

21ST DISTRICT COURT
BASTROP COUNTY, TEXAS

NO. 12,841 STATE VS. MELISSA MOLLINS PHILLIPS DATE MARCH 17, 2008

GUILTY PLEA MEMORANDUM AND WRITTEN ADMONITIONS

On this day, this cause was called for trial. The Defendant personally appeared represented by the attorney noted; the State was represented by its District Attorney. In open Court, the Defendant waived the reading of the indictment; the indictment was stated in substance; and the Defendant entered a plea of guilty to the offense of : _____

GAMBLING PROMOTION - A LESSOR CLASS A MISDEMEANOR
- A LESSOR INCLUDED OF THE CHARGED CRIME

The Court informed the Defendant that before the plea could be accepted, Defendant must be admonished and was admonished of the following:

() First Degree Felony

Life or any term not more than 99 years nor less less than 5 years in T.D.C.J.I.D. and in addition, a fine up to \$10,000.00.

() Second Degree Felony

Not more than 20 years or less than 2 years in T.D.C.J.I.D. and in addition, a fine up to \$10,000.00

() Third Degree felony

Not more than 10 years or less than 2 years in T.D.C.J.I.D. and in addition, a fine up to \$10,000.00.

() State Jail Felony

A fine of not to exceed \$10,000 and confinement in a State Jail for any term of not more than two years but not less than 180 days.

() CLASS A MISDEMEANOR

A FINE OF NOT TO EXCEED \$4,000 AND CONFINEMENT IN THE COUNTY JAIL OF NOT MORE THAN ONE YEAR.

The Defendant was admonished that any punishment recommendation of the State was not binding on the Court. The Court inquired as to the Defendant, and if there was such a recommendation, informed the Defendant that the recommendation would be followed or the plea would be ordered withdrawn in accordance with Art. 26.13 C.C.P. The Court also informed the Defendant that in the event that punishment was set at or below any agreed recommendation, the Defendant could not appeal without the permission of the Court unless based on motions previously filed.

The Court inquired as to whether or not the Defendant was a citizen of the United States and informed him if it was determined that he was not a citizen of the United States, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law.

The Court inquired into the competency of the Defendant to stand trial, and based upon the Defendant's statement, Defendant was mentally competent and all other evidence presented, the Court found the Defendant competent.

Upon inquiry by the Court, the Defendant stated Defendant was entering his or her plea of guilty freely and voluntarily, and only because Defendant was guilty. The Defendant further confirmed that Defendant completely understood all of the written waiver, stipulations and motions filed in connection with the plea, and that the execution of each was done freely, voluntarily and intelligently.

By signing this below, the Defendant acknowledges that Defendant has read the above admonitions with Defendant's attorney, that Defendant understands everything contained herein fully and that if Defendant did not understand something contained herein, Defendant's attorney explained it to defendant's complete satisfaction. Defendant further acknowledges that Defendant is satisfied with the representation given to Defendant by the undersigned attorney and is aware of the consequences of his or her plea of guilty.

LESSOR INCLUDED WITHIN THE

In open Court and under oath, the Defendant judicially confessed to the indictment and admitted that he or she had committed each and every element alleged in the indictment, and that he or she was guilty as charged.

THE LESSOR INCLUDED WITHIN THE

The Court then accepted the Defendant's plea, heard evidence and found the Defendant guilty. Punishment was then assessed. The Defendant was admonished that Defendant had 10 days in which to file a Motion for New Trial or Motion in Arrest of Judgment; the Defendant waived such time and requested to be sentenced immediately and sentence was then informed that Defendant had 10 days in which to file a Notice of Appeal and if indigent, counsel would be appointed on appeal. The Defendant then in open Court, waived his right of appeal in writing.

