

**PLEA OF NOT RESPONSIBLE  
BY REASON OF MENTAL DISEASE OR DEFECT  
CPL 220.15  
(Published Aug. 2016)**

**INTRODUCTION**

**THE COURT:** I have conferenced the case with the lawyers. I expect that we will now proceed with a plea of not responsible by reason of mental disease or defect.

[There are two relevant psychiatric reports. The first one by *(specify name of doctor and date of report)* who examined the defendant on his/her request. That report will be (marked/deemed) Exhibit 1 for this proceeding.

The second report is by *(specify name of doctor and date of report)* who examined the defendant on behalf of the People. That report will be (marked/deemed) Exhibit 2 for this proceeding.

As necessary, the parties may of course reference, or incorporate by reference, either or both reports.]

**THE COURT** [to defense counsel]: Do you on behalf of your client, move to enter a plea of not responsible by reason of mental disease or defect?

**THE COURT** [to the prosecutor]: Do the People consent to the entry of that plea, and are the People satisfied that the affirmative defense of lack of criminal responsibility by reason of mental disease or defect would be proven by the defendant at trial by a preponderance of the evidence?

## **THE PEOPLE'S POSITION**

**THE COURT** [to the prosecutor]: Please explain the evidence available to the People with respect to the offenses charged. Also, by incorporation by reference of the psychiatric reports, or otherwise, state the psychiatric evidence available and known to the People bearing on the affirmative defense.

**THE COURT** [to the prosecutor]: Please explain the reasons for recommending the plea.

## **THE DEFENSE POSITION**

**THE COURT** [to defense counsel]: In your opinion, does defendant have the capacity to understand the current proceedings to be able to assist in his/her own defense, and does he/she understand the consequences of the plea of not responsible by reason of mental disease or defect? <sup>1</sup>

**THE COURT** [to defense counsel]: Will you now state in detail by incorporation by reference of the psychiatric reports or otherwise the psychiatric evidence available to the defendant with respect to the affirmative defense.

**THE COURT** [to defense counsel]: In your opinion, does the defendant have any viable defense to the charges other than the affirmative defense of lack of criminal responsibility by reason of mental disease or defect?

**THE COURT:** [to defense counsel]: Does your client agree with you that should there be a trial, he/she would be interposing the defense of not responsible by reason of mental disease or defect, and that the outcome he would seek at the trial is the same as the outcome of this plea?

## COLLOQUY WITH DEFENDANT

**THE COURT** [to the defendant]:

Your attorney has indicated that you wish to enter a plea of not responsible by reason of mental disease or defect. Under the law, I must decide whether to accept that plea or not to accept it. In order to make that decision, I must ask you some questions, and, of course, listen to and evaluate the answers. Before you answer a question, you may talk with your lawyer about the question and then answer. If you do not understand a question or hear it, tell me. Do you understand me so far?

As I said, I will be asking you questions; as a result, by entering this plea, you are giving up your right to remain silent and not to incriminate yourself. Do you understand?

Have you understood everything that has been said here today so far?

Have you spoken with your lawyer about your case, about entering this plea, and about the consequences of doing so?

Are you satisfied with the services of your lawyer?

### The Charges

The charge(s) against you (are/include): (*specify*). Do you understand?

The key factual allegations are that: (*specify from the accusatory instrument*). Do you understand?

[The Court may then question the defendant with respect to whether he committed the acts which formed the basis of the charge(s).]

## The Plea Consequences

The consequences of entering a plea of not responsible by reason of mental disease or defect are as follows:

(1) On accepting this plea, I will issue an examination order directing the Commissioner of Mental Health to have you examined by two qualified psychiatrists to determine if you suffer from a dangerous mental disorder or are mentally ill. For the purposes of that examination, you (may/will) be committed to a secure facility for a period not exceeding 30 days, except that I may authorize confinement for an additional period, again not to exceed 30 days, if it is necessary to complete the examination.

