

7/2/10

**THE CRIMINAL JUSTICE (PLEA NEGOTIATIONS
AND AGREEMENTS) ACT**

**The Criminal Justice (Plea Negotiations and
Agreements) Regulations, 2010**

In exercise of the powers conferred upon the Minister by section 21 of the Criminal Justice (Plea Negotiations and Agreements) Act, and of every other power hereunto enabling, the following Regulations are hereby made:-

1. These Regulations may be cited as the Criminal Justice (Plea Negotiations and Agreements) Regulations, 2010.
2. The attorney-at-law for the accused shall inform the accused of any offer made by the prosecution to enter into plea discussions and keep the accused fully informed of any plea discussions.
3. The attorney-at-law for the accused shall *fully* explain to the accused the contents of any plea agreement reached with the prosecution and the advantages, disadvantages and potential consequences of the agreement.

4. A plea agreement shall substantially be in the form set out as Form 1 in the First Schedule.

**Form 1.
First
Schedule.**

5. A notice of breach of a plea agreement shall be in the form set out as Form 2 in the First Schedule.

Form 2.

6. A notice of withdrawal of a plea agreement shall be in the form set out as Form 3 in the First Schedule.

Form 3.

7. A notice requesting additional information shall be in the form set out as Form 4 in the First Schedule.

Form 4.

8. The order accepting a plea agreement shall be in the form set out in the Second Schedule.

**Second
Schedule.**

9. The accused shall initial or make his mark on each page of each form set out in the First Schedule before signing the last page.

10. Subject to section 18 of the Act (sealing of records), in the interests of transparency and probity, written records of the plea negotiations shall be kept by the Director of Public Prosecutions.

FIRST SCHEDULE (Regulation 4)

FORM 1

THE CRIMINAL JUSTICE (PLEA NEGOTIATIONS AND AGREEMENTS) ACT

The Criminal Justice (Plea Negotiations and Agreements) Regulations, 2010

PLEA AGREEMENT

JAMAICA
IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CRIMINAL DIVISION/HOME CIRCUIT DIVISION

Or

IN THE RESIDENT MAGISTRATE'S COURT FOR THE PARISH OF
HOLDEN AT

Suit No.
File No.

R. v (Name of Accused)

This constitutes the Plea Agreement ("the Agreement"), under the Criminal Justice (Plea Negotiations and Agreements) Act ("the Act"), BETWEEN _____, nee _____ /also known as (*alias, if any*)

name of accused (insert maiden name)

through his Attorney-at-law _____ and the Director of Public Prosecutions ("The Director").

name of Attorney-at-law

This Agreement sets out in its entirety the understanding of the parties as to the nature of the Agreement and the possible consequences of the accused's plea of guilty.

The terms of the Agreement are as follows:

The Nature of the Offence

1. The accused is charged with the following offence(s) -

For Example - SIMPLE LARCENY, contrary to section 5 of the Larceny Act:

The maximum penalty for which is [5 years imprisonment].

Substantial facts

2. The substantial facts relevant to any admissions made by the accused are as follows -

(A statement of facts may be attached and incorporated by reference. Any document containing any promise, agreement, understanding or inducement which has been incorporated into the Agreement shall be attached.)

Plea

3. The accused hereby withdraws any previously entered plea(s) of not guilty and enters a plea/pleas of:

(E.g. - To Count 1 - Guilty)

(The draft/information or indictment shall be attached to this Agreement)

Waiver of Rights

4. The accused understands that if the Court accepts the plea of guilty, he waives the following rights:

- (a) the right not to be compelled to give self-incriminating evidence;
- (b) the right to persist in a plea of not guilty;
- (c) the right to confront and cross-examine witnesses against the accused;
- (d) the right to pursue pre-trial motions and appeal preliminary points.

5. It is understood that by pleading guilty the accused does not waive his right to be represented by an attorney-at-law at all stages of the proceedings and he does not waive the rights reserved under this Agreement.

Provisions not binding on Court or Specified Government Agencies or Entities

6. The provisions of this Agreement are not binding on the Court or any of the following agencies or entities of the Government -

(Set out any other agencies or entities, as applicable)

Obligations of the Accused under this Agreement

7. The obligations of the accused under this Agreement are as follows -
(Set out Obligations)

Obligations of the Director of Public Prosecutions under this Agreement

8. The obligations of the Director of Public Prosecutions under this Agreement are as follows -

(Set out Obligations agreed)

9. In exchange for the accused's plea of guilty to *(set out count(s))*, his complete co-operation with the Director as set out in paragraph 7 of this Agreement, and the fulfillment of all his other obligations under this Agreement, the Director agrees to the following:

(Insert)

In this regard the accused understands that the Resident Magistrate/Judge is not bound to accept any recommendations and may impose a greater or lesser sentence.

