



2023 Edition

Withdrawal of Pleas in Connecticut

A Guide to Resources in the Law Library

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*Prepared by Connecticut Judicial Branch, Superior Court Operations,
Judge Support Services, Law Library Services Unit*

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References to online legal research databases refer to in-library use of these databases. Remote access is not available.

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Introduction

A Guide to Resources in the Law Library

- **Guilty Plea:** "A plea of guilty is, in effect, a conviction, the equivalent of a guilty verdict by a jury.... In choosing to plead guilty, the defendant is waiving several constitutional rights, including his privilege against self-incrimination, his right to trial by jury, and his right to confront his accusers.... The ... constitutional essentials for the acceptance of a plea of guilty are included in our rules and are reflected in Practice Book §§ [39-19 and 39-20]...." [State v. Reid](#), 277 Conn. 764, 780, 894 A.2d 963 (2006). (Internal quotation marks omitted.)
- **Withdrawal Before the plea is accepted:** "**A defendant may withdraw his or her plea of guilty or nolo contendere as a matter of right until the plea has been accepted.**" Conn. Practice Book [§ 39-26](#).
- **Withdrawal After the plea is accepted:** "After acceptance, the judicial authority shall allow the defendant to withdraw his or her plea upon proof of one of the grounds in Section 39-27." Conn. Practice Book [§ 39-26](#).
- **Grounds for allowing withdrawal:** "The grounds for allowing the defendant to withdraw his or her plea of guilty after acceptance are as follows:
 - (1) The plea was accepted without substantial compliance with Section 39-19;
 - (2) The plea was involuntary, or it was entered without knowledge of the nature of the charge or without knowledge that the sentence actually imposed could be imposed;
 - (3) The sentence exceeds that specified in a plea agreement which had been previously accepted, or in a plea agreement on which the judicial authority had deferred its decision to accept or reject the agreement at the time the plea of guilty was entered;
 - (4) The plea resulted from the denial of effective assistance of counsel;
 - (5) There was no factual basis for the plea; or
 - (6) The plea either was not entered by a person authorized to act for a corporate defendant or was not subsequently ratified by a corporate defendant." Conn. Practice Book [§ 39-27](#).
- **Withdrawal After the sentence is imposed:** "A defendant may not withdraw his or her plea after the conclusion of the proceeding at which the sentence was imposed." Conn. Practice Book [§ 39-26](#).

Section 1: Timing to Withdraw Plea

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to information on the timing for withdrawal of pleas in criminal matters under Conn. Practice Book § 39-26.

DEFINITIONS:

- Plea: An accused persons answer to a criminal charge. For example: not guilty; guilty; no contest.
- Plea Bargain: The agreement a defendant makes with the prosecutor to avoid a trial. Usually involves pleading guilty to lesser charges in exchange for a lighter sentence.
- Alford Doctrine: A plea in a criminal case in which the defendant does not admit guilt, but agrees that the state has enough evidence against him or her to get a conviction. Allows the defendant to enter into a plea bargain with the state. If the judge accepts the Alford Plea, a guilty finding is made on the record.
- No Contest: A plea in a criminal case that allows the defendant to be convicted without admitting guilt for the crime charged. Also called nolo contendere. Although a finding of guilty is entered on the criminal court record, the defendant can deny the charges in a civil action based on the same acts.
- Sentencing: When a criminal defendant is brought before a judge after conviction for ordering the terms of the punishment.

[Common Legal Words](#), CT Judicial Branch.

ADDITIONAL INFORMATION:

- Withdrawal before the plea is accepted: **"A defendant may withdraw his or her plea of guilty or nolo contendere as a matter of right until the plea has been accepted."** Conn. Practice Book [§ 39-26](#) (2023).
- Withdrawal after the plea is accepted: "After acceptance, the judicial authority shall allow the defendant to withdraw his or her plea upon proof of one of the grounds in Section 39-27." Conn. Practice Book [§ 39-26](#) (2023).
- Withdrawal after the sentence is imposed: "A defendant may not withdraw his or her plea after the conclusion of the proceeding at which the sentence was imposed." Conn. Practice Book [§ 39-26](#) (2023).

