counsel might have possibly discussed the inmate's Boykin rights based on counsel's act of signing the plea agreement, that record failed to show that the inmate's plea was knowingly, voluntarily, and intelligently made and supported the grant of habeas relief. State v. Hemdani, 282 **Ga**. 511, 651 S.E.2d 734 (2007).

CITED In

Williams v. State, 221 **Ga**. App. 291, 470 S.E.2d 922 (1996); Johnson v. State, 227 **Ga**. App. 390, 489 S.E.2d 138 (1997); Bess v. State, 235 **Ga**. App. 372, 508 S.E.2d 664 (1998); Graham v. State, 236 **Ga**. App. 673, 512 S.E.2d 921 (1999); Wheeler v. State, 255 **Ga**. App. 249, 564 S.E.2d 765 (2002); Harland v. State, 262 **Ga**. App. 803, 586 S.E.2d 705 (2003); Skinner v. State, 297 **Ga**. App. 828, 678 S.E.2d 526 (2009); Williams v. State, 320 **Ga**. App. 243, 739 S.E.2d 727 (2013).

GEORGIA RULES OF **COURT** ANNOTATED
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The **rules** incorporate all state **rule** changes received by the publisher through August 10, 2016, for state and federal **courts**

Rule 33.9. Determining accuracy of plea.

Notwithstanding the acceptance of a plea of guilty, the judgment should not be entered upon such plea without such inquiry on the record as may satisfy the judge that there is a factual basis for the plea.

Annotations

Case Notes

JUDICIAL DECISIONS

THE PURPOSE OF THIS **RULE** is to ensure the trial **court** is satisfied that a factual basis does exist for the plea. Where the record did not show the trial **court** determined a factual basis existed for the guilty plea, the state did not meet its burden of showing affirmatively by the record that appellant's guilty plea was knowingly and voluntarily entered. Consequently, the trial **court** should have granted appellant's motion to withdraw the guilty plea. Caldwell v. State, 213 **Ga**. App. 531, 445 S.E.2d 560 (1994).

The purpose of this **rule** is to protect against someone pleading guilty when that person may know what he has done but may not know that those acts do not constitute the crime with which he is charged. State v. Evans, 265 **Ga**. 332, 454 S.E.2d 468 (1995).

WHEN APPLICABLE. -- With regard to a defendant attempting to withdraw the guilty pleas entered in 1984, **Ga**. Unif. Super. Ct. R. **33**.9 did not apply to the case since the **rule** was not effective until July 1, 1985. Johnson v. State, 287 **Ga**. App. 759, 652 S.E.2d 836 (2007).

THIS **RULE** IS MANDATORY. See State v. Evans, 265 **Ga**. 332, 454 S.E.2d 468 (1995).

MEANING OF "ON THE RECORD." -- As for the "on the record" language of this **rule**, the **court** construes it as requiring that the "inquiry" occur on the record of the plea hearing. State v. Evans, 265 **Ga**. 332, 454 S.E.2d 468 (1995).

VOLUNTARINESS OF PLEA SUPPORTED BY RECORD. -- Defendant's guilty plea to murder, robbery, and concealment was knowingly, intelligently and voluntarily entered, as the trial **court** determined that there was an adequate factual basis for the plea. Wright v. State, 275 **Ga**. 497, 570 S.E.2d 280 (2002).

Since the trial **court** determined that an adequate factual basis existed to accept defendant pleas of guilt to voluntary manslaughter and aggravated stalking in the death of a woman he knew who was stabbed 24 times, the trial **court** did not err in denying defendant's motion to withdraw his guilty plea, as the record showed that defendant knowingly and voluntarily entered his plea. Brown v. State, 261 **Ga**. App. 448, 582 S.E.2d 588 (2003).

Requirement in **Ga**. Unif. Super. Ct. R. **33**.9 that the trial **court** be satisfied there was a factual basis for the plea was met by the trial **court**'s questions to the defendant regarding the accuracy of the charges, which were read into the record, and trial counsel's statement that the evidence would show that the defendant was the one who shot the victim during the robbery. Brown v. State, 280 **Ga**. 658, 631 S.E.2d 687 (2006).

FAILURE OF RECORD TO SHOW DETERMINATION OF FACTUAL BASIS FOR PLEA. -- Where the record did not show that the trial **court** had determined that a factual basis existed for defendant's guilty plea, defendant was entitled to withdraw plea. Smith v. State, 213 **Ga**. App. 536, 445 S.E.2d 341 (1994).

On appeal by the state of an order granting an inmate habeas relief, said order was reversed, because that inmate acknowledged, in a plea form, an understanding that by pleading guilty, the inmate was waiving a constitutional right to a jury trial; moreover, although **Ga**. Unif. Super. Ct. R. **33**.9 applied in a guilty plea hearing, that **rule** did not apply to the inmate's case because it was not of a constitutional magnitude. State v. Cooper, 281 **Ga**. 63, 636 S.E.2d 493 (2006).

Defendant's complaint that there was a lack of a factual basis for the plea, in violation of **Ga**. Unif. Super. Ct. R. **33**.9, failed because the defendant's co-indictee pleaded guilty the month before the defendant's plea, and a factual basis for the plea, including the defendant's culpability, was presented to the trial **court**. Lewis v. State, 293 **Ga**. 544, 748 S.E.2d 414 (2013).

AFFIRMATIVE STATEMENT NOT REQUIRED WHERE TRANSCRIPT INDICATES **COURT**'S AWARENESS OF FACTUAL BASIS. -- It is not necessary that a trial **court** affirmatively state on the record that it is satisfied that a factual basis for a defendant's guilty plea exists when the transcript presents evidence that the trial **court** was aware of the factual basis. Golden v. State, 190 **Ga**. App. 477, 379 S.E.2d 230 (1989).

This **rule** does not require that the **Superior Court** make an express finding upon the record that a factual basis exists for a plea of guilty when there is evidence that the trial **court** is aware of the factual basis. Holman v. State, 202 **Ga**. App. 57, 413 S.E.2d 234 (1991).

EVIDENCE OF FACTUAL BASIS FOR PLEA. -- Absent evidence that the trial **court** determined that a factual basis existed for a guilty plea, the state did not meet its burden of showing affirmatively by the record that defendant's guilty plea was knowingly and voluntarily entered and, thus, defendant was entitled to withdraw his plea. Colium v. State, 211 **Ga**. App. 158, 438 S.E.2d 401 (1993).

A trial **court** need not make itself aware of evidence establishing the pleader's guilt beyond a reasonable doubt in order to satisfy itself subjectively that the pleader knows both what he has done and that those acts constitute the crime with which he is charged. King v. Hawkins, 266 **Ga**. 655, 469 S.E.2d 30 (1996).

While a specific inquiry about the factual basis of the plea is not mandated at the plea hearing, the trial **court** must make clear on the record that it relied on information contained in parts of the record other than the hearing transcript which establish the plea's factual basis. Tripp v. State, 223 **Ga**. App. 73, 476 S.E.2d 844 (1996).

