

[CAPTION]

VERIFIED MOTION TO DISMISS APPEAL
(Voluntary dismissal by defendant)

The Appellant, by counsel, files this Verified Motion to Dismiss Appeal and respectfully requests this Court to dismiss this appeal. In support the Motion, the Appellant states as follows:

1. On [insert date], the Defendant/Appellant was convicted of [insert conviction], and on [insert date], was sentenced to [insert sentence].
2. The Appellant is currently incarcerated at [insert facility].
3. The Court of Appeals has jurisdiction of this appeal under Indiana Appellate Rule 5(A).
4. On [insert date], undersigned counsel met with Defendant/Appellant and advised him that an appeal would not further his objectives. Undersigned counsel explained to him the effect of withdrawing his appeal, including the waiver of any consideration of the issues that could have been asserted as error on the face of the appellate record, both now and in the future. As a consequence of that discussion, Defendant/Appellant agreed to withdraw his appeal and memorialized that understanding in an affidavit, which is attached and incorporated as Exhibit A.

WHEREFORE, the Defendant/Appellant respectfully requests the Court to grant Appellant's Verified Motion to Dismiss Appeal and for all other proper relief.

(Signature)

VERIFICATION

I affirm under the penalties for perjury, that the foregoing information is true and correct to the best of my knowledge and belief.

(Attorney signature)

[CAPTION]

AFFIDAVIT

I, [insert Defendant's name], after having been duly sworn upon my oath, hereby request that the appeal of my sentence for [insert conviction, trial court cause number and trial court] filed with the Indiana Court of Appeals as [insert appellate cause number], be withdrawn. I understand, after a discussion with my attorney, that the effect of withdrawing this appeal will be to waive any consideration of the issues that could have been asserted as error on the face of the appellate record, both now and in the future.

I affirm, under the penalties for perjury, that the foregoing representations are true to the best of my knowledge and belief.

(Signature of Appellant)

EXHIBIT "A"

NOTE:

In Indiana, there are no Anders briefs, which are briefs filed pursuant to the procedure established in Anders v. California, 386 U.S. 738 (1967), permitting appointed counsel to withdraw from "frivolous" criminal appeals. Exercising its supervisory authority over matters of appellate procedure and professional responsibility, the Indiana Supreme Court declined to adopt the Anders protocol, noting that it is cumbersome, inefficient, and places increased demands on the judiciary, which to some extent is placed in the precarious role of advocate. Mosley v. State, 908 N.E.2d 599 (Ind. 2009). Requiring counsel to submit an ordinary appellate brief the first time--no matter how frivolous counsel regards the claims to be-- is quicker, simpler, and places fewer demands on appellate courts. Id.

Although appellate public defenders are required to file a brief even when they believe all the issues are frivolous, public defenders may still discuss the case with the client and obtain a waiver of the client's right to appeal, if possible. Some clients may understand that it is in their best interest to pursue an avenue, such as sentencing modification or PCR, different than an appeal. This is especially so in light of McCullough v. State, 900 N.E.2d 745 (Ind. 2009) (if the defendant challenges the appropriateness of his or her sentence on appeal, the state may request that the defendant's sentence be increased).

Indiana Rule of Appellate Procedure 36A states that "[a]n appeal may be dismissed on motion of the appellate upon the terms agreed upon by all the parties on appeal or fixed by the Court."