

MOTION IN [CAPTION]
MOTION IN LIMINE REGARDING WITHDRAWN GUILTY PLEA

The Defendant, by counsel, respectfully requests this Court for an Order in limine precluding any reference to or admission of his previously made plea of guilty in this cause, or any statement made by the Defendant in connection with such plea of guilty, pursuant to I.C. 35-35-1-4(d) and Indiana Rule of Evidence 410. In support of this Motion, the Defendant states the following:

1. The Defendant was originally charged with the offenses of [insert offenses].
2. The Defendant entered a plea of guilty in this Court on [insert date].
3. [Insert date], [CHOOSE ONE: this Court permitted the Defendant to withdraw this plea of guilty and enter a plea of not guilty in this cause OR this Court rejected the Defendant's plea agreement].
4. Neither the previously made guilty plea nor any statements made by Defendant in connection therewith, are admissible in the above-captioned proceedings. Ind.R.Evid. 410; I.C. 35-35-1-4(d); I.C. 35-35-3-4. Indiana Rule of Evidence 410 expanded the privilege beyond the statute to include any of the defendant's statements if they were made "in connection with" a plea agreement and made to anyone, including victims, with the right to object to the plea agreement. Gonzalez v. State, 929 N.E.2d 699 (Ind. 2010). Broadening the scope of the privilege advances its purposes, encouraging candor and facilitating plea agreements. Id. To be protected, the statements must be made: 1) after charges are filed and negotiations have begun; and 2) with the intent to seek a plea agreement or in contemplation of an agreement. Id.

WHEREFORE, the Defendant, by counsel, respectfully requests that this Court grant this Motion in Limine and preclude any reference to his previously made guilty plea or any statements made by him in connection therewith, and for all relief just and proper in the

premises.

(Signature)

REFERENCES

CASEBANK C.2.d; O.1.b

I.C. 35-35-1-4 (withdrawal of plea; motion; requisites; procedures)

I.C. 35-35-3-4 (inadmissibility at trial)

CASE LAW

Gonzalez v. State, 929 N.E.2d 699 (Ind. 2010) (Defendant's letter of apology he wrote to the victims after he submitted his plea agreement but before his sentencing hearing was inadmissible at trial when trial court rejected plea agreement).

Tyree v. State, 518 N.E.2d 814 (Ind.Ct.App. 1988) (Defendant testimony to establish factual basis at guilty plea hearing is not admissible at trial if plea is withdrawn or rejected; here, Defendant was allowed to withdraw plea before sentencing; then, at trial, State was allowed to use Defendant's statements from guilty plea hearing for impeachment; fundamental error).

Reed v. State, 748 N.E.2d 381 (Ind. 2001) (no privilege insulated a key prosecution witness' statements during plea negotiation from use in the Defendant's trial because the use of the plea negotiations is prohibited only as to the negotiating accused person).

Hensley v. State, 573 N.E.2d 913 (Ind.Ct.App. 1991) (rule prohibiting evidence of plea bargaining or statements made during plea bargaining where the court does not accept plea agreement is a rule of substantive law and not mere evidentiary rule).

Gilliam v. State, 650 N.E.2d 45 (Ind.Ct.App. 1995) (in order for statement to qualify for plea negotiation privilege, the Defendant must have been charged with a crime at the time of the statement and the statement must have been made to a person with authority to enter a binding plea agreement, whether the parties were undertaking plea negotiations when the Defendant made the incriminating statement is a question of fact for the trial court). See also Chase v. State, 528 N.E.2d 784 (Ind. 1988).