

**§ 15A-1022. Advising defendant of consequences of guilty plea; informed choice; factual basis for plea; admission of guilt not required.**

(a) Except in the case of corporations or in misdemeanor cases in which there is a waiver of appearance under G.S. 15A-1011(a)(3), a superior court judge may not accept a plea of guilty or no contest from the defendant without first addressing him personally and:

- (1) Informing him that he has a right to remain silent and that any statement he makes may be used against him;
- (2) Determining that he understands the nature of the charge;
- (3) Informing him that he has a right to plead not guilty;
- (4) Informing him that by his plea he waives his right to trial by jury and his right to be confronted by the witnesses against him;
- (5) Determining that the defendant, if represented by counsel, is satisfied with his representation;
- (6) Informing him 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; and
- (7) Informing him that if he is not a citizen of the United States of America, 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.

(b) By inquiring of the prosecutor and defense counsel and the defendant personally, the judge must determine whether there were any prior plea discussions, whether the parties have entered into any arrangement with respect to the plea and the terms thereof, and whether any improper pressure was exerted in violation of G.S. 15A-1021(b). The judge may not accept a plea of guilty or no contest from a defendant without first determining that the plea is a product of informed choice.

(c) The judge may not accept a plea of guilty or no contest without first determining that there is a factual basis for the plea. This determination may be based upon information including but not limited to:

- (1) A statement of the facts by the prosecutor.
- (2) A written statement of the defendant.
- (3) An examination of the presentence report.
- (4) Sworn testimony, which may include reliable hearsay.
- (5) A statement of facts by the defense counsel.

(d) The judge may accept the defendant's plea of no contest even though the defendant does not admit that he is in fact guilty if the judge is nevertheless satisfied that there is a factual basis for the plea. The judge must advise the defendant that if he pleads no contest he will be treated as guilty whether or not he admits guilt. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1989, c. 280; 1993, c. 538, s. 10; 1994, Ex. Sess., c. 24, s. 14(b).)



# STATE OF NORTH CAROLINA

File No.

\_\_\_\_\_ County

In The General Court Of Justice  
☐ District ☐ Superior Court Division**STATE VERSUS**

Name Of Defendant

**TRANSCRIPT OF PLEA**

DOB Age Highest Level Of Education Completed

G.S. 15A-1022, 15A-1022.1

**NOTE:** Use this section **ONLY** when the Court is rejecting the plea arrangement.☐ The plea arrangement set forth within this transcript is hereby rejected and the clerk shall place this form in the case file. (Applies to plea arrangements disclosed on or after December 1, 2009.)

Date Name Of Presiding Judge (type or print) Signature Of Presiding Judge

The undersigned judge, having addressed the defendant personally in open court, finds that the defendant (1) was duly sworn or affirmed, (2) entered a plea of ☐ guilty ☐ guilty pursuant to *Alford* decision ☐ no contest, and (3) offered the following answers to the questions set out below:

**Answers**

1. Are you able to hear and understand me? (1) \_\_\_\_\_
2. Do you understand that you have the right to remain silent and that any statement you make may be used against you? (2) \_\_\_\_\_
3. At what grade level can you read and write? (3) \_\_\_\_\_
4. (a) Are you now using or consuming alcohol, drugs, narcotics, medicines, pills, or any other substances? (4a) \_\_\_\_\_  
(b) When was the last time you used or consumed any such substance? (4b) \_\_\_\_\_  
(c) How long have you been using or consuming this medication or substance? (4c) \_\_\_\_\_  
(d) Do you believe your mind is clear, and do you understand what you are doing in this hearing? (4d) \_\_\_\_\_
5. Have the charges been explained to you by your lawyer, and do you understand the nature of the charges, and do you understand every element of each charge? (5) \_\_\_\_\_
6. (a) Have you and your lawyer discussed the possible defenses, if any, to the charges? (6a) \_\_\_\_\_  
(b) Are you satisfied with your lawyer's legal services? (6b) \_\_\_\_\_
7. (a) Do you understand that you have the right to plead not guilty and be tried by a jury? (7a) \_\_\_\_\_  
(b) Do you understand that at such trial you have the right to confront and to cross examine witnesses against you? (7b) \_\_\_\_\_  
(c) Do you understand that by your plea(s) you give up these and other important constitutional rights to a jury trial? (7c) \_\_\_\_\_
8. Do you understand that, if you are not a citizen of the United States of America, your plea(s) of guilty or no contest may result in your deportation from this country, your exclusion from admission to this country, or the denial of your naturalization under federal law? (8) \_\_\_\_\_
- ☐ 9. Do you understand that upon conviction of a felony you may forfeit any State licensing privileges you have in the event that your probation is revoked? (9) \_\_\_\_\_
10. Do you understand that following a plea of guilty or no contest there are limitations on your right to appeal? (10) \_\_\_\_\_
11. Do you understand that your plea of guilty may impact how long biological evidence related to your case (for example, blood, hair, skin tissue) will be preserved? (11) \_\_\_\_\_

