

[CAPTION]

**MOTION TO ENFORCE PLEA AGREEMENT**

The Defendant, by counsel, respectfully requests this Court to enforce the terms of the negotiated plea agreement entered into by the State and the Defendant. In support of the Motion, the Defendant States the following:

1. On [insert date], the Defendant was charged with [insert offense(s)].
2. On [insert date], the Defendant and the State entered into a plea agreement in which [insert terms of plea agreement].
3. “[C]ourts must enforce agreements between the prosecution and a defendant, *even if those agreements are oral and therefore outside the statutory framework*, either if the State has materially benefited from the terms of the agreement or if the defendant has relied on the terms of the agreement to his substantial detriment.” Badger v. State, 637 N.E.2d 800, 804 (Ind. 1994) (emphasis in original); see also Bowers v. State, 500 N.E.2d 203 (Ind. 1986) (holding that an agreement between the State and a defendant, whereby the State would dismiss charges in return for information sufficient to obtain a search warrant in another investigation, must be enforced by the Courts).
4. The Defendant has relied on the terms of the agreement to his substantial detriment and the State has benefited from the agreement when [insert specific facts, such as the Defendant gave a complete and true statement to the police concerning the involvement of others in criminal activity]. Thus, the State now must live up to its end of the bargain.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to enforce the negotiated plea agreement entered into by the State and the Defendant and for all other relief just and proper in the premises.

(Signature)

## REFERENCES

## CASEBANK: C.3.b.3

IC 35-34-1-10(d) (provides that defendant pleading guilty to one offense is entitled to dismissal of prosecution for related offense if guilty plea was entered on basis of plea agreement in which prosecutor agreed not to prosecute other potential related offenses; related offenses are defined in IC 35-34-1-10(e) as 2 or more offenses within jurisdiction of same court and which could have been joined in one prosecution).

## CASE LAW

Lee v. State, 816 N.E.2d 35 (Ind. 2004) (even pleas to illegal sentences can be enforceable, if the agreement is voluntarily entered). See also Russell v. State, 34 N.E.3d 1223 (Ind. 2015) (Defendant's plea agreement was valid and enforceable, despite trial court's erroneous capping of sentence at 10 years due to misapplication of sentencing statute).

Crider v. State, 984 N.E.2d 618 (Ind. 2013) (a waiver of the right to appeal contained in a plea agreement is unenforceable where the sentence imposed is contrary to law and the Defendant did not bargain for the sentence); cf. Brown v. State, 970 N.E.2d 791 (Ind.Ct.App. 2012) (Defendant convicted on open plea knowingly and voluntarily waived his right to appeal sentence on direct appeal, where he was sentenced within the statutory range).

Wright v. State, 700 N.E.2d 1153 (Ind.Ct.App. 1998) (Defendant met his burden of proving that he was entitled to have circuit court case dismissed pursuant to plain language of superior court plea agreement).

Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) (when guilty plea rests in any significant degree on promise or agreement of the prosecutor, so that it can be said to be part of an inducement or consideration, such promise must be fulfilled; failure of the prosecution to keep promise requires either specific performance or permission to withdraw plea).

Griffin v. State, 756 N.E.2d 572 (Ind.Ct.App. 2001) (it was improper for the State to file charge where plea agreement included promise by the State to not file certain charges).

Willey v. State, 712 N.E.2d 434 (Ind. 1999) (because the State prepared stipulation, any ambiguity had to be construed against the State; contract is ambiguous only if it is susceptible to more than one interpretation and reasonably intelligent persons would differ as to its meaning).

Johnston v. Dobeski, 739 N.E.2d 121 (Ind. 2000) (State should be held to agreement it made with the Defendant, even though the sentence was not provided for by statute when the Defendant committed his crimes), *overruled on other grounds*, State v. Hernandez, 910 N.E.2d 213 (Ind. 2009).

Richardson v. State, 456 N.E.2d 1063 (Ind.Ct.App. 1983) (trial court erred in denying the Defendant's motion to dismiss conspiracy charge in Porter County where the Defendant pled guilty in Lake County to selling cocaine in return for prosecutor's agreement not to file any additional charges in connection with other transactions in which the Defendant may have been involved).

Bowers v. State, 500 N.E.2d 203 (Ind. 1986) (prosecutor could not refuse to honor oral agreement to abate criminal proceedings against suspect who had fully performed his obligation under agreement by providing information sufficient to obtain a search warrant for residence, and thus agreement would be equitably enforced).

Campbell v. State, 17 N.E.3d 1021 (Ind.Ct.App. 2014) (State was not bound by terms of plea agreement after Defendant breached the agreement by failing to testify in co-defendant's prosecution; by failing to testify, Defendant failed to tender consideration contemplated in the agreement, and to sentence Defendant in accordance with the agreement would deprive the State of its end of the bargain).

Dunn v. State, 33 N.E.3d 1074 (Ind.Ct.App. 2015) (trial court was precluded from granting State's request for withdrawal of plea agreement, even though victim had not been notified of agreement; trial court had accepted plea, Defendant had not violated express terms of agreement, and any error in trial court's original acceptance of plea was invited by the State).

