

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-20-0005
RULE 17.1(F)(1) and RULE 41,)
FORM 28, RULES OF)
CRIMINAL PROCEDURE) **FILED: 8/27/2020**
)
)
)
_____)

ORDER
AMENDING RULE 17.1(F)(1) AND RULE 41, FORM 28,
RULES OF CRIMINAL PROCEDURE

A petition having been filed proposing to amend Rule 17.1(f)(1) and Rule 41, Form 28 of the Rules of Criminal Procedure, the Court having considered the petition and the comments,

IT IS ORDERED that Rule 17.1(f)(1) and Rule 41, Form 28 of the Rules of Criminal Procedure are amended in accordance with the attachment to this order, effective January 1, 2021.

DATED this 27th day of August, 2020.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

Arizona Supreme Court No. R-20-0005

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TO:

Rule 28 Distribution

David K. Byers

Kathleen E. Brody

ATTACHMENT¹

RULES OF CRIMINAL PROCEDURE

Rule 17.1. The Defendant's Plea.

(a) – (e) [No change]

(f) Limited Jurisdiction Court Alternatives for Entering a Plea and Sentencing. The parts of Rule 17 and Rule 26.9 requiring a defendant to be present are met by the defendant complying with this rule's requirements.

(1) Telephonic Pleas. “Telephonic” includes voice only and audio-video communications between the court and the parties. This rule's provisions concerning telephonic pleas also apply to pleas submitted through an online dispute resolution (“ODR”) system approved by the Administrative Office of the Courts.

(A) Eligibility Discretionary. A limited jurisdiction court has discretion to accept a telephonic plea of guilty or no contest to ~~an offense if the defendant provides written certification and the court finds the defendant:~~ any misdemeanor offense.

~~(i) resides out of state or more than 100 miles from the court in which the plea is taken; or~~

~~(ii) has a serious medical condition so that appearing in person would be an undue hardship, regardless of distance to the court.~~

(B) Procedure. The defendant must submit the plea in writing to the court, and the writing must be substantially in the form set forth in Rule 41, Form 28. If the court authorizes it, the defendant may submit plea documents through an ODR system, and Form 28 may be used for that process. The documents the defendant submits for a telephonic plea ~~it~~ must include the following:

(i) a statement by the defendant that the defendant has read and understands the information in the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of the offense(s) in the complaint, or to the offense(s) described in a written plea agreement; and

¹ Additions to the text of the rule are shown by underscoring and deletions of text are shown by ~~strike-through~~.

~~(ii) a certification from a peace officer in the state in which the defendant resides or, if the defendant is an Arizona resident, a peace officer in the county in which the defendant resides that the defendant personally appeared before the officer and signed the certification described in (f)(1)(B)(i), and the officer affixes the defendant's fingerprint to the form; a legible photocopy of the defendant's driver's license or other government-issued photo identification that contains the defendant's name and birth date; and~~

~~(iii) any other forms the prosecutor provides that are deemed necessary by the parties for completing a plea under the circumstances of the case.~~

~~(C) Judicial Findings. Before accepting a plea, the court must hold a telephonic hearing with the parties, inform the defendant that the offense may be used as a prior conviction, and find:~~

~~(i) it has personally advised the defendant of the items set forth in the form;~~

~~(ii) a factual basis exists for believing the defendant is guilty of the charged offenses; and~~

~~(iii) the defendant's plea is knowingly, voluntarily, and intelligently entered.~~

~~(C) Fingerprint.~~

~~(i) If the defendant is entering a plea to an offense described in A.R.S. § 13-607(A), Form 28 also must contain a signed certification from a law enforcement officer in the state in which the defendant resides that the defendant personally appeared before the officer and signed Form 28, and that the officer affixed the defendant's fingerprint to the form.~~

~~(ii) If the defendant is entering a plea to an offense described in A.R.S. § 13-607(A) and the defendant's plea form does not include the defendant's fingerprint and the law enforcement officer's certification as this rule requires, the court may defer the plea's acceptance until the defendant has submitted the required fingerprint and certification, or until the defendant appears in open court for sentencing and provides a fingerprint at that time.~~

~~(iii) In extraordinary circumstances, instead of requiring a certification and fingerprint, the court may permit another method of proving the defendant's identification on Form 28, including allowing the defendant to use a notary public to witness the defendant's signature on the form.~~

(D) Judicial Findings. Before accepting a plea, the court must hold an in-person or telephonic hearing with the parties, advise the defendant of the items set forth in Form 28, inform the defendant that the offense(s) may be used as a prior conviction, and find:

(i) a factual basis exists for believing the defendant is guilty of the offense(s); and

(ii) the defendant's plea is knowingly, voluntarily, and intelligently entered.