Defendant

JUDGE PRESIDING

Counsel for Defendant

Counsel for State

21ST DISTRICT COURT
BASTROP COUNTY, TEXAS

NO. 12,841 STATE V. MELISSA MULLINS PHILLIPS DATE: MARCH 17, 2008

**DEFENDANT'S PLEA OF GUILTY,
WAIVER, STIPULATION & JUDICIAL CONFESSION**

Now comes the Defendant in open Court in the above entitled and numbered cause represented by his attorney with whom he has previously consulted and makes the following voluntary statement:

1. That I am sane and that I understand the nature of the charges contained in the indictment in this cause.
2. That the Court has advised me of the consequences of a plea of guilty, including the minimum and maximum punishment provided by law; and that any recommendation of the Prosecuting Attorney as to punishment is not binding on the Court.
3. That I understand I have the right to a trial by jury whether I plead "Guilty", "Not Guilty" or "Nolo Contendere".
4. That I have the right to remain silent but if I choose not to remain silent, anything I may say can be used against me.
5. That I have the right to be confronted with the witnesses against me whether I have trial before the Court or the Jury.

WAIVER OF RIGHTS

In accordance with Art.1.14 C.C.P. I now in writing and in open Court, waive any and all rights secured to me, whether of substance, form or procedure, and state that any error which may have been committed as harmless I also specifically waive the following rights:

1. Waive the reading of the indictment.
2. Waive the right of trial by jury and request the consent and approval of the Court and of the attorney for the State to such waiver.
3. Waive my right to remain silent and state that I will take the witness stand knowing anything I may say can be used against me and make a judicial confession of my guilt.
4. Waive the right to be confronted with the witnesses against me and request the approval of the Court to the stipulation of the evidence by my waiving the appearance, confrontation and cross-examination of witnesses, and by my further consenting to the introduction of testimony by oral stipulations or by affidavit, or by written statements of witnesses and any other documentary evidence.
5. Waive the ten-day preparation period for trial after the appointment of counsel. In addition, I confirm that I am totally satisfied with the representation given me by my appointed attorney and that my counsel was competent in every aspect of his representation.

JUDICIAL CONFESSION

Under oath, in writing, and in open Court, I swear that I have read the indictment and understand everything it contains; that I committed each and every element alleged, ^{IN THE LESSOR INCLUDED} and that I am guilty as charge. My plea of GUILTY is voluntary and is not influenced by any consideration of fear or any persuasion any delusive hope of pardon; and I request the Court to consider probating any sentence imposed; and the issue of punishment agree that the pre-sentence investigation report of the Adult Probation Office may be considered by the Court or that I agree to waive the pre-sentence investigation.

I further understand that in the event I am convicted I have the legal right of appeal to the Court of Criminal Appeals of Texas, and also the right to be represented on appeal by an attorney of my choice if I am too poor to pay for such attorney or the record on appeal, the Court will, without expense to me provide an attorney and a property record for such an appeal, but after consulting with my attorney, I voluntarily, knowingly and intelligently waive my right to appeal.

Defendant

Counsel for Defendant

Sworn to and subscribed before me by the said Defendant on this the _____ day of _____, 20____.

District Clerk

I have consulted with the Defendant advising him of his rights; believe him to be sane; and approve his signing of this plea of guilty, waiver of a jury, agreement to stipulated testimony and judicial confession

Attorney for Defendant

Attorney for State

It clearly appearing to the Court that the Defendant is sane and is represented by competent counsel and that said Defendant understands the nature of the charge against him and that he has been by the Court warned of the consequences of a plea of guilty including the minimum and maximum punishment provided by law, that the attorney for the Defendant and the State consent and approve the waiver of a trial by jury and agree to stipulate the testimony in this case; the Court, therefore, finds such plea of guilty, waiver and consent to be voluntarily made and accepts the plea of guilty and approves the waiver of a jury herein and the consent to stipulate testimony.

