

NAPA SUPERIOR COURT

PLEA FORM

Defendant

Hopkins, Klark

Case Number

CR184555

INSTRUCTIONS

Fill out this form if you wish to plead guilty or no contest (or admit a violation of probation). Initial the box for each item that applies to you, but only if you understand it, and sign and date the form on page 3. If you have any questions about your case, the possible sentence, or the information on this form, ask your attorney or the judge.

YOU MUST READ AND INITIAL SECTIONS 1 AND 2

1. **Right To A Trial** - I understand that I have the right to a speedy, public jury trial or court trial. At a trial, I would be presumed innocent, and I could not be convicted unless 12 impartial jurors (or the judge at a court trial) were convinced of my guilt beyond a reasonable doubt. (For a probation violation, I understand that I have a right to a hearing in front of a judge who would decide if I violated conditions of my probation.) I give up my right to a jury trial and my right to a court trial (or probation hearing). INITIALS
KDH

Right To Confront And Cross-Examine Witnesses - I understand that I have a right to see and hear all witnesses who may testify against me at the trial. I understand that I have a right to ask them questions during the trial. I give up my right to confront and cross-examine witnesses.

Right To Produce Evidence - I understand that I have a right to present evidence, to testify in my own behalf, and to have the Court issue subpoenas to bring into court all witnesses and evidence favorable to me, at no cost to me. I give up my right to produce evidence.

Right To Remain Silent - I understand that I have a right to remain silent and not incriminate myself. I understand that by pleading guilty or no contest I am incriminating myself. I give up my right to remain silent.

Penalty For Charges I Am Pleading Guilty Or No Contest To (Or Admitting A Violation Of Probation To) - I understand the possible consequences of my plea(s) include the following:

• 2 VC § 2800.2 16m, 2y, 3y prison \$10,000
 Count No. Charge (code & section no.) Minimum Penalty (jail & fine) Maximum Penalty (jail & fine)

• * If probation denied, minimum jail term of 180; no minimum when probation is granted Other consequences
Count No. Charge (code & section no.) Minimum Penalty (jail & fine) Maximum Penalty (jail & fine)

• Other consequences

I understand that in addition to the base fine, I will have to pay various legislatively imposed penalties, assessments, and fees. Such penalties, assessments, and fees will exceed 3 times the amount of the base fine.

I understand that a plea of guilty or no contest (or an admission to a violation of probation) may be grounds for violating probation or parole which has been previously granted to me in any other case.

I understand that, if I am not a United States citizen, a plea of guilty or no contest could result in my deportation, exclusion from admission to this country, or denial of naturalization.

2. I understand if I am sentenced to county jail pursuant to PC 1170(h), a portion of my term may be suspended and, upon release from jail, I may be placed on mandatory supervision and if I violate any of the terms and conditions of my mandatory supervision, I could be returned to county jail for up to the remainder of my suspended jail term.
 I understand that I may be ordered to pay restitution to the victim(s), if any. I may request a hearing.
 I understand that I will be ordered to pay a restitution fine. The fine is \$100 to \$1000 for one or more misdemeanors and \$200 to \$10,000 for one or more felonies (if I am sent to prison or to county jail pursuant to PC 1170(h), I will pay an additional, identical restitution fine which will be suspended unless parole or community supervision is revoked).
 I stipulate there is a factual basis for my plea(s) in the police report.
 I understand that a plea of no contest has exactly the same effect in this case as a plea of guilty, but it cannot be used against me in a civil lawsuit unless the offense is a felony.
 I understand the nature of the charge(s) against me and the possible pleas and defenses.
 No one has used any threats, force, violence, duress or undue influence of any kind on me, or anyone close to me, in order to get me to plead guilty or no contest.
 I declare I am of sound mind and I am not under the influence of alcohol, drugs, or medication of any kind.
 I hereby freely and voluntarily (circle one)

PLEAD GUILTY PLEAD NO CONTEST ADMIT A VIOLATION OF PROBATION
 to the charges listed in section(s) 1 (and 10).

INITIAL SECTIONS 3 THROUGH 16 ONLY IF THEY APPLY TO YOUR CASE

3. Plea Bargain - The following promises have been made to me as a condition of my plea(s). No other promises have been made. I understand that if the Court refuses to follow this plea bargain then I will be allowed to withdraw my plea(s) of guilty or no contest and enter a not guilty plea.
 I will argue 17(b) at sentencing
 refer to probation
 No additional jail,
 I will receive probation with the search & seizure, testing, no
 illegal drugs, probation term 3 years no early terminat
 waive appeal, No guns/ weapons/ arms
 dismiss remaining charges as to Ms. Hopkins

4. Harvey Waiver - I understand that ordinarily dismissed charges cannot be considered by the Court in deciding punishment for this case, or in ordering victim restitution. I agree the Court can consider the following dismissed charges when I am sentenced in this case and may order restitution for them:

5. Right To A Preliminary Hearing - I understand that I have a right to a preliminary hearing if I am charged with a felony.
 I give up my right to a preliminary hearing.