Where the only factual predicates for a plea offered by the state were an application for arrest warrant from the county magistrate **court** which was not a part of the record on appeal and a statement that the state, defendant's counsel, and the judge discussed the case in chambers, such evidence was insufficient to establish the trial **court**'s awareness of the factual basis for the plea. Obi v. State, 230 **Ga**. App. 476, 496 S.E.2d 556 (1998), overruled on other grounds, Sentinel Offender Servs., LLC v. Harrelson, 286 **Ga**. 665, 690 S.E.2d 831 (2010).

The failure of the plea hearing record to show the factual basis for the defendant's guilty plea did not require that defendant be permitted to withdraw the plea since the affidavit of the victim was included in the record and provided the required factual basis. Craft v. State, 234 **Ga**. App. 305, 506 S.E.2d 663 (1998).

Record at a plea hearing adequately established the existence of a factual basis for the plea since the record indicated that the **court** heard from the prosecutor, defense counsel, and the defendant. Brown v. State, 271 **Ga**. 550, 522 S.E.2d 230 (1999).

After questioning by the judge at the hearing, defendant affirmed that, pursuant to a negotiated plea agreement, defendant was pleading guilty to possession of cocaine and possession of a firearm by a convicted felon; thus, a factual basis for the plea was established, as required by this **rule**. Thompson v. State, 240 **Ga**. App. 539, 524 S.E.2d 239 (1999).

There was a sufficient factual basis under **Ga**. Unif. Super. Ct. R. **33**.9 to support the defendant's nolo contendere plea to two counts of animal cruelty, in violation of O.C.G.A. § 16-12-4(b), based on a statement at the plea hearing from the defendant's counsel that due to the defendant's medical conditions of degenerative joint disease and diabetes, the defendant was unable to care for the large number of animals on the property alone. Johnson v. State, 282 **Ga**. App. 464, 638 S.E.2d 873 (2006).

A trial **court** was not required to grant the defendant's motion for an out-of-time appeal merely because the record did not reflect a factual basis for a guilty plea. Robertson v. State, 287 **Ga**. App. 271, 651 S.E.2d 198 (2007).

Evidence that a defendant and the defendant's spouse had a violent relationship; that shortly before the spouse's death by stabbing, the defendant told a witness the defendant was going to kill the spouse; that the defendant admitted being in the spouse's home on the day of the spouse's death; and that the defendant fled the state after the slaying, supported a finding under **Ga**. Unif. Super. Ct. R. **33**.9 of an adequate factual basis for the defendant's Alford plea to the offense of voluntary manslaughter. Tomlin v. State, 295 **Ga**. App. 369, 671 S.E.2d 865 (2008).

Given the prosecutor's summary of the evidence supporting the charges against the defendant and defense counsel's admission of culpability, the trial **court** was more than justified in determining, in accordance with **Ga**. Unif. Super. Ct. R. **33**.9, that there was a factual basis for the defendant's guilty plea, and neither a photographic line-up nor admonition form established that the trial **court** relied on inaccurate information in doing so; those documents were not inconsistent with and did not undermine the veracity of the prosecutor's statement. Belcher v. State, 304 **Ga**. App. 645, 697 S.E.2d 300 (2010).

Trial **court** did not abuse the **court**'s discretion in refusing to allow withdrawal of the defendant's guilty plea on the ground that the factual basis set forth by the state was insufficient to support the false imprisonment charge, O.C.G.A. § 16-5-41, because the state's recitation of facts reflecting that the defendant had detained the victim on a bed and inside the defendant's residence presented a sufficient factual basis for the false imprisonment charge. James v. State, 309 **Ga**. App. 721, 710 S.E.2d 905 (2011).

CONSIDERATIONS FOR DETERMINING FACTUAL BASIS FOR PLEA. -- In a habeas corpus proceeding based on defendant's claim that his plea of guilty was not knowingly and voluntarily entered, the habeas **court** could consider whether the factual basis for the plea was established by the transcript of the guilty plea hearing or by parts of the record other than the hearing; in the event the record does not adequately demonstrate the basis, the propriety of the plea must be examined in light of the manifest injustice test. Parker v. Rollins, 265 **Ga**. 354, 455 S.E.2d 838 (1995).

FACTUAL BASIS FOR PLEA ESTABLISHED. -- See McCants v. State, 222 **Ga**. App. 75, 473 S.E.2d 514 (1996); King v. State, 226 **Ga**. App. 576, 486 S.E.2d 904 (1997); Towns v. State, 228 **Ga**. App. 267, 491 S.E.2d 497 (1997); Manues v. State, 232 **Ga**. App. 454, 501 S.E.2d 826 (1998); Battle v. State, 234 **Ga**. App. 143, 505 S.E.2d 573 (1998); Romano v. State, 272 **Ga**. 238, 527 S.E.2d 184 (2000); McFadden v. State, 243 **Ga**. App. 896, 534 S.E.2d 566 (2000); Swantner v. State, 244 **Ga**. App. 372, 535 S.E.2d 343 (2000).

Trial **court** did not abuse its discretion in finding that defendant's trial counsel was not ineffective at defendant's plea hearing and in denying defendant's plea withdrawal motion. There was not a reasonable probability that, but for the attorney's failure to challenge a **Ga**. Unif. Super. Ct. R. **33**.9 violation, the result of the guilty plea hearing would have been different, because a sufficient factual basis existed from the testimony at the plea hearing and a prior bond hearing to support the plea. Bielen v. State, 265 **Ga**. App. 865, 595 S.E.2d 543 (2004).

Denial of the defendant's motion for an out-of-time appeal was proper because, contrary to the defendant's claim, the expressed desire of the defendant's wife that the state not pursue the state's case against the defendant did not resolve the case and was irrelevant to the issue of guilt; this irrelevance was underscored by the fact that it was not the wife, but the wife's daughter, who was the victim of the crime. An affidavit signed by the wife was not before the trial **court** at the time of the plea, and, in any event, given the equivocal nature of the wife's statements in the affidavit, the statements did nothing to undermine the trial **court**'s finding that there existed a factual basis for the defendant's plea. Golden v. State, 299 **Ga**. App. 407, 683 S.E.2d 618 (2009), cert. denied, No. S09C1904, 2010 **Ga**. LEXIS 56 (**Ga**.); cert. denied, 560 U.S. 941, 130 S. Ct. 3358, 176 L. Ed. 2d 1250 (2010).

Factual basis for a plea was adequate because the trial **court** questioned the defendant about the facts underlying the defendant's pleas. The prosecutor filled in information that the defendant omitted from the defendant's recitation. The trial **court** also indicated that the prosecutor previously had given a factual basis for the crimes, although it apparently was not recorded for transcription, and the **court** asked the defendant if the defendant disagreed with anything the prosecutor had said. Childs v. State, 311 **Ga**. App. 891, 717 S.E.2d 509 (2011).

SUFFICIENT PREPARATION TIME. -- The warden should have sufficient time to prepare to address the issues and defendant should have an opportunity to amend his petition to conform to the issues before the habeas **court**. King v. Hawkins, 265 **Ga**. 93, 454 S.E.2d 135 (1995).