(2) After I receive the reports of the psychiatrists who examine you, I will conduct a hearing to determine your present mental condition, unless you waive the hearing.

(3) If after the hearing, I find you have a dangerous mental disorder, you will be committed to the custody of the Commissioner of Mental Health initially for a period of six months. The Commissioner of Mental Health may thereafter periodically (at no more than two year intervals), and indefinitely, apply for a continuation of the retention order.

(4) If after the hearing, I find that you do not have a dangerous mental disorder, but that you are mentally ill, I must issue an order of conditions and an order committing you to the custody of the Commissioner of Mental Health. In that instance, the civil laws governing those who are mentally ill shall thereafter apply, and those laws also permit the commissioner to periodically (at no more than two year intervals), and indefinitely, apply for a continuation of the retention order.

(5) If after the hearing, I find that you do not have a dangerous mental disorder, and you are not mentally ill, you must be discharged either unconditionally or subject to an order of conditions.

Do you understand each of those consequences of a plea of not responsible by reason of mental disease or defect?

## **The Plea**

Do you understand that you have the right to persist in your plea of not guilty and not enter a plea of not responsible by reason of mental disease or defect?

Do you withdraw your plea of not guilty and now enter a plea of not responsible by reason of mental disease or defect?

## **Trial by Jury Waived**

By entering this plea, you waive the right to a trial by jury. Do you understand that?

At a trial by jury you are presumed to be innocent, and you are entitled to the following rights:

You have the right to be represented by your lawyer.

You have the right to confront and cross-examine witnesses presented by the government, [which includes the right to see, hear, and question those witnesses].

You have the right to remain silent and not to incriminate yourself.

You have the right, but are not required, to call witnesses, and to testify yourself.

Finally, you have the right to require the government to prove your guilt beyond a reasonable doubt to a jury of twelve people who must be unanimous in finding that you are guilty.

Do you understand each of those rights, and that by this plea, you give up each of those rights?

Do you understand that by this plea you give up any defense you may have to these charges?

Do you understand that this plea is the same as a verdict of not responsible by reason of mental disease or defect rendered by a jury after a trial?

## **Voluntariness**

Has anyone made any promise or representation of any kind to you that we have not placed on the record to get you to enter this plea?

Has anyone threatened you, or forced you, or pressured you to enter this plea against your will?

Have I, or your lawyer, or anyone else, said anything to you to have you enter this plea against your will?

Does your willingness to enter this plea result from your discussions with your attorney, and discussions your attorney had with the district attorney?

Are you therefore entering this plea voluntarily, of your own free will?

## **Court's Findings and Conclusion**

The Court is satisfied based on the recitation of the People's evidence and [the defendant's recitation of his conduct and] Defense Counsel's opinion that there is no defense other than the affirmative defense, that there is indeed a factual basis for the plea, and the Court is satisfied that each element of the offense charged in the indictment would therefore be established beyond a reasonable doubt at trial.

It is also true that the Court is satisfied that the affirmative defense of lack of criminal responsibility by reason of mental disease or defect would be proven by defendant after trial by a preponderance of the evidence given the psychiatric reports and the further amplification as to the facts and other psychiatric matters placed on the record by the lawyers.

The Court is also satisfied, [as was each doctor who interviewed the defendant], that he has the capacity to understand the proceedings against him and to assist in his own defense, and that he is entering this plea knowingly, intelligently and voluntarily. And given that the outcome of trial would be, in the Court's view, the outcome of this plea, it is in the interest of the public and effective administration of justice to accept the plea.

The defendant's plea is accordingly acceptable to the Court and entered upon the record.

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1. If there is any indication that the defendant's current fitness to proceed is in question, a CPL 730 examination should be ordered. Further, if there is an indication from a psychiatric report or other reliable source that the defendant's fitness to proceed is dependent on the defendant taking medication, inquiry should at least be made of the defendant as to whether he or she has taken the medication.