Judge Presiding

No. 12,841

The State of Texas

In the 21st Judicial District Court

v.

of

MELISSA MULLINS PHILLIPS, Defendant

Bastrop County, Texas

TRIAL COURT'S CERTIFICATION OF DEFENDANT'S RIGHT OF APPEAL

I, Judge of the trial court, certify this criminal case:

- is not a plea-bargain case, and the defendant has the right of appeal. [or]
- is a plea-bargain case, but matters were raised by written motion filed and ruled on before and not withdrawn or waived, and the defendant has the right of appeal. [or]
- is a plea-bargain case, but the trial court has given permission the appeal, and the defendant has the right of appeal. [or]
- is a plea-bargain case, and the defendant has NO right of appeal. [or]
- the defendant has waived the right of appeal.

Judge

Date Signed

I have received a copy of this certification. I have also been informed of my rights concerning any appeal of this criminal case, including any right to file a *pro se* petition for discretionary review pursuant to Rule 68 of the Texas Rules of Appellate Procedure. I have been admonished that my attorney must mail a copy of the court of appeals' judgment and opinion to my last known address and that I have only 30 days in which to file a *pro se* petition for discretionary review in the court of appeals. TEX. R. APP. P. 68.2 I acknowledge that, if I wish to appeal this case and if I am entitled to do so, it is my duty to inform my appellate attorney, by written communication, of any change in the address at which I am currently living or any change of my current prison unit. I understand that, because of appellate deadlines, if I fail to timely inform my appellate attorney of any change in my address, I may lose the opportunity to file a *pro se* petition for discretionary review.

Defendant
Mailing address:
Telephone number:
Fax number (if any):

Defendant's Counsel
State Bar of Texas ID number
Mailing address
Telephone number:
Fax number (if any):

CAUSE NO. 12,841

THE STATE OF TEXAS * IN THE 21ST JUDICIAL DISTRICT
VS. * COURT OF
MELISSA MULLINS PHILLIPS * BASTROP COUNTY, TEXAS

JUDGMENT AND SENTENCE OF THE COURT

JUDGE PRESIDING: JUDGE DEBBIE MANTOOTH STRICKLIN
~~JUDGE TERRY FLENNIKEN/REVA TOWSLEE CORBETT~~

DATE OF JUDGMENT: MARCH 17, 2008

ATTORNEY FOR STATE: BRYAN GOERTZ HARRY E. WHITE

ATTORNEY FOR DEFENDANT: HOWARD JENKINS

OFFENSE CONVICTED OF: GAMBLING PROMOTION CLASS DEGREE: A

DATE OFFENSE COMMITTED: FROM SEPTEMBER 1, 2005 UNTIL OCTOBER 24, 2006

CHARGING INSTRUMENT: INDICTMENT/INFORMATION

PLEA: GUILTY/NOLO CONTENDERE FO FIVE, NO JAIL

TERMS OF PLEA BARGAIN (IN DETAIL): N/A YEARS TEXAS DEPARTMENT OF CRIMINAL JUSTICE INSTITUTIONAL DIVISION

PLEA TO ENHANCEMENT PARAGRAPH: N/A FINDINGS ON ENHANCEMENT: N/A

FINDINGS ON USE OF DEADLY WEAPON: N/A

DATE SENTENCED IMPOSED: MARCH 17, 2008 COSTS: \$ _____

PUNISHMENT AND PLACE OF CONFINEMENT: N/A YEARS TEXAS DEPARTMENT OF CRIMINAL JUSTICE INSTITUTIONAL DIVISION

DATE TO COMMENCE: MARCH 17, 2008

TIME CREDITED: _____ TOTAL AMOUNT OF RESTITUTION/REPARATION: _____

CONCURRENT UNLESS OTHERWISE SPECIFIED.