(Over)

12. Do you understand that you are pleading ☐ guilty ☐ guilty pursuant to *Alford* ☐ no contest to the (12) \_\_\_\_\_ charges shown below? (Describe charges, total maximum punishments, and applicable mandatory minimums for those charges.)

				PLEAS							
✓	Plea*	File Number	Count No.(s)	Offense(s)		Date Of Offense OR Date Range Of Offense	G.S. No.	F/M	CL.	‡Pun. CL.	Maximum Punishment

☐ See attached AOC-CR-300A, for additional charges.

\*G = Guilty GA = *Alford* plea  
NC = No Contest

**TOTAL MAXIMUM PUNISHMENT** ►

**MANDATORY MINIMUM FINES & SENTENCES (if any)** ►

✓ **NOTE TO CLERK:** If this column is checked this is an added offense or reduced charge.

‡ **NOTE:** Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

13. Do you now personally plead ☐ guilty ☐ guilty pursuant to *Alford* ☐ no contest to the charges (13) \_\_\_\_\_ I just described?

14. ☐ (a) Are you in fact guilty? (14a) \_\_\_\_\_

☐ (b) (*no contest plea*) Do you understand that, upon your plea of no contest, you will be treated as being guilty whether or not you admit that you are in fact guilty? (14b) \_\_\_\_\_

☐ (c) (*Alford guilty plea*)  
(1) Do you now consider it to be in your best interest to plead guilty to the charges I just described? (14c1) \_\_\_\_\_

(2) Do you understand that, upon your "*Alford* guilty plea," you will be treated as being guilty whether or not you admit that you are in fact guilty? (14c2) \_\_\_\_\_

☐ 15. (Use if aggravating factors are listed below) Have you admitted the existence of the following aggravating factors: (15) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

have you agreed that there is evidence to support these factors beyond a reasonable doubt, have you agreed that the Court may accept your admission to these factors, and do you ☐ understand that you are waiving any notice requirement that the State may have with regard to these aggravating factors ☐ agree that the State has provided you with appropriate notice about these aggravating factors?

☐ 16. (Use if sentencing points are selected below) Have you admitted the existence of the following sentencing points not related to prior convictions: ☐ offense committed while on supervised or unsupervised probation, parole, or post-release supervision ☐ offense committed while serving a sentence of imprisonment ☐ offense committed while on escape from a correctional institution, have you agreed that there is evidence to support these points beyond a reasonable doubt, have you agreed that the Court may accept your admission to these points, and do you ☐ understand that you are waiving any notice requirement that the State may have with regard to these sentencing points ☐ agree that the State has provided you with the appropriate notice about these sentencing points? (16) \_\_\_\_\_

☐ 17. (Use if No. 15 or 16 selected above) Do you understand that at a jury trial you have the right to have a jury determine the existence of any aggravating factors and any additional sentencing points not related to prior convictions that may apply to your case beyond a reasonable doubt, and that by your plea(s) you give up this constitutional right to a jury determination? (17) \_\_\_\_\_

18. Do you understand that you also have the right during a sentencing hearing to prove to the Court the existence of any mitigating factors that may apply to your case? (18) \_\_\_\_\_

19. Do you understand that the courts have approved the practice of plea arrangements and you can discuss your plea arrangement with me without fearing my disapproval? (19) \_\_\_\_\_

**STATE VERSUS**

File No.

