

IN THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IOWA

FELONY SENTENCING ISSUES)	
)	ADMINISTRATIVE ORDER
)	No. 2020-13

This Order should clarify various questions raised about how to handle felony sentencings.

PRE-PANDEMIC PLEA OF GUILTY AND SENTENCING:

In a felony case where the Defendant entered a plea of guilty on the record pre-pandemic, the matter was set for sentencing and a PSI was ordered. That sentencing date remains on the calendar now. At the time set for that sentencing, it must be done by telephone, by video-conferencing or in writing.

If the sentencing is to be done in writing, Defendant’s attorney must have the Defendant sign a waiver of presence form. In addition, the prosecution and defense counsel should then file a joint proposed sentencing order with the court.

If there is no agreement on the sentence to be imposed, Defendant and his/her counsel and prosecution’s counsel shall participate in the sentencing hearing by telephone or video-conference.

If a joint proposed sentencing order is presented to the court, the judge assigned to that sentencing matter will determine whether he/she will accept the proposed sentencing order and/or the plea agreement. If so, the court’s disposition order will reflect that proposed sentencing. If the judge determines he/she will not accept the proposed sentencing order and/or the plea agreement, the court will continue the matter for another sentencing date where the Defendant and counsel for both parties shall all appear by telephone or by video-conference.

POST-PANDEMIC PLEA OF GUILTY AND SENTENCING:

A post-pandemic felony plea of guilty must be done in writing. Forms have been developed and distributed previously for written felony guilty pleas.

Sentencing in Writing:

The written plea of guilty shall be uploaded to EDMS. If Defendant agrees to be sentenced entirely in writing without his/her presence at the sentencing hearing, Defendant's attorney shall have him/her sign a Waiver of Presence and Consent to Written Sentencing form and file that form with the written plea of guilty along with the Sentencing Election form. *See* forms below.

Sentencing by Telephone or Video Conferencing:

If the Defendant does not agree to waive his/her presence for sentencing, but does elect to be sentenced in person or by video conference, Defendant's counsel shall have him/her sign a Consent to Sentencing by Telephone or Video Conferencing form and fill out and sign a Sentencing Election Form and file those forms with the written plea of guilty. *See* forms below.

In-Person Sentencing:

If Defendant elects an "in-person" sentencing, Defendant's counsel shall have him/her fill out and sign a Sentencing Election Form and file that form with the written guilty plea.

Sentencing Hearings:

In all cases where there is a felony plea in writing, a judicial specialist will create draft orders for a judge to accept the plea, to order a PSI, and to set the matter for a sentencing hearing.

At the time of the sentencing hearing, the judge will examine the file. If the Defendant has agreed to be sentenced entirely in writing without his/her presence and a joint proposed sentencing order has been filed, the judge will determine whether he/she will accept the proposed

sentencing order and the plea of guilty. If so, the court's disposition order will reflect that proposed sentencing. If the judge determines he/she will not accept the proposed sentencing order or the plea agreement, the court will continue the matter for another sentencing date where the Defendant and counsel for both parties shall all appear by telephone or by video-conference. If there is no agreement on the sentence to be imposed, Defendant and his/her counsel and prosecution's counsel shall participate in the sentencing hearing by telephone or video-conference.

If Defendant has not waived his presence at the sentencing hearing, but has consented to a telephonic or video conference sentencing, it shall be conducted by telephone or video-conferencing with all parties and counsel present either by telephone or video-conferencing.

If Defendant has selected the choice on the Sentencing Election Form that he/she will not agree to a sentencing hearing unless he/she is physically present, the matter shall be continued to a date in the future when the pandemic crisis has passed.

Forms:

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

<p>STATE OF IOWA,</p> <p>Plaintiff,</p> <p>v.</p> <p>_____ ,</p> <p>Defendant.</p>	<p>Case No. _____</p> <p>CONSENT TO SENTENCING BY TELEPHONE OR VIDEO CONFERENCE</p>
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COMES NOW the Defendant, _____, in the above-captioned cause, and hereby submits this Consent to Sentencing by Telephone or Video-Conference, and states the following:

1. I understand that I have a right to be personally physically present at the sentencing hearing in my case.
2. I understand that due to the COVID-19 pandemic, I am being offered the opportunity to participate in this sentencing hearing by telephone or teleconference.
3. I understand that if I choose to participate telephonically or by teleconference, I will still be given a full opportunity to address the court (right of allocution), and my attorney will still be able to make a full sentencing recommendation.
4. I understand that if I choose to participate telephonically or by teleconference, the judge will be pronouncing judgment and sentence in my case over the phone, and will not have the opportunity to personally observe me and enter judgment in my physical presence before the judge.
5. I understand that I must still appear either by phone or by videoconference. I also understand that I am not required to waive my personal presence at this sentencing

hearing, and can request a continuance so that I may safely attend following the pandemic.