(E) Sentencing. After entry and acceptance of a telephonic plea, the court may sentence the defendant, either on the same day or later, in-person or telephonically.

(F) Victim's Rights. In a telephonic plea proceeding, a victim has the same rights under Rule 39 to notice and participation as if the defendant physically appeared in the courtroom.

(2) Plea by Mail. [No change.]

COURT

County, Arizona

STATE OF ARIZONA Plaintiff -vs- Defendant (FIRST, MI, LAST)

[CASE/COMPLAINT NO.]

TELEPHONIC GUILTY/NO CONTEST PLEA PROCEEDING: JUDGMENT OF GUILT AND CONVICTION

Defendant states:

1. I have an attorney or I do not have an attorney and I waive my right to an attorney.
2. I have a copy of the criminal complaint in this case. I have read and understand the charges filed against me. I hereby agree to plead guilty or no contest to all the charges in the complaint.
3. I understand the nature of the charges as indicated:
 - Driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor/toxic vapor/drugs.
 - Driving or in actual physical control of a motor vehicle with an alcohol concentration of .08 percent or more within 2 hours of driving or being in actual physical control of a motor vehicle.
 - Driving or in actual physical control of a motor vehicle with an alcohol concentration of .15 percent or more within 2 hours of driving or being in actual physical control of a motor vehicle.
 - Driving or in actual physical control of a motor vehicle with any illegal drug or its metabolite in the defendant's body.
 - Driving or in actual physical control of a commercial vehicle with an alcohol concentration of .04 percent or more.
 - Other: _____.
4. I am pleading guilty or no contest to all the charges in the complaint, or
 I have entered into a written plea agreement and I agree to its terms.
5. I admit that if my case went to trial, the facts would support the charges against me.
6. I understand the maximum penalties to be:
 - Class 1 misdemeanor: a \$2500 fine, 6 months jail, and/or 3 years' probation, plus surcharges and fees.
 - Class 1 misdemeanor: a \$2500 fine, 6 months jail, and/or 5 years' probation, plus surcharges and fees.
 - Class 2 misdemeanor: a \$750 fine, 4 months jail, and/or 2 years' probation, plus surcharges and fees.
 - Class 3 misdemeanor: a \$500 fine, 30 days jail, and/or 1 year probation, plus surcharges and fees.
 - Other: _____.
7. I understand that there are special conditions, including required minimum penalties, for the charge or charges to which I am pleading guilty or no contest, as follows: _____.
8. I understand that by pleading guilty or no contest, I am giving up the following constitutional rights:
 - a. The right to plead not guilty and require the State to prove my guilt beyond a reasonable doubt.
 - b. The right to a trial by jury by a judge.
 - c. The right to assistance of an attorney at all stages of the proceeding, including appeal. In some cases, I understand that I might be eligible for a court-appointed attorney at a reduced cost or at no cost if I cannot afford one.
 - d. The right to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony.

- e. The right to present evidence in my own behalf and to have the court compel my chosen witnesses to appear and testify free of charge.
 - f. The right to remain silent, not to incriminate myself, and to be presumed innocent unless/or until proven guilty beyond a reasonable doubt.
 - g. The right to a direct appeal.
9. My plea is voluntary and not the result of force or threats. No promises were made to me concerning the consequences of my plea or what my sentence will be, other than those contained in a plea agreement if I have one.
 10. I understand that if I am arrested on a subsequent offense, I may be charged with a more serious offense and associated penalties because of this plea.
 11. I understand that my guilty or no contest plea in this case may cause me to violate my probation or parole in another case.