Name Of Defendant

20. Have you agreed to plead ☐ guilty ☐ guilty pursuant to *Alford* ☐ no contest as part of a plea arrangement? (if so, review the terms of the plea arrangement as listed in No. 21 below with the defendant.) (20) \_\_\_\_\_
21. The prosecutor, your lawyer and you have informed the Court that these are all the terms and conditions of your plea:

**PLEA ARRANGEMENT**

- ☐ The State dismisses the charge(s) set out on Page Two, Side Two, of this transcript.
- ☐ The defendant stipulates to restitution to the party(ies) in the amounts set out on "Restitution Worksheet, Notice And Order (Initial Sentencing)" (AOC-CR-611).

22. Is the plea arrangement as set forth within this transcript and as I have just described it to you correct as being your full plea arrangement? (22) \_\_\_\_\_
23. Do you now personally accept this arrangement? (23) \_\_\_\_\_
24. (Other than the plea arrangement between you and the prosecutor) has anyone promised you anything or threatened you in any way to cause you to enter this plea against your wishes? (24) \_\_\_\_\_
25. Do you enter this plea of your own free will, and do you fully understand what you are doing? (25) \_\_\_\_\_
26. Do you agree that there are facts to support your plea ☐ and admission to aggravating factors ☐ and sentencing points not related to prior convictions, and do you consent to the Court hearing a summary of the evidence? (26) \_\_\_\_\_
27. Do you have any questions about what has just been said to you or about anything else connected to your case? (27) \_\_\_\_\_

**ACKNOWLEDGEMENT BY DEFENDANT**

I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. No one has told me to give false answers in order to have the Court accept my plea in this case. The terms and conditions of the plea as stated within this transcript, if any, are accurate.

**SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME**

Date

Date

Signature

Signature Of Defendant

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

Name Of Defendant (type or print)

**CERTIFICATION BY LAWYER FOR DEFENDANT**

I hereby certify that the terms and conditions stated within this transcript, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself. I further certify that I have fully explained to the defendant the nature and elements of the charges to which the defendant is pleading, and the aggravating and mitigating factors and prior record points for sentencing, if any.

Date

Name Of Lawyer For Defendant (type or print)

Signature Of Lawyer For Defendant

**CERTIFICATION BY PROSECUTOR**

As prosecutor for this Prosecutorial District, I hereby certify that the conditions stated within this transcript, if any, are the terms and conditions agreed to by the defendant and his/her lawyer and myself for the entry of the plea by the defendant to the charges in this case.

Date

Name Of Prosecutor (type or print)

Signature Of Prosecutor

**PLEA ADJUDICATION**

Upon consideration of the record proper, evidence or factual presentation offered, answers of the defendant, statements of the lawyer for the defendant, and statements of the prosecutor, the undersigned finds that:

1. There is a factual basis for the entry of the plea (*and for the admission as to aggravating factors and/or sentencing points*);
2. The defendant is satisfied with his/her lawyer's legal services;
3. The defendant is competent to stand trial;
4. ☐ The State has provided the defendant with appropriate notice as to the aggravating factors and/or points; ☐ The defendant has waived notice as to the aggravating factors and/or points; and
5. The plea (*and admission*) is the informed choice of the defendant and is made freely, voluntarily and understandingly.

The defendant's plea (*and admission*) is hereby accepted by the Court and is ordered recorded.

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
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**SUPERIOR COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT**

File No.	Count No.(s)	Offense(s)

**DISTRICT COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT**

File No.	Count No.(s)	Offense(s)

**CERTIFICATION BY PROSECUTOR**

The undersigned prosecutor enters a dismissal to the above charges pursuant to a plea arrangement shown on this Transcript Of Plea.

Date	Name Of Prosecutor (type or print)	Signature Of Prosecutor
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### **Discussion Problem 1:**

Judge: Counselor, I understand that your client Ms. Jones is prepared to plead guilty to felony possession of cocaine. Is that correct?

Defense lawyer: Yes your honor.

Judge: Ms. Jones, is it your intention to plead guilty to this crime?

Defendant: Yes, Sir.

Judge: Is there is a plea agreement?

Defense lawyer: No Sir.

Defendant: No Sir.

Judge: Ms. Jones, have you completed the Transcript of Plea form with your lawyer?

Defense lawyer: Yes, she has your honor.