COLLATERAL CONSEQUENCES. -- Trial **court** did not abuse its discretion by finding that a defendant's guilty plea was voluntarily, knowingly, and intelligently made as to a conviction for possession of cocaine because the trial **court** had no obligation to inform the defendant of the possible collateral consequence of the revocation of for a prior offense and, because the defendant was represented by counsel, the trial **court** properly presumed that the defendant's counsel had informed the defendant of such a collateral consequence. Lamb v. State, 278 **Ga**. App. 97, 628 S.E.2d 165 (2006).

MANIFEST INJUSTICE REVIEW. -- A reviewing **court** conducting a manifest injustice analysis is not limited to the record of the guilty plea, but may consider subsequent evidence presented to the **court**. Wharton v. Henry, 266 **Ga**. 557, 469 S.E.2d 27 (1996).

Although the plea hearing transcript reflected and the state conceded that there was no factual basis presented at the hearing for the offenses of terroristic threats and simple battery charged in the second indictment, a violation of **Ga**. Unif. Super. Ct. R. **33**.9 was examined under the analytical framework of manifest injustice under **Ga**. Unif. Super. Ct. R. **33**.12, and based on review of the record, defendant failed to demonstrate that a manifest injustice would result unless the defendant's guilty plea to the second indictment was invalidated. Therefore, because it appeared from the record that defendant's attacks on the validity of defendant's plea could all be resolved adversely to the defendant by an examination of the record, there was no error in denying defendant's motion for an out-of-time appeal. Adams v. State, 285 **Ga**. 744, 683 S.E.2d 586 (2009).

WITHDRAWAL OF GUILTY PLEA. -- Even if the state failed to provide sufficient facts on which to accept defendant's guilty plea, the inquiry did not stop there where defendant had already sentenced when he sought to withdraw his plea; defendant was required to also show that the trial **court**'s acceptance of the plea caused him to suffer a manifest injustice, and where no such showing was made and where defendant made no contentions supporting his argument that the record contained an insufficient factual basis to support his plea, defendant waived his argument and his appeal failed. Ramsey v. State, 267 **Ga**. App. 452, 600 S.E.2d 399 (2004).

Trial **court** did not abuse its discretion in denying the defendant's post-sentence motion to withdraw a guilty plea, because the defendant failed to show the ineffective assistance of trial counsel in incorrectly assessing the strength of the state's case, and recognizing the existence of exculpatory evidence; moreover, any coercion the defendant experienced did not manifest itself from counsel's actions, but arose from the circumstances the defendant felt during the entire hearing process. Collier v. State, 281 **Ga**. App. 646, 637 S.E.2d 72 (2006).

Because: (1) the facts of the case as narrated by the prosecutor presented a sufficient factual basis for the defendant's pleas; (2) the trial **court** informed the defendant of the consequences of the guilty pleas, waiver of certain constitutional and statutory rights, and the minimum and maximum possible sentences for the crimes charged; and (3) the defendant admitted guilt and to entering the guilty plea freely and voluntarily, the trial **court** did not abuse its discretion in denying withdrawal of said pleas. Foster v. State, 281 **Ga**. App. 584, 636 S.E.2d 759 (2006).

Trial **court** properly denied the defendant's motion to withdraw the defendant's guilty pleas because the **court** determined that a factual basis existed for the pleas pursuant to **Ga**. Unif. Super. Ct. R. **33**.9 and that the defendant understood the nature of the charges to which the defendant was pleading pursuant to **Ga**. Unif. Super. Ct. R. **33**.8(A); the plea transcript affirmatively showed that the district attorney advised the defendant that by pleading not guilty or remaining silent and not entering a plea, the defendant would obtain a jury trial and that by entering pleas of guilty, the defendant was waiving the right to a jury trial and other rights, and the defendant stated that no one had threatened or coerced the defendant in any way into entering the defendant's guilty pleas. Loyd v. State, 288 **Ga**. 481, 705 S.E.2d 616 (2011), cert. dismissed, 132 S. Ct. 474, 181 L. Ed. 2d 309 (U.S. 2011).

Trial **court** did not err in denying the defendant's motion to withdraw a guilty plea to aggravated assault because the victim suffered a burning sensation in the victim's eyes and face, was in a great deal of pain, and was temporarily blinded after the defendant sprayed the victim with mace. Weaver v. State, 325 **Ga**. App. 51, 752 S.E.2d 128 (2013).

RULE INAPPLICABLE IN HABEAS CORPUS PROCEEDING. -- Petitioner was not entitled to a grant of habeas relief based upon the trial **court**'s failure to establish on the record a factual basis for the petitioner's guilty plea; although **Ga**. Unif. Super. Ct. R. **33**.9 applies in a guilty plea hearing, that **rule** does not apply in a habeas corpus proceeding because it is not of constitutional magnitude. Brown v. State, 290 **Ga**. 50, 718 S.E.2d 1 (2011).

CITED in

Brownlee v. City of Atlanta, 212 **Ga**. App. 174, 441 S.E.2d 492 (1994); Henry v. State, 269 **Ga**. 851, 507 S.E.2d 419 (1998); Bess v. State, 235 **Ga**. App. 372, 508 S.E.2d 664 (1998); Motley v. State, 273 **Ga**. 732, 546 S.E.2d 468 (2001); Wheeler v. State, 255 **Ga**. App. 249, 564 S.E.2d 765 (2002); Hower v. State, 331 **Ga**. App. 567, 769 S.E.2d 402 (2015).

Research References & Practice Aids

LAW REVIEWS. --

For article, "The Misunderstood Alford Plea: A Primer," see 19 **Ga**. St. B.J. 8 (2013).

GEORGIA RULES OF **COURT** ANNOTATED
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The **rules** incorporate all state **rule** changes received by the publisher through August 10, 2016, for state and federal **courts**

Georgia Court Rules > UNIFORM RULES FOR THE SUPERIOR COURTS > RULE 33. PLEADING BY DEFENDANT

Rule 33.10. Stating intention to reject the plea agreement.

If the trial **court** intends to reject the plea agreement, the trial **court** shall, on the record, inform the defendant personally that (1) the trial **court** is not bound by any plea agreement; (2) the trial **court** intends to reject the plea agreement presently before it; (3) the disposition of the present case may be less favorable to the defendant than that contemplated by the plea agreement; and (4) that the defendant may then withdraw his or her guilty plea as a matter of right. If the plea is not then withdrawn, sentence may be pronounced.

▼ Annotations

Case Notes

JUDICIAL DECISIONS

EXPLICIT AND SPECIFIC EXPLANATION OF RIGHT REQUIRED. -- The **court**'s error in failing to explicitly inform the defendant that she had the right to withdraw her guilty plea was reversible error, even though her attorney had informed her of her right to withdraw her plea if the **court** rejected her plea agreement. Additionally, the **court** allowed the defendant to present mitigation evidence after indicating that it would reject the plea agreement but then refused to allow the defendant to withdraw her plea after imposing the maximum sentence. Lawrence v. State, 234 **Ga**. App. 603, 507 S.E.2d 490 (1998); Smith v. State, 239 **Ga**. App. 776, 521 S.E.2d 911 (1999).

