

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

APR 16 2010

PEOPLE vs John Albert Gardner Defendant

By: ELAINE SABLAN, Deputy

PLEA OF GUILTY/NO CONTEST - FELONY

Court Number: CD 225 886

DA Number: ACR 576

I, the defendant in the above-entitled case, in support of my plea of Guilty/No Contest, personally declare as follows:

1. Of those charges now filed against me in this case, I plead Guilty to the following offenses and admit the enhancements, allegations and prior convictions as follows:

COUNT	CHARGE	ENHANCEMENT/ALLEGATION
<u>1</u>	<u>PC 187(a) murder (Chelsea K) (1st degree)</u>	<u>PC 190.2 (a)(17) - special CIRCUMSTANCE - RAPE</u>
<u>2</u>	<u>PC 220 (a) ASSAULT with intent to RAPE</u>	
<u>3</u>	<u>PC 187(a) murder (Amber D) (1st degree)</u>	<u>PC 190.2 (a)(17) - special CIRCUMSTANCE - RAPE</u>

PRIORS: (LIST ALLEGATION SECTION, CONVICTION DATE, COUNTY, CASE NUMBER, AND CHARGE)

<u>VIOLENT PRISON PRIOR: PC 288(a) x 2</u>	<u>5-31-2000</u>	<u>SCD 151675</u>
<u>SERIOUS FELONY PRIOR: PC 288(a) x 2</u>	<u>5-31-2000</u>	<u>SCD 151675</u>
<u>STRIKE PRIORS: PC 288(a) x 2</u>	<u>5-31-2000</u>	<u>SCD 151675</u>

2. I have not been induced to enter this plea by any promise or representation of any kind, except: (State any agreement with the District Attorney.)
Parties stipulate to maximum punishment Allowed by law other than death

3. I am entering my plea freely and voluntarily, without fear or threat to me or anyone closely related to me.

4. I understand that a plea of No Contest is the same as a plea of Guilty for all purposes.

5. I am sober and my judgment is not impaired. I have not consumed any drug, alcohol or narcotic within the past 24 hours.

CONSTITUTIONAL RIGHTS

6a. I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer or the Court will appoint a lawyer for me if I cannot afford one.

I understand that as to all charges, allegations and prior convictions filed against me, and as to any facts that may be used to increase my sentence, now or in the future, I also have the following constitutional rights, which I now give up to enter my plea of guilty/no contest:

6b. I have the right to a speedy and public trial by jury. I now give up this right.

6c. I have the right to confront and cross-examine all the witnesses against me. I now give up this right.

6d. I have the right to remain silent (unless I choose to testify on my own behalf). I now give up this right.

6e. I have the right to present evidence in my behalf and to have the court subpoena my witnesses at no cost to me. I now give up this right.

CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST

Life without parole

- 7a. I understand that I may receive this maximum punishment as a result of my plea: Life without parole years in State Prison, \$ 20,000 fine and NO years ~~parole~~ (4, 7, 14, life) with return to prison for every parole violation. If I am not sentenced to prison I may receive probation for a period up to 5 years or the maximum prison term, whichever is greater. As conditions of probation I may be given up to a year in jail custody, plus the fine, and any other conditions deemed reasonable by the Court. I understand that if I violate any condition of probation I can be sent to State Prison for the maximum term as stated above.
- 7b. I understand that I must pay a restitution fine (\$200 - \$10,000), that I will also be subject to a suspended fine in the same amount, and that I must pay full restitution to all victims.
- 7c. I understand that my conviction in this case will be a serious/violent felony ("strike") resulting in mandatory denial of probation and substantially increased penalties in any future felony case.
- 7d. I understand that if I am not a U.S. citizen, this plea of Guilty/No Contest may result in my removal/deportation, exclusion from admission to the U.S. and denial of naturalization. Additionally, if this plea is to an "Aggravated Felony" listed on the back of this form, then I **will** be deported, excluded from admission to the U.S., and denied naturalization.
- 7e. I understand that my plea of Guilty or No Contest in this case could result in revocation of my probation or parole in other cases, and consecutive sentences.
- 7f. My attorney has explained to me that other possible consequences of this plea may be:
(Circle applicable consequences.)

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> (1) Consecutive sentences | <input checked="" type="checkbox"/> (7) Priorable (increased punishment for future offenses) | <input checked="" type="checkbox"/> (13) Reduced conduct credits |
| <input type="checkbox"/> (2) Loss of driving privileges | <input checked="" type="checkbox"/> (8) Prison prior | a. Violent Felony (No credit or max. 15%) |
| <input type="checkbox"/> (3) Commitment to Youth Authority | <input checked="" type="checkbox"/> (9) Mandatory prison | b. Prior Strike(s) (No credit to max. 20%) |
| <input type="checkbox"/> (4) Registration as an arson <u>sex</u> / narcotic / gang offender | <input checked="" type="checkbox"/> (10) Presumptive prison | c. <input checked="" type="checkbox"/> Murder on/after 6/3/98 (No credit) |
| <input checked="" type="checkbox"/> (5) Cannot possess firearms or ammunition | <input checked="" type="checkbox"/> (11) Sexually Violent Predator Law | <input type="checkbox"/> (14) Loss of public assistance |
| <input checked="" type="checkbox"/> (6) Blood test and saliva sample | <input checked="" type="checkbox"/> (12) Possible/Mandatory hormone suppression treatment | <input type="checkbox"/> (15) AIDS education program |
| | | <input type="checkbox"/> (16) Other: _____ |