Judge: Ms. Jones, did you personally complete this form?

Defendant: Yes, Sir.

Judge: Is it signed?

Defense lawyer: Yes.

Judge: Okay, hand up the form.

[The attached form is handed up. The judge reviews it and sees that it has been completed properly]

Judge: Okay, everything is in order. Mr. Prosecutor, let's hear the factual basis so that I can take this plea.



# STATE OF NORTH CAROLINA

File No.

18-CRS-108854

Orange

County

In The General Court Of Justice  
☐ District ☒ Superior Court Division

## STATE VERSUS

Name Of Defendant

Jarret Millhouse Jones

DOB

3/6/65

Age

53

Highest Level Of Education Completed

8th

## TRANSCRIPT OF PLEA

G.S. 15A-1022, 15A-1022.1

**NOTE:** Use this section **ONLY** when the Court is rejecting the plea arrangement.

☐ The plea arrangement set forth within this transcript is hereby rejected and the clerk shall place this form in the case file. (Applies to plea arrangements disclosed on or after December 1, 2009.)

Date

Name Of Presiding Judge (type or print)

Signature Of Presiding Judge

The undersigned judge, having addressed the defendant personally in open court, finds that the defendant (1) was duly sworn or affirmed, (2) entered a plea of ☒ guilty ☐ guilty pursuant to *Alford* decision ☐ no contest, and (3) offered the following answers to the questions set out below:

### Answers

1. Are you able to hear and understand me? (1) Yes
2. Do you understand that you have the right to remain silent and that any statement you make may be used against you? (2) Yes
3. At what grade level can you read and write? (3) 8th
4. (a) Are you now using or consuming alcohol, drugs, narcotics, medicines, pills, or any other substances? (4a) No  
 (b) When was the last time you used or consumed any such substance? (4b) N/A  
 (c) How long have you been using or consuming this medication or substance? (4c) N/A  
 (d) Do you believe your mind is clear, and do you understand what you are doing in this hearing? (4d) Yes
5. Have the charges been explained to you by your lawyer, and do you understand the nature of the charges, and do you understand every element of each charge? (5) Yes
6. (a) Have you and your lawyer discussed the possible defenses, if any, to the charges? (6a) Yes  
 (b) Are you satisfied with your lawyer's legal services? (6b) Yes
7. (a) Do you understand that you have the right to plead not guilty and be tried by a jury? (7a) Yes  
 (b) Do you understand that at such trial you have the right to confront and to cross examine witnesses against you? (7b) Yes  
 (c) Do you understand that by your plea(s) you give up these and other important constitutional rights to a jury trial? (7c) Yes
8. Do you understand that, if you are not a citizen of the United States of America, your plea(s) of guilty or no contest may result in your deportation from this country, your exclusion from admission to this country, or the denial of your naturalization under federal law? (8) Yes
- ☐ 9. Do you understand that upon conviction of a felony you may forfeit any State licensing privileges you have in the event that your probation is revoked? (9) Yes
10. Do you understand that following a plea of guilty or no contest there are limitations on your right to appeal? (10) Yes
11. Do you understand that your plea of guilty may impact how long biological evidence related to your case (for example, blood, hair, skin tissue) will be preserved? (11) Yes

(Over)

12. Do you understand that you are pleading ☒ guilty ☐ guilty pursuant to Alford ☐ no contest to the (12) \_\_\_\_\_ charges shown below? (Describe charges, total maximum punishments, and applicable mandatory minimums for those charges.)

PLEAS										
✓	Plea*	File Number	Count No.(s)	Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.	F/M	CL	‡Pun. CL.	Maximum Punish
	G	18-CRS-108854	1	Felony Poss of Cocaine	3/9/18	90-95(2)(3)	F	I	-	15 mos.

☐ See attached AOC-CR-300A, for additional charges.

\*G = Guilty GA = Alford plea  
NC = No Contest

TOTAL MAXIMUM PUNISHMENT ▶ 15 months + chin

MANDATORY MINIMUM FINES & SENTENCES (if any) ▶

✓ NOTE TO CLERK: If this column is checked this is an added offense or reduced charge.