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- [Connecticut Practice Book](#) (2023)
 - [Chapter 39](#). Disposition Without Trial
 - § [39-5](#). Plea Agreements; Upon Plea of Guilty or Nolo Contendere.
 - § [39-7](#). –Notice of Plea Agreement
 - § [39-10](#). –Rejection of Plea Agreement
 - § [39-18](#). Plea of Guilty or Nolo Contendere; Entering

- § [39-19](#). Acceptance of Plea; Advice to Defendant
- § [39-20](#). —Ensuring That the Plea Is Voluntary
- § [39-21](#). —Factual Basis for Plea
- § [39-22](#). Pleading to Other Offenses after Guilty Finding
- § [39-23](#). Previous Offender; Plea to Second Part
- § [39-24](#). Record of Proceedings regarding Guilty Pleas
- § [39-25](#). Inadmissibility of Rejected Guilty Pleas
- § [39-26](#). Withdrawal of Plea; When Allowed
- § [39-27](#). —Grounds for Allowing Plea Withdrawal
- § [39-28](#). —Effect of Plea Withdrawal

- [Connecticut Code of Evidence](#) (2023)
Article IV. Relevancy
§ [4-8A](#). Pleas, Plea Discussions and Related

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2021)
[Chapter 959](#). Court Jurisdiction and Power
§ [Sec. 54-1j](#). Ascertainment that defendant understands possible immigration and naturalization consequences of guilty or nolo contendere plea.
[Chapter 961](#). Trial and Proceedings After Conviction
§ [54-94a](#). Conditional nolo contendere plea. Appeal of denial of motion to suppress or dismiss

FORMS:

- *LexisNexis Practice Guide: Connecticut Criminal Law*, by Stephan E. Seeger, 2020 ed., LexisNexis.
Form CCL 5.02. Motion to Withdraw Plea of Guilty
- *Connecticut Criminal Legal Forms*, by Richard M. Marano, Atlantic Law Book Co., 1999.
Disposition Without Trial
Motion to Withdraw Plea & Memorandum, p.96
- *Connecticut Criminal Legal Forms*, by Richard M. Marano, Atlantic Law Book Co., 2007.
Disposition Without Trial
Motion to Withdraw Plea, p.92

CASE LAW:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

Withdrawal of plea after the sentence is imposed:

- [State v. Green](#), 206 Conn. App. 253, 259 A3d. 1191 (2021). **"The defendant concedes that the trial court lacked jurisdiction to consider his motion to withdraw his guilty plea. This concession notwithstanding, the defendant, relying on *State v. Reid*, 277 Conn. 764, 894 A.2d 963 (2006), requests that this court exercise its supervisory authority to treat this appeal as an authorized late appeal from his 2009 conviction. We decline to do so and affirm the judgment of the trial court."** (p. 254-255)

"Significantly, since *Reid*, neither our Supreme Court nor this court has encountered an appeal with similar rare and unique circumstances that would warrant the exercise of our supervisory authority in the same manner." (p. 264)

- [Godfrey v. Comm'r of Correction](#), 202 Conn. App. 684, 703, 246 A.3d 1032, cert. denied, 336 Conn. 931, 248 A.3d 2 (2021). As *Dingle*, *Brant*, and *Brady* illustrate, an individual cannot withdraw a guilty plea merely because a subsequent change in the law renders the maximum penalty for the crime in question less than was reasonably assumed at the **time the plea was entered...**" [Habeas Corpus Case]
- [State v. Das](#), 291 Conn. 356, 968 A.2d 367 (2009). "To the extent that cases such as *State v. Martin*, supra, 197 Conn. at 21–22, 495 A.2d 1028, *State v. Anonymous* (1980–9), supra, 36 Conn. Supp. at 579–80, 421 A.2d 557, *State v. Falcon*, supra, 84 Conn. App. at 433–36, 853 A.2d 607, *State v. Perez*, 85 Conn. App. 27, 37–38, 856 A.2d 452, cert. denied, 271 Conn. 933, 859 A.2d 931 (2004),¹² and *State v. Schaeffer*, supra, 5 Conn. App. at 385–86, 498 A.2d 134, suggest that there exists in our jurisprudence a constitutional violation exception to the trial court's lack of jurisdiction over a defendant's motion to withdraw his plea after the sentence has been executed, those cases are hereby overruled. In fact, that aspect of these cases was implicitly overruled by our decision in *Reid*." (p. 368–369)

