

GUILTY PLEAS IN SUPERIOR COURT

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For a more detailed discussion of these and other issues related to guilty pleas, see Jessica Smith, Pleas and Plea Negotiations in North Carolina Superior Court, on-line at:

<http://shopping.netsuite.com/s.nl/c.433425/it.l/id.82/f>

I. Types of pleas

- A. Guilty plea
 - 1. *Alford* pleas
 - a. A defendant may plead guilty while factually maintaining innocence provided that the record contains strong evidence of actual guilt.
 - b. An *Alford* plea carries all consequences of a regular guilty plea.
 - c. A defendant who enters an *Alford* plea may be required, as a condition of probation, to participate in a sex offender rehabilitation program that requires an acknowledgement of guilt.
- B. Not guilty plea
 - 1. A not guilty plea requires the state to prove every element of its case.
 - 2. If a defendant fails to plead, the court must record that fact and treat the defendant as if he or she had pled not guilty.
 - 3. Because a defendant may not be punished for exercising the right to plead not guilty, the fact of such a plea may not be considered by a sentencing judge.
- C. No contest plea
 - 1. In this plea, a defendant does not acknowledge guilt but agrees not to contest the charge.
 - 2. The judge and the prosecutor must consent to a no contest plea.
 - 3. The judge must inform the defendant that he or she will be treated as guilty regardless of whether guilt is admitted.

II. Steps for taking a plea

- A. Read the charging instrument.
 - 1. For felonies, verify that the charging instrument is an indictment or information.
 - 2. Check the charging instrument for defects. A defective indictment deprives you of jurisdiction to enter judgment. For more information about fatal defects, see Jessica Smith, The Criminal Indictment: Fatal Defect, Fatal Variance & Amendment, on-line at: <http://shopping.netsuite.com/s.nl/c.433425/it.l/id.347/f>
 - 3. If the plea is to an offense other than the crime charged, make sure it is a lesser included offense of the crime charged.
- B. Verify that the defendant has completed the Transcript of Plea Form, AOC-CR-300 (included as an appendix to this Chapter).
- C. Address the defendant and others to ensure that the plea is knowing, voluntary, and intelligent.
 - 1. Use the Transcript of Plea Form as your guide for taking the plea.
 - 2. Address the defendant personally.
 - a. Do not simply rely on the written form.
 - b. If you fail to address the defendant personally, *you will be reversed*.
 - 3. G.S. 15A-1022 requires you to:

- Inform the defendant of the right to remain silent and that any statement the defendant makes may be used against him or her;
 - Determine that the defendant understands the nature of the charge;
 - Inform the defendant that he or she has a right to plead not guilty;
 - Inform the defendant that by his or her plea the defendant waives the right to trial by jury and to be confronted by the witnesses against him or her;
 - Determine that the defendant, if represented by counsel, is satisfied with counsel's representation;
 - Inform the defendant of the maximum possible sentence on the charge for the class of offense for which the defendant is being sentenced, including that possible from consecutive sentences, and of the mandatory minimum sentence, if any, on the charge;
 - Inform the defendant that if he or she is not a citizen, a plea of guilty or no contest may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law;
 - Determine that the plea is a product of informed choice;
 - Inquire of the prosecutor, defense counsel, and the defendant to determine whether there were any prior plea discussions;
 - Inquire of the prosecutor, defense counsel, and the defendant to determine, whether the parties have entered into any arrangement with respect to the plea and the terms thereof;
 - Inquire of the prosecutor, defense counsel, and the defendant to determine whether any improper pressure was exerted on the defendant to induce the plea.
4. As of the writing of this Chapter, the Transcript of Plea Form contained additional questions. It is recommended that you ask all questions on the Form as most serve to amplify the record regarding the knowing and voluntary nature of the plea. The additional questions, include these, among others:
- Are you able to hear and understand me?
 - At what grade can you read and write?
 - Are you now under the influence of alcohol, drugs, narcotics, pills, or any other intoxicants?
 - When was the last time you used or consumed such substances?
 - Do you understand that the courts have approved of the practice of plea arrangements?
5. Follow-up questions
- a. If the defendant's answers raise issues about the knowing, intelligent, and voluntary nature of the plea, ask follow up questions.
 - b. If the defendant indicates that he or she is taking medication, ask this series of follow-up questions to determine whether those medications affect the knowing and voluntary nature of the plea:
 - What are your prescribed medications?
 - What is your prescribed dosage of each one?
 - How often are you supposed to take each medication?
 - For what problems are the medications prescribed?
 - Have you taken each of the medications as prescribed during the past 10 days?
 - When you are taking the medications as prescribed, do any of them cause any side effects, in particular, do they affect your ability to think clearly or communicate with other people?