Director of Public Prosecutions is Free to Prosecute the accused otherwise

10. - (1) The Director is free to prosecute the accused for any other unlawful past conduct that does not relate to this Agreement or any unlawful conduct that occurs after the date of this Agreement.

(2) The Director may, in any case where he considers it desirable so to do, discontinue at any stage before judgment is delivered any criminal proceedings instituted or undertaken by himself or any other person or authority.

Withdrawal from the Agreement by Director

11. The Director may withdraw from this Agreement before sentence on the following grounds, namely that the Director was -

- (a) in the course of plea negotiations, misled by the accused or by his attorney-at-law in some material respect; or
- (b) induced to conclude the plea agreement by conduct amounting to an obstruction of justice.

Withdrawal from Agreement/Appeal by Accused

12. The accused may withdraw from this Agreement before sentence or appeal against a conviction based on this Agreement on the following grounds, namely that -

- (a) it was entered into as a result of an improper inducement;
- (b) the Court determines that the Director of Public Prosecutions has breached the terms of the plea agreement; or
- (c) it was entered into as a result of a misrepresentation or misapprehension as to the substance or consequences of the plea agreement.

Consequences of any Breach of the Agreement

13. This Agreement applies only to offences committed by the accused. It has no effect on any proceedings against the accused not expressly mentioned herein, and shall not preclude any past, present, or future forfeiture actions.

Statement Re Interpretation/Translation/Evaluation of Accused

14. - (1) The accused has/has not communicated with the Director through an interpreter/translator.

(2) The highest education level and/or training of the accused is:

(For example, functionally/ not functionally literate, pre-primary, primary, secondary Grade 9, secondary Grade 11, Secondary Grade 13, tertiary, postgraduate, skills/vocational training)

Contact details of Attorneys-at-law

15. The name, position, business address, business telephone and facsimile numbers of the prosecuting counsel are -

(Set out details for each counsel)

16. The name, position, business address, business telephone and facsimile numbers of the defence counsel are -

(Set out details for each counsel)

Other provisions

17. *(Insert other provisions as agreed)*

Effective date of Agreement

18. This Agreement becomes effective upon signature by the accused, his attorney-at-law and the Director, before a Justice of the Peace.

STATEMENT BY THE ACCUSED

I _____ have read this Agreement and carefully discussed
(name of accused)
 each paragraph with my attorney(s)-at-law,

(name of attorney(s)-at-law)

I understand the terms of this Agreement and voluntarily, and of my free will, agree to them without reservation. I am pleading guilty to the charge(s) as indicated in this Agreement. My attorney-at-law has advised me of my rights, of possible defences, of the penalties and of the consequences of entering into this Agreement. No promises, agreements, understanding or inducements have been made to me other than those contained in this Agreement. No one has threatened or forced me in any way to enter into this Agreement. I

have had sufficient time to confer with my attorney(s)-at-law concerning this Agreement. I am satisfied with the representation of my attorney(s)-at-law in this matter.

CERTIFICATE OF ACCUSED'S ATTORNEY(S)-AT-LAW

I am/We are the attorney(s)-at-law for _____ .
(name of accused)

I/We have read this Agreement and carefully discussed each paragraph of this Agreement with the accused. Further, I/We have fully advised the accused of his rights, of possible defences, of the penalties, and of the consequences of entering into this Agreement. To the best of my/our knowledge and belief, the accused's decision to enter into this Agreement is an informed and voluntary one.

Name(s) of Attorney(s)-at-law
representing the accused

Date

JURAT

SWORN TO by name of accused)
in the presence of his attorney(s)-at-law) _____
Accused

_____) _____
) Attorney(s)-at-law for the accused
and the Director of Public)
Prosecutions)
_____) _____
) Director of Public Prosecutions

This day of , 20)
Before me)

_____) _____
) JUSTICE OF THE PEACE for the
parish of _____)

CERTIFICATE OF JUDGE/RESIDENT MAGISTRATE

JAMAICA
IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CRIMINAL DIVISION/HOME CIRCUIT DIVISION

Or

IN THE RESIDENT MAGISTRATE'S COURT FOR THE PARISH OF
HOLDEN AT

Suit No.
File No.

A plea of guilty is entered by the accused herein and accepted by this Honourable Court. I hereby certify that no improper inducement was offered to the accused by the Court to encourage him to enter into this plea agreement. I believe that the accused understands the nature, substance and consequence of the plea agreement. There is a factual basis upon which the plea agreement has been made and acceptance of the plea agreement would not be contrary to the interests of justice.