"A defendant seeking to withdraw his plea after his sentence has been executed has several avenues available to challenge the constitutionality of his plea. First, a defendant may file a timely appeal in accordance with Practice Book § 63–1 and request review of his unpreserved claims under *Golding* or the plain error doctrine. Alternately, a defendant may file a petition for a writ of habeas corpus to challenge the constitutionality of his plea. See, e.g., *Wilson v. Office of Adult Probation*, 67 Conn. App. 142, 143, 786 A.2d 1120 (2001). Of course, if this claim is not first raised on direct appeal, the defendant must satisfy 'the cause and prejudice standard of *Wainwright v. Sykes*, 433 U.S. 72, 97 S.Ct. 2497, 53 L.Ed.2d 594 (1977), for determining the reviewability of habeas claims that were not properly pursued on direct appeal.... Unless the [defendant] can satisfy that standard, [he is] not entitled to review of [his] claims on the merits.' (Internal quotation marks omitted.) *Id.*, at 144, 786 A.2d 1120; see also *Johnson v. Commissioner*, 218 Conn. 403, 417, 589 A.2d 1214 (1991) (adopting federal cause and prejudice standard for 'habeas review with respect to constitutional claims not properly preserved because of a trial court default')." (p. 371)

- [State v. Reid](#), 277 Conn. 764, 775–76, 894 A.2d 963 (2006). “Turning to the matter presently before this court, we note that, at the time he filed the motion to withdraw his plea, the defendant not only had begun serving his sentence, he had completed it and had been released. The defendant does not claim to act under a legislative grant of continuing jurisdiction; see footnote 13 of this opinion; and, indeed, brings his motion to withdraw pursuant to Practice Book § 39–26, which specifically provides that a defendant ‘may not withdraw his ... plea after the conclusion of the proceeding at which the sentence was imposed.’ We, therefore, agree with the state that the trial court lacked jurisdiction to hear and determine the defendant’s motion to withdraw.”

Withdrawal of plea after the plea is accepted but before the sentence is imposed:

- [State v. LaMotte](#), 210 Conn. App. 44, 65–66, 268 A.3d 162 (2022). “In sum, the court conducted a hearing on the defendant’s motion to withdraw his guilty pleas and implicitly concluded that an evidentiary hearing was not required. The court afforded the defendant and his newly appointed counsel ample opportunity to present his claims but, relying on the transcript of the plea proceeding, concluded that there was no basis for them. On the basis of our review of the record, the court clearly addressed each of the defendant’s arguments appropriately as they were presented. Accordingly, we cannot conclude that the court abused its discretion by not affording the defendant an evidentiary hearing on his motion to withdraw his guilty pleas.”
- [State v. Yusef L.](#), 207 Conn. App. 475, 480–81, 262 A.3d 1017, cert. denied, 340 Conn. 910 (2021). “In considering whether to hold an evidentiary hearing on a motion to withdraw a guilty plea the court may disregard any allegations of fact, whether contained in the motion or made in an offer of proof, which are either conclusory, vague or oblique. For the purposes of determining whether to hold an evidentiary hearing, the court should ordinarily assume any specific allegation of fact to be true. If such allegations furnish a basis for withdrawal of the plea under [Practice Book § 39-27] and are not conclusively refuted by the record of the plea proceedings and other information contained in the court file, then an evidentiary hearing is required. ... We further [note] that the burden [is] on the defendant to show a plausible reason for the withdrawal.’ (Citations omitted; emphasis omitted; internal quotation marks omitted.) *State v. Warner*, 165 Conn. App. 185, 191–92, 138 A.3d 463 (2016).

The defendant's first claim challenging the court's denial of his motion to withdraw his guilty pleas is that the court failed to determine whether he fully understood the maximum possible sentence that could result from consecutive sentences. Specifically, the defendant argues that '[n]othing in the record suggests [that] [he] was aware of the actual sentencing possibilities,' and that '[t]here was no substantial compliance with Practice Book § 39-19 (4).' The state counters that the record shows substantial compliance with § 39-19 (4), and that the defendant was aware of the maximum possible sentence that would result from consecutive sentences. We agree with the state."