The trial **court** committed reversible error where it failed to follow the bright line test, as required by State v. Germany and **Ga**. Unif. Super. Ct. R. **33**.10, by failing to inform the defendant personally that: (1) the trial **court** was not bound by any plea agreement encompassing her plea to theft by taking, (2) the trial **court** intended to reject the plea agreement presently before it, (3) the disposition of the present case might be less favorable to the defendant than that contemplated by the plea agreement, and (4) that the defendant had a right to then withdraw his or her guilty plea. Mulkey v. State, 265 **Ga**. App. 631, 595 S.E.2d 330 (2004).

THE TRIAL **COURT** WAS NOT REQUIRED TO COMPLY WITH THE MANDATES OF THIS **RULE** because there was no plea agreement to reject since defendant entered a non-negotiated plea. Brassfield v. State, 242 **Ga**. App. 747, 531 S.E.2d 148 (2000).

The trial **court** accepted the state's plea recommendation and thus was not obligated to comply with USCR **33**.10. Lewis v. State, 266 **Ga**. App. 812, 598 S.E.2d 90 (2004).

Since the trial **court** did not reject the defendant's negotiated plea agreement, pursuant to **Ga**. Unif. Super. Ct. R. **33**.10 and **33**.11(D), the trial **court** was not required to inform defendant of the right to withdraw the plea before the sentence was pronounced. McMillian v. State, 266 **Ga**. App. 749, 598 S.E.2d 371 (2004).

ACCEPTANCE OF PLEA. -- Defendant's claim on his appeal of the denial of his motion to file an out-of-time appeal that the trial **court** erred during his plea proceedings that the trial **court** failed to inform him that he could withdraw his plea prior to the pronouncement of sentence was procedurally barred, as the term of **court** during which he was sentenced had long since expired and the trial **court** had not, as required, rejected his plea but had accepted it. Thompson v. State, 275 **Ga**. App. 566, 621 S.E.2d 475 (2005).

As a defendant was sentenced pursuant to a negotiated plea agreement, the trial **court** had no duty under **Ga**. Unif. Super. Ct. R. **33**.10 to advise the defendant of the right to withdraw a guilty plea; such a claim of error could not form the basis to grant the defendant's motion for an out-of-time appeal. Ethridge v. State, 283 **Ga**. App. 289, 641 S.E.2d 282 (2007).

RULE INAPPLICABLE. -- Because nothing in the transcript of the plea hearing indicated that the defendant entered a negotiated plea, but rather the plea was open-ended, the trial **court** was not required to comply with **Ga**. Unif. Super. Ct. R. **33**.10; hence, a lack of compliance with the **rule** could not serve as a basis to allow the withdrawal of the plea. Manley v. State, 287 **Ga**. App. 358, 651 S.E.2d 453 (2007), cert. denied, 2008 **Ga**. LEXIS 94 (**Ga**. 2008).

NO RIGHT TO ENTER GUILTY PLEA. -- Trial **court** properly rejected a defendant's tendered guilty plea to charges of felony murder and armed robbery, and entered a nolle prosequi without the defendant's consent as to those charges, because **Ga**. Unif. Super. Ct. R. 30.2, **33**.1, and **33**.10 did not confer on defendants the right to enter a guilty plea. Sanders v. State, 280 **Ga**. 780, 631 S.E.2d 344 (2006).

WITHDRAWAL OF PLEA IMPROPERLY DENIED. -- Trial **court** improperly denied the defendant's motion to withdraw the defendant's guilty plea because the **court** did not provide any notice to the defendant of the **court**'s intent to reject the concurrent sentencing recommendation for the offenses of robbery by intimidation and

possession of a firearm by a convicted felon, and instead sentenced the defendant to consecutive sentences for those offenses. Brown v. State, 324 **Ga**. App. 194, 749 S.E.2d 781 (2013).

STATE HAS NO AUTHORITY TO WITHDRAW NEGOTIATED PLEA AGREEMENT. -- While a defendant can withdraw a negotiated plea if the trial **court** decides to impose a longer sentence than that recommended by the state, **Ga**. Unif. Super. Ct. R. **33**.10, there is no comparable authority allowing for the state to withdraw the state's offer if the **court** indicates the **court** intends to sentence the defendant to less time than recommended, and it is not for the **court** to judicially create such a right out of whole cloth. Kelley v. State, 331 **Ga**. App. 758, 771 S.E.2d 441 (2015).

LESSER SENTENCE THAN RECOMMENDED ALLOWED. -- Trial **court** erred by granting the state's motion to set aside an illegal judgment because the trial **court** had the authority to sentence the defendant to a lesser sentence than that recommended by the state as part of a negotiated plea to a reduced charge. Kelley v. State, 331 **Ga**. App. 758, 771 S.E.2d 441 (2015).

CITED in

Leverette v. State, 291 **Ga**. 834, 732 S.E.2d 255 (2012).

Research References & Practice Aids

LAW REVIEWS. --

For annual survey of criminal law, see 56 Mercer L. Rev. 153 (2004). For survey article on death penalty law, see 59 Mercer L. Rev. 123 (2007).

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Georgia Court Rules > UNIFORM STATE COURT RULES > RULE 33. PLEADING BY DEFENDANT

Rule 33.11. Record of proceedings.

A record of the proceedings at which a defendant enters a plea of guilty or nolo contendere shall be made and preserved. The record should include:

(A) the inquiry into the voluntariness of the plea (as required in section 33.7);

(B) the advice to the defendant (as required in section 33.8);

(C) the inquiry into the accuracy of the plea (as required in section 33.9), and, if applicable;

(D) the notice to the defendant that the trial court intends to reject the plea agreement and the defendant's right to withdraw the guilty plea before sentence is pronounced.

Annotations

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JUDICIAL DECISIONS

A VERBATIM RECORD OF THE GUILTY PLEA HEARING IS REQUIRED in state court when a defendant is sentenced to a term of imprisonment. King v. State, 270 Ga. 367, 509 S.E.2d 32 (1998).

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Rule 33.12. Plea withdrawal.

(A) After sentence is pronounced, the judge should allow the defendant to withdraw his plea of guilty or nolo contendere whenever the defendant, upon a timely motion for withdrawal, proves that withdrawal is necessary to correct a manifest injustice.

(B) In the absence of a showing that withdrawal is necessary to correct a manifest injustice, a defendant may not withdraw a plea of guilty or nolo contendere as a matter of right once sentence has been pronounced by the judge.

Annotations

Case Notes

JUDICIAL DECISIONS

PLEA WITHDRAWAL TO PREVENT MANIFEST INJUSTICE. -- Trial **court** should have allowed defendant to withdraw his guilty plea to prevent a manifest injustice, where he had two attorneys who had been disbarred, and he was not present at two conferences discussing the complexities of his guilty plea--in particular, whether the judge or a jury would impose sentence. Browner v. State, 257 **Ga**. 321, 357 S.E.2d 559 (1987).

Defendant should have been allowed to withdraw the guilty plea since there was a substantial likelihood that defendant was unduly influenced to plead guilty by the judge's comments. Cherry v. State, 240 **Ga**. App. 41, 522 S.E.2d 540 (1999).

