

SCRIPT FOR GUILTY PLEA HEARING

Chief Magistrate Judge Paul A. Zoss, Revised January 6, 2009

PETTY OFFENSES¹

1. INTRODUCTION.

- [If an interpreter is required, the Judge will say the following.]
 - Will the clerk please swear the interpreter?
- This is the case of [name of case].
- You are Mr./Ms. [name of defendant]?
- I am Paul Zoss, a United States Magistrate Judge.
- The record should reflect that the defendant appears personally, and is represented by Mr./Ms. [defense counsel]. The government is represented by Assistant United States Attorney [name of prosecutor].
- [If an interpreter is being used, the Judge will say the following.]
 - Mr./Ms. [name of defendant], is (*Spanish*) your native language? I want to make certain that your headset is working, and that you can follow what the interpreter is saying to you. Can you hear and understand what the interpreter is saying to you through your headset?
- Mr./Ms. [name of defendant], I want to make sure you understand everything we talk about here today. If you have problems hearing or understanding anything I say, I want you to interrupt me and let me know. Will you do that?

2. NATURE OF THE CHARGE(S).

- Mr./Ms. [name of defendant], on [date of Information], the United States Attorney filed a @ – count Information against you charging you with [the Judge will describe the charge(s) against the defendant]. I understand that

¹ A “petty offense” is a Class B or Class C misdemeanor or an infraction (18 U.S.C. § 19), all of which are punishable by imprisonment for six months or less (18 U.S.C. § 3559(a)(7)-(9)). For a Class A misdemeanor, use the normal felony guilty plea script.

you are here today to plead guilty to(*Count(s) @ of*) the Information.
Mr./Ms. [defense counsel], is that your understanding?

- Do you understand what you have been charged with in this case? Have you had the chance to talk with Mr./Ms. [defense counsel] as much as you want about this/these charge(s)?
- Mr./Ms. [defense counsel], do you believe your client understands the charge(s) against him/her?

3. WAIVER OF FORMAL READING.

- You have the right to have the Information read to you here in open court before we proceed further, or you can waive that right.
- Mr./Ms. [name of defendant], would you like me to read the Information to you, or do you waive that right?

4. PLEA.

- At this time, I will ask you to enter (a) plea(s) to the charge(s) in Count(s) @, and your plea(s) can be either guilty or not guilty.
- On the charge of [name of charge] in Count 1 of the Information, how do you plead, guilty or not guilty? [The Judge will repeat for Count 2.] [Etc.]

5. DEFENDANT PLACED UNDER OATH.

- Mr./Ms. [name of defendant], I am now going to place you under oath. Would you please raise your right hand? [The Judge will place the defendant under oath.]
- You are now under oath. You should tell the truth because if you do not, you could be prosecuted for perjury or for making a false statement. In any such prosecution, the government could use against you any statements you make here under oath.

6. **ENSURING MENTAL CAPACITY.**

- Mr./Ms. [name of defendant], I am now going to ask you some personal questions to help me decide if you will be able to understand the matters we will be discussing during this hearing.
- Would you please state your full name? How old are you?(*Are you a citizen of the United States? Of what country are you a citizen?*) How far did you go in school? (*Can you read and write?*) Within the past month, have you used any illegal drugs? Are you taking any prescription medication? Have you ever suffered from depression, anxiety, or any other mental illness? Do you have any problems from past drug or alcohol use that might make it hard for you to understand what is happening at this hearing today? Do you have any other physical or mental problems?
- Mr./Ms. [defense counsel], do you have any reason to believe your client is not competent to plead guilty at this hearing today?

7. **RIGHT TO AN ATTORNEY.**

- Mr./Ms. [name of defendant], you have the right to a lawyer to help and represent you during every stage of this case. If at any time you cannot afford a lawyer, you are entitled to a free one.
- Mr./Ms. [defense counsel], are you retained or appointed?
 - [If the defendant's lawyer is court-appointed, the Judge will say the following.] Mr./Ms. [name of defendant], Mr./Ms. [defense counsel] has been appointed to represent you at public expense, and will continue to represent you until your case is concluded, even if you decide to go to trial instead of entering (a) guilty plea(s) to this/these charge(s).

- Are you satisfied with the help you have received from Mr./Ms. [defense counsel]?

8. TRIAL.

- Before I can recommend acceptance of your guilty plea(s), I must explain your trial rights to you. If you plead guilty, you will be giving up your one chance for a trial on this/these charge(s). You have the right to a speedy, public trial before me. I would try your case fairly and justly, based only on the law and what is submitted into evidence at trial.
- I would presume that you are innocent, and I would continue to presume you innocent unless and until, at the end of your trial, the prosecution has convinced me of your guilt beyond a reasonable doubt. The presumption of innocence alone is enough for you to be acquitted of this/these charge(s).
- The prosecution would have to call its witnesses to testify under oath here in court. Your lawyer would not have to question the prosecution's witnesses, although (s)he would have the right to cross-examination them if (s)he wanted to. If you plead guilty, you will be giving up your right to confront the prosecution's witnesses.
- The burden of proof would remain on the prosecution throughout the trial. You would not have to put on a defense or produce any evidence. However, if you wanted to, you could present any relevant evidence at trial. For example, you could make witnesses come to court by having subpoenas served on them. If you could not afford to pay the costs and fees necessary to serve the subpoenas or get your witnesses to court, the government would have to pay those costs and fees. If you plead guilty, you will be giving up your right to present a defense.