- [State v. Simpson](#), 329 Conn. 820, 836–37, 189 A.3d 1215 (2018). "Motions to withdraw guilty pleas are governed by Practice Book §§ 39-26 and 39-27. Practice Book § 39-26 provides in relevant part: A defendant may withdraw his ... plea of guilty ... as a matter of right until the plea has been accepted. After acceptance, the judicial authority shall allow the defendant to withdraw his ... plea upon *proof* of one of the grounds in [Practice Book §] 39-27 ...' (Citations omitted; emphasis in original; internal quotation marks omitted.) *State v. Anthony D.*, 320 Conn. 842, 850, 134 A.3d 219 (2016)."
- [State v. Anthony D., Sr.](#), 320 Conn. 842, 851, 134 A.3d 219 (2016). "We first note that the plain language of Practice Book § 39–26 expressly imposes limitations upon a defendant's ability to withdraw his guilty plea after it has been accepted. Although a defendant may withdraw his guilty plea 'as a matter of right until the plea has been accepted,' after a guilty plea is accepted, the defendant's right to withdraw his plea is restricted to a narrow window of time. Practice Book § 39–26. After acceptance, but before the imposition of sentence, the trial court is required to permit a defendant to withdraw his guilty plea under Practice Book § 39–26 only 'upon proof of one of the grounds in [Practice Book §] 39–27.' Once a defendant has been sentenced, he no longer maintains a right to withdraw his guilty plea. Practice Book § 39–26. Furthermore, we emphasize that Practice Book § 39–26 requires the trial court to grant the defendant's motion to withdraw his guilty plea only 'upon *proof* of one of the grounds in Practice Book § 39–27. (Emphasis added.) This language indicates that the defendant bears the burden to present facts sufficient to persuade the trial court that his guilty plea should be withdrawn at this point in the proceedings."

WEST KEY
NUMBERS:

- Criminal Law
XV. Pleas
Plea of Guilty
274. Withdrawal

- 274(1). In General
- 274(2). Discretion of Court
- 274(3). Ground for allowance
- 274(3.1). – In General
- 274(4). – Fraud, duress, mistake, or ignorance
- 274(5). – Hope of leniency
- 274(6). – Mental incompetency or other incapacity
- 274(7). – Lack or incompetence of counsel
- 274(8). – Innocence or doubt as to guilt
- 274(9). – Time for application
- 274(10). – Effect of withdrawal

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 22 *Am Jur 2d Criminal Law*, Thomson West, 2016 (Also available on Westlaw).

XII. Pleas

G. Withdrawal or Change of Plea

1. State Rules

a. In General

§ 657. Right to withdraw a plea

§ 658. Discretion of court

b. Plea of Guilty or Nolo Contendere

§ 659. Right to withdraw a guilty or nolo contendere plea

§ 660. Discretion of court

§ 661. Withdrawal as of right

§ 662. Hearing

§ 663. Evidence, issues to be considered, and burden of proof

§ 664. Plea bargains

§ 665. Effect of withdrawal

c. Plea of Not Guilty

§ 673. Withdrawal of plea of not guilty, generally

TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- *LexisNexis Practice Guide: Connecticut Criminal Law*, by Stephan E. Seeger, 2022 ed., LexisNexis.
 - Chapter 5. Pleas, Diversionary Programs and Other Dispositions Without Trial
- *Connecticut Criminal Procedure*, 5th ed., by Elizabeth A. Latif, et al., Connecticut Law Tribune, 2023.
 - Chapter 8. Disposition Without Trial
 - Sec. 8-14. Withdrawal of Plea
 - Sec. 8-14: 1. Breach of Plea Agreement
 - Sec. 8-14-2. Other Bases
 - Sec. 8-14: 2.1. Failure to Comply with the Practice Book
 - Sec. 8-14: 2.2. Lack of Voluntariness
 - Sec. 8-14: 2.3. Lack of Factual Basis
 - Sec. 8-14: 2.4. Additional Bases
 - Sec. 8-14: 3. Effect of Withdrawal

- 4 Connecticut Practice Series, *Connecticut Criminal Procedure*, 4th ed., by Leonard Orland, et al., Thomson West, 2008, with 2022-2023 supplement (also available on Westlaw).
 - Chapter 39. Disposition Without Trial
 - Sec. 39-26. Withdrawal of Plea--When Allowed
 - Sec. 39-27. --Grounds for Allowing Plea Withdrawal
 - Sec. 39-28. --Effect of Plea Withdrawal