Unless defendant made a showing that it was necessary for the **court** to allow the withdrawal of defendant's plea to correct a manifest injustice, a defendant may not withdraw the plea as a matter of right after the sentence has been pronounced. Johnson v. State, 242 **Ga**. App. 89, 528 S.E.2d 861 (2000).

MANIFEST INJUSTICE NOT SHOWN. -- There was no manifest injustice in the trial **court**'s denial of the defendant's motion to withdraw his guilty plea where the record established that the plea was entered into voluntarily with full understanding and former counsel testified that the defendant expressed his intent to withdraw his plea even before it was entered. Grimsley v. State, 233 **Ga**. App. 781, 505 S.E.2d 522 (1998).

The trial **court** did not abuse its discretion in refusing to allow defendant to withdraw a guilty plea on the basis that defense attorney erroneously advised defendant that he could not prevail on a self-defense claim. Cherry v. State, 240 **Ga**. App. 41, 522 S.E.2d 540 (1999).

Defendant could not show that a manifest injustice occurred, first, because he signed a petition to enter his plea indicating, among other things, that he understood the possible punishment and sentence he could receive and that he had knowledge of the maximum sentences that could be imposed upon him and, second, before sentence was pronounced, he was entitled to withdraw his plea as a matter of right pursuant to O.C.G.A. § 17-7-93(b). Pike v. State, 245 **Ga**. App. 518, 538 S.E.2d 172 (2000).

Defendant was not entitled to withdraw defendant's guilty plea under the manifest injustice standard of **Ga**. Unif. Super. Ct. R. **33**.12, where defendant asserted that defendant was unaware of the mandatory sentence of life in prison for felony murder and that counsel coerced the plea; the record indicated that defense counsel informed defendant on multiple occasions that the mandatory sentence for felony murder was life in prison, and defendant stated on the record that defendant's plea was voluntary. Shaheed v. State, 276 **Ga**. 291, 578 S.E.2d 119 (2003).

Trial **court** did not abuse its discretion in denying defendant's motion to withdraw defendant's guilty plea to child molestation; rather than indicating that defendant was impaired by medication, defendant indicated that the medicine did not affect defendant's ability to understand the proceedings. Brown v. State, 259 **Ga**. App. 576, 578 S.E.2d 188 (2003).

Trial **court** did not abuse its discretion in denying defendant's motion to withdraw defendant's guilty plea as not knowingly and voluntarily entered with effective assistance of counsel as defendant's trial counsel testified that counsel advised defendant that defendant would have to serve 90 percent of defendant's 17-year sentence for voluntary manslaughter before being eligible for parole; the trial **court** found that the statements of defendant and defendant's mother to the contrary were not credible. Thompson v. State, 263 **Ga**. App. 54, 587 S.E.2d 208 (2003).

Trial **court** did not abuse its discretion in finding that defendant's trial counsel was not ineffective at defendant's plea hearing and in denying defendant's plea withdrawal motion. There was not a reasonable probability that, but for the attorney's failure to challenge a **Ga**. Unif. Super. Ct. R. **33**.9 violation, the result of the

guilty plea hearing would have been different, because a sufficient factual basis existed from the testimony at the plea hearing and a prior bond hearing to support the plea. Bielen v. State, 265 Ga. App. 865, 595 S.E.2d 543 (2004).

Even if the State failed to provide sufficient facts on which to accept defendant's guilty plea, the inquiry did not stop there where defendant had already sentenced when he sought to withdraw his plea; defendant was required to also show that the trial **court**'s acceptance of the plea caused him to suffer a manifest injustice, and where no such showing was made and where defendant made no contentions supporting his argument that the record contained an insufficient factual basis to support his plea, defendant waived his argument and his appeal failed. Ramsey v. State, 267 Ga. App. 452, 600 S.E.2d 399 (2004).

Defendant's non-negotiated guilty pleas were not invalidated by the fact that the defendant's attorney did not specifically inform the defendant of that which should have been self-evident: that the defendant did not have the right to withdraw the defendant's guilty plea based only on the defendant's dissatisfaction with the sentence; the trial **court** explained to the defendant that the defendant's entry of a non-negotiated guilty plea authorized the imposition of sentences within the range of "5 to 40 to life." McCroskey v. State, 280 Ga. App. 638, 634 S.E.2d 824 (2006).

Although the plea hearing transcript reflected and the state conceded that there was no factual basis presented at the hearing for the offenses of terroristic threats and simple battery charged in the second indictment, a violation of Ga. Unif. Super. Ct. R. 33.9 was examined under the analytical framework of manifest injustice under Ga. Unif. Super. Ct. R. 33.12, and based on review of the record, defendant failed to demonstrate that a manifest injustice would result unless the defendant's guilty plea to the second indictment was invalidated. Therefore, because it appeared from the record that defendant's attacks on the validity of defendant's plea could all be resolved adversely to the defendant by an examination of the record, there was no error in denying defendant's motion for an out-of-time appeal. Adams v. State, 285 Ga. 744, 683 S.E.2d 586 (2009).

MOTION TO WITHDRAW GUILTY PLEA DENIED. -- Trial **court** did not abuse its discretion in disregarding defendant's testimony that his appointed attorney misled him and in refusing to allow him to withdraw his plea because (1) defendant's counsel was not ineffective because (a) counsel stated that defendant determined that the plea and the resulting sentence to be served concurrently with what he already had was better than going to trial; (b) counsel expressly stated that he made no threats or promises to induce his client's plea; and (c) counsel testified that before completing the plea, the attorney continuously advised defendant of the status of the witnesses against him; (2) defendant's plea was voluntary and knowingly entered because defendant understood the charges, the sentence, and plea consequences; and (3) there was a factual basis for the plea. Hill v. State, 267 Ga. App. 357, 599 S.E.2d 307 (2004).

Because: (1) the facts of the case as narrated by the prosecutor presented a sufficient factual basis for the defendant's pleas; (2) the trial **court** informed the defendant of the consequences of the guilty pleas, waiver of certain constitutional and statutory rights, and the minimum and maximum possible sentences for the crimes charged; and (3) the defendant admitted guilt and to entering the guilty plea freely and voluntarily, the trial **court** did not abuse its discretion in denying withdrawal of said pleas. Foster v. State, 281 Ga. App. 584, 636 S.E.2d 759 (2006).

Trial **court** properly denied defendant's request to withdraw defendant's guilty plea to 24 counts of sexual exploitation of a child since defendant failed to establish that a manifest injustice occurred in that the record revealed that after accepting defendant's plea but prior to sentencing, the trial **court** asked defendant if defendant desired to withdraw the plea, to which defendant responded in the negative. After the sentencing, the trial **court** informed defendant both of the right to appeal the sentence to the sentence review panel and to challenge the conviction by writ of habeas corpus. Bennett v. State, 292 Ga. App. 382, 665 S.E.2d 365 (2008).

