



SUPREME COURT OF GEORGIA

Atlanta July 11, 2007

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

It is ordered that the Georgia Uniform Probate Court Rules be hereby amended to read as follows:

Rule 27. Arraignment.

Rule 27.1. Calendar.

Rule 27.2. Call for Arraignment.

Rule 27.1. Calendar.

The judge or the judge's designee shall set the time of arraignment unless arraignment is waived either by the defendant or by operation of law. Notice of the date, time and place of arraignment shall be delivered to the clerk of the court and sent to attorneys of record, defendants and bondsmen.

Rule 27.2. Call for Arraignment.

Before arraignment the court shall inquire whether the accused is represented by an attorney and, if not, advise the accused of the right to indigent defense counsel and the procedures by which an attorney's assistance may be obtained.

Upon the call of the case for arraignment the accused, or the attorney for the accused, shall answer whether the accused pleads guilty or not guilty or desires to enter a plea of nolo contendere to the offense or offenses charged; a plea of not guilty shall constitute a joining of the issue.

Rule 28. Motions, Demurrers, Special Pleas, Etc.

Rule 28.1. Time for Filing.

Rule 28.2. Time for Hearing.

Rule 28.3. Notice of Prosecution's Intent to Present Evidence of Similar Transactions.

Rule 28.4. Notice of Intention of Defense to Raise Issue of Insanity, Mental Illness or Mental Competency.

Rule 28.1. Time for Filing.

All motions, demurrers, and special pleas shall be made and filed at or before the time set by law, unless time therefor is extended by the judge in writing prior to trial. Notices of the state's intention to present evidence of similar transactions or occurrences and notices of the intention of the defense to raise the issue of insanity or mental illness shall be given and filed at least ten (10) days before trial unless the time is shortened or lengthened by the judge. Such filing shall be in accordance with the following procedures.

Rule 28.2. Time for Hearing.

All such motions, demurrers, special pleas and notices shall be heard and considered at such time, date, and place as set by the judge. Generally, such will be heard at or after the time of arraignment and prior to the time at which such case is scheduled for trial.

Rule 28.3. Notice of Prosecution's Intent to Present Evidence of Similar Transactions.

(A) The prosecution may, upon notice filed in accordance with section 28.1 of these rules, request of the court in which the charging instrument is pending leave to present during the trial of the pending case evidence of similar transactions or occurrences.

(B) The notice shall be in writing, served upon the defendant's counsel, and shall state the transaction, date, county, and the name(s) of the victim(s) for each similar transaction or occurrence sought to be introduced. Copies of accusations or indictments, if any, and guilty pleas or verdicts, if any, shall be attached to the notice. The judge shall hold a hearing at such time as may be appropriate, and may receive evidence on any issue of fact necessary to determine the request. The burden of proving that the evidence of similar transactions or occurrences should be admitted shall be upon the prosecution. The state may present during the trial evidence of only those similar transactions or occurrences specifically approved by the judge.

(C) Evidence of similar transactions or occurrences not approved shall be inadmissible. In every case, the prosecuting attorney and defense attorney shall instruct their witnesses not to refer to similar crimes, transactions or occurrences, or otherwise place the defendant's character in issue, unless specifically authorized by the judge.

(D) If upon the trial of the case the defense places the defendant's character in issue, evidence of similar transactions or occurrences, as shall be admissible according to the rules of evidence, shall be admissible, the above provisions notwithstanding.

(E) Nothing in this rule is intended to prohibit the state from introducing evidence of similar transactions or occurrences which are lesser included alleged offenses of the charge being tried, or are immediately related in time and place to the charge being tried, as part of a single, continuous transaction. Nothing in this rule is intended to alter the rules of evidence relating to impeachment of witnesses.

(F) This rule shall not apply to sentencing hearings.

Rule 28.4. Notice of Intention of Defense to Raise Issue of Insanity, Mental Illness or Mental Competency.

Reserved.

Rule 29. Criminal Trial Calendar.

Rule 29.1. Calendar Preparation.

Rule 29.2. Removal From Calendar.

Rule 29.1. Calendar Preparation.

All cases shall be set for trial within a reasonable time after arraignment. The judge or the judge's designee shall prepare a trial calendar, shall deliver a copy thereof to the clerk of court, and shall give notice in person or by mail to each counsel of record, the bondsman (if any) and the defendant at the last address indicated in court records, not less than 7 days before the trial date. The calendar shall list the dates that cases are set for trial, the cases to be tried at that session of court, the case numbers, the names of the defendants and the names of the defense counsel.

Rule 29.2. Removal From Calendar.

No case shall be postponed or removed from the calendar except by the judge.