- *Connecticut Appellate Practice & Procedure*, 7th ed., by Elliot D. Prescott, Connecticut Law Tribune, 2021.
 - Sec. 3-1. Final Judgment Rule
 - Sec. 3-1: 7.6c. Defense Motions: Conditional Plea of Guilty or Nolo Contendere
 - Sec. 3-1: 7.7. Withdrawal of Plea

- 5 *Criminal Procedure*, 4th ed., by Wayne R. LaFare, et al., Thomson West, 2015, with 2022-2023 supplement (also available on Westlaw).
 - Chapter 21. Pleas of Guilty
 - Sec. 21.5(a) Withdrawal of plea
 - Sec. 21.5(b). Other challenges to plea
 - Sec. 21.5(c). Significance of noncompliance with plea-receiving procedures
 - Sec. 21.5(d). Significance of compliance with plea-receiving procedures
 - Sec. 21.5(e). Effect of withdrawn or overturned plea

Table 1: Immigration and Naturalization Consequences of Plea - Conn. Gen. Stat. § 54-1j (c)

<p>Conn. Gen. Stat. § 54-1j</p> <p>Ascertainment that defendant understands possible immigration and naturalization consequences of guilty or nolo contendere plea</p>	<p>(a) The court shall not accept a plea of guilty or nolo contendere from any defendant in any criminal proceeding unless the court first addresses the defendant personally and determines that the defendant fully understands that if the defendant is not a citizen of the United States, conviction of the offense for which the defendant has been charged may have the consequences of deportation or removal from the United States, exclusion from readmission to the United States or denial of naturalization, pursuant to the laws of the United States. If the defendant has not discussed these possible consequences with the defendant's attorney, the court shall permit the defendant to do so prior to accepting the defendant's plea.</p> <p>(b) The defendant shall not be required at the time of the plea to disclose the defendant's legal status in the United States to the court.</p> <p>(c) If the court fails to address the defendant personally and determine that the defendant fully understands the possible consequences of the defendant's plea, as required in subsection (a) of this section, and the defendant not later than three years after the acceptance of the plea shows that the defendant's plea and conviction may have one of the enumerated consequences, the court, on the defendant's motion, shall vacate the judgment, and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty.</p>
<p>State v. Ramos, 306 Conn. 125, 127-28, 49 A.3d 197 (2012).</p>	<p>Under General Statutes (Rev. to 1999) § 54-1j (c), when a noncitizen defendant has not been properly advised that a guilty plea may have certain immigration and naturalization consequences, the court is mandated to vacate the judgment of conviction and permit withdrawal of the guilty plea if the defendant "not later than three years after the acceptance of the plea" files a motion and shows that the plea and conviction may have such a consequence. The dispositive issue in this appeal is whether the trial court has jurisdiction under § 54-1j to vacate the judgment and permit withdrawal of the plea, as a matter of discretion, if the motion to vacate is filed more than three years after the court's acceptance of the plea.</p>

Section 2: Grounds for Withdrawal of Plea after Acceptance

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to grounds for withdrawal of plea after acceptance under Conn. Practice Book § 39-27.

DEFINITIONS:

- Plea: An accused persons answer to a criminal charge. For example: not guilty; guilty; no contest.
- Plea Bargain: The agreement a defendant makes with the prosecutor to avoid a trial. Usually involves pleading guilty to lesser charges in exchange for a lighter sentence.

[Common Legal Words](#), CT Judicial Branch.

ADDITIONAL INFORMATION:

- The grounds for allowing the defendant to withdraw his or her plea of guilty after acceptance are as follows:
 - (1) The plea was accepted without substantial compliance with Section 39-19;
 - (2) The plea was involuntary, or it was entered without knowledge of the nature of the charge or without knowledge that the sentence actually imposed could be imposed;
 - (3) The sentence exceeds that specified in a plea agreement which had been previously accepted, or in a plea agreement on which the judicial authority had deferred its decision to accept or reject the agreement at the time the plea of guilty was entered;
 - (4) The plea resulted from the denial of effective assistance of counsel;
 - (5) There was no factual basis for the plea; or
 - (6) The plea either was not entered by a person authorized to act for a corporate defendant or was not subsequently ratified by a corporate defendant.

