



**NOLO CONTENDERE
PLEA COLLOQUY**

COMMONWEALTH OF PENNSYLVANIA

v.

CRIMINAL DIVISION

Docket No. _____

PID #: _____

PART A (To Be Completed by the Defendant)

PERSONAL

1. What is your full name? _____

2. How old are you today? _____

3. What is the highest grade that you completed in school? _____

4. Can you read, write, and understand the English language? Yes_____ No_____

5. Have you ever been treated, or are you currently being treated, for a mental illness?
Yes_____ No_____ (If the answer is "No," proceed to Question 6.)

a. If the answer to number 5 is "Yes," please explain:

b. If you are presently being treated for a mental illness, do you feel that you have the ability to understand what you are doing today? Yes_____ No_____

6. Have you had any alcohol or taken any drugs or medication within the past 48 hours?
Yes_____ No_____ (If the answer is "No," proceed to Question 7.)

a. If the answer to number 6 is "Yes," please explain:

7. Are you under the influence of medication, drugs, alcohol, or any substance that would prevent you from understanding what is happening here today? Yes_____ No_____

THE OFFENSE(S)

8. Do you wish to plead nolo contendere (or “no contest”) to the offense(s) listed in the table below? Yes_____ No_____

COUNT	OFFENSE	GRADE	MAXIMUM TERM OF CONFINEMENT	MAXIMUM FINE
			<i>Total Max. Confinement:</i>	<i>Total Max. Fine:</i>

9. Has your attorney explained to you the elements of each of the above offense(s), and that, for each offense, the District Attorney would have to prove those elements beyond a reasonable doubt at trial in order to convict you for that offense?

Yes_____ No_____

10. Do you understand that, after pleading nolo contendere to the above offense(s), you could be punished up to the maximum possible penalties listed above for each offense?

Yes_____ No_____

11. Has anybody promised you anything, threatened you, forced you, or coerced you in any manner to plead nolo contendere?

Yes_____ No_____

12. Have you reviewed this form with your attorney and had the opportunity to ask your attorney any questions that you have about any parts of this form?

Yes_____ No_____

PLEA BARGAIN OR AGREEMENT

13. Check all of the following that apply:

There is no plea bargain or agreement of any kind.

The parties agree that they will jointly recommend the following total sentence:

OTHER (*describe any other agreement between the parties*):

RESTITUTION (*if applicable, submit restitution form prior to plea*): The parties agree that the defendant owes restitution in the amount of _____.

The Commonwealth has agreed to drop the charges of: _____

14. Other than what is described above, has anybody promised you anything for pleading nolo contendere?

Yes _____ No _____

15. Do you understand that, if the Judge does not agree with the plea bargain or agreement, you can withdraw your plea of nolo contendere and have a trial?

Yes _____ No _____

PART B (To Be Reviewed, Initialed, and Signed by the Defendant)

RIGHTS AT TRIAL

I understand that I do not have to plead guilty or nolo contendere, even if I committed the crimes. I have an absolute right to plead not guilty and have a trial by jury. When I plead nolo contendere, I give up my right to have a trial. If I were to proceed to trial, I would have all the rights listed below plus others.

I am presumed to be innocent. That means that I start out innocent and remain innocent unless the District Attorney proves I committed the crime(s). I do not have to prove anything.

To convict me, the District Attorney would have to prove more than that I “probably” committed the crimes. The District Attorney would have to prove me guilty “beyond a reasonable doubt.” A reasonable doubt is the kind of doubt which would cause a normal, reasonable person to hesitate or pause or refuse to take any action at all in something very important to them.

I have the right to remain silent. Nobody can make me testify or talk about the case. No one can hold it against me if I remain silent. However, if I wanted to, I could testify (tell my story) at the trial. Also, I could call other people who would be my witnesses and testify for me. If I plead nolo contendere, I give up this right.

I give up many important rights if I plead nolo contendere. For example, if I do not plead nolo contendere and have a trial, all the witnesses for the District Attorney would have to come to court and testify under oath. My lawyer could cross-examine them and ask them questions to see if they are telling the truth and if what they say is correct. I give up this right to confront and cross-examine witnesses and many other rights if I plead nolo contendere. If I plead nolo contendere, the witnesses would not be required to come into court. The District Attorney would just provide a summary to the Judge of what happened.

