



MINNESOTA JUDICIAL TRAINING UPDATE



LOTHENBACH PLEA: A POTENTIAL JUDICIAL LANDMINE

QUESTION: WHAT IS A *LOTHENBACH* PLEA/STIPULATION?

Unlike some other states, Minnesota does not allow a defendant to make a conditional guilty plea. Before the *Lothenbach* decision, in order to preserve the right to appeal a pre-trial issue even when no other material facts were in dispute, a criminal defendant was first required to plead “not guilty” and then go through an unnecessary jury trial. Recognizing this was inefficient, the Supreme Court created a procedure to preserve a defendant’s right to appeal a pre-trial order and avoid an otherwise unnecessary jury trial.

State v. Lothenbach, 296 N.W.2d 854 (Minn.1980); MRCP 26.01 subd 3 and 4.

Because This Procedure Involves A Defendant’s Waiver of Fundamental Rights, Failure To Make A Proper Record Could Result In Mandatory Reversal. There Are 7 Basic Steps To Every *Lothenbach* Plea/Stipulation:

- 1) The defendant **MUST** maintain the plea of not guilty;
- 2) Defendant and prosecutor **MUST** acknowledge that the pretrial issue is dispositive, or that a trial will be unnecessary if Def prevails on appeal.
- 3) Defendant, after an opportunity to consult with counsel, **MUST** acknowledge & personally waive the following **FUNDAMENTAL** rights:
 - a) Right to a jury trial;
 - b) Right to testify at trial;
 - c) Right to have the prosecution witnesses testify in open court in the Defendant’s presence;
 - d) Right to question those prosecution witnesses; and
 - e) Right To require favorable witnesses to testify for the defense in court.

- 4) The defendant must stipulate to the prosecution's evidence in a trial to the court, and acknowledge that the court will consider the prosecution's evidence, and that the court may enter a finding of guilt based on that evidence.
- 5) The defendant must also acknowledge that appellate review will be of the pretrial issue, but not of the defendant's guilt, or of other issues that could arise at a contested trial.
- 6) The defendant and the prosecutor must make the preceding acknowledgments personally, in writing or on the record.
- 7) After consideration of the stipulated evidence, the court must make an appropriate finding; if that finding is guilty, the court must also make findings of fact on the record or in writing as to each element of the offense(s).

POTENTIAL JUDICIAL LANDMINE:

WARNING: FAILURE TO ESTABLISH A VALID WAIVER OF THE FUNDAMENTAL RIGHTS LISTED ABOVE IN 3a – e CONSTITUTES A STRUCTURAL ERROR REQUIRING MANDATORY REVERSAL!

State vs. Ehmke, 752 N.W.2d 117 (Minn. App. 2008); State v. Knoll, 739 N.W.2d 919 (Minn. App. 2007).