Conn. Practice Book § [39-27](#) (2023).

COURT RULES:

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 - § [39-10](#). –Rejection of Plea Agreement
 - § [39-18](#). Plea of Guilty or Nolo Contendere; Entering
 - § [39-19](#). Acceptance of Plea; Advice to Defendant
 - § [39-20](#). –Ensuring That the Plea Is Voluntary
 - § [39-21](#). –Factual Basis for Plea
 - § [39-22](#). Pleading to Other Offenses after Guilty Finding

- § [39-23](#). Previous Offender; Plea to Second Part
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- § [39-25](#). Inadmissibility of Rejected Guilty Pleas
- § [39-26](#). Withdrawal of Plea; When Allowed
- § [39-27](#). —Grounds for Allowing Plea Withdrawal
- § [39-28](#). —Effect of Plea Withdrawal

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You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

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 - [Chapter 959](#). Court Jurisdiction and Power
 - § [Sec. 54-1j](#). Ascertainment that defendant understands possible immigration and naturalization consequences of guilty or nolo contendere plea.
 - [Chapter 961](#). Trial and Proceedings After Conviction
 - § [54-94a](#). Conditional nolo contendere plea. Appeal of denial of motion to suppress or dismiss

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Motion to Withdraw Plea & Memorandum, p.96
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CASE LAW:

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- [State v. Lynch](#), 193 Conn. App. 637, 653–54, 220 A.3d 163 (2019), cert. denied, 335 Conn. 914, 229 A.3d 729 (2020). “The ... constitutional essentials for the acceptance of a plea of guilty are included in our rules and are reflected in Practice Book §§ [39-19 and 39-20].... The failure to inform a defendant as to all possible indirect and collateral consequences does not render a plea unintelligent or involuntary in a constitutional sense.” (Internal quotation marks omitted.) *State v. Reid*, 277 Conn. 764, 780, 894 A.2d 963 (2006). Thus, defense counsel’s assertion that the plea canvass was deficient for failing to specify that the defendant’s driver’s license could be revoked permanently **was not a reason** ‘among the grounds enumerated in Practice Book § 39-27 for the withdrawal of a plea, and the court had no reason to inquire further, such as by way of an evidentiary hearing.’ *State v. Simpson*, supra, 329 Conn. at 841–42, 189 A.3d 1215.”
- [State v. Claudio](#), 123 Conn. App. 286, 293–94, 1 A.3d 1131 (2010). “It is well established that a plea of guilty cannot be voluntary in the sense that it constitutes an intelligent

admission that the accused committed the offense unless the accused has received real notice of the true nature of the charge against him, the first and most universally recognized **requirement of due process.**' (Internal quotation marks omitted.) *State v. Barnwell*, supra, 102 Conn. App. at 259, 925 A.2d 1106. This rule is embodied in Practice Book § 39-19(1). For substantial compliance with that section, notice need not be provided by the court itself. '[E]ven without an express statement by the court of the elements of the crimes charged, it is appropriate to presume that in most cases defense counsel routinely explain the nature of the offense in sufficient detail to give the accused notice of what he is being asked to admit... [U]nless a record contains some positive suggestion that the defendant's attorney had not informed the defendant of the elements of the crimes to which he was pleading guilty, **the normal presumption applies.**' (Emphasis in original; internal quotation marks omitted.) *Id.*, at 259-60, 925 A.2d 1106. For example, in *State v. Heyliger*, 114 Conn. App. 193, 200-202, 969 A.2d 194 (2009), this court found a **'positive suggestion'** that it should not apply the presumption when a defendant expressly contended that defense counsel had not informed her of the elements of the charges and neither the trial court nor the attorneys initiated further discussion on the matter."

- [State v. Turner](#), 91 Conn. App. 17, 21, 879 A.2d 471, (2005). "The defendant's first claim is that his plea violated the requirements of the rules of practice and his federal and state constitutional rights to due process in that it was not entered knowingly and voluntarily because it was not supported by a factual basis. We conclude that the plea was supported by an adequate factual basis.