JUDGE/RESIDENT MAGISTRATE

***Declaration by Interpreter/Translator as to
The Accuracy of the Interpretation/Translation
during the Negotiations and in respect of the
Contents of the Plea Agreement***

I, **A.B.**, _____, do solemnly and
(Insert name of person translating and interpreting)
sincerely declare that -

1. I am certified/ registered to interpret and translate from the _____ language to the _____ language.
My Certification/Registration Number(s) is/are:
_____.

2. I have translated (*describe document or portion thereof, e.g. a transcript of the negotiations/the Plea Agreement/attached document*) from the _____ language (*insert name of language*) to the ENGLISH language.

3. To the best of my abilities and belief, the interpretation during the negotiations is accurate and the contents of the Agreement are a true and accurate translation thereof.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true, and by virtue of the Voluntary Declarations Act.

Taken and acknowledged by the said **A.B.**)
this day of 20)
At)
) _____
In the parish of) Signature of Interpreter

before me

JUSTICE OF THE PEACE for the
parish of



CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a true and correct copy of the above and foregoing Agreement has been furnished to _____
name(s) and address(es) of the accused/attorney(s)-at-law

and to the Clerk of Court for the parish of _____ /
name of parish/

Registrar of the Supreme Court by Mail/hand delivery this _____ day of _____, 20__ .

Director of Public Prosecutions

Date

FORM 2

(Regulation 6)

THE CRIMINAL JUSTICE (PLEA NEGOTIATIONS AND AGREEMENTS) ACT

The Criminal Justice (Plea Negotiations and Agreements) Regulations, 2010

NOTICE OF BREACH OF PLEA AGREEMENT

JAMAICA
IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CRIMINAL DIVISION/HOME CIRCUIT DIVISION

Or

IN THE RESIDENT MAGISTRATE'S COURT FOR THE PARISH OF HOLDEN AT

Suit No.
File No.

R.v *(Name of Accused)*

TO:

(Name of accused)
(address or registered office)

TAKE NOTICE that the Director of Public Prosecutions entered into a Plea Agreement with you on the _____ day of _____, 20__

AND WHEREAS the Director is satisfied that there has been a breach of the terms and conditions of the Plea Agreement, namely -

(Set out the nature of the breach)

the Director hereby gives notice that -

(Outline consequence of breach)

Dated this day of 20 .

The effective date of this Notice is the day of 20 .

SEAL

(Signature)

Director of Public Prosecutions

FORM 3

(Regulation 7)

**THE CRIMINAL JUSTICE (PLEA NEGOTIATIONS
AND AGREEMENTS) ACT**

**The Criminal Justice (Plea Negotiations and
Agreements) Regulations, 2010**

**NOTICE OF APPLICATION TO WITHDRAW FROM
PLEA AGREEMENT**

JAMAICA
IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CRIMINAL DIVISION/HOME CIRCUIT DIVISION

or

IN THE RESIDENT MAGISTRATE'S COURT FOR THE PARISH OF
HOLDEN AT

Suit No.
File No.
Indictment No.

R. v (Name of Accused)

TO: (**Name of accused**) address or registered office)

TAKE NOTICE that the accused *name of accused* who enters into a plea agreement dated between _____ **HEREBY GIVES NOTICE** of application to withdraw from the Plea Agreement on the basis that -

(Please tick)

- it was entered into as a result of an improper inducement
- the Court determines that the Director of Public Prosecutions has breached the terms of the plea agreement
- it was entered into as a result of a misrepresentation or misapprehension as to the substance or consequences of the plea agreement

(set out other reasons)

Dated this day of , 20 .

(Signature)
Director of Public Prosecutions

FORM 4

(Regulation 8)

**THE CRIMINAL JUSTICE (PLEA NEGOTIATIONS
AND AGREEMENTS) ACT**

**The Criminal Justice (Plea Negotiations and
Agreements) Regulations, 2010**

NOTICE REQUESTING ADDITIONAL INFORMATION

JAMAICA
IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CRIMINAL DIVISION/HOME CIRCUIT DIVISION

or

IN THE RESIDENT MAGISTRATE'S COURT FOR THE PARISH OF
HOLDEN AT

Suit No.
File No.
Indictment No.

R. v (Name of Accused)

TO: (Name of accused) address or registered office)

TAKE NOTICE that the following additional information is requested -
(set out information required)

Dated this day of . 20 .

Director of Public Prosecutions

Date

SECOND SCHEDULE

(Regulation 9)

ORDER ACCEPTING PLEA

(Suit No./Information No./Indictment No.)

IT IS HEREBY ORDERED that the accused's plea of guilty be accepted, and it is hereby accepted, by this Court, in accordance with his request.

BY THE COURT

Judge/Resident Magistrate

Dated this day of , 2010.

Minister of Justice