‡ NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

13. Do you now personally plead ☒ guilty ☐ guilty pursuant to Alford ☐ no contest to the charges I just described? (13) yes

14. ☒ (a) Are you in fact guilty? (14a) yes

☐ (b) (no contest plea) Do you understand that, upon your plea of no contest, you will be treated as being guilty whether or not you admit that you are in fact guilty? (14b) N/A

☐ (c) (Alford guilty plea)  
(1) Do you now consider it to be in your best interest to plead guilty to the charges I just described? (14c1) N/A

(2) Do you understand that, upon your "Alford guilty plea," you will be treated as being guilty whether or not you admit that you are in fact guilty? (14c2) N/A

☐ 15. (Use if aggravating factors are listed below) Have you admitted the existence of the following aggravating factors: (15) N/A

\_\_\_\_\_

\_\_\_\_\_

have you agreed that there is evidence to support these factors beyond a reasonable doubt, have you agreed that the Court may accept your admission to these factors, and do you ☐ understand that you are waiving any notice requirement that the State may have with regard to these aggravating factors ☐ agree that the State has provided you with appropriate notice about these aggravating factors?

☐ 16. (Use if sentencing points are selected below) Have you admitted the existence of the following sentencing points not related to prior convictions: ☐ offense committed while on supervised or unsupervised probation, parole, or post-release supervision ☐ offense committed while serving a sentence of imprisonment ☐ offense committed while on escape from a correctional institution, have you agreed that there is evidence to support these points beyond a reasonable doubt, have you agreed that the Court may accept your admission to these points, and do you ☐ understand that you are waiving any notice requirement that the State may have with regard to these sentencing points ☐ agree that the State has provided you with the appropriate notice about these sentencing points? (16) N/A

☐ 17. (Use if No. 15 or 16 selected above) Do you understand that at a jury trial you have the right to have a jury determine the existence of any aggravating factors and any additional sentencing points not related to prior convictions that may apply to your case beyond a reasonable doubt, and that by your plea(s) you give up this constitutional right to a jury determination? (17) N/A

18. Do you understand that you also have the right during a sentencing hearing to prove to the Court the existence of any mitigating factors that may apply to your case? (18) yes

19. Do you understand that the courts have approved the practice of plea arrangements and you can discuss your plea arrangement with me without fearing my disapproval? (19) yes

## STATE VERSUS

File No.

18-CRS-108854

Name Of Defendant

Janet Millham Jones

20. Have you agreed to plead ☐ guilty ☐ guilty pursuant to Alford ☐ no contest as part of a plea arrangement? (if so, review the terms of the plea arrangement as listed in No. 21 below with the defendant.) (20) No
21. The prosecutor, your lawyer and you have informed the Court that these are all the terms and conditions of your plea:

## PLEA ARRANGEMENT

- ☐ The State dismisses the charge(s) set out on Page Two, Side Two, of this transcript.
- ☐ The defendant stipulates to restitution to the party(ies) in the amounts set out on "Restitution Worksheet, Notice And Order (Initial Sentencing)" (AOC-CR-611).

22. Is the plea arrangement as set forth within this transcript and as I have just described it to you correct as being your full plea arrangement? (22) N/A
23. Do you now personally accept this arrangement? (23) N/A
24. (Other than the plea arrangement between you and the prosecutor) has anyone promised you anything or threatened you in any way to cause you to enter this plea against your wishes? (24) No
25. Do you enter this plea of your own free will, and do you fully understand what you are doing? (25) Yes
26. Do you agree that there are facts to support your plea ☐ and admission to aggravating factors ☐ and sentencing points not related to prior convictions, and do you consent to the Court hearing a summary of the evidence? (26) Yes
27. Do you have any questions about what has just been said to you or about anything else connected to your case? (27) No

## ACKNOWLEDGEMENT BY DEFENDANT

I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. No one has told me to give false answers in order to have the Court accept my plea in this case. The terms and conditions of the plea as stated within this transcript, if any, are accurate.

## SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

1-14-19

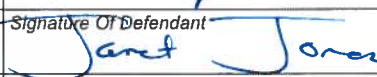
Date

1-14-19

Signature



Signature Of Defendant

☒ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court

Name Of Defendant (type or print)

Janet M. Jones

## CERTIFICATION BY LAWYER FOR DEFENDANT

I hereby certify that the terms and conditions stated within this transcript, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself. I further certify that I have fully explained to the defendant the nature and elements of the charges to which the defendant is pleading, and the aggravating and mitigating factors and prior record points for sentencing, if any.