JURY TRIAL OR TRIAL BY JUDGE

My lawyer has fully explained to me that I have a right to a jury trial. Nobody can take that right away from me. At a jury trial, 12 people, all from Philadelphia, would be on the jury and hear the evidence for my case. If all twelve were convinced beyond a reasonable doubt that I was guilty, I would be found guilty. If all twelve were not convinced beyond a reasonable doubt that I was guilty, I would be found not guilty. If all twelve could not agree, I would not be convicted, although I might have another trial before a different jury.

I can help pick my jurors. Each juror would be questioned to make sure they would be fair. I can keep anyone off the jury who is shown to the Judge to be unfair. If I am the only defendant at my trial, I can generally keep the following number of people off the jury without giving any reason why I don't want them on the jury, and so can the District Attorney: 7 for non-capital felony cases; 5 for cases involving only misdemeanors; 20 for capital felony cases. (Those numbers would be reduced if my trial involves other defendants.) My lawyer and I would decide together which people we want to keep off the jury.

If I give up my right to a jury trial, and if the District Attorney does not demand that my trial be heard by a jury, I still could be tried by a Judge alone without a jury. The same rules would apply, except the Judge alone would decide whether or not I have been proven guilty beyond a reasonable doubt. If I plead nolo contendere, I give up all of my trial rights.

Defendant's Initials

PRE-TRIAL RIGHTS

I am also giving up my pre-trial rights. If I were to proceed to a trial, my lawyer could file motions before the trial, such as motions to keep out or “suppress” evidence. That means my lawyer could try to convince the Judge that some of the evidence against me cannot be used at trial. This includes:

- (1) statements I made to the police or other people;
- (2) identifications people made of me; and
- (3) anything that the police or others seized to use against me as evidence.

If I plead nolo contendere, I also give up speedy trial rights and my right under Rule 600 to be tried within 365 days of the filing of the complaint. I am also giving up all other pre-trial rights that I might have. If I already had a hearing on pre-trial motions, when I plead nolo contendere I give up my right to appeal the decisions on those motions.

APPEAL RIGHTS

If I am found guilty at a trial, I could appeal to a higher court. I could ask to have my conviction overturned and my case discharged because there was not enough evidence, because I did not get a speedy trial, or for other reasons. I could ask for a new trial because a mistake was made before or during the trial.

I understand that if I plead nolo contendere, I would be giving up almost all of my rights to appeal. If I plead nolo contendere, my appeal rights would be very limited.

After I plead nolo contendere, I could appeal only if:

- (1) I did not know what I was doing when I pled nolo contendere, or somebody forced me to do it;
- (2) I was in the wrong court – the court did not have jurisdiction over my case;
- (3) The sentence the Judge gave me was illegal or improper; or
- (4) My attorney was ineffective.

After pleading nolo contendere and getting sentenced, if I wish to argue on appeal that my nolo contendere plea was not voluntary, or that my sentence was excessive, I must first raise those claims in a post-sentence motion. If I don't file a written post-sentence motion within 10 days of my sentencing, I lose the right to file the motion and to argue those claims on appeal.

PROBATION OR PAROLE RIGHTS

I know a nolo contendere plea has the same effect as if I were to be found guilty after a trial. If I am on probation or parole, my nolo contendere plea could result in a violation of my probation or parole. In addition to my sentence in this case, I could get more time in prison for a violation of my probation or parole. This plea could also cause me to be sentenced as a second or third strike offender if I am ever convicted again and it could increase my prior record score. The sentence on this plea may not run concurrent to (at the same time as) a state (back time) sentence for a parole violation. It could be concurrent with a sentence I am currently serving.

Defendant's Initials

RISK OF DEPORTATION

I understand that pleading nolo contendere may have immigration consequences for people who are not United States citizens or were not born in the United States. Immigration will consider my nolo contendere plea a conviction, even if my plea is part of entering a diversionary program, I successfully complete the program, and the charges are later withdrawn. Other consequences can include detention, deportation, exclusion from the United States, or denial of other immigration benefits, including naturalization, change of status within the United States, or adjustment to permanent resident status (getting a green card). If I am not a United States citizen or was not born in the United States, I certify that I have discussed these possible immigration consequences of my nolo contendere plea with my lawyer.