OTHER WAIVERS

- 8. **(Appeal Rights)** I give up my right to appeal the following: 1) denial of my 1538.5 motion, 2) issues related to strike priors (under PC sections 667(b)-(i) and 1170.12), and 3) any sentence stipulated herein.
- 9. **(Harvey Waiver)** The sentencing judge may consider my prior criminal history and the entire factual background of the case, including any unfiled, dismissed or stricken charges or allegations or cases when granting probation, ordering restitution or imposing sentence.
- 10. **(Blakely Waiver)** Except where a prison term has been set by stipulation of the parties, I agree that the sentencing judge may determine the existence or non-existence of any aggravating facts which may be used to increase my sentence on any count or allegation above the middle term, either at the initial sentencing or at any future sentencing in the event my probation is revoked.
- 11. **(Arbuckle Waiver)** I give up my right to be sentenced by the judge who accepts this plea.
- 12. **(Probation Report)** I give up my right to a full probation report before sentencing.

Defendant: John Albert Gardner CASE NUMBER: CS225886

13. (Evidence Disposal Waiver) I give up my interest in all non-biological property/evidence impounded during the investigation of this case except _____ and acknowledge that if I listed any property here, I must also file a claim with the impounding agency within 60 days after pronouncement of judgment or my ability to make a claim will expire.

PLEA

14. I now plead Guilty/No Contest and admit the charges, convictions and allegations described in paragraph #1, above. I admit that on the dates charged, I: (Describe facts as to each charge and allegation) SEE ADDENDUM

15. I declare under penalty of perjury that I have read, understood, and initialed each item above and any attached addendum, and everything on the form and any attached addendum is true and correct.

Dated: 04/05/2010 Defendant's Signature John Gardner

Defendant's Address: _____ Street

_____ City State Zip

Telephone Number: (____) _____



Defendant's Right Thumb Print

ATTORNEY'S STATEMENT

I, the attorney for the defendant in the above-entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges and possible defenses with the defendant, and the consequences of this plea, including any immigration consequences. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his/her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Dated: 4/5/2010 Michael J. Popkins Michael Popkins
Mel Epley Mel Epley
(Print Name) Attorney for Defendant (Signature)
(Circle one: PD / APD / PCC / RETAINED)

INTERPRETER'S STATEMENT (If Applicable)

I, the sworn _____ language interpreter in this proceeding, truly translated for the defendant the entire contents of this form and any attached addendum. The defendant indicated understanding of the contents of this form and any addendum and then initialed and signed the form and any addendum.

Dated: _____
(Print Name) Court Interpreter (Signature)

PROSECUTOR'S STATEMENT

The People of the State of California, plaintiff, by its attorney, the District Attorney for the County of San Diego, concurs with the defendant's plea of Guilty/No Contest as set forth above.

Dated: 4/16/10 Kristen D. Spier Kristen D. Spier
(Print Name) Deputy District Attorney (Signature)

COURT'S FINDING AND ORDER

The Court, having questioned the defendant and defendant's attorney concerning the defendant's plea of Guilty/No Contest and admissions of the prior convictions and allegations, if any, finds that: The defendant understands and voluntarily and intelligently waives his/her constitutional rights; the defendant's plea and admissions are freely and voluntarily made; the defendant understands the nature of the charges and the consequences of the plea and admissions; and there is a factual basis for same. The Court accepts the defendant's plea and admissions, and the defendant is convicted thereby.

Dated: 4/16/10 David J. Danielson
DAVID J. DANIELSEN Judge of the Superior Court

ADDENDUM TO ITEM #14
FACTUAL BASIS FOR THE PLEA

As to Count One, I admit that on February 25, 2010, I attacked Chelsea King while she was running. I dragged her to a remote area where I raped and strangled her. I then buried her in a shallow grave. I admit that this killing was done with premeditation and deliberation. I further admit that this murder occurred during the course of a rape, within the meaning of Penal Code Section 190.2 (a)(17). This murder took place within an hour of my initial contact with Chelsea King.

As to Count Two, I admit that on December 27, 2009, I attacked Candice Moncayo while she was running and unlawfully assaulted her with the intent to rape her.

As to Count Three, I admit that on February 13, 2009, I took Amber Dubois to a remote area of Pala where I raped and stabbed her. I then buried her in a shallow grave. I admit that this killing was done with premeditation and deliberation. I further admit that this murder occurred during the course of a rape, within the meaning of Penal Code section 190.2 (a)(17). This murder took place within an hour and a half of my initial contact with Amber Dubois.


x John Doe