- Do you ever suffer any such problems when you do not take the medications as prescribed?
 - As you stand here today, are you able to think clearly? Are you able to understand clearly what I am saying to you? Are you able to express to me the things that you wish to say?
 - Is there anything else that I need to know about your medications or any physical or emotional difficulty?
6. Be alert as to capacity issues.
 - a. For a more detailed discussion on guilty pleas and capacity, see Ripley Rand, *Guilty Pleas and Related Proceedings Involving Defendants With Mental Health Issues: Best Practices*, on-line at www.judges.unc.edu under the link for the Fall 2008 judges' conference.
 - b. Check the file to see if a referral has been made for a capacity evaluation. If a question about capacity has been raised—even if the evaluation found the defendant competent—you must hold a competency hearing.
 - c. Watch out for “red flag” medications taken to treat psychotic disorders. These medications are listed on the last page of the publication noted above.
 7. Accept the Transcript of Plea form once all signatures are obtained.
- D. Factual Basis
1. You may not take a plea before determining that there is a factual basis.
 2. Do this by asking the prosecution for the factual basis.
 3. Under 15A-1022(c) your determination as to factual basis may be based upon information including but not limited to:
 - a statement of the facts by the prosecutor;
 - a written statement of the defendant;
 - an examination of the presentence report;
 - sworn testimony, which may include reliable hearsay; or
 - a statement of facts by the defense counsel
- E. Accepting the plea
1. As noted in the section immediately below, you may reject a plea agreement that includes a term relating to the sentence.
 2. Except for that situation, you must accept a guilty plea if it is knowing, intelligent, and voluntary and there is a factual basis for the plea. As noted above, you may decline to accept a no contest plea. Additionally, there is some authority to suggest that you have discretion as to whether to accept an *Alford* plea.
 3. Once you have taken the plea, sentence the defendant accordingly.

III. Arrangements as to sentence

- A. Pre-plea discussions
 1. When the parties have reached a proposed plea arrangement in which the prosecutor has agreed to recommend a sentence, they may present the arrangement to a judge.
 2. The judge is not required to consider the arrangement.
 3. The judge may indicate whether he or she will concur in the proposed disposition, but may change his or her mind if the judge later learns of information inconsistent with the representations made.
- B. Disclosure of terms at the time of the plea

1. If the parties have agreed on a plea arrangement in which the prosecutor will recommend a sentence, they must disclose the agreement to the judge when the plea is taken.
 2. Before accepting the plea, the judge must advise the parties whether he or she approves the arrangement and will dispose of the case accordingly.
 - a. If the judge rejects the arrangement, the judge must:
 - i. Advise the defendant personally that neither party is bound by the arrangement; and
 - ii. Tell the parties why he or she rejected the arrangement and give them a chance to modify it.
 - b. If the judge rejects the plea arrangement, the defendant is entitled to a continuance until the next session of court.
- C. Sentence inconsistent with arrangement.
1. If the sentencing judge decides to impose a sentence other than that provided for in a plea arrangement, the judge must tell the defendant that a different sentence will be imposed and that he or she may withdraw the plea.
 2. Upon withdrawal, the defendant is entitled to a continuance until the next session of court.

IV. Defendant's Motion to Withdraw the Plea

A. Before sentencing

1. Before sentencing, a judge should allow a defendant to withdraw a plea for any "fair and just" reason. Factors relevant to this determination include:
 - whether the defendant has asserted legal innocence;
 - the strength of the state's proffer of evidence;
 - the length of time between entry of the guilty plea and the desire to change it;
 - whether the defendant had competent counsel at all relevant times;
 - whether the defendant understood the consequences of the plea; and
 - whether the plea was entered in haste, under coercion or at the time when the defendant was confused.
2. The state may refute the defendant's showing of a fair and just reason with evidence of prejudice caused by withdrawal. Examples of prejudice include:
 - destruction of important physical evidence;
 - death of an important witness; or
 - that a co-defendant already has been tried in a lengthy trial.

B. After Sentencing

1. After sentencing, a plea may be withdrawn only to avoid manifest injustice.
2. The following fact patterns probably rise to the level of a manifest injustice:
 - the defendant was denied effective assistance of counsel;
 - the plea was not entered or ratified by the defendant or a person authorized to act in his or her behalf; or
 - the plea was involuntary.