- You would have the right to remain silent. This means you would not have to testify at your trial, although you could testify if you wanted to. If you go to trial but do not testify, I would not hold it against you.
- You would have the right to appeal, and the right to a free lawyer to help you with your appeal if you could not afford one.
- If you plead guilty, you will be giving up your right to a trial, and all of the trial-related rights I have just described. You also will be waiving your right to raise any matters that might have helped you to defend this case, including issues you have raised or could have raised in motions for discovery, motions challenging the Indictment, motions to dismiss the case, or motions to suppress evidence. If you plead guilty, you will be found guilty based upon your guilty plea(s), just as if you had gone to trial and I had found you guilty.
- Mr./Ms. [name of defendant], do you understand, if you plead guilty, you will not have a trial?

9. **ELEMENTS AND FACTUAL BASIS.**

- Mr./Ms. [name of defendant], I now must establish that you understand the charge(s) you are pleading guilty to, and I must determine that there exists an adequate factual basis to convict you on the charge(s).
- Regarding the charge of [name of first charge], the prosecution would have to prove all of the following matters to the jury: [The Judge will recite the elements of and obtain a factual basis for each charge to which the defendant is pleading guilty.]
- Mr./Ms. [prosecutor], did I accurately describe the elements of this/these charge(s)? Do you believe there is an adequate factual basis in this record for (a) guilty plea(s) to this/these charge(s)?

- Mr./Ms. [defense counsel], do you think your client understands the elements of the charge(s)? Do you believe there is a factual basis for him/her to plead guilty to the/these charge(s)? Do you know of any possible defenses to the charge(s) you have not considered and discussed with your client?

10. PENALTIES.

- Mr./Ms. [name of defendant], I want to inform you of the statutory penalties that apply to the charge(s) to which you are pleading guilty.
- On[*Count @,*] the charge of [name of charge], you could be sent to jail for up to @ months or you could be placed on probation for up to @ years; and you could be fined up to \$@. There also is a special assessment of \$10 (*on each count to which you plead guilty, which would be a total of \$ @*).
- [The Judge will repeat for each additional count.]
- Mr./Ms. [name of defendant], do you understand the statutory penalties?

11 SENTENCING.

- Mr./Ms. [name of defendant], if you plead guilty here today, you are entitled to a sentencing hearing before me. At this hearing, the lawyers can present witnesses and exhibits on any sentencing issue, and you will be given a chance to say whatever you want to me..
- During the sentencing hearing, I will have the responsibility for determining your sentence. I could impose any reasonable sentence permitted by law, which means you could receive a sentence all the way up to the maximum statutory sentence. You should understand that the sentence I give you may be different from what you are hoping for or what your lawyer may have predicted. Also, after your guilty plea(s) is/are accepted by me, you will have no right to withdraw your guilty plea(s), even if you do not like the

sentence I give you. However, under some circumstances, you and/or the Government may have the right to appeal from what happens at the sentencing hearing.

- Mr./Ms. [name of defendant], do you understand that the sentence I give you may be different from what you are hoping for or what Mr./Ms. [defense counsel] may have predicted?
- Do you have any questions about how you would be sentenced?

12. RIGHT TO APPEAL.

- Under some circumstances, you and/or the government may have the right to appeal from what happens at the sentencing hearing. Do you understand?

13. VOLUNTARINESS AND VALIDITY OF PLEA(S).

- Mr./Ms. [name of defendant], has anyone forced or pressured you to plead guilty or made any promises to you to get you to plead guilty, other than what is in the Plea Agreement?
- Mr./Ms. [defense counsel], if your client pleads guilty, do you believe his/her guilty plea(s) would be voluntary? Do you know of any legal reason why his/her guilty plea(s) should not be accepted? Do you know of anything the Court has omitted that could affect the validity of your client's guilty plea(s)?
- Mr./Ms. [prosecutor], do you know of anything the Court has omitted that could affect the validity of the defendant's guilty plea(s)?
- Mr./Ms. [name of defendant], do you have any questions about the matters we have discussed here today? Do you still want to plead guilty? Are you pleading guilty of your own free will? Are you pleading guilty because you are, in fact, guilty?

14. PLEA.

- Mr./Ms. [name of defendant], formally and for the record, how do you plead to the charge of [name of offense] in Count @, guilty or not guilty? [The Judge will repeat for each charge to which the defendant is pleading guilty.]
- The record should reflect that the defendant has pled guilty to (*Count(s) @ of*) the Information.

15. FINDINGS.

- I find that the defendant is competent, (s)he fully understands the charge(s) against him/her, there is a factual basis for his/her plea(s) of guilty, (s)he knows the maximum punishment that could be imposed on the charge(s), and (s)he knows his/her trial rights and has voluntarily waived those rights.
- I further find that the defendant's decision to plead guilty was voluntary, knowing, and not the result of any force, pressure, threats, or promises.

16. ACCEPTANCE OF GUILTY PLEA(S).

- Accordingly, I accept the defendant's plea(s) of guilty.
- **I HEREBY ORDER** a Presentence Investigation Report. The parties should pay careful attention to the deadlines relating to the preparation of the Report. I hereby schedule a sentencing hearing in this case for @.

17. ADJOURNMENT.

- Do the lawyers want to make any further record? Mr./Ms. [prosecutor]? Mr./Ms. [defense counsel]? We are in recess.