6. My attorney has answered any and all questions I have about this waiver.
7. With all that in mind, I wish to waive my personal presence at my upcoming sentencing hearing on _____ at _____ a.m./p.m.
8. I will be available to be reached by telephone during this hearing at the following phone number: _____.

WHEREFORE, I am asking the Court to accept my waiver of personal presence at the sentencing hearing on _____ at _____ a.m./p.m. I will be available by phone during these hearings at the number I provided in paragraph (8).

Date

Name (signature)

Attorney for Defendant

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

<p>STATE OF IOWA,</p> <p>Plaintiff,</p> <p>v.</p> <p>_____ ,</p> <p>Defendant.</p>	<p>Case No. _____</p> <p>WAIVER OF PRESENCE AND CONSENT TO WRITTEN SENTENCING</p>
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COMES NOW the Defendant, _____, in the above-captioned cause, and hereby submits this Waiver of Presence and Consent to Written Sentencing, and states the following:

1. I understand that I have a right to be personally physically present at the sentencing hearing in my case or participate by telephone or teleconference. I have had a chance to review my Pre-Sentence Investigation Report and, if I found any additions or corrections were needed, my attorney will file a statement in that regard as an attachment to this document. No motions are presently pending and no reason exists for the court not to proceed to sentencing in my case.
2. I understand that due to the COVID-19 pandemic, I am being offered the opportunity to be sentenced in writing without a sentencing hearing in person, by telephone or by teleconference as provided for in Paragraph 18 of the Supreme Court's supervisory Order dated 4-2-20.
3. I understand that if I choose to be sentenced without a hearing, I will be giving up a full opportunity to address the court (right of allocution), and my attorney will be unable to make a full sentencing recommendation. I understand I and/or my attorney may file a

written statement for the court's consideration, and my attorney will file such a statement, if any, as an attachment to this document.

4. I understand that if I choose to be sentenced in writing without a sentencing hearing, the judge will be pronouncing judgment and sentence in my case without having the opportunity to personally observe me and enter judgment in my physical presence.
5. I also understand that I am not required to waive my personal presence at this sentencing hearing, and can request a continuance so that I may safely attend following the pandemic.
6. My attorney has answered any and all questions I have about this waiver of presence, waiver of my right to allocution, and the Agreement as to Sentence previously filed herein.
7. With all that in mind, I wish to waive my presence at a sentencing hearing and hereby request that the court enter a Sentencing Order embodying the Agreement as to Sentence entered into by myself, my attorney and the State previously filed herein.

Date

Name (signature)

Attorney for Defendant

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

<p>STATE OF IOWA,</p> <p>Plaintiff,</p> <p>v.</p> <p>_____ ,</p> <p>Defendant.</p>	<p>Case No. _____</p> <p>SENTENCING HEARING ELECTION</p>
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During this Pandemic crisis and until further order of this court ALL sentencings must be done by telephone, video-conferencing or Go To Meeting. Please see the Order issued by the Iowa Supreme Court on 03/17/2020 and this District's guidelines, which have been provided to all bar members and is updated as frequently as possible.

If you have a client who has a felony sentencing scheduled or wants one scheduled, please check the choice below indicating the Defendant and counsel will all appear either telephonically, by video-conferencing, or by Go To Meeting.

_____ Defendant and counsel acknowledge and agree to have the sentencing done entirely in writing without Defendant's presence.

_____ Defendant and counsel acknowledge and agree to have the sentencing in this matter set for hearing by telephone, OR

_____ Defendant and counsel acknowledge and agree to have the sentencing in this matter set for hearing by video-conferencing, OR

_____ Defendant and counsel acknowledge and agree to have the sentencing in this matter set for hearing by Go To Meeting, OR

_____ Defendant and counsel do not agree to have the sentencing in this matter set for hearing without Defendant's physical presence.

Based on the line checked above, Defendant's sentencing hearing shall be held _____ on the _____ day of _____, 2020 at _____ .m.

If this form is not signed and electronically filed with the Guilty Plea form, the sentencing hearing shall be continued by the court.

If Defendant checks the box above stating he/she does not agree to have the sentencing in this matter set for hearing without his/her physical presence, the sentencing hearing shall be continued by the court.

If Defendant and counsel agree to have this matter set for hearing entirely in writing, by telephone, video-conferencing, or Go To Meeting, counsel for the parties shall be responsible for arranging their client(s) and themselves to participate in the telephone conference call Court Administration sets up.

Misdemeanor sentencings shall also ALL be done either in writing, by telephonically, by video-conferencing, or by Go To Meeting, but do not require a special setting or a continuance until determined to need one by the Judge.

If a continuance is needed, the Court will schedule the matter for a sentencing hearing to be held in the future after the Pandemic crisis.

Date

Name (signature)

Attorney for Defendant

This Order merely clarifies this Court's previous Orders and the Supreme Court's April 2, 2020 and April 6, 2020 Orders.

DATED: April 9, 2020.

ALL ABOVE IS SO ORDERED.

/S/

MARLITA A. GREVE
CHIEF JUDGE
7TH JUDICIAL DISTRICT