

PLEAS & PLEA PROCEDURE

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OBJECTIVE

Properly take a plea

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PRELIMINARY POINTS

Types of pleas:

1. Not guilty
2. Guilty
3. No Contest

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- 1. Not guilty
- 2. Guilty (Includes *Alford* pleas)
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Taking a Guilty Plea

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TAKING A GUILTY PLEA

Knowing, voluntary & intelligent

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TAKING A GUILTY PLEA

Knowing, voluntary & intelligent
 G.S. 15A-1022 ensures that plea complies with constitutional requirements

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[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.

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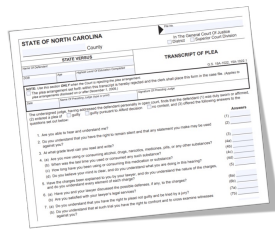
(b) By inquiring of the prosecutor and defense counsel and the defendant personally, the judge must determine whether there were any prior plea discussions, whether the parties have entered into any arrangement with respect to the plea and the terms thereof, and whether any improper pressure was exerted 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.

G.S. § 15A-1022(b)

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AOC-CR-300 & -300A



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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 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, the law 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.

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TAKING A GUILTY PLEA

Accepting the plea transcript form without personally addressing the defendant is reversible error

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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 8th 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

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MAXIMUM SENTENCE

“All the way over, all the way up.”

Consecutive sentences?

Mandatory minimums?

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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

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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.

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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.

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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.

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TAKING A GUILTY PLEA

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TAKING A GUILTY PLEA

Factual basis

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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 30th and that it contained crack cocaine.

Judge: Anything else?

Prosecutor: No.

Judge: Does the defense want to be heard?

Defense lawyer: No your honor.

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TAKING A GUILTY PLEA

•Factual Basis

- Statement by prosecutor
- D's written statement
- Presentence report
- Sworn testimony
- Statement by defense counsel

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TAKING A GUILTY PLEA

- Pleas to other offenses
 - If crime pleaded to is not charged in the indictment:
 - Must be a lesser included or
 - Criminal information must be filed

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PLEA ARRANGEMENTS AS TO SENTENCE

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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?

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Article 38.
Procedures Relating to Guilty Pleas in Superior Court.

§ 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.

(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. 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.

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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?

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PLEA ARRANGEMENT RE: SENTENCE

You may hear from the parties about a proposed agreement as to sentence

But you don't have to

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

You can withdraw your agreement if facts are otherwise

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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?

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PLEA ARRANGEMENTS

When you learn of a plea arrangement as to sentence at the plea, you must advise the parties whether you concur

If you reject the arrangement, then

- Refuse to accept the plea
- Tell the D neither the D nor the State is bound by the agreement
- Explain why rejected and give opportunity to modify
- D entitled to a continuance until next session

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<p>WITHDRAWAL OF PLEA</p>	<p>Before sentencing: Any fair and just reason</p> <p>After sentencing: Only to avoid manifest injustice</p>
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