Date

1-14-19

Name Of Lawyer For Defendant (type or print)

Ann Cella

Signature Of Lawyer For Defendant



## CERTIFICATION BY PROSECUTOR

As prosecutor for this Prosecutorial District, I hereby certify that the conditions stated within this transcript, if any, are the terms and conditions agreed to by the defendant and his/her lawyer and myself for the entry of the plea by the defendant to the charges in this case.

Date

1-14-19

Name Of Prosecutor (type or print)

Allen Michael

Signature Of Prosecutor



**PLEA ADJUDICATION**

Upon consideration of the record proper, evidence or factual presentation offered, answers of the defendant, statements of the lawyer for the defendant, and statements of the prosecutor, the undersigned finds that:

1. There is a factual basis for the entry of the plea (*and for the admission as to aggravating factors and/or sentencing points*);
2. The defendant is satisfied with his/her lawyer's legal services;
3. The defendant is competent to stand trial;
4. ☐ The State has provided the defendant with appropriate notice as to the aggravating factors and/or points; ☐ The defendant has waived notice as to the aggravating factors and/or points; and
5. The plea (*and admission*) is the informed choice of the defendant and is made freely, voluntarily and understandingly.

The defendant's plea (*and admission*) is hereby accepted by the Court and is ordered recorded.

Date	Name Of Presiding Judge (type or print)	Signature Of Presiding Judge
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**SUPERIOR COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT**

File No.	Count No.(s)	Offense(s)

**DISTRICT COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT**

File No.	Count No.(s)	Offense(s)

**CERTIFICATION BY PROSECUTOR**

The undersigned prosecutor enters a dismissal to the above charges pursuant to a plea arrangement shown on this Transcript Of Plea Arrangement.

Date	Name Of Prosecutor (type or print)	Signature Of Prosecutor
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## **Discussion Problem 2:**

Same facts as above but now in addition to reviewing the completed transcript of plea form, the trial judge addresses the defendant personally and determines that the defendant:

- Can hear and understand
- Understands that she has the right to remain silent and that any statement may be used against her
- Completed 8<sup>th</sup> grade and can read and write at that grade level
- Is not taking any medication and is not under the influence of any drugs or alcohol
- Has had the charge explained to her by her lawyer and understands the nature of the charge and each element
- Wishes to plead guilty to felony possession of cocaine
- Has discussed possible defenses with her lawyer
- Is satisfied with her lawyer's services
- Understands that she has the right to plead not guilty and be tried by a jury
- Understands that at such trial she has the right to confront and cross-examine witnesses
- Understands that by her plea she gives up these and other constitutional rights to a jury trial
- Understands that if she's not a citizen, immigration consequences may result from the plea
- Understands that plea arrangements are permissible
- Is pleading "straight up" and that there is no plea agreement
- Has not been coerced into the plea

## **Discussion Problem 3:**

The following occurs during the Judge's colloquy with the defendant:

Judge: Are you now under the influence of alcohol, drugs, narcotics, medicines, pills, or any other intoxicants.

Defendant: I take my medicine.

Judge: When was the last time you used such substances?

Defendant: Last night. No, sorry, this morning, like always.

Judge: Have the charges been explained to you by your lawyer, and do you understand the nature of such charges, and do you understand each and every element of each charge?

Defendant: Yes

#### **Discussion Problem 4:**

Same facts as above, except now the Judge has clarified that the defendant is taking prescribed medications for heart disease and high blood pressure, that the defendant is taking the medication as per a doctor's prescription, and that the defendant does not experience any side effects from these medications that might interfere with her ability to understand the proceedings or to communicate with the judge or counsel.

Judge: Do you drink alcohol?

Defendant: Yes.

Judge: When is the last time you had alcohol?

Defendant: A couple of days ago.

Judge: Are you under the influence of any other intoxicants or drugs?

Defendant: No but I smoked a joint this morning to calm my nerves.

#### **Discussion Problem 5:**

Similar situation to Problem 3, but now the following transpires when the Judge asks about medication:

Judge: Are you currently taking any prescribed medication?