Defendant claimed a guilty plea was not freely, voluntarily, and knowingly entered. The defendant's motion to withdraw the plea was properly denied as: (1) the state met the state's burden to prove the plea was voluntary and intelligent by showing from a transcript of the plea hearing that the defendant knew the rights the defendant was waiving and the possible consequences of the defendant's plea; and (2) conflicts between the defendant's testimony at the withdrawal hearing and the defendant's testimony at the plea hearing were matters of witness credibility, which the trial **court** was authorized to decide against the defendant. Further, the fact that the defendant's family urged the defendent to take a plea for a sentence less than that possible following a conviction by a jury did not constitute duress that invalidated the plea. Matthews v. State, 295 Ga. App. 752, 673 S.E.2d 113 (2009).

Denial of the defendant's motion to withdraw a guilty plea pursuant to Ga. Unif. Super. Ct. R. 33.12(A) was proper because the defendant failed to establish that but for defense counsel's failure to inform the defendant of the repeal of former O.C.G.A. § 17-10-6, which allowed for a sentence review, the defendant would have insisted on a trial; further, the defendant was aware of the maximum sentence, and the availability of a sentence review did not alter the possibility that the defendant could have potentially been required to serve up to 66 years in prison. The record supported a finding that the defendant entered the plea knowingly, intelligently, and voluntarily. Vaughn v. State, 298 Ga. App. 669, 680 S.E.2d 680 (2009).

Denial of the defendant's motion to withdraw defendant's guilty plea to possession of cocaine with intent to distribute was appropriate because the defendant did not prove that the defendant received the ineffective assistance of counsel. The defendant never testified that, had the defendant proceeded to trial, the defendant wished to take the stand despite the defendant's extensive criminal history, nor did the defendant explain how the defendant or the defendant's lawyer could have made more effective use of a photograph had the defendant had more time to study the photograph prior to trial. Sims v. State, 299 Ga. App. 698, 683 S.E.2d 668 (2009).

Trial **court** properly denied the defendant's motion to withdraw the defendant's guilty pleas because the defendant failed to show that withdrawal of the defendant's pleas was necessary to correct a manifest injustice, and the trial **court** determined that a factual basis existed for the pleas pursuant to Ga. Unif. Super. Ct. R. 33.9 and that the defendant understood the nature of the charges to which the defendant was pleading pursuant to Ga. Unif. Super. Ct. R. 33.8(A); the plea transcript affirmatively showed that the district attorney advised the defendant that by pleading not guilty or remaining silent and not entering a plea, the defendant would obtain a jury trial and that by entering pleas of guilty, the defendant was waiving the right to a jury trial and other rights, and the defendant stated that no one had threatened or coerced the defendant in any way into entering the defendant's guilty pleas. Loyd v. State, 288 Ga. 481, 705 S.E.2d 616 (2011), cert. dismissed, 132 S. Ct. 474, 181 L. Ed. 2d 309 (U.S. 2011).

There was no abuse of the trial **court**'s discretion in denying the motion to withdraw the guilty plea because, although the defendant felt pressured by the defendant's family to plead guilty, the defendant's guilty plea was freely and voluntarily entered as the defendant testified at the plea hearing that the defendant knew the defendant could choose a jury trial; no threats or promises had been made to influence the defendant's plea, other than the state's sentencing recommendation; the defendant was, in fact, guilty of murdering the defendant's eldest son, and of the criminal attempt on the younger son's life; and the defendant wanted to plead guilty. DeToma v. State, 296 Ga. 90, 765 S.E.2d 596 (2014).

OUT-OF-TERM MOTION TO WITHDRAW PLEA PROPERLY DENIED. -- When the term of **court** had expired in which a defendant was sentenced pursuant to a guilty plea, the trial **court** lacked jurisdiction to allow the withdrawal of the plea; the trial **court** correctly dismissed defendant's motion to withdraw his pleas because the motion was well out-of-term, and thus, clearly untimely. Dupree v. State, 279 Ga. 613, 619 S.E.2d 608 (2005).

DENIAL OF MOTION FOR A NEW TRIAL VACATED. -- Denial of a defendant's motion for a new trial was vacated and the case was remanded to the trial **court** to determine if counsel advised the defendant that the defendant could withdraw the defendant's guilty pleas if the defendant was dissatisfied with the defendant's sentence as long as the defendant did so before the written entry of sentence; if counsel so advised the defendant, the advice fell below an objective standard of reasonableness for ineffective assistance of counsel purposes. McCroskey v. State, 280 Ga. App. 638, 634 S.E.2d 824 (2006).

Requirements Regarding Informing Defendant of His Right to an Attorney

Faretta v. California, 422 U.S. 806 (1974)

Requirements Regarding Informing Defendant of His Constitutional Rights

Boykin v. Alabama, 395 U.S. 238 (1969)

FILED IN OPEN COURT
on _____ day of _____, _____.

_____
Deputy Clerk, State Court, Troup County

IN THE STATE COURT OF TROUP COUNTY
STATE OF GEORGIA

Defendant: _____ Case No. _____

WAIVER OF RIGHT OF COUNSEL

The above-named Defendant states under oath that:

_____ I am not under the influence of alcohol or drugs, nor am I suffering from any disability that would interfere with or prevent an intelligent waiver of my right of counsel.

_____ I have been advised of the nature of the charge(s) against me, and the maximum and minimum penalties provided by law. I have been advised that under the Constitutions of the United States and the State of Georgia I have a right to be represented by an attorney at all critical stages of the criminal process, including arraignment. I have been advised of my right to a court-appointed attorney if I cannot afford to hire an attorney.

_____ I have been informed of the benefits of a lawyer, such as a lawyer's ability to explain the law and legal proceedings; to investigate my case; to conduct negotiations with the prosecution; to cross-examine witnesses; present evidence, and select a jury if I were to go to trial. I understand the dangers and disadvantages of proceeding without benefit of counsel.

_____ Nevertheless, I hereby waive my right to an attorney and represent myself in this matter. I am making this decision voluntarily, without any threat or promise having been made to me.

_____ I understand that I have been charged with misdemeanor(s) and that there are, generally, no lesser included charges. I also understand that defenses to the charges would include, but are not necessarily limited to, that I did not commit the act(s) with which I have been charged, or that I was legally justified in committing the act(s).

_____ _____
Solicitor/Asst. Solicitor Defendant's Signature Date

After having investigated the facts and circumstances underlying the Defendant's wish to waive his/her right to counsel, including the Defendant's background, employment, education, and desires, and after having warned the Defendant of the dangers and disadvantages of proceeding without legal counsel, I have determined that this Defendant has knowingly, intelligently and voluntarily waived the right to counsel and the right to a court-appointed attorney, if indigent.

This the ____ day of _____, _____. _____
Jeannette L. Little, Judge, State Court, Troup County

FILED IN OPEN COURT
On _____ day of _____, _____,

_____
Deputy Clerk, State Court, Troup County

IN THE STATE COURT OF TROUP COUNTY
STATE OF GEORGIA

Defendant_____ Case #_____

RECORD OF DEFENDANT PRIOR TO ENTERING A PLEA

The Defendant in this case, being duly sworn, states as follows:

I am not under the influence of alcohol or drugs and I am not mentally or physically disabled to the extent that it would prevent me from voluntarily and knowingly entering a plea in this matter.