6. Parole Period - I understand that if I am sent to state prison, I will be placed on parole or local community supervision when released. The maximum parole period is for the remainder of my life if I am sentenced to a life term for first or second degree murder. The maximum parole period is ten years if I am sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (15), (16), or (18) of PC667.5(c), or if I receive a life term under PC209(b), PC269, PC288.7, PC667.51, PC667.61, or PC667.71. The maximum parole period is five years if I am sentenced to a life term for any other offense. The maximum parole period or local community supervision is three years in all other cases.

7. Mandatory Registration - I understand that I will be required to register as a (circle one)

gang offender	sex offender	drug offender	arson offender
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with the police or sheriff of any city or county where I live, if I am sentenced or granted probation.

8. Presumptive State Prison - I understand that I will not be eligible for probation unless the Court finds my case involves unusual circumstances.

9. Mandatory State Prison - I understand that I will not be eligible for probation.

10. Attachment One (Additional Charges) lists additional charges I am pleading guilty or no contest to.

11. Attachment Two (DUI Offenses) contains additional consequences.

12. Attachment Three (Suspended License) contains additional consequences.

13. Attachment Four (Deferred Entry Of Judgment) contains additional consequences.

14. Attachment Five (Deferred Entry Of Judgment Driving Program) contains additional consequences.

INITIALS

2.

KDH

KDH

4.

X

KDH

7.

X

8.

X

9.

X

10.

X

11.

X

12.

X

13.

X

14.

15. Attachment Six (General Misdemeanor Deferred Entry of Judgment Program) contains additional consequences.

16. Arbuckle Waiver - I understand that I may have a right to be sentenced by the judge who accepts my plea(s). I give up that right and agree to be sentenced by another judge.

17. Temporary Judge - I understand that I have the right to enter my plea(s) before, and to be sentenced by, a judge. I give up this right and agree to enter my plea(s) before, and be sentenced by a temporary judge.

18. Right To An Attorney - I understand that I have the right to be represented by an attorney in this case. I understand that the Court will appoint a free attorney for me if I cannot afford to hire one, but, at the end of the case, I may be asked to pay all or part of the cost of that attorney, if I can afford to. I understand that there are dangers and disadvantages to giving up my right to an attorney, and that it is almost always unwise to represent myself. I give up my right to an attorney, and I choose to represent myself.

19. Appeal - I understand I have the right to appeal the judgment of the court by filing a notice of appeal with the clerk of this court within 30 days of the day I am sentenced for a misdemeanor and within 60 days of the day I am sentenced for a felony. I am entitled to a free lawyer and transcript on appeal. I understand the contents of this form and any attachments.

INITIALS
15. X
16. X
17. X
18. X
(19) KDH

DEFENDANT'S SIGNATURE: Kathy Kline

DATE: 11/07/2017

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have gone over this form, and any attachments, with my client. I have explained each of the defendant's rights to the defendant and answered all of the defendant's questions about this form and the plea(s). I have discussed the facts of the case with the defendant and have explained the nature of the charges, the elements of the offense(s), any possible defenses, and the consequences of the plea(s). I join in the waivers, stipulate there is a factual basis in the police report, and consent to the plea(s).

SIGNATURE: Kathy Kline
(Signature)

Chris Kelly
(Print Name)

DATE: 11/7/17

INTERPRETER'S STATEMENT

I, having been sworn, or having a written oath on file, certify that I truly translated this form to the defendant in the language indicated below.

Language: Spanish Other (specify) _____

SIGNATURE: _____

DATE: _____

PROSECUTOR'S STATEMENT

I am the prosecutor in this case. I have reviewed the information above and consent to the plea(s) being entered on the terms and conditions indicated. I stipulate there is a factual basis for the plea(s) in the police report.

SIGNATURE: M. Z. S.

DATE: 11/7/17

COURT'S FINDINGS AND ORDER

The Court, having reviewed this form, together with any attachments, and having questioned the defendant concerning his or her constitutional and statutory rights, finds that the defendant understands his or her rights and that the defendant expressly, knowingly, voluntarily, and intelligently waived those rights. The Court finds that the defendant understands the nature of the charges and the consequences of the plea(s) and admission(s). The Court finds the plea(s) and admission(s) have been made freely and voluntarily. The Court finds there is a factual basis for the plea(s) and admission(s). The Court accepts the plea(s) and admission(s) and orders this form filed and incorporated in the docket by reference as though fully set forth therein.