SATISFIED WITH MY LAWYER

I am satisfied with the advice and services I received from my lawyer. My lawyer spent enough time on my case, and I had enough time to talk with my lawyer about the case. My lawyer left the final decision to me, and I am the one who made the decision to plead nolo contendere.

FACTS OF MY CASE AND ELEMENTS OF THE CRIME(S)

The facts of the case have been read to me. The crimes and elements of the crime(s) described in the table of Page 2 of this form (Part A, #8) have been explained to me. In pleading nolo contendere, I understand that I am consenting to being punished as if I were found guilty of the crime(s).

CONSEQUENCES OF PLEADING NOLO CONTENDERE

Although the effect of a plea of nolo contendere is the same as that of a plea of guilty, I understand that the significance of the plea is not the same. In pleading nolo contendere, I do not admit guilt but rather consent to being punished as if I were guilty. The consequences of entering a nolo contendere plea are exactly those of entering a guilty plea with one exception. As I am not admitting facts by entering a nolo contendere plea, the entry of a nolo contendere plea in this criminal proceeding could not be used against me in a later civil proceeding to determine the existence of those facts. In all other respects, the consequences of a nolo contendere plea are the same as if I had pled guilty or were found guilty of the crime(s) described in the table of Page 2 of this form (Part A, #8). I understand that I will have a criminal record of conviction for the crime(s) underlying my nolo contendere plea.

GIVING UP DEFENSES

If I plead nolo contendere, I am giving up the right to defend my case. I cannot come back to court later and say that I was not guilty. Once I plead nolo contendere, I will no longer be able to claim that I was innocent and did not commit the crime(s).

**I HAVE READ ALL OF THE ABOVE, OR MY LAWYER HAS READ IT TO ME.
I UNDERSTAND IT. MY ANSWERS ARE ALL TRUE AND CORRECT.**

Printed Name of Defendant

Signature of Defendant

Date

DEFENSE COUNSEL'S CERTIFICATION

RE: Commonwealth v. _____

- (1) I am an attorney admitted to the Supreme Court of Pennsylvania.
- (2) I represent the defendant herein.
- (3) I know of no reason why the defendant cannot fully understand everything that is being said and done here today.
- (4) The defendant read the above form in my presence, or I read the form to the defendant, and the defendant appeared to fully understand it. I have gone over the form completely with the defendant, explained all of the items on the form, and answered any of the defendant's questions.
- (5) I see no reason why the defendant cannot and is not knowingly, intelligently and voluntarily giving up the defendant's rights to trial and pleading nolo contendere.
- (6) I made no promises to the defendant other than any listed on this form.

Attorney for Defendant

Date

COMMONWEALTH'S CERTIFICATION

I certify that I am the assigned Assistant District Attorney in this case and that any plea agreements described herein are true and correct. No other promises have been made to the defendant in exchange for the defendant's plea of nolo contendere. The facts in this case would establish a sufficient basis to convict the defendant of the crime(s) described in the table on Page 2 of this form (Part A, #8). For purposes of sentencing, I calculate the following to apply:

PRS OGS Guidelines Range

Assistant District Attorney

Date

JUDGE'S CERTIFICATION

I certify that I am the Judge having the jurisdiction to hear this case, and that I am satisfied the defendant understands fully the nature of the plea that the defendant is entering before me. The defendant has exercised a knowing, intelligent, and voluntary plea of nolo contendere to the charge(s) described above. In addition, I have personally explained to the defendant, on the record:

- (1) the charge(s) to which the defendant is pleading nolo contendere, and the maximum sentence(s) which could be imposed, as well as any mandatory minimum sentences;
- (2) that the defendant is presumed innocent and has a right to a trial by a jury; and
- (3) that, by pleading nolo contendere, the defendant is giving up all rights to trial and almost all rights to appeal.

I have asked the defendant on the record if the defendant understands everything being said and done here today, as well as whether the defendant is pleading nolo contendere of the defendant's own free will.

Judge

Date