

IN THE CIRCUIT COURT OF CULLMAN COUNTY, ALABAMA

STATE OF ALABAMA vs. KENNETH ELWIN NAIL CASE NO. CC 2023-480

PLEA AGREEMENT AND SENTENCING ORDER

After discussion and negotiation between the parties, after a full explanation of rights has been given to defendant as evidenced by the attached Explanation of Rights, and after such disclosure of information between the parties as each deems sufficient, it is agreed in this case, subject to acceptance by the Court, that:

1. Defendant will enter a plea of guilty to violating Alabama Code 36-25-5 as follows:

Count 1: Use of Office for Personal Gain

Count 2: Use of Office for Personal Gain

Count 3: Use of Office for Personal Gain

Count 4: Use of Office for Personal Gain

Count 5: Use of Office for Personal Gain

Count 6: Use of Office for Personal Gain

Count 7: Use of Office for Personal Gain

Count 8: Use of Office for Personal Gain

Count 9: Use of Office for Personal Gain

Count 10: Use of Office for Personal Gain

Count 11: Use of Office for Personal Gain

Count 12: Use of Office for Personal Gain

Count 13: Use of Office for Personal Gain

Count 14: Use of Office for Personal Gain

Count 15: Use of Office for Personal Gain

The Defendant's pleas in Counts 1 through 15 of the indictment are to the lesser included misdemeanor offenses of Use of Office for Personal Gain as prescribed in Alabama Code 36-25-27. (u) (2)

2. The prosecutor will recommend to the Court that the defendant be given a sentence of:

Count 1: 12 months.

Count 2: 12 months consecutive with preceding count.

Count 3: 12 months consecutive with preceding count.

Count 4: 12 months consecutive with preceding count.

Count 5: 12 months consecutive with preceding count.

Count 6: 12 months consecutive with preceding count.

Count 7: 12 months consecutive with preceding count.

Count 8: 12 months consecutive with preceding count.

Count 9: 12 months consecutive with preceding count.

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DEC 19 2023

LISA McSWAIN
CIRCUIT COURT
CULLMAN COUNTY

Count 10: 12 months consecutive with preceding count.

Count 11: 12 months consecutive with preceding count.

Count 12: 12 months consecutive with preceding count.

Count 13: 12 months consecutive with preceding count.

Count 14: 12 months consecutive with preceding count.

Count 15: 12 months consecutive with preceding count.

3. Dates of Offenses: Between September 30, 2019 and September 29, 2023.
4. Credit shall be given for time served pending the disposition of this case as determined by the Clerk.
5. Case Counts shall run Concurrent Consecutive with: each other.
6. The sentences imposed shall be suspended for a period of 12 months on each count and the Court orders the Defendant to be placed on unsupervised probation.
7. Additional terms agreed upon: The Defendant will immediately resign his position at Mayor of the City of Hanceville, Alabama; The Defendant will immediately resign his position on any regulatory boards; The Defendant will perform 120 hours of community service with an approved agency; As a condition of probation, the Defendant will not directly work for, be directly employed by or otherwise directly serve in any public entity or governmental entity within the State of Alabama in any capacity during the fifteen year probationary period; The Defendant will immediately return all property, equipment and keys in his possession or control belonging to the City of Hanceville; The Defendant will answer a colloquy in open court to establish a factual basis for his guilt; The Defendant will issue a public apology at the time of his sentencing.

9. MANDATORY FINES and FEES:

\$2,500.00 Fine

\$ ALL Court costs and assessed/allowable Fair Trial Tax Fund

\$ _____ Drug Demand Reduction Act (\$1,000.00 1st conviction; \$2,000.00 each subsequent conviction)

\$ _____ Forensic Science Trust Fund (Up to \$1,000.00)

\$ _____ Crime Victims Trust Fund (Pursuant to §15-23-17)

\$ _____ Bail Bonding Fee (3.5% or minimum) per Act 2012-535, effective August 1, 2012

\$4,000.00 Restitution to the inmates listed in indictment. (**See Attached Restitution Orders**)

10. The Defendant shall pay full restitution at the time of sentencing as a condition of this plea agreement. Any other monies ordered to be paid, including fines, court costs, or otherwise noted above shall be paid at the rate of \$250.00 per month beginning February 1, 2024. **All court ordered monies will be paid through the Court Clerk.**

This plea agreement applies only to the case which is set out in this agreement. Any other pending charges in Cullman County or elsewhere are not involved in its consideration and will be dealt with separately. The defendant further understands that he is waiving his right to appeal this guilty plea under the Alabama Rules of Criminal Procedure unless his issues of appeal are reserved at the time of the plea. The defendant further understands and agrees that this agreement contemplates full payment of restitution in all cases when ordered and that non-payment of restitution may extend his conditions and terms of probation. The defendant fully acknowledges the foregoing by his execution and signature as well as that of defense counsel, if applicable.