Cause No. 12,841

On this the 17th day of MARCH, A.D. 2008, was regularly reached and called for trial the above numbered and entitled cause, and the State appeared by her District Attorney, ~~Bryan Goertz~~ ^{HARRY WHITE}, and the defendant, MELISSA MULLINS PHILLIPS appeared in person, defendant's counsel, HOWARD JENKINS, also being present, thereupon the District Attorney announced ready for trial, and it appearing to the Court that the defendant, defendant's counsel, and the District Attorney have agreed in writing in open Court to waive a jury in the trial of this cause and to submit this cause to the Court; and the Court having consented to the waiver of the jury herein, the reading of the indictment/information was waived and the defendant, upon being asked by the Court as to how the defendant pleaded, entered a plea of Guilty/Nolo Contendere to offense in the ^{LESSER INCLUDE OFFENSE} indictment/information ^{OF GAMBLING PROMOTION} relied upon by the State; thereupon the defendant was admonished by the Court of the range of punishment attached to the offense; that the recommendation of the District Attorney as to punishment is not binding on the Court; that if the plea is the result of a plea bargaining agreement and the Court does not accept the agreement, that he or she could withdraw his or her plea; that if the defendant has entered a plea and made statements at the hearing on his or her plea of guilty they may not be used against him or her on the issue of guilt or punishment in subsequent criminal proceedings; that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his or her attorney, the trial Court must give its permission to the defendant before he or she may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial and it appearing to the Court that the said defendant is mentally competent to stand trial, that the said plea is freely and voluntarily made and that the defendant was made aware of the consequences of said plea, the said plea is by the Court received and is here now entered of record in the minutes of the Court as the plea herein of said defendant, and after having heard all evidence for the State and Defendant, and having heard argument of counsel, is of the opinion that there is sufficient evidence to substantiate a finding of Guilt beyond any reasonable doubt and the Court grants the defendant's requests that a pre-sentence investigation report by the Adult Probation Department not be made.

Cause No. 12,841

On the 17th day of MARCH, A.D. 2008, this cause being again called, the State appeared by her District Attorney and the above named defendant, appeared in person with the above counsel also being present, the Court is of the opinion and so finds that the said defendant is guilty as confessed of the offense of GAMBLING PROMOTION committed on 9/1/2005 UNTIL 10/24/2006 and the Court having heard all the evidence from the State and for the defendant presented for the purpose of determining the punishment to be assessed, and having heard argument of counsel, is of the opinion and so finds that punishment of the defendant should be fixed by confinement in the Texas Department of Criminal Justice Institutional Division for a period of 0 days/~~years~~ and a fine of \$ 0.

It is therefore CONSIDERED, ORDERED, ADJUDGED and DECREED by the Court that the above named defendant is guilty of the above named offense committed on the above date as confessed in said plea herein made, ~~and that punishment be fixed as determined by the Court, by confinement in the Texas Department of Criminal Justice Institutional Division for a period of time as set out above and a fine in the amount as set out above and the said defendant being asked by the Court if sufficient reason existed why the sentence of this Court should not be pronounced, failed to give such reason; whereupon the Court proceeded, in the presence of the said defendant, to pronounce sentence as follows:~~

It is the ORDER of this Court that the said above named defendant who has been adjudged guilty of the above named offense be, and is hereby sentenced to ~~confinement in the Texas Department of Criminal Justice Institutional Division for a term of _____ days/years and a fine of \$ 0 _____~~ and said defendant is ordered to pay all costs of court, court-appointed attorney fees and restitution in this cause as listed following: Court Cost \$ _____; Court Appointed Attorney's Fee \$ _____; and Restitution \$ _____; ~~and that said defendant be taken by the authorized agent of the State of Texas or by the Sheriff of Bastrop County, Texas and by him or her safely conveyed and delivered to the Director of said Texas of Criminal Justice Institutional Division there to be confined in the manner and for the period aforesaid.~~

The Court further finds that the above plea in this case was the result of a plea bargaining agreement, and the punishment assessed does not exceed the agreed recommendation of the State.

Jail credit granted the defendant: N/A

Notice of Appeal given by defendant: _____

Signed this the _____ day of _____, A.D. 20____.

PRESIDING JUDGE

Defendant's RIGHT Thumbprint