SIGNATURE: Stu C. H.

DATE: 11/7/2017



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER**

Case: People vs. Hopkins, Klark Deziray
Judicial Officer: Mark Boessenecker
Courtroom: Department E
Event: Sentencing
PID #: 201701832-01

Case #: CR184555
Event Date: 1/30/2018
Clerk: Tina Smith
Reporter: Cynthia Lomeli
Cite/Report:

Appearances:

Nick Gohn, Prosecuting Attorney
Kristin Keeley, Attorney for Defendant
Klark Deziray Hopkins Defendant present
Probation Officer Present

SENTENCING AND PROBATION

The Court finds no legal cause why judgment and sentence should not be pronounced at this time.

The Court has received, read and considered the Probation Officer's pre-sentence report filed on Tuesday, January 30, 2018.

The Court hears comments of counsel with regard to Defendant's 17(b) PC Motion. After comments, the Court orders the Motion shall be Denied without prejudice.

Imposition of sentence is suspended, the Defendant is granted Formal Probation for a period of 3 Years under the terms and conditions as ordered this date. Terms and Conditions Number 1 through 31 with the following modifications:

No. 17 Defendant to submit to a Mental Health Assessment and provide to Probation.

No. 20 is deleted.

No. 23 Enroll in, pay for and successfully complete an outpatient treatment program if required and as chosen by the Probation Officer. Abide by all the rules and regulations of the program. Do not leave the program without the permission of the Probation Officer.

No. 29 is deleted

Court Orders the Defendant shall pay a Restitution Fine pursuant to PC1202.4 in the amount of \$300.00.

Defendant shall serve 28 Days in Jail with 14 Days Actual Days Credit 14 Days Conduct Credit. Defendant is entitled to day for day credit.

Defendant advises the Court that he/she understands and accepts the terms and conditions of Probation.

The Court Orders the following fines and fees:

APPENDIX B



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER**

Fine of \$70 as to Count(s) 2 for a total of \$70.00.

Booking Fee in the amount of \$182.00 is waived.

Pre-Sentence Report Fee of \$560.00 is waived.

Pay a Probation Supervision Fee in the amount of \$240.00.

Indigent Defense Reimbursement Fees are ordered in the amount of \$600.00, following financial hearing, the Court waives \$600.00.

Matter is referred to Division Clerk.

Bail Bond is exonerated

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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A153756

v.

**(Napa County
Super. Ct. No. CR184555)**

KLARK DEZIRAY HOPKINS,

Defendant and Appellant.

/

Klark Deziray Hopkins pleaded no contest to the charge of driving in willful or wanton disregard for the safety of persons or property while fleeing from a pursuing police officer. (Veh. Code, § 2800.2.) The court placed Hopkins on three years of probation. Hopkins appeals. She challenges a probation condition and the court's imposition of a restitution fine. However, as part of her plea bargain, Hopkins waived her right to appeal. Her appeal challenges the breadth of her waiver and therefore the validity of her plea. As a result, it requires a certificate of probable cause. (Pen. Code, § 1237.5.)¹ Hopkins did not obtain one, so we dismiss her appeal without reaching the merits of her contentions.

FACTUAL AND PROCEDURAL BACKGROUND

¹ All undesignated statutory references are to the Penal Code.

On September 1, 2017, Hopkins was arrested after leading police officers on a high-speed car chase in Napa County, California. She was charged with assault upon a peace officer (§ 245, subd. (c); count one), driving in willful or wanton disregard for the safety of persons or property while fleeing from a pursuing police officer (Veh. Code, § 2800.2; count two), and driving with a suspended license (Veh. Code, § 14601, subd. (a); count three).

On November 7, 2017, Hopkins pleaded no contest to count two, and the district attorney dismissed the other charges. The plea form stated, in handwriting, that Hopkins “will receive probation with full search & seizure, [n]o additional jail, testing, no illegal drugs, probation term 3 years no early termination, waive appeal, [n]o [g]uns/weapons/ammo[,] dismiss remaining charges as to Ms. Hopkins.”

On January 30, 2018, the court suspended imposition of sentence and placed Hopkins on three years of probation. The court imposed probation conditions, including the condition that she “not use, consume or possess any marijuana[.]” The court ordered Hopkins to pay restitution to the American Canyon Police Department in the sum of \$3,243.72.