12/19/2023
DATE

[Signature]
DISTRICT ATTORNEY/ASSISTANT DISTRICT ATTORNEY

12/19/23
DATE

[Signature] Michael Whisenant
DEFENSE ATTORNEY

12/19/23
DATE

[Signature]
DEFENDANT

SENTENCING ORDER

The Court having read, understood, and considered the above Plea Agreement, which has been entered into between the State and the Defendant, it is therefore, **CONSIDERED AND ORDERED** by the Court that all terms contained in this Plea Agreement are hereby accepted by this Court. The disposition of the charge(s) and all other terms, including, but not limited to, court costs, fines, bond fee and restitution are hereby embodied into the judgment and sentence of this Court. The same shall be declared the **FINAL SENTENCING ORDER** of this Court.

DONE and ORDERED this the 19 day of December, 2023.

[Signature]
JUDGE

NOTICE TO DEFENDANT ON REJECTION OF PLEA AGREEMENT

Since the agreement has been rejected, you may withdraw your offer to the prosecutor to plead guilty to the charged offense. Therefore, the plea agreement does **NOT** bind the defendant, the prosecutor, or the Court to any of the above provisions. If you do decide to plead guilty, the disposition of the case may be either more or less favorable to you than contemplated in the agreement. The Court will allow the prosecutor to change his recommendation and the parties may submit further plea agreements for the court's consideration.

DATE

JUDGE

FILED IN OFFICE

DEC 19 2023

IN THE CIRCUIT COURT OF CULLMAN COUNTY, ALABAMA
LISA McSWAIN
CIRCUIT COURT
CULLMAN COUNTY

STATE OF ALABAMA, *

PLAINTIFF, *

VS. * CASE NUMBER: CC-2023-480

KENNETH ELWIN NAIL *

DEFENDANT *

RESTITUTION AGREEMENT AND ORDER

Upon the Agreement between the State of Alabama, by and through R. Champ Crocker, District Attorney, and the Defendant, by and through his attorney, the Honorable Michael Whisonant, restitution is due in the above styled case and it is of the opinion of this Court that the Agreement should be and is accepted. The Defendant will pay \$4,000.00 in restitution to be distributed as ordered below.

IT IS THEREFORE **ORDERED** that restitution is due to the victims and in the amounts as set out below. All restitution shall be paid jointly and severally with any of the following listed person once adjudicated guilty and deemed a co-defendant in the case.

It is further **ORDERED** that all monies received by the Clerk from the defendant shall be disbursed first to pay the restitution obligation(s) owed by these victims in their own cases which are listed below, and any remaining restitution shall be applied and disbursed in payment of these victims' court costs, fees and other amounts specified in this Order and/or the attached restitution orders.

BRADFORD SETH BURNEY

\$2000.00

The Clerk shall issue \$1000.00 payable to:

Mann's Garden Shop
 204 Blountsville Street NE
 Hanceville, AL 35077

Per Restitution Order in State of Alabama vs. Bradford Seth Burney, CC-14-211

The Clerk shall issue \$1000.00 payable to:

Bruce Homer Peak
 14964 US HWY 278 W
 Cullman, AL 35057

Per Restitution Order in State of Alabama v. Bradford Seth Burney, CC-14-152.

ANTHONY PERKINS

\$1000.00

The Clerk shall issue \$100.00 payable to:

Cullman Police Department

Per Restitution order in State of Alabama v. Anthony Perkins, CC-21-653.

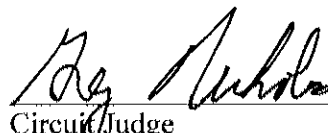
The remainder of funds due to Anthony Perkins shall be applied to the court-ordered monies in CC-21-653.