I CERTIFY that I have read and that I understand all the above matters. I wish to give up my constitutional rights, including my right to a trial by jury and my right to an attorney, and to plead guilty or no contest to the charge(s) of:

I FURTHER CERTIFY that I have attached to this form a legible photocopy of my driver’s license or other government-issued photo identification that contains my name and birth date. I understand that the court will not accept my telephonic plea if I have not attached a copy of my license or identification.

Defendant’s signature: _____ Dated: _____

Defendant’s Address: _____

Defendant’s Telephone # _____ Defendant’s Email: _____

DEFENDANT’S ATTORNEY (IF ANY)

I have explained to the defendant the nature of the charge(s) and the defendant’s constitutional rights.

Signature of defendant’s attorney (if any) and State Bar number: _____

OFFICER’S CERTIFICATION

[This certification is required only if the defendant is entering a plea of guilty or no contest for a violation of section 13-1802 (theft) or 13-1805 (shoplifting), a domestic violence offense as defined in section 13-3601, or a violation of an offense in Title 13, Chapter 14 (specified sexual offenses) or Title 28, Chapter 4 (driving under the influence).]

I CERTIFY that

1. the above-named defendant personally appeared before me,
2. the defendant acknowledged that he or she read all the foregoing information,
3. the defendant identified himself or herself to me by a driver’s license or a picture ID from the State of _____, number _____; and
4. I have affixed a print of the defendant’s right index finger to this document in the box below.



Fingerprint

Dated: _____

Officer Name and Badge Number

Law Enforcement Agency

Address

()
Telephone

NOTARY

[IF THERE IS NO OFFICER’S CERTIFICATION AND ONE IS NOT REQUIRED, a notary must witness the defendant’s signature.]

The defendant established their identity to my satisfaction and I personally witnessed the defendant’s signature on page 2 of this form.

State of _____

County of _____

I hereby certify that _____ personally appeared before me. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 20__.

Notary Public: _____

Commission Expires: _____

**(The following section is for court use only.)
ACCEPTANCE OF PLEA AND JUDGMENT OF CONVICTION**

The defendant has appeared telephonically before the court on the date indicated below [] with or [] without an attorney. If defendant required an interpreter, the interpreter’s name is: _____.

The court has advised the defendant and confirmed the defendant’s understanding of the following:

1. The nature of the charges to which defendant is pleading guilty or no contest, and the maximum penalties;
2. The constitutional rights that defendant is waiving by pleading guilty or no contest, and that the defendant’s waiver is knowing and voluntary; and
3. The right to file a petition for post-conviction relief and, if denied, a petition for review.

I have asked the defendant about any status on probation or parole, I have given the defendant an immigration advisal, and I have spoken with the defendant regarding the other matters set for above the defendant’s signature. The court finds a factual basis for the plea and that the defendant has entered the plea knowingly and voluntarily and without threats or promises, other than those contained in a plea agreement, if any. The court accordingly accepts the defendant’s plea.

Case # _____ For the offenses committed on _____ 20_____

It is the judgment of the court that the defendant is guilty of the following offenses and is sentenced as follows:

Count 1: _____ a class 1, 2, 3 misdemeanor,
 petty offense, a violation of A.R.S. § or ordinance number _____.

SENTENCE: The defendant is sentenced as follows: _____.

Count 2: _____ a class 1, 2, 3 misdemeanor,
 petty offense, a violation of A.R.S. § or ordinance number _____.

SENTENCE: The defendant is sentenced as follows: _____.

Count 3: _____ a class 1, 2, 3 misdemeanor,
 petty offense, a violation of A.R.S. § or ordinance number _____.

SENTENCE: The defendant is sentenced as follows: _____.

Count 4: _____ a class 1, 2, 3 misdemeanor,
 petty offense, a violation of A.R.S. § or ordinance number _____.

SENTENCE: The defendant is sentenced as follows: _____.

Count 5: _____ a class 1, 2, 3 misdemeanor,
 petty offense, a violation of A.R.S. § or ordinance number _____.

SENTENCE: The defendant is sentenced as follows: _____.

Date: _____

Judge's signature: _____

I certify that a copy of this document was mailed to the defendant at the address shown above on this date:

_____ by (clerk's name or initials): _____.