Rule 30. Pleading by Defendant.

Rule 30.1. Alternatives.

Rule 30.2. Aid of Counsel--Time for Deliberation.

Rule 30.3. Propriety of Plea Discussions and Plea Agreements.

Rule 30.4. Relationship Between Defense Counsel and Client.

Rule 30.5. Responsibilities of the Trial Judge.

Rule 30.6. Consideration of Plea in Final Disposition.

Rule 30.7. Determining Voluntariness of Plea.

Rule 30.8. Defendant to Be Informed.

Rule 30.9. Determining Accuracy of Plea.

Rule 30.10. Stating Intention to Reject the Plea Agreement.

Rule 30.11. Record of Proceedings.

Rule 30.12. Plea Withdrawal.

Rule 30.1. Alternatives.

(A) A defendant may plead guilty, not guilty, or in the discretion of the judge, nolo contendere. A plea of guilty or nolo contendere should be received only from the defendant personally in open court, except when the defendant is a corporation, in which case the plea may be entered by counselor or a corporate officer. In misdemeanor cases, upon the request of a defendant who has made, in writing, a knowing, intelligent and voluntary waiver of his right to be present, the court may accept a plea of guilty in absentia.

(B) A defendant may plead nolo contendere only with the consent of the judge. Such a plea should be accepted by the judge only after due consideration of the views of the parties and the interest of the public in the effective administration of justice. Procedurally, a plea of nolo contendere should be handled under these rules in a manner similar to a plea of guilty.

Rule 30.2. Aid of Counsel--Time for Deliberation.

(A) A defendant shall not be called upon to plead before having an opportunity to retain counsel, or if defendant is eligible for appointment of counsel, until counsel has been appointed or right to counsel waived. A defendant with counsel shall not be required to enter a plea if counsel makes a reasonable request for

additional time to represent the defendant's interest, or if the defendant has not had a reasonable time to consult with counsel.

(B) A defendant without counsel should not be called upon to plead to any offense without having had a reasonable time to consider this decision. When a defendant without counsel tenders a plea of guilty or nolo contendere to an offense, the court should not accept the plea unless it is reaffirmed by the defendant after a reasonable time for deliberation, following the advice from the court required in section 30.8.

Rule 30.3. Propriety of Plea Discussions and Plea Agreements.

(A) In cases in which it appears that the interests of the public in the effective administration of criminal justice (as stated in section 30.6) would thereby be served, the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement. The prosecuting attorney should engage in plea discussions or reach a plea agreement with the defendant only through defense counsel, except when the defendant is not eligible for or does not desire appointment of counsel and has not retained counsel.

(B) The prosecuting attorney, in reaching a plea agreement, may agree to one or more of the following, as dictated by the circumstances of the individual case:

- (1) to make or not to oppose favorable recommendations as to the sentence which should be imposed if the defendant enters a plea of guilty or nolo contendere;
- (2) to seek or not to oppose dismissal of the offense charged if the defendant enters a plea of guilty or nolo contendere to another offense reasonably related to defendant's conduct; or,
- (3) to seek or not to oppose dismissal of other charges or potential charges against the defendant if the defendant enters a plea of guilty or nolo contendere.

Rule 30.4. Relationship Between Defense Counsel and Client.

(A) Defense counsel should conclude a plea agreement only with the consent of the defendant, and should ensure that the decision to enter or not enter a plea of guilty or nolo contendere is ultimately made by the defendant.

(B) To aid the defendant in reaching a decision, defense counsel, after appropriate investigation, should advise the defendant of the alternatives available and of considerations deemed important by him in reaching a decision.

Rule 30.5. Responsibilities of the Trial Judge.

(A) The trial judge should not participate in plea discussions.

(B) If a tentative plea agreement has been reached, upon request of the parties, the trial judge may permit the parties to disclose the tentative agreement and the reasons therefor in advance of the time for the tendering of the plea. The judge may then indicate to the prosecuting attorney and defense counsel whether the judge will likely concur in the proposed disposition if the information developed in the plea hearing or presented in the pre-sentence report is consistent with the representations made by the parties. If the trial judge concurs but the final disposition differs from that contemplated by the plea agreement, then the judge shall state for the record what information in the pre-sentence report or hearing contributed to the decision not to sentence in accordance with the plea agreement.

(C) When a plea of guilty or nolo contendere is tendered or received as a result of a plea agreement, the trial

judge should give the agreement due consideration, but notwithstanding its existence, must reach an independent decision on whether to grant charge or sentence leniency under the principles set forth in section 30.6 of these rules.

Rule 30.6. Consideration of Plea in Final Disposition.