CLINT MOONEY

\$1000.00

The Clerk shall redirect the restitution payment to this victim to the court-ordered monies in State of Alabama v. Clint Mooney, DC-2019-001978.

Date: 12-15-23



Circuit Judge
Thirty-Second Judicial Circuit

State Of Alabama Unified Judicial System Form CR-51 (front) Rev. 1/2019	EXPLANATION OF RIGHTS AND PLEA OF GUILTY (Non-Habitual Offender - Felony and Misdemeanor - Circuit or District Court) (FOR OFFENSES COMMITTED ON OR AFTER January 30, 2016)	Case Number 2023-480
IN THE <u>Circuit</u> COURT OF <u>Cullman</u> , ALABAMA (Circuit or District) (Name of County) STATE OF ALABAMA v. <u>Kenneth Nail</u> Defendant		

TO THE ABOVE-NAMED DEFENDANT: The Court, having been informed that you wish to enter a plea of guilty in this case, hereby informs you of your rights as a defendant charged with a criminal offense.

PENALTIES APPLICABLE TO YOUR CASE

You are charged with the crime of 36-25-5, which is a Class C Felony Misdemeanor. The Court has been informed that you desire to enter a plea of guilty to this offense or to the crime of 36-25-27(a)(2) which is a felony misdemeanor offense. The sentencing range for the above crime(s) is set out below:

MISDEMEANOR		FELONY	
Class A	Up to one (1) year imprisonment in the county jail, or a fine up to \$6,000, or both.	Class A	Not less than ten (10) years and not more than life or ninety-nine (99) years imprisonment in the state penitentiary, and may include a fine not to exceed \$60,000
Class B	Up to six (6) months imprisonment in the county jail, or a fine up to \$3,000, or both.	Class B	Not less than two (2) years and not more than twenty (20) years imprisonment in the state penitentiary, and may include a fine not to exceed \$30,000.
Class C	Up to three (3) months imprisonment in the county jail, or a fine not to exceed \$500, or both.	Class C	Not less than one (1) year and one (1) day and not more than ten (10) years imprisonment in the state penitentiary, and may include a fine not to exceed \$15,000*.
		Class D	Not More than 5 years or less than 1 year and 1 day in the state penitentiary and may include a fine not to exceed \$7,500*.

Multiple Sentences. If you face multiple sentences for multiple crimes, the court may order your sentence for the above crime to run consecutively to or concurrently with the other sentence or sentences.

Costs & Crime Victim's Assessment: You will also be ordered to pay the costs of court, which may include the fees of any appointed attorney, fines, fees, assessments, and restitution if there is any. You will also be ordered to pay an additional monetary penalty for the use and benefit of the Alabama Crime Victims Compensation Commission of not less than \$50 and not more than \$10,000 for each felony and not less than \$25 and not more than \$1,000 for each misdemeanor for which you are convicted.

This crime is also subject to the following enhancements or additional penalties as provided by law: (Provisions Checked Apply To Your Case)

- Enhanced Punishment For Use Of Firearm Or Deadly Weapon:** Sections 13A-5-6(a)(5) and (a)(6), Ala. Code 1975, provide for the enhancement of a punishment for a Class A, B, or C, felony in which a "firearm or deadly weapon was used or attempted to be used in the commission of the felony." This section provides for the following punishments in such events: For the commission of a Class A Felony, a term of imprisonment of not less than 20 years; For the commission of a Class B or C Felony, a term of imprisonment of not less than 10 years.
- Enhanced Punishment for a Felony Criminal Sex Offense Involving a Child:** Sections 13A-5-6(a)(5) and (a)(6), Ala. Code 1975, provide for the enhancement of a punishment for a Class A or B felony criminal sex offense involving a child under the age of 12 or involving child pornography. These Sections provide for the following punishment in such events: For a Class A felony criminal sex offense, not less than 20 years; For a Class B felony sex offense, not less than 10 years.
- Enhanced Punishment for Drug Sale Near School:** Section 13A-12-250, Ala. Code 1975, provides that any person who is convicted of unlawfully selling any controlled substance within a three (3) mile radius of a public or private school, college, university or other educational institution, must be punished by an additional penalty of five years' imprisonment for each violation.
- Enhanced Punishment for Drug Sale Near Housing Project:** Section 13A-12-270, Ala. Code 1975, provides that any person who is convicted of unlawfully selling any controlled substance within a three (3) mile radius of a public housing project owned by a housing authority must be punished by an additional penalty of five years' imprisonment in a state correctional facility for each violation.
- Enhanced Punishment For Sales Of Controlled Substance To One Under the age of 18:** Section 13A-12-215, Ala. Code 1975, provides that anyone convicted of selling, furnishing or giving away a controlled substance to one who has not yet attained the age of 18 years, shall be guilty of a Class A Felony and the punishment imposed shall not be suspended or probation granted.