Steele v. State, 638 N.E.2d 1338 (Ind.Ct.App. 1994) (trial court could not accept plea of guilty without accepting sentence recommendation forming part of same plea bargain; if trial court was dissatisfied with bargain, correct procedure was to reject plea and set matter for trial).

Griffin v. State, 461 N.E.2d 1123 (Ind. 1984) (once a plea is accepted, a court is bound by all the terms in the plea agreement which are within its legal power to control).

Roark v. State, 829 N.E.2d 1078 (Ind.Ct.App. 2005) (after accepting plea agreement and entering judgment, trial court could not reject the plea prior to sentencing when PSI came back showing a more extensive criminal history than known when the plea was accepted). See also Stone v. State, 27 N.E.3d 341 (Ind.Ct.App. 2015) (trial court abused its discretion when, after accepting plea agreement and entering judgment thereon, it withdrew its acceptance because Defendant failed to appear at pre-sentencing investigation).

Carneal v. State, 859 N.E.2d 1255 (Ind.Ct.App. 2007) (although decision not to award credit for Illinois time served conflicts with Illinois plea agreement, neither the State nor trial court were party to the Illinois agreement and thus were not bound by its terms; each state court was responsible only for crediting time in confinement as a result of the charge for which that court was sentencing the Defendant).

St. Clair v. State, 901 N.E.2d 490 (Ind. 2009) (once trial court approved plea agreement that recommended a three-year sentence, it was bound to impose the sentence specified in the agreement and was not authorized to impose any other sentence; the Defendant did not point to any substantial evidence that he, his lawyer, prosecutor, or judge intended or understood that agreement gave trial court "broad discretion" to impose any sentence within statutory or other legal limits; notwithstanding agreement's use of the word "recommend" in sentencing section, parties clearly did not intend to present an open plea agreement to court, but rather one that specified a particular sentence if court approved agreement and accepted the plea).

Valenzuela v. State, 898 N.E.2d 480 (Ind.Ct.App. 2008) (where plea agreement provided for "Cap of Thirty Five Years," trial court improperly exceeded the plain terms of agreement when it sentenced Defendant to an aggregate sentence of forty-five years, with thirty-two years executed; even if plea agreement were ambiguous, court will strictly construe the agreement against its drafter, the State, rather than rely on extrinsic evidence to discern the intent of the parties).

Koontz v. State, 975 N.E.2d 846 (Ind.Ct.App. 2012) (whether a defendant has benefited from a plea agreement, and thus waived objection to an illegal sentencing provision in it, is generally measured by whether the plea reduced the defendant's penal exposure).

Westlake v. State, 987 N.E.2d 170 (Ind.Ct.App. 2013) (holding that, although Defendant waived appeal of his sentence under Indiana Rule of Appellate Procedure 7(B), an abuse of discretion claim is distinct from Rule 7(B) review; because the waiver provision did not specifically address abuse of discretion

claims or include any “catchall” language completely foreclosing the possibility of appeal, Defendant could argue that trial court abused its discretion by failing to consider guilty plea).

Grider v. State, 976 N.E.2d 783 (Ind.Ct.App. 2012) (plain meaning of plea agreement pursuant to which Defendant pled guilty under three separate cause numbers, providing that sentences on “all counts” were to run concurrently, was that all of the counts included in the plea agreement were to run concurrently, regardless of the separate cause numbers; even if provision was ambiguous, any ambiguity is resolved in favor of Defendant).

Vaughn v. State, 982 N.E.2d 1071 (Ind.Ct.App. 2013) (plea agreement giving trial court discretion regarding fines and costs was not violated by imposition of community service in lieu of costs and fines; however, trial court lacked statutory authority to do so).

Jackson v. State, 968 N.E.2d 328 (Ind.Ct.App. 2012) (after accepting plea agreement, court may impose administrative or ministerial conditions as terms of probation, but it may not impose probation conditions that constitute substantial obligations of a punitive nature if the plea agreement is silent of such punitive conditions; community services constitutes a substantial obligation of a punitive nature). But see Morris v. State, 2 N.E.3d 7 (Ind.Ct.App. 2013) (open guilty plea left Defendant’s sentence entirely to discretion of trial court, which was free to enter an award of restitution, though plea was silent on issue of restitution).

Barker v. State, 994 N.E.2d 306 (Ind.Ct.App. 2013) (trial court improperly exceeded negotiated 40-year cap on executed portion of Defendant’s sentence by ordering 120-day home detention in addition to 40-year commitment to DOC).

Trammell v. State, 45 N.E.3d 1212 (Ind.Ct.App. 2015) (trial court could not change the concurrent terms of the original sentences in two cases when revoking probation in one of the cases, where the concurrent terms were part of Defendant’s plea bargain).

Harris v. State, 20A-CR-732 (Ind.Ct.App. 2020) (Trial court acted within its discretion when it accepted a guilty plea but explained it would not be accepted until review of Defendant's PSI report).