(A) It is proper for the judge to grant charge and sentence leniency to defendants who enter pleas of guilty or nolo contendere when the interests of the public in the effective administration of criminal justice are thereby served. Among the considerations which are appropriate in determining this question are:

(1) that the defendant by entering a plea has aided in ensuring the prompt and certain application of correctional measures;

(2) that the defendant has acknowledged guilt and shown a willingness to assume responsibility for conduct;

(3) that the leniency will make possible alternative correctional measures which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant from the form of conviction;

(4) that the defendant has made public trial unnecessary when there are good reasons for not having the case dealt with in a public trial;

(5) that the defendant has given or offered cooperation when such cooperation has resulted or may result in the successful prosecution of other offenders engaged in equally serious or more serious criminal conduct;

(6) that the defendant by entering a plea has aided in avoiding delay (including delay due to crowded dockets) in the disposition of other cases and thereby has increased the probability of prompt and certain application of correctional measures to other offenders.

(B) The judge should not impose upon a defendant any sentence in excess of that which would be justified by any of the rehabilitative, protective, deterrent or other purposes of the criminal law merely because the defendant has chosen to require the prosecution to prove the defendant's guilt at trial rather than to enter a plea of guilty or nolo contendere.

Rule 30.7. Determining Voluntariness of Plea.

The judge shall not accept a plea of guilty or nolo contendere without first determining, on the record, that the plea is voluntary. By inquiry of the prosecuting attorney and defense counsel, the judge should determine whether the tendered plea is the result of prior plea discussions and a plea agreement, and, if it is, what agreement has been reached. If the prosecuting attorney has agreed to seek charge or sentence leniency which must be approved by the judge, the judge must advise the defendant personally that the recommendations of the prosecuting attorney are not binding on the judge. The judge should then address the defendant personally and determine whether any other promises or any force or threats were used to obtain the plea.

Rule 30.8. Defendant to Be Informed.

The judge should not accept a plea of guilty or nolo contendere from a defendant without first:

(A) Determining on the record that the defendant understands the nature of the charge(s);

(B) Informing the defendant on the record that by entering a plea of guilty or nolo contendere one waives:

- (1) the right to trial by jury;
- (2) the presumption of innocence;
- (3) the right to confront witnesses against oneself;
- (4) the right to subpoena witnesses;
- (5) the right to testify and to offer other evidence;
- (6) the right to assistance of counsel during trial;
- (7) the right not to incriminate oneself; and that by pleading not guilty or remaining silent and not entering a plea, one obtains a jury trial; and

(C) Informing the defendant on the record:

- (1) of the terms of any negotiated plea;
- (2) that a plea of guilty may have an impact on his or her immigration status if the defendant is not a citizen of the United States;
- (3) of the maximum possible sentence on the charge, including that possible from consecutive sentences and enhanced sentences where provided by law; and/or
- (4) of the mandatory minimum sentence, if any, on the charge. This information may be developed by questions from the judge, the district attorney or the defense attorney, or a combination of any of these.

Rule 30.9. Determining Accuracy of Plea.

Notwithstanding the acceptance of a plea of guilty, judgment should not be entered upon such plea without such inquiry on the record as may satisfy the judge that there is a factual basis for the plea.

Rule 30.10. Stating Intention to Reject the Plea Agreement.

If the trial court intends to reject the plea agreement, the trial court shall, on the record, inform the defendant personally that (1) the trial court is not bound by any plea agreement; (2) the trial court intends to reject the plea agreement presently before it; (3) the disposition of the present case may be less favorable to the defendant than that contemplated by the plea agreement; and (4) that the defendant may then withdraw his or her guilty plea as a matter of right. If the plea is not then withdrawn, sentence may be pronounced.

Rule 30.11. Record of Proceedings.

A verbatim record of the proceedings at which a defendant enters a plea of guilty or nolo contendere shall be made and preserved. The record should include:

- (A) the inquiry into the voluntariness of the plea (as required in section 30.7);
- (B) the advice to the defendant (as required in section 30.8);
- (C) the inquiry into the accuracy of the plea (as required in section 30.9), and, if applicable;

(D) the notice to the defendant that the trial court intends to reject the plea agreement and the defendant's right to withdraw the guilty plea before sentence is pronounced.

Rule 30.12. Plea Withdrawal.

(A) After sentence is pronounced, the judge should allow the defendant to withdraw his plea of guilty or nolo contendere whenever the defendant, upon a timely motion for withdrawal, proves that withdrawal is necessary to correct a manifest injustice.

(B) In the absence of a showing that withdrawal is necessary to correct a manifest injustice, a defendant may not withdraw a plea of guilty or nolo contendere as a matter of right once sentence has been pronounced by the judge.