* **Class C and D felonies Split Sentencing** Section 15-18-8(b) and (e), Ala. Code 1975, provides that when a defendant is convicted of an offense that constitutes a Class C or D felony and receives a sentence of not more than 15 years, and has not been sentenced to probation, drug court, or a pretrial diversion program, he or she shall be confined in a prison, jail-type institution, treatment institution, or community corrections program for a Class C felony offense or in a consenting community corrections program for a Class D felony offense for a period not exceeding two years. The execution of the remainder of the sentence shall be suspended and he or she shall be placed on probation for a period not exceeding three years and upon such terms as the court deems best. If no community corrections program exists within a county or jurisdiction and no alternative program options are available, a person convicted of an offense that constitutes a Class D felony may be sentenced to high-intensity probation under the supervision of the Board of Pardons and Paroles in lieu of community corrections.

Form CR-51 (back)
Rev. 1/2019

EXPLANATION OF RIGHTS AND PLEA OF GUILTY
(Non-Habitual Offender – Felony and Misdemeanor – Circuit or District Court)
(FOR OFFENSES COMMITTED ON OR AFTER January 30, 2016)

***Enhanced Punishment for Class D felonies**

Note that Section 15-18-8 also provides that in all cases when it is shown that a defendant has been previously convicted of any three or more felonies or has been previously convicted of any two or more felonies that are Class A or Class B felonies, and after such convictions has committed a Class D felony, upon conviction, he or she must be punished for a Class C felony.

- Drug Demand Reduction Assessment Act and Loss of Driving Privileges:** Section 13A-12-281 provides that any person convicted of a violation of Sections 13A-12-202, 13A-12-203, 13A-12-204, 13A-12-211, 13A-12-212, 13A-12-213, 13A-12-215 or 13A-12-231, Ala. Code 1975, shall be assessed an additional penalty of \$1,000 if he or she is a first-time offender or \$2,000 if he or she is a repeat offender under one of these sections. Collection of all or part of the penalty will be suspended if, with court approval, the defendant enters a drug rehabilitation program and if the defendant agrees to pay for a part or all of the program costs. Upon successful completion of the program, the defendant may apply to the court to reduce the penalty by the amount actually paid by him or her for participation in the program. Any suspension of the penalty can be withdrawn by the court if the defendant fails to enroll in or successfully pursue or otherwise fail to complete an approved program. Loss of Driving Privileges: Pursuant to Section 13A-12-291, Ala. Code 1975, a driver's license shall be suspended for six months for a conviction for any of the following: attempting to commit, criminally conspiring to commit, criminal solicitation to commit, or committing the crime of trafficking in specified substances under Section 13A-12-231; attempting to commit, criminal solicitation to commit, or committing the crime of unlawful possession with intent to distribute a controlled substance under subsections (c) and (d) of Section 13A-12-211. Suspension of a driver's license for a conviction of driving under the influence of a controlled substance or under the combined influence of a controlled substance and alcohol shall be governed by Section 32-5A-191, the DUI law.
- Alcohol/Drug Related Offenses:** A person convicted of an alcohol or drug-related offense will be required to undergo an evaluation for substance abuse. Based upon the results of any such evaluation, he or she will be required to complete the recommended course of education and/or treatment and to pay for the evaluation and any program to which the defendant is referred. Failure to submit to an evaluation or failure to complete any program to which the defendant may be referred will be considered a violation of any probation or parole he or she may be granted. The defendant may also be required to attend monitoring sessions, including random drug and alcohol testing or blood, urine and/or breath tests and to pay a fee for this service. The defendant may request a waiver of part or all of the fees assessed if he or she is indigent or for any portion of time he or she is financially unable to pay. Community service may be ordered by the court in lieu of the monetary payment of fees by an indigent.
- Enhanced Punishment for a Criminal Sex Offense:** A person convicted of a sex offense is required to comply with the requirements of the Alabama Sex Offender Registration and Notification Act (Section 15-20A-1, et seq., Ala. Code, 1975).
- Drug Trafficking Offenses:** Convictions for an offense under §13A-12-231, Code of Alabama 1975, include mandatory minimum terms of incarceration and a mandatory fine. Convictions for drug trafficking while in possession of a firearm includes an additional mandatory period of incarceration of 5 years and a mandatory fine of \$25,000.
- DUI Offenses:** Pursuant to 32-5A-191.4, Code of Alabama 1975, persons convicted of driving under the influence are subject to installation of an ignition interlock devices on motor vehicles. Pursuant to Section 32-5A-191, Ala. Code 1975, a conviction for driving under the influence carries a mandatory driver's license suspension.
- Drug Possession:** If any person is convicted in any court of this state for drug possession, drug sale, drug trafficking, or drug paraphernalia offenses as defined in Section 13A-12-211 to 13A-12-260, inclusive, Ala. Code 1975, an additional fee of \$100.00 will be assessed pursuant to Section 36-18-7, Ala. Code 1975.
- Other:** _____

