

Exhibit # 1

STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

FILED IN OFFICE
CLERK STATE COURT
GWINNETT COUNTY, GA
07 MAY 25 AM 2:49
TOM LAWLER, CLERK

ORDER

This matter comes before the Court on the Defendant's "Motion for New Trial" filed April 10, 2007 and heard by the Court on May 4, 2007. Defendant Sharon Bridgewater seeks withdraw her negotiated plea of guilty to driving under the influence of drugs and no insurance which was entered on October 15, 2006. Defendant's Motion was filed outside of the term of Court in which her plea was entered and ordinarily the Court would have no jurisdiction to consider the Defendant's Motion.¹

In this case, however, the Defendant's sentence was void as the sentence did not include the mandatory sentencing requirement that the Defendant complete a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Driver Services. O.C.G.A. § 40-6-391(c)(1)(D). See Priest v. State, 281 Ga. App. 89, 91 (Ga. Ct. App. 2006). The sentence was illegal and void and as such, Defendant Bridgewater maintains her right to withdraw her plea until she is properly sentenced. Kaiser v. State, 2007 Ga. App. LEXIS 372 (March 28, 2007).

The Court also notes that the Defendant was arrested by the City of Lawrenceville for DUI on November 20, 2005. The Defendant filed a jury demand on July 10, 2006 and the case was bound over from Lawrenceville Municipal Court to Gwinnett State Court. This Court's

¹ After the term, the prescribed means to withdraw the plea would generally be through habeas corpus proceedings. Bennett v. The State, 225 Ga. App. 284 (1997). This Court does not have jurisdiction to rule on Defendant's request for habeas relief.

Notice of Arraignment was mailed to the Defendant at an incorrect address; not the address listed on the citations or on her license. The Defendant failed to appear for Arraignment and a bench warrant was issued. The Defendant was arrested on the bench warrant on October 6, 2006. On October 16, 2006 and after spending ten days in jail with no bond, the Defendant received a court appointed attorney and entered her plea the same day. The transcript of the proceedings was filed by the Defendant. The transcript reflects there was a considerable amount of confusion on the part of the Defendant, and the incentive to get released from jail on the non bondable appeared to be paramount.

"The entry of a guilty plea involves the waiver of three federal constitutional rights: the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers. It is the duty of a trial court to establish that the defendant understands the constitutional rights being waived, and the record must reveal the defendant's waiver of those constitutional rights." Hawes v. State, 281 Ga. 822 (2007), quoting Boykin v. Alabama, 395 U.S. 238, 243 (1969) (citations omitted). The transcript in this case does not establish that the Defendant knowingly and intelligently waived her rights.

The Court will allow the Defendant to withdraw her plea. The above-styled case will be called for trial on July 12, 2007 at 9:00 a.m. in Courtroom 3H.

SO ORDERED this 25th day of June, 2007.


Randy Rich, Judge
State Court of Gwinnett County

cc:
Sharon Bridgewater via fax 678-868-1970
Solicitor