'A factual basis exists where the facts before the court are sufficient to establish each and every element of the crime charged.' *State v. Pena*, 16 Conn. App. 518, 523, 548 A.2d 445, cert. denied, 209 Conn. 830, 552 A.2d 1217 (1988). 'In determining whether a factual basis exists, the court may consider the facts recited by the state's attorney as well as any other facts properly submitted to the court which support a conviction.' *Id.*"

- [State v. Sutton](#), 95 Conn. App. 139, 145-46, 895 A.2d 805 (2006). "[A] claim of ineffective assistance of counsel is generally made pursuant to a petition for a writ of habeas corpus rather than in a direct appeal.... Section 39-27 of the Practice Book, however, provides an exception to that general rule when ineffective assistance of counsel results in a guilty plea. A defendant must satisfy two requirements ... to prevail on a claim that his guilty plea resulted from ineffective assistance of counsel.... First, he must prove that the assistance was not within the range of competence

displayed by lawyers with ordinary training and skill in criminal law.... Second, there must exist such an interrelationship between the ineffective assistance of counsel and the guilty plea that it can be said that the plea was not voluntary and intelligent because of the ineffective assistance.” (Internal quotation marks omitted.) *State v. Nelson*, 67 Conn. App. 168, 177, 786 A.2d 1171 (2001).

- [State v. James](#), 197 Conn. 358, 360-61, 497 A.2d 402 (1985). “On appeal, the defendant claims that the trial court erred in denying the motion to withdraw his plea in that the court failed in its canvass (1) to advise him of the maximum possible penalty for the offense to which he pleaded guilty, and (2) to elicit an express waiver from him of his federal constitutional right to confront and cross-examine his accusers. We agree with the defendant that it was reversible error to deny his motion to withdraw his plea.”

WEST KEY NUMBERS:

- Criminal Law
 - XV. Pleas
 - Plea of Guilty
 - # 274. Withdrawal
 - 274(1). In General
 - 274(2). Discretion of Court
 - 274(3). Ground for allowance
 - 274(3.1). – In General
 - 274(4). – Fraud, duress, mistake, or ignorance
 - 274(5). – Hope of leniency
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 - 274(9). – Time for application
 - 274(10). – Effect of withdrawal

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Online databases are available for in-library use. Remote access is not available.

- 22 *Am Jur 2d* Criminal Law, Thomson West, 2016 (Also available on Westlaw).
 - XII. Pleas
 - E. Plea of Guilty
 - 2. Voluntary and Knowing Entry of Guilty Plea
 - a. In General
 - § 599. Necessity that defendant be advised of consequences of guilty plea
 - § 600. Effect of presence or absence of counsel on need to advise defendant of consequences of guilty plea
 - b. Plea Colloquy
 - c. Sufficiency of Information Provided to Defendant
 - G. Withdrawal or Change of Plea
 - 1. State Rules
 - a. In General
 - § 657. Right to withdraw a plea
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- b. Plea of Guilty or Nolo Contendere
 - § 659. Right to withdraw a guilty or nolo contendere plea
 - § 660. Discretion of court
 - § 661. Withdrawal as of right
 - § 662. Hearing
 - § 663. Evidence, issues to be considered, and burden of proof
 - § 664. Plea bargains
 - § 665. Effect of withdrawal
- c. Plea of Not Guilty
 - § 673. Withdrawal of plea of not guilty, generally

TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- *LexisNexis Practice Guide: Connecticut Criminal Law*, by Stephan E. Seeger, 2022 ed., LexisNexis.
 - Chapter 5. Pleas, Diversionary Programs and Other Dispositions Without Trial
- *Connecticut Criminal Procedure*, 5th ed., by Elizabeth A. Latif, et al., Connecticut Law Tribune, 2023.
 - Chapter 8. Disposition Without Trial
 - Sec. 8-14. Withdrawal of Plea
 - Sec. 8-14: 1. Breach of Plea Agreement
 - Sec. 8-14-2. Other Bases
 - Sec. 8-14: 2.1. Failure to Comply with the Practice Book
 - Sec. 8-14: 2.2. Lack of Voluntariness
 - Sec. 8-14: 2.3. Lack of Factual Basis
 - Sec. 8-14: 2.4. Additional Bases
 - Sec. 8-14: 3. Effect of Withdrawal
- 4 Connecticut Practice Series, *Connecticut Criminal Procedure*, 4th ed., by Leonard Orland, et al., Thomson West, 2008, with 2022-2023 supplement (also available on Westlaw).
 - Chapter 39. Disposition Without Trial
 - Sec. 39-26. Withdrawal of Plea--When Allowed
 - Sec. 39-27. --Grounds for Allowing Plea Withdrawal
 - Sec. 39-28. --Effect of Plea Withdrawal
- *Connecticut Appellate Practice & Procedure*, 7th ed., by Eliot D. Prescott, Connecticut Law Tribune, 2021.
 - Sec. 3-1. Final Judgment Rule
 - Sec. 3-1: 7.6c. Defense Motions: Conditional Plea of Guilty or Nolo Contendere
 - Sec. 3-1: 7.7. Withdrawal of Plea
- 5 *Criminal Procedure*, 4th ed., by Wayne R. LaFave, et al., Thomson West, 2015, with 2022-2023 supplement (also available on Westlaw).
 - Chapter 21. Pleas of Guilty