RIGHTS YOU HAVE AND THE WAIVER OF YOUR RIGHTS

Under the Constitution of the United States and the Constitution and laws of the State of Alabama, you have a right to remain silent and you may not be compelled to give evidence against yourself. Your attorney cannot disclose any confidential talks he/she has had with you. You do not have to answer any questions. If you do answer questions knowing that you have a right to remain silent, you will have waived this right.

You have the right to enter, or stand on if previously entered, a plea of "Not Guilty" or "Not Guilty by Reason of Mental Disease or Defect," or "Not Guilty and Not Guilty by Reason of Mental Disease or Defect" and have a public trial before a duly selected jury. The jury would decide your guilt or innocence based upon the evidence presented before them. If you elect to proceed to trial, you would have the right to be present, you would have the right to have your attorney present to assist you, you would have the right to confront and cross examine your accuser(s) and all the State's witnesses, you would have the right to subpoena witnesses to testify on your behalf and to have their attendance in court and their testimony required by the court, and you would have the right to take the witness stand and to testify, but only if you chose to do so, as no one can require you to do this. If you elect to testify, you can be cross examined by the State just as any other witness is subject to cross examination. If you elect not to testify, no one but your attorney will be allowed to comment about that fact to the jury. Your attorney is bound to do everything he/she can honorably and reasonably do to see that you obtain a fair and impartial trial.

If you elect to proceed to trial, you come to court presumed to be innocent. This presumption of innocence will follow you throughout the trial until the State produces sufficient evidence to convince the jury (or the court if the trial is non-jury) of your guilt beyond a reasonable doubt. You have no burden of proof in this case. If the State fails to meet its burden, you would be found not guilty.

If you are entering a guilty plea to a charge for which you have not yet been indicted, you are waiving indictment by a grand jury and you will be pleading guilty to a charge preferred against you by a District Attorney's Information filed with the court.

If you are not a United States citizen, a guilty plea may subject you to adverse immigration consequences, including deportation (see 8 U.S.C. § 1227), exclusion from reentry to the United States and amnesty, and that the appropriate consulate may be informed of the plea and conviction.

Pursuant to Section 15-22-27.3, Ala. Code 1975, if you are pleading guilty to a sex offense involving a child as defined in Section 15-20A-4, Ala. Code 1975, which constitutes a Class A or B felony, you will not be eligible for parole.

If you are convicted of a misdemeanor crime of domestic violence, which has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, against your current or former spouse; your child of whom you are a parent or guardian; a person with whom you share a child in common; a spouse, parent, or guardian with whom you are, or have been, cohabiting or to whom you are similarly situated, and you ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition, or if you receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, YOU ARE SUBJECT TO BEING PROSECUTED IN FEDERAL COURT FOR VIOLATING 18 U.S.C. § 922(g)(9).