DISCUSSION

On appeal, Hopkins challenges the probation condition prohibiting marijuana use and the restitution fine. We do not reach the merits of Hopkins’s claims because we must dismiss her appeal.

Under section 1237.5, a defendant cannot appeal from a judgment of conviction following a no contest plea, unless she files with the trial court a statement “showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings,” and the trial court executes and files “a certificate of probable cause for such appeal with the clerk of the court.” (§ 1237.5, subds. (a), (b).) “The purpose of section 1237.5 is . . . ‘to discourage and weed out frivolous or vexatious appeals challenging convictions following guilty and nolo contendere pleas,’ ” and the “ ‘requirements of section 1237.5 . . . must be strictly applied.’ ” (*People v. Mashburn* (2013) 222 Cal.App.4th 937, 941 (*Mashburn*)).

There is an exception to the certificate requirement when the appeal is based on “[g]rounds that arose after entry of the plea and do not affect the plea’s validity.” (Cal. Rules of Court, rule 8.304(b)(4).) “In determining whether section 1237.5 applies to a challenge of a sentence imposed after a plea of . . . no contest, courts must look to the substance of the appeal: “the crucial issue is what the defendant is challenging, not the time or manner in which the challenge is made.”’” (*People v. Buttram* (2003) 30 Cal.4th 773, 781.)

“[A] defendant who waives the right to appeal as part of a plea agreement must obtain a certificate of probable cause to appeal on any ground covered by the waiver, regardless of whether the claim arose before or after the entry of the plea. Absent such a certificate, the appellate court lacks authority under California Rules of Court, rule 8.304(b) to consider the claim because it is in substance a challenge to the validity of the appellate waiver, and therefore to the validity of the plea.” (*People v. Espinoza* (2018) 22 Cal.App.5th 794, 797 (*Espinoza*)).

Here, Hopkins’s plea form expressly stated “waive appeal,” or, in other words, that she waived her right to appeal. Hopkins did not obtain a certificate of probable cause. Therefore, we must dismiss her appeal and cannot reach the merits of her claims. (*Mashburn, supra*, 222 Cal.App.4th at p. 943 [“If the plea bargain had included an express waiver of appeal, ‘an attempt to appeal the sentence notwithstanding the waiver would necessarily be an attack on an express term, and thus on the *validity*, of the plea.’”].)

Hopkins attempts to distinguish *Espinoza* and *Mashburn* by arguing the defendants in those cases broadly waived their right to appeal, but Hopkins did not do so. She argues her “waiver of the right to appeal expressly applied to *illegal* drugs, not legal drugs.” We are not persuaded. The plea form stated Hopkins “waive[d] appeal,” and she initialed the form indicating she reviewed its terms. At the hearing on her plea, Hopkins answered affirmatively to the court’s questions regarding whether she had an opportunity to read the plea form or have it read to her, and whether she had adequate time to discuss it with her attorney. Hopkins had no questions for the court. Her attorney joined “in the

waiver, [and] consent to the plea.” The court found Hopkins “made a knowing, intelligent, voluntary waiver of her rights.” There is no indication this waiver of the right to appeal was limited to a particular subject matter, such as the right to challenge probation conditions prohibiting the use of illegal drugs, but not legal ones.

More fundamentally, Hopkins’s attempt to limit the scope of her waiver is itself a challenge to “the validity of the waiver . . . and, thus, the plea itself.” (*Mashburn, supra*, 222 Cal.App.4th at p. 943.) As a result, a certificate of probable cause was required to argue her waiver of the right to appeal does not apply to her challenge to probation conditions or the restitution fine. We are required by statute to dismiss Hopkins’s appeal. (§ 1237.5.)

For the first time in her reply brief, Hopkins argues a certificate of probable cause is not necessary when challenging “later, unknown, future errors.” Ordinarily, we will not consider arguments made for the first time on reply. (*In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 693.) In any event, the same argument was considered and rejected in *Espinoza, supra*, 22 Cal.App.5th at pages 801–802. We agree with the reasoning of *Espinoza* and adopt it as our own. Nor can we address on direct appeal Hopkins’s argument that defense counsel provided ineffective assistance by failing to obtain a certificate of probable cause.

DISPOSITION

The appeal is dismissed.

Jones, P.J.

We concur:

Simons, J.

Needham, J.

A153756

SUPREME COURT
FILED .

Court of Appeal, First Appellate District, Division Five - No. A153756 FEB 13 2019

S253360

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA Deputy

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

KLARK DEZIRAY HOPKINS, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

APPENDIX D