

FORM TO BE USED BY PRISONERS FILING A  
MOTION TO WITHDRAW A PLEA OF GUILTY  
UNDER MONT. CODE ANN. § 46-16-105

NAME \_\_\_\_\_

PRISON NUMBER \_\_\_\_\_

PLACE OF CONFINEMENT \_\_\_\_\_

CRIMINAL CAUSE NUMBER \_\_\_\_\_

\_\_\_\_\_, Petitioner,  
(Full Name)

v.

STATE OF MONTANA, Respondent.

Instructions

1. Use this form if you are seeking to withdraw a guilty plea. If you are allowed to withdraw your guilty plea, note that the charges are still in place and the State may proceed with a criminal trial.
2. The motion must be neatly handwritten or typed. It must be filed in the court that entered the judgment of conviction.
3. When you have completed the forms, send the original to the clerk of the district court in the county where you were convicted. Also, mail a copy of the motion to each party listed on the Certificate of Service.

4. THERE ARE FILING DEADLINES FOR PERSONS WHO PLED GUILTY ON OR AFTER JULY 1, 2003. If you pled guilty to offenses on or after July 1, 2003, you must file the motion within one year after the judgment becomes final. Use the following rules to determine when a conviction is final:
- (a) If you appealed to the Montana Supreme Court, the conviction becomes final when the time for appealing to the U.S. Supreme Court expires. This is 90 days from the date the Montana Supreme Court's opinion was issued or, if rehearing was sought, 90 days from the date rehearing was denied.
  - (b) If you did not appeal to the Montana Supreme Court, the conviction becomes final when the time for appeal expires. This is 60 days from the date the written judgment is entered.
  - (c) If you appealed to the United States Supreme Court following an appeal to the Montana Supreme Court, the conviction becomes final on the date that the U.S. Supreme Court issues its final order in the case.
5. The only exception to the one-year filing deadline is when you have a claim of innocence that is supported by evidence of a fundamental miscarriage of justice. If you wish to proceed under this exception, complete paragraph 10 (but only if your guilty plea was entered on or after July 1, 2005).

NOTE: If you have a claim of innocence, you may also consider filing for postconviction relief.

6. In paragraph 9, explain why you should be allowed to withdraw your guilty plea. A guilty plea must be knowing, voluntary, and intelligent, so you should explain why it did not meet some or all of these requirements.

MOTION TO WITHDRAW PLEA OF GUILTY

1. I pled guilty to the following criminal offense(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. My guilty plea(s) was/were entered on (date) \_\_\_\_\_.

3. Judgment on these offenses was entered on (date) \_\_\_\_\_.

4. I received the following sentence: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Check one: ( ) There was a plea agreement.  
( ) There was no plea agreement.

6. If there was a plea agreement, identify the terms of the agreement:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Check one: ( ) I appealed to the Montana Supreme Court.  
( ) I did not appeal to the Montana Supreme Court.

8. Check one: ( ) I appealed to the U.S. Supreme Court.  
( ) I did not appeal to the U.S. Supreme Court.



11. I was represented by the following attorneys:

At trial: \_\_\_\_\_

At sentencing: \_\_\_\_\_

On appeal: \_\_\_\_\_

MEMORANDUM IN SUPPORT OF  
MOTION TO WITHDRAW PLEA OF GUILTY

No set rule or standard exists under which a trial court addresses a request to withdraw a guilty plea; each case must be considered in light of its unique record.” State v. Enoch, 269 Mont. 8, 11, 887 P.2d 175, 177 (1994).

Because a criminal defendant waives numerous constitutional rights when pleading guilty, "it is a well settled legal principle that a guilty plea must be a voluntary, knowing, and intelligent choice among the alternative courses of action open to the defendant." State v. Sanders, 1999 MT 136, ¶14, 294 Mont. 539, ¶14, 982 P.2d 1015, ¶14, *citing* State v. Bowley, 282 Mont. 298, 304, 938 P.2d 592, 595 (1997) (*citing* State v. Radi, 250 Mont. 155, 159, 818 P.2d 1203, 1206 (1991)). Thus, prior to accepting a guilty plea, the trial court must satisfy the statutory requirements set forth in Mont. Code Ann. § 46-12-210 and 46-16-105.

The trial court may permit the plea of guilty to be withdrawn, at any time before or after judgment, for good cause shown. Mont. Code Ann. § 46-16-105(2001). Good cause may include discovery of new exculpatory evidence, an inadequate plea colloquy, or intervening circumstances that did not exist when the

defendant pled guilty. See State v. Lone Elk, 2005 MT 56, ¶ 19. If the court, the prosecutor, defense counsel, or some other party induced the plea, however slight, by threats or promises, that evidence indicates involuntariness. Id. ¶ 21. Further, the defendant must be mentally competent to enter a plea and any medication he or she is taking must not render him/her mentally incompetent to plead. Id.

When a plea is rendered involuntary because of the deficient performance of counsel, the defendant must also prove there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." United States v. McCoy, 215 F. 3d 102, 107 (9th Cir. 2000) *quoting* United States v. Taylor, 139 F. 3d 924, 929-930(D.C. Cir. 1998); *citing* Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The court will permit a change of plea "if it fairly appears that the defendant was in ignorance of his rights and of the consequences of his act. . . ." State v. Schaff, 1998 MT 104, ¶17, 288 Mont. 421, ¶17, 958 P.2d 682, ¶17. Prejudice is determined by weighing the potential strength of the state's case, as well as the likelihood of success of the actions counsel failed to take. Hill v. Lockhart, U.S. 52, 59-60, 106 S.Ct. 366, 371, 88 L.Ed.2d 203, 210-11 (Ark. 1985).

"If there is any doubt that a guilty plea was not voluntarily or intelligently made, the doubt must be resolved in favor of the defendant." State v. Melone, 2000 MT 118, ¶14, 299 Mont. 442, ¶14, 2 P.3d 442, ¶14; *see also* State v. Keys, 1999 MT 10, ¶12, 293 Mont. 81, ¶12, 973 P. 2d 812, ¶12 (1999). The requirement that

a guilty plea be entered voluntarily has long been a requirement in Montana. As far back as State ex rel. Foot v. District Court, 81 Mont. 495, 263 P. 979, 982 (1928), the Court emphasized that “[a] plea of guilty should be entirely voluntary, by one competent to know the consequences, and should not be induced by fear, persuasion, promise, or ignorance.”

Wherefore, Petitioner prays that the Court grant relief to which he may be entitled in this proceeding.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature of Petitioner)

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion to Withdraw Plea of Guilty and Memorandum was sent by U.S. mail to the following:

County Attorney

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_