Defendant: Yes.

Defense lawyer: Your honor, my client is currently under a doctor's care and is taking the following medications by prescription: Clozapine and Paliperidone.

Judge: Is that it? Any others? Any other drugs, prescription or otherwise?

Defense lawyer: That is it. Nothing else. All taken per prescription.

**Discussion Problem 6:**

Judge: Have you and your lawyer discussed the possible defenses, if any to the charges?

Defendant: Yeah.

Judge: And are you satisfied with your lawyer's legal services?

Defendant: He's not no hired lawyer.

Judge: Are you satisfied with your lawyer's legal services?

Defendant: Yeah right but he came to see me like once while I was locked up. He hardly talked to me. He's done all right for what he's done but it's been pretty little.

**Discussion Problem 7:**

Assume that all proper inquiries have been made of the defendant by the Judge.

Judge: Mr. Prosecutor, what's the factual basis for this plea?

Prosecutor: The defendant is pleading guilty to felony possession of cocaine. On August 30, 2010, she was stopped in her vehicle by Officer James Olney of the Chapel Hill Police Department, for a traffic violation. While getting her license and registration, Officer Olney noticed a clear vial with what looked like a rock of crack cocaine on the console by the defendant's right hand. Officer Olney has 10 years of experience identifying crack cocaine. Officer Olney asked the defendant if he could search the vehicle. She agreed. Officer Olney seized the vial and arrested the defendant, on the charges at issue today. I have an SBI lab analysis confirming that the substance was cocaine.

Judge: Anything else?

Prosecutor: I also have a statement by the defendant, admitting that she possessed the vial found in her vehicle on August 30<sup>th</sup> and that it contained crack cocaine.

Judge: Anything else?

Prosecutor: No.

Judge: Does the defense want to be heard?

Defense lawyer: No your honor.

### **Discussion Problem 8:**

Prosecutor: Your honor, the defendant was originally charged with Sexual Activity With a Student but is pleading guilty pursuant to a plea agreement to Crime Against Nature.

Judge: And the factual basis . . .

Prosecutor: The defendant is a male high school teacher employed by the Chapel Hill Carrboro Public School System. The victim was a student in the defendant's 11<sup>th</sup> grade AP World History class at Chapel Hill High School. After the victim initiated contact with the defendant outside of school, the defendant eventually agreed to meet the victim one evening. The meeting occurred on September 15, 2019, on school premises in the media resource room. The defendant kissed the victim and engaged in vaginal intercourse with her. The victim never reported the defendant, although she has confirmed this occurred. The two were seen by another teacher, Ms. Ingram, who reported the incident. As I said, the plea is to Crime Against Nature.

Judge: Defense counsel, do you have anything to add?

Defense counsel: No, your honor. That was an accurate statement of the facts. This is a plea agreement. Everything is in order – everything is good.

### **Discussion Problem 9:**

Same facts as Problem 8, except this time, the factual basis reveals that the defendant engaged in an act of oral sex, not vaginal intercourse, with the victim.

The one-count indictment reads in relevant part as follows:

On or about September 15, 2019, the defendant unlawfully, willfully, and feloniously did engage in cunnilingus and fellatio with Samantha Student. At the time of the offense, the defendant was a teacher at Chapel Hill High School, Chapel Hill, North Carolina, and the victim was a student in this same school.

**Discussion Problem 10:**

The defense lawyer and the prosecutor say that they want to present a proposed plea agreement to you, indicating that it includes an arrangement as to sentence.

May you hear from them about the proposed arrangement?

Must you hear from them?

If you decide to hear from them, may you indicate whether you will agree to the proposal?

**§ 15A-1021. Plea conference; improper pressure prohibited; submission of arrangement to judge; restitution and reparation as part of plea arrangement agreement, etc.**

(a) In superior court, the prosecution and the defense may discuss the possibility that, upon the defendant's entry of a plea of guilty or no contest to one or more offenses, the prosecutor will not charge, will dismiss, or will move for the dismissal of other charges, or will recommend or not oppose a particular sentence. If the defendant is represented by counsel in the discussions the defendant need not be present. The trial judge may participate in the discussions.

(b) No person representing the State or any of its political subdivisions may bring improper pressure upon a defendant to induce a plea of guilty or no contest.