I have been advised of the nature of the charge(s) against me, the maximum and minimum punishment provided by law and my right to be represented by a private attorney, or by a public defender, if I am eligible.

I understand that by entering a plea of guilty or nolo contendere that I waive:
(1) The right to trial, including the right to have my guilt proved beyond a reasonable doubt; (2) The right to the presumption of innocence; (3) The right to confront witnesses against me; (4) The right to subpoena witnesses; (5) The right to testify and to offer other evidence; (6) The right to assistance of counsel during trial; (7) The right to remain silent and not to incriminate myself.

I also understand that by entering a plea of not guilty I will have the choice of a bench trial or trial by jury. If I choose to remain silent and not enter a plea, a plea of not guilty will be entered on my behalf and I will be set for a jury trial.

I hereby now voluntarily and freely enter my plea of _____ (write either GUILTY, NOT GUILTY, OR NOLO CONTENDERE) to the charge(s) against me. I have not been informed of the sentence that will be imposed. No promises or threats have been made to me by any Prosecutor, Attorney, law enforcement officer or any other person to induce me to enter this plea.

I understand that a plea of GUILTY may have an impact on my immigration status if I am not a citizen of the United States of America.

I understand that if I am placed on probation, whether reporting or non-reporting, I cannot violate any criminal laws of any government unit or any special conditions of probation without being subject to revocation for the balance of the sentence.

I hereby acknowledge/waive receipt of a copy of the accusation in this matter.

After having entered a plea of "not guilty", I choose to:
_____ waive my right to a trial by jury and request a bench trial (by a judge only); or
_____ demand that this matter be tried by a jury.

I swear under penalties of perjury that these statements are true.

_____
Defendant Date

_____
Signature of Prosecuting Attorney

_____
Attorney Date

I have satisfied myself that this Defendant's plea is freely, knowingly, intelligently, and voluntarily entered and that he/she is in possession of his/her faculties and is able to understand the nature and consequences of his/her plea. I have also determined that this Defendant understands that he/she has the right to the assistance of counsel at this plea proceeding and knowingly, voluntarily, and intelligently waives the right to counsel, if not represented by counsel. I am further satisfied that there has been a sufficient factual basis shown for the acceptance of this plea and that the Defendant understands the consequences of his plea.

This _____ day of _____, 2012.

_____
Jeannette L. Little, Judge, State Court of Troup County

FILED IN OPEN COURT
DATE _____

DEPUTY CLERK, STATE COURT
TROUP COUNTY

EN EL TRIBUNAL ESTATAL DEL CONDADO DE TROUP
ESTADO DE GEORGIA

_____ Numero de Caso _____
Acusado

RENUNCIA AL DERECHO A UN ABOGADO

El Acusado en este caso, una vez prestado debido juramento, declara lo siguiente:

_____ No estoy bajo los efectos del alcohol o las drogas, ni sufro de una enfermedad mental o incapacidad física.

_____ Se me informó la naturaleza de los cargos en mi contra, y la pena máxima y mínima establecida por ley, se me informó que bajo las leyes Constitucionales de los Estados Unidos y del Estado de Georgia, tengo el derecho a ser representado por un abogado en todas las etapas críticas del proceso penal, incluso en mi lectura de cargos. Se me informó de mi derecho a un abogado de oficio, si es que no tuviera los recursos para contratar a uno.

_____ Se me informó de los beneficios de tener a un abogado, tales como un abogado tiene la habilidad de explicar las leyes y procesos legales; de investigar mi caso; de hacer negociaciones con el fiscal, y de contra-interrogar testigos, presentar pruebas, y seleccionar a un jurado si es que fuéramos a juicio. Entiendo los peligros y desventajas de proceder sin la representación de un abogado.

_____ Aún así, deseo renunciar a mi derecho de un abogado y deseo representarme a mí mismo. Estoy haciendo esta decisión voluntariamente. Nadie me ha amenazado o prometido para convencerme a que renuncie a mi derecho de un abogado.

_____ Entiendo que se me acusa de un delito menor y que hay, generalmente, no delitos menores incluidos. También entiendo que las defensas de los delitos contra mí puede
_____ incluir que yo no cometí tal acto, o que pude justificar el acto.

_____ _____
Fiscal Acusado Fecha

Después de haber investigado los hechos y circunstancias subrayando el deseo del Acusado de renunciar al derecho de un abogado, incluso los antecedentes del Acusado, empleo, formación y deseos, y después de haberle advertido al Acusado de los peligros y desventajas de proceder sin la representación de un abogado, he determinado que este Acusado a sabiendas, voluntariamente, e inteligentemente renuncia a su derecho de un abogado de oficio, si el Acusado es indigente.

Este _____ día de _____, ____ _____
Juez, Tribunal Estatal del Condado de Troup

EN EL TRIBUNAL ESTATAL DEL CONDADO DE TROUP
ESTADO DE GEORGIA

Acusado_____ Número de Caso_____

ACTA DEL ACUSADO ANTES DE HACER UNA DECLARACIÓN

El acusado en este caso, una vez prestado debido juramento, declara lo siguiente:

No estoy bajo los efectos del alcohol o las drogas ni sufro de una enfermedad mental o incapacidad física. Se me informó la naturaleza de los cargos en mi contra, la pena máxima y mínima establecida por ley y mi derecho a ser representado por un abogado privado, o por un defensor público, si reúno los requisitos:

Entiendo que al declararme culpable o *nolo contendere* (no me opongo a los cargos), renuncio a:

(1) El derecho a un juicio por jurado;
(2) El derecho a que se me presuma inocente;
(3) El derecho a carear a los testigos en mi contra;
(4) El derecho a citar testigos;
(5) El derecho a dar testimonio y presentar pruebas;
(6) El derecho a tener ayuda de un abogado durante el juicio; y
(7) El derecho a no incriminarme.

También entiendo que al no declararme culpable, mi caso será llevado a juicio por jurado o un juicio ante el juez. Si decido permanecer callado y no hacer una declaración, se haría una declaración de no culpable a mi favor y mi caso será llevado a juicio por un jurado.

Deseo ahora hacer una declaración de _____ respecto del cargo o cargos en mi contra. Es libre y voluntaria. No se me informó cuál sería la sentencia. Ningún Fiscal, Abogado, Agente de policía u otra persona me hizo promesas o amenazas para inducirme a hacer esta declaración.

_____ No estoy representado por un abogado. Entiendo la naturaleza del cargo o cargos en mi contra y las consecuencias de mi declaración. Renuncio libre y voluntariamente ala ayuda de un abogado y elijo representarme a mí mismo en este proceso.

Yo entiendo que si soy puesto en libertad vigilada (*probation*) para reportarme o no reportarme, no puedo infringir las leyes penales de cualquier oficina del gobierno o condiciones especiales de la libertad vigilada; caso contrario, ésta podrá ser revocada por el resto de la sentencia.

Por el presente reconozco / renuncio a recibir una copia de la acusación del caso antes mencionado.

Juro, sujeto a la penalidad correspondiente en caso de perjurio, que estas declaraciones son ciertas.

