

FORM 38 - WAIVER OF COUNSEL ON POSTCONVICTION PROCEEDINGS

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
_____ JUDICIAL DISTRICT

_____,
Respondent,

vs.

WAIVER OF COUNSEL
ON POSTCONVICTION
PROCEEDINGS

D.C. File No. _____

_____,
Petitioner.

TO THE ABOVE-NAMED COURT:

I, _____, petitioner in the above-entitled case, represent and state as follows:

1. My full name is _____. I am _____ years old, my date of birth is _____. I certify I am able to read, write and understand the English language.

2. I have been convicted of _____, a felony (gross misdemeanor), in _____ County District Court. I was sentenced to _____ on _____, 20____.

3. I understand that I have the right to challenge my conviction by filing a postconviction petition in the district court where I was convicted and sentenced and that because I am indigent I have the right to be represented by the State Public Defender.

4. Notwithstanding my right to be represented in a postconviction proceeding by the State Public Defender, I wish to waive that right and represent myself pro se. I understand that by this waiver I am permanently waiving my right to the assistance of the attorneys in the State Public Defender's Office or any other attorney retained at public expense. I understand that the Supreme Court has said that if I choose to act as my own attorney, I will not receive any legal advice, research, library materials, or other assistance from the State Public Defender in any state court proceeding to challenge the legality of my conviction and/or sentence. In other words, as to any challenge of this conviction and/or sentence, I am on my own in filing my postconviction petition and in filing any appeal from that petition, should it be denied.

I further understand that I will have to do the necessary legal work on my postconviction by myself. This includes filing my postconviction petition in the district court where I was convicted and sentenced within 60 days after I receive my trial transcript, complying with any district court requirements regarding the format of my petition, and properly serving my petition on the appropriate parties. I understand that the State Public Defender will not be available to answer any questions I have in this regard, nor can I expect the Clerk of District Court to answer any such questions. I acknowledge that the Supreme Court has said that I will

be held to the same standard of responsibility as a licensed attorney. I understand that I may not later claim that because I made mistakes while representing myself in my postconviction action that I am entitled to a new postconviction action.

5. I certify that I do not have the funds to pay for the necessary transcripts and I acknowledge that the Court will have access to any information regarding my finances.

6. I understand that a copy of the transcript will be made available to me by the State Public Defender. I agree to return the entire transcript in an undamaged condition to the State Public Defender within 60 days after receiving it. Failure to return the transcript, which is state property, is a violation of Rule 19 of the Inmate Discipline Regulations and I could be prosecuted within the prison disciplinary system. Any destruction, damage or alteration of the transcript is a violation of Rule 27 of the Inmate Discipline Regulations and I could be prosecuted within the prison disciplinary system.

I further understand that I cannot make the transcript available to any other inmate or other person, but it must remain in my personal possession until returned to the State Public Defender.

7. I understand that the Supreme Court has said no library services are required to be made available to me other than those available to other inmates in the institution.

8. I understand that all existing legal issues with respect to my present conviction and/or sentence must be raised by me in my postconviction petition or they will be waived for the purpose of any further state or federal court proceedings.

9. I understand that I will not be permitted to be personally present to argue my case to the district court unless the court so orders, nor will any other person appear on my behalf.

10. I understand that Minnesota Statutes, section 481.02, subdivision 1, makes it a crime for any person who is not a lawyer to give legal advice or assistance to another person. Additionally, Rule 4 of the Inmate Discipline Regulations prohibits one inmate from performing unauthorized tasks for another inmate. I understand that I may be required to certify that the petition I file was prepared by me before my petition will be accepted for filing by the Clerk of District Court.

11. I understand that if an attorney, other than an attorney from the State Public Defender's Office or any other attorney retained at public expense, agrees to assist me, that the attorney must first agree to represent me through exhaustion of all state court remedies. In that case I would return the transcript to the State Public Defender so arrangements could be made to get the transcript to the private attorney.

12. I understand that in waiving assistance of the State Public Defender in my postconviction action or on any appeal I may choose to file should my petition be denied, I am certifying that I am competent to make this decision, that I am not under the influence of any

drug, that I am not suffering from any mental illness or defect that would prevent me from representing myself, and I understand that if I did not waive counsel, the State Public Defender would be appointed to represent me in my postconviction action.

13. I understand that by alleging ineffective assistance of trial counsel in my postconviction petition, I waive the attorney/client privilege to the extent necessary to establish this claim. I understand that my trial attorney will be permitted to respond to my specific allegations of ineffective assistance either by testifying or by submitting an affidavit to the Court. I understand that in responding to my allegations, my trial attorney will be permitted to reveal confidential information I disclosed to my trial attorney during the course of our relationship, which related to my claim of ineffective representation.

14. I hereby acknowledge that I have read or have had read to me the above-entitled waiver and that I have been advised by the State Public Defender as to the risks involved in proceeding pro se and that I understand those risks and am voluntarily waiving my right to be represented by the State Public Defender.

Dated: _____

Petitioner

Subscribed and sworn to before
me this ____ day of
_____.

Notary Public

(Effective for criminal actions commenced or arrests made after 12 o'clock midnight January 1, 1990.)