1 (c) If the parties have reached a proposed plea arrangement in which the prosecutor has agreed to recommend a particular sentence, they may, with the permission of the trial judge, advise the judge of the terms of the arrangement and the reasons therefor in advance of the time for tender of the plea. The proposed plea arrangement may include a provision for the defendant to make restitution or reparation to an aggrieved party or parties for the damage or loss caused by the offense or offenses committed by the defendant. 2 The judge may indicate to the parties whether he will concur in the proposed disposition. The judge may withdraw his concurrence if he learns of information not consistent with the representations made to him. 3

(d) When restitution or reparation by the defendant is a part of the plea arrangement agreement, if the judge concurs in the proposed disposition he may order that restitution or reparation be made as a condition of special probation pursuant to the provisions of G.S. 15A-1351, or probation pursuant to the provisions of G.S. 15A-1343(d). If an active sentence is imposed the court may recommend that the defendant make restitution or reparation out of any earnings gained by the defendant if he is granted work release privileges under the provisions of G.S. 148-33.1, or that restitution or reparation be imposed as a condition of parole in accordance with the provisions of G.S. 148-57.1. The order or recommendation providing for restitution or reparation shall be in accordance with the applicable provisions of G.S. 15A-1343(d) and Article 81C of this Chapter.

If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and the plea agreement may include a provision that the defendant will be ordered to pay for such treatment.

When restitution or reparation is recommended as part of a plea arrangement that results in an active sentence, the sentencing court shall enter as a part of the commitment that restitution or reparation is recommended as part of the plea arrangement. The Administrative Office of the Courts shall prepare and distribute forms which provide for ample space to make restitution or reparation recommendations incident to commitments.

**Problem 11:**

The parties come to you and ask you to consider a proposed plea agreement that includes a sentence. The defendant, originally charged with felony assault is pleading guilty to simple assault on a female. The victim is his wife, the assault occurred after an altercation about money, and the defendant and the victim are still living together. The prosecutor indicates that the defendant is an established member of the community, owns the local sporting goods store, and that this will be his first conviction, for an assault of a minor nature. As part of the plea agreement, the prosecutor has agreed to recommend 10 days of community service. You indicate that you will concur in this recommendation.

Before the case comes before you, you learn that the victim has a partial loss of vision in one eye as a result of the assault, and that she stayed in a women's shelter for a period of time before returning to live with the defendant. Also, the incident came after repeated 911 domestic calls to the house, occurring over a period of 6 months. Assuming that these facts are confirmed, are you bound by your agreement as to the sentence?

**Discussion Problem 12:**

The parties have not consulted with you prior to the plea. During the plea colloquy, you learn that pursuant to the plea agreement, the prosecutor will recommend a sentence. Based on the factual statement, you think the sentence is simply too low, and are unwilling to impose it. What can you do?

**§ 15A-1023. Action by judge in plea arrangements relating to sentence; no approval required when arrangement does not relate to sentence.**

(a) If the parties have agreed upon a plea arrangement pursuant to G.S. 15A-1021 in which the prosecutor has agreed to recommend a particular sentence, they must disclose the substance of their agreement to the judge at the time the defendant is called upon to plead.

(b) Before accepting a plea pursuant to a plea arrangement in which the prosecutor has agreed to recommend a particular sentence, the judge must advise the parties whether he approves the arrangement and will dispose of the case accordingly. If the judge rejects the arrangement, he must so inform the parties, refuse to accept the defendant's plea of guilty or no contest, and advise the defendant personally that neither the State nor the defendant is bound by the rejected arrangement. The judge must advise the parties of the reasons he rejected the arrangement and afford them an opportunity to modify the arrangement accordingly. Upon rejection of the plea arrangement by the judge the defendant is entitled to a continuance until the next session of court. A decision by the judge disapproving a plea arrangement is not subject to appeal.

(c) If the parties have entered a plea arrangement relating to the disposition of charges in which the prosecutor has not agreed to make any recommendations concerning sentence, the substance of the arrangement must be disclosed to the judge at the time the defendant is called upon to plead. The judge must accept the plea if he determines that the plea is the product of the informed choice of the defendant and that there is a factual basis for the plea.