_____
Acusado Fecha

_____
Procurador-General

_____
Abogado Fecha

Estoy convencido de que la declaración del acusado es libre y voluntaria, y que está en pleno uso de sus facultades mentales y puede comprender la naturaleza y consecuencias de esta declaración. También he determinado que el acusado entiende que tiene el derecho a reibir la ayuda de un abogado en este proceso para responder a los cargos, y que renuncia al derecho a un abogado, si no está representado por uno, a sabiendas, voluntaria e inteligentemente. Estoy convencido además de que existe una base suficiente de hechos para aceptar esta declaración, y que el acusado comprende las consecuencias de su declaración.

A los _____ días del mes de _____ del año _____.

_____
Jeannette L. Little, Jueza, Tribunal Estatal del Condado de Troup

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

STATE OF GEORGIA
vs.

Case No. _____

_____
Defendant

DEFENDANT'S RIGHT TO AN ATTORNEY

As a person accused of a crime, you have the right to be represented by an attorney. If you cannot afford an attorney, you have the right to have an attorney appointed to represent you. If you wish to be interviewed to determine whether you qualify financially for a court appointed attorney, you may apply at the Cobb County Circuit Defender's Office, 30 Waddell Street, Marietta.

Although you have the right to speak with the prosecutor about your case, you are under no obligation to do so. Anything you say to the prosecutor can be used in evidence against you.

Also, although you may waive the right to an attorney, it is important that you be aware that an attorney can help you to understand

1. The nature of the charges against you;
2. Any statutory lessor-included offenses;
3. The range of possible punishments for the charges, including a jail sentence for up to 12 months on each misdemeanor count;
4. Possible defenses, including but not limited to, defenses of double jeopardy, justification, alibi, misidentification, and others;
5. Mitigating circumstances; and
6. Any other facts necessary for a broad understanding of the matter.

The judge cannot assist you in identifying or developing these matters because the judge must remain impartial as between you and the prosecutor and cannot practice law. The judge cannot assist either side against the other.

If you were to waive your right to an attorney, you must also understand that at trial

1. The rules of evidence will be enforced by the judge;
2. If the trial is a jury trial, you must make decisions with regard to the process of interviewing the jurors and the striking of jurors;
3. You must make decisions with regard to the calling of witnesses to testify on your behalf;
4. The State has the burden of proving its case beyond a reasonable doubt;
5. You are not required to testify at trial, but if you do testify, you would be subject to cross-examination by the prosecutor;
6. Issues must be properly preserved by way of timely objections and, in order to raise them on appeal, the proceedings must be taken down and transcribed by a court reporter.

Even if you choose to waive an attorney now, you can change your mind and obtain an attorney later. But you must act diligently in obtaining an attorney, either appointed or retained. If you do not act diligently, it is possible that you might later be deemed to have waived your right to an attorney.

I have taken the time to thoroughly read the above.

_____ **I choose to waive my right to an attorney.**
[Initials]

_____ **I do not waive my right to an attorney, and I will either retain an attorney or seek a court appointed attorney.**
[Initials]

This _____ day of _____, 20___.

_____
Defendant

Filed in open court, this _____ day of _____, 20___. Deputy Clerk: _____

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

STATE OF GEORGIA
VS. **CASE NO.** _____

_____
Defendant

PLEA PROCEEDING RECORD

(PLEASE READ CAREFULLY)

I, the Defendant, acknowledge by my execution of this document and by entering a plea of (**GUILTY**) to counts _____ (**NOLO CONTENDERE**) to counts _____ that:

Please Initial:

____ (1) I understand the nature of the charge(s) against me;
____ (2) I waive the right to trial, including trial by jury;
____ (3) I waive the presumption of innocence;
____ (4) I waive the right to confront witnesses against myself;
____ (5) I waive the right not to incriminate myself; and I understand that if I plead not guilty or remain silent and do not enter any plea, I could obtain a jury trial;
____ (6) I waive the right to subpoena witnesses;
____ (7) I waive the right to testify and to offer other evidence;
____ (8) If I am not represented by counsel, I acknowledge that I have the right to an attorney at all stages of the proceedings, including plea hearings, and if I cannot afford an attorney I have the right to a court appointed attorney;
____ (9) I acknowledge that I enter this plea freely, voluntarily, and knowingly and that no person has made any promise or threat to me to influence my decision to enter this plea;
____ (10) I acknowledge that if I plead guilty, I am admitting that the facts support the guilty plea;
____ (11) I acknowledge that if I am not a citizen of the United States, that this plea may have an impact on my immigration status, including deportation, exclusion or denial of naturalization.
____ (12) I have been advised that for all of the charges pending against me I can receive a *maximum* of a $_____ fine and _____ months incarceration and a *minimum* of $_____ fine and _____ months incarceration.
____ (13) I understand that the terms of this negotiated plea are _____ (months) and _____ (days) incarceration (CTS/RTS), _____ months and _____ days probation, and a $_____ fine for count(s) _____ plus statutory surcharges.

Additional special conditions

_____ (hours) (days) community service;
_____ CSAI weekends;
_____ (days) (months) in-home confinement;
_____ risk reduction;
_____ ignition interlock;
_____ license plate surrender;
_____ license suspension;
_____ publication of conviction;
_____ defensive driving school;
_____ no (alcohol) (drugs);
_____ random screens;
_____ screen and treat for (alcohol) (drugs) (violence);
_____ theft seminar;
_____ family violence intervention program;
____ (no violent contact with) (stay away from) _____;
$_____ restitution;
$_____ restitution; Circuit Defender
_____Victim Impact Panel
_____No guns or weapons
other: _____

____ (14) I have (180 days/traffic) (one year/other misdemeanors) in order to file a habeas corpus challenge.
____ (15) I understand that any person convicted of a misdemeanor crime of domestic violence is prohibited by federal law from possessing or transporting a firearm or ammunition 18 USC 922.
____ (16) I understand that this plea of guilty or nolo contendere may adversely affect any sentence of probation or parole.
____ (17) I am not now under the influence of alcohol or any drug, prescription or non-prescription, and I have read and understand this document.
____ (18) **I have reviewed the general conditions of PROBATION:**

(a) Do not violate the criminal laws of any governmental unit.
(b) Avoid injurious and vicious habits - especially alcoholic intoxication and narcotics and other dangerous drugs unless prescribed lawfully.
(c) Avoid persons or places of disreputable or harmful character.
(d) Report to the Probation/Suspension supervisor as directed and permit such Supervisor to visit you at home or elsewhere.
(e) Work faithfully at suitable employment insofar as may be possible.
(f) Do not change your present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation/Suspension Supervisor.
(g) Support your legal dependents to the best of your ability.

_____ _____
DEFENDANT'S ATTORNEY/BAR NO. **DEFENDANT**

I hereby certify that I have made inquiry and am satisfied that there is a factual basis to support this Defendant's plea, that the plea is made voluntarily and knowingly, and that no promise, threat or force was used to induce the Defendant to enter this plea.

This _____ day of _____, 20_____.

_____
JUDGE ERIC A. BREWTON
STATE COURT OF COBB COUNTY

Filed in open court, this _____ day of _____, 20___. *Deputy Clerk:* _____

Revised 06/23/14