If you plead guilty, there will be no trial. You will be waiving the rights outlined above, except your rights relating to representation by an attorney. The state will have nothing to prove and you will stand guilty on your guilty plea. By entering a plea of guilty, **YOU WILL ALSO WAIVE YOUR RIGHT TO APPEAL**, unless in appeals to the Court of Criminal Appeals or the Supreme Court (1) you have, before entering the plea of guilty, expressly reserved the right to appeal with respect to a particular issue or issues, in which event appellate review shall be limited to a determination of the issue or issues reserved, or (2) you have timely filed a motion to withdraw the plea of guilty after pronouncement of sentence on the ground that the withdrawal is necessary to correct a manifest injustice, and the court has denied your motion to withdraw your plea, or the motion has been deemed denied by operation of law.

Form CR-51
Rev. 1/2019

EXPLANATION OF RIGHTS AND PLEA OF GUILTY
(Non-Habitual Offender – Felony and Misdemeanor – Circuit or District Court)
(FOR OFFENSES COMMITTED ON OR AFTER January 30, 2016)

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IF YOU HAVE A RIGHT TO APPEAL UNDER ONE OF THE CONDITIONS ABOVE AND YOU ARE DETERMINED BY THE COURT TO BE INDIGENT, COUNSEL WILL BE APPOINTED TO REPRESENT YOU ON APPEAL. IF YOU SO DESIRE AND IF THE APPEAL IS FROM A CIRCUIT COURT JUDGMENT OR SENTENCE, A COPY OF THE RECORD AND REPORTER'S TRANSCRIPT WILL BE PROVIDED AT NO COST TO YOU. IF THE APPEAL IS FROM A MUNICIPAL OR DISTRICT COURT JUDGMENT TO CIRCUIT COURT, YOU HAVE A RIGHT TO DEMAND A JURY TRIAL IF YOU INDICATE YOUR WISH TO ASSERT THIS RIGHT ON THE NOTICE OF APPEAL.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS OR THE CONSEQUENCES OF PLEADING GUILTY, PLEASE LET THE COURT KNOW NOW AND FURTHER EXPLANATION WILL BE MADE.

The court having personally addressed the defendant determines that the defendant has entered the plea voluntarily.

_____ Date

_____ Judge

ATTORNEY'S CERTIFICATE

I certify that the above was read and/or explained to the defendant by me; that I explained the penalty or penalties to the defendant, that I discussed in detail the defendant's rights and the consequences of pleading guilty; and that, in my judgment, the defendant understands the same and that he/she is knowingly, voluntarily, and intelligently waiving his/her rights and entering a voluntary and intelligent plea of guilty. I further certify to the court that I have in no way forced or induced the defendant to plead guilty and, to my knowledge, no one else has done so.

12/19/23



_____ Date

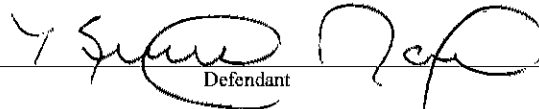
_____ Attorney

DEFENDANT'S STATEMENT OF WAIVER OF RIGHTS AND PLEA OF GUILTY

I certify to the court that I have read the matters set forth above or have had them read to me; that my rights have been discussed with me in detail and fully explained; that I understand the charge or charges against me; that I understand my rights, the punishment or punishments provided by law as may apply to my case, and I understand the consequence of pleading guilty; that I am not under the influence of any drugs, medicines, or alcoholic beverages; and I have not been threatened or abused or offered any inducement, reward, or hope of reward to plead guilty other than the terms of the plea agreement which will be stated on the record.

I further state to the court that I am guilty of the charge to which I am entering a plea of guilty, that I desire to plead guilty, that I made up my own mind to plead guilty, and that I knowingly, intelligently, and voluntarily waive my right to a trial in this case. I further state to the court that I am satisfied with my attorney's services and his/her handling of my case.

12-19-23



_____ Date

_____ Defendant

IN THE CIRCUIT COURT OF CULLMAN COUNTY, ALABAMA

STATE OF ALABAMA,

*

*

v.

*

Case No. CC-2023-480

*

KENNETH ELWIN NAIL,
Defendant.

*

*

Public Apology Pursuant to Plea Agreement

"Today, I am pleading guilty to fifteen (15) misdemeanor ethics violations. I am truly sorry for the harm and inconvenience brought about by this. I never wanted to bring any negativity to Hanceville. I love Hanceville and the people of Hanceville. I would never do anything to intentionally harm the city. Again, I am truly sorry."



Kenneth Elwin Nail

12-19-23

Date