Sec. 21.5(a) Withdrawal of plea
Sec. 21.5(b). Other challenges to plea
Sec. 21.5(c). Significance of noncompliance with
plea-receiving procedures
Sec. 21.5(d). Significance of compliance with
plea-receiving procedures
Sec. 21.5(e). Effect of withdrawn or overturned
plea

Table 2: Evidentiary Hearing on a Motion to Withdraw Plea

<p>State v. Salas, 92 Conn. App. 541, 544–45, 885 A.2d 1258 (2005).</p>	<p>“On appeal, the defendant claims that the court improperly denied his motion for an evidentiary hearing on his motion to withdraw his plea. He argues that because he ‘offered allegations of specific, demonstrative incidents of his attorney’s ineffectiveness and an adequate record for review,’ the court abused its discretion in denying his motion for an evidentiary hearing. After careful review of the plea canvass and other portions of the record, we agree that the defendant was entitled to an evidentiary hearing.”</p> <p>....</p> <p>“An evidentiary hearing is not required if the record of the plea proceeding and other information in the court file conclusively establishes that the motion is without merit....</p> <p>‘In considering whether to hold an evidentiary hearing on a motion to withdraw a guilty plea the court may disregard any allegations of fact, whether contained in the motion or made in an offer of proof, which are either conclusory, vague or oblique. For the purpose of determining whether to hold an evidentiary hearing, the court should ordinarily assume any specific allegations of fact to be true. If such allegations furnish a basis for withdrawal of the plea under § 721 [now § 39–27] and are not conclusively refuted by the record of the plea proceedings and other information contained in the court file, then <i>an evidentiary hearing is required.</i>’ Citations omitted; emphasis added.) <i>State v. Torres</i>, 182 Conn. 176, 185–86, 438 A.2d 46 (1980); see <i>State v. Blue</i>, 230 Conn. 109, 124–25, 644 A.2d 859 (1994).”</p> <p>“An evidentiary hearing is not required if the record of the plea proceeding and other information in the court file conclusively establishes that the motion is without merit.... The burden is always on the defendant to show a plausible reason for the withdrawal of a plea of guilty.... To warrant consideration, the defendant must allege and provide facts which justify permitting him to withdraw his plea under [Practice Book § 39–27].” (Citations omitted; internal quotation marks omitted.) <i>State v. Johnson</i>, 253 Conn. 1, 50–51, 751 A.2d 298 (2000).”</p>
<p>State v. Morant, 13 Conn. App. 378, 384–85, 536 A.2d 605 (1988).</p>	<p>“Ordinarily, a defendant is not allowed to withdraw his plea of guilty, nor is he entitled to an evidentiary hearing to determine the voluntariness of his plea, merely because he makes a general allegation that his plea was involuntary. <i>State v. Torres</i>, 182 Conn. 176, 185, 438 A.2d 46 (1980). ‘In considering whether to hold an evidentiary hearing on a motion to withdraw a guilty plea the court may disregard any allegations of fact, whether contained in the motion or made in an offer of proof, which are either conclusory, vague or oblique. [Id.]’ <i>State v. Lasher</i>, 190 Conn. 259, 266, 460 A.2d 970 (1983). In this case, however, we deem that the statements made by the defendant are sufficient to require the holding of an evidentiary hearing because the trial court effectively precluded the defendant from making any more specific allegations of fact.”</p>