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COVID-19, Guilty Pleas, and Motions for Appropriate Relief

Ian A. Mance*

Plea Bargaining During the Pandemic. The U.S. Supreme Court has described the American justice system as "for the most part a system of pleas, not a system of trials," observing that "[n]inety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas."[1] While trials resolve only a small fraction of cases, the possibility of trial is a central feature in the resolution of cases through plea bargaining. Although this process occurs largely outside of the courtroom and has continued throughout the pandemic, the unprecedented and indeterminate suspension of trials for much of the past year has altered the incentives and disincentives for defendants to plead guilty.

This pandemic effect on pleas has varied among jurisdictions and case types and has not necessarily been prejudicial to defendants. In some instances, defense attorneys have reported receiving unusually generous offers that they attribute to the exigencies of COVID-19. Yet in others, they have found that the difficulty of consulting with clients and the uncertainty about trial resumption plans have worked prejudice, particularly in cases where clients have been unable to make bond. Some attorneys have expressed concern that the pandemic has had the effect of coercing defendants to plead guilty who otherwise would have elected to exercise their right to a jury trial.

After discussing the availability of post-conviction relief regarding the validity of a guilty plea, this white paper reviews possible grounds for relief for defendants who entered guilty pleas during the COVID-19 pandemic, including the lack of a knowing and voluntary plea, the inability to exercise the right to a jury trial, dangerous jail conditions, pandemic-related ineffective assistance of counsel, and invalid waivers of counsel and denial of counsel.

Post-Conviction Review of Guilty Pleas. Guilty pleas considerably limit but do not extinguish a criminal defendant's right to review.[2] To comply with due process, those entering guilty pleas must be able to receive "advi[ce] by competent counsel" and have the benefit of "other procedural safeguards."[3] In North Carolina, defendants convicted through guilty pleas may

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* Ian A. Mance is an attorney who works with the UNC School of Government's Public Defense Education group on issues related to the impact of COVID-19 in criminal cases.

[1] *Lafler v. Cooper*, 566 U.S. 156, 170 (2012) (citing *Missouri v. Frye*, 566 U.S. 134, 143 (2012)); *see also United States v. Dominguez Benitez*, 542 U.S. 74, 82–83 (2004) (stating that "guilty pleas . . . are indispensable in the operation of the modern criminal justice system").

[2] *Blackledge v. Allison*, 431 U.S. 63, 73 (1977) (stating that "in collaterally attacking a plea of guilty a prisoner 'may not ordinarily repudiate' statements made to the sentencing judge when the plea was entered,'" but that "no procedural device for the taking of guilty pleas is so perfect by design and exercise as to warrant a per se rule rendering it 'uniformly invulnerable to subsequent challenge'" (quoting *Fontaine v. U.S.*, 411 U.S. 213, 215 (1973)).

[3] *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978); *see also State v. Sinclair*, 301 N.C. 193, 197 (1980) ("A plea of guilty or no contest involves the waiver of various fundamental rights such as the privilege against self-incrimination, the right of confrontation and the right to trial by jury. Our legislature has sought to [e]nsure that such pleas are entered into voluntarily and as a product of informed choice."); G.S. 15A-1022(a) (stating that "a superior court judge may not accept a plea of guilty or no contest from

challenge their conviction by way of a Motion for Appropriate Relief ("MAR").[4] G.S. 15A-1415(b) details the grounds for relief for motions filed more than ten days after the entry of judgment. Pursuant to subdivision (b)(3), a defendant may file an MAR to vacate a conviction obtained by way of a guilty plea that "violat[es] . . . the Constitution of the United States or the Constitution of North Carolina." Under this provision, appellants may seek relief from a conviction if it was based on a plea that was not knowingly, freely, and voluntarily entered, in violation of federal or state due process guarantees.

Lack of Knowing and Voluntary Plea. While remote proceedings have posed unique problems for jury trials,[5] they have generally posed less of a barrier for the entry of pleas, which courts have continued to accept throughout the pandemic. In an effort to mitigate transmission risks, many plea proceedings have occurred remotely. Different jurisdictions have adopted different approaches, and local rules and practices have varied. In some places, the defendant and his counsel have been in one location, the prosecution in another location, and the judge in another. In others, the defendant and his attorney have appeared from separate locations. As with any remote proceeding, communication challenges may arise that can affect whether a plea is knowingly and voluntarily entered and thus its underlying validity. Attorneys should be alert to concerns raised by clients about communication issues and whether all relevant rights were observed.

Attorneys reviewing such pleas post-conviction should also determine whether the defendant entered a written waiver of personal appearance before entry of the judgment. The Chief Justice's Emergency Directives, which authorized judicial officials "to conduct proceedings that include remote audio and video transmissions," required that "the defendant must waive any right to in-person . . . presence before remote audio and video transmissions may be used" in a proceeding where the "defendant's right to . . . be present is implicated."[6] This means that in all misdemeanor and felony cases, guilty pleas should not be accepted through use of remote technology unless the defendant has first knowingly and voluntarily entered a written waiver of their right to be physically present in court.[7]

These statutory standards buttress the independent constitutional requirement that for a plea of guilty to satisfy the Fourteenth Amendment, the record must affirmatively

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the defendant without first addressing him personally" and addressing and inquiring about a number of enumerated factors).

[4] For a discussion of direct appeals of cases in which a defendant has entered a guilty plea, see 2 JULIE R. LEWIS & JOHN RUBIN, NORTH CAROLINA DEFENDER MANUAL Ch. 23.6, Appeal of Guilty Pleas (June 2018); David Andrews, Common Issues in Guilty Plea Appeals (Aug. 8–9, 2019).

[5] *See generally* Ian A. Mance and John Rubin, *COVID-19 and Remote Testimony in Criminal Trials*, ADMINISTRATION OF JUSTICE BULLETIN No. 2020/06 (UNC Sch. Gov't, Dec. 2020).

[6] Chief Justice of North Carolina (Beasley, C.J.), Emergency Directive No. 3, Order of the Chief Justice of the Supreme Court of North Carolina (2020). The Administrative Office of the Courts has also published a form for Waiver of Personal Appearance and Consent to Audio-Video Proceeding.

[7] G.S. 15A-1011(a) provides that guilty pleas "may be received only from the defendant himself in open court," except for in misdemeanor cases when accompanied by a written waiver of appearance submitted with the approval of the presiding judge, as well as in certain cases involving worthless checks and traffic, hunting, fishing, and boating offenses. G.S. 15A-1011(a)(4)–(6).

demonstrate it was the "knowing and voluntary" choice of the defendant.[8] In addition to determining whether there was a waiver of personal appearance, attorneys should determine whether the court engaged in the statutorily-required plea colloquy and whether the record reflects that all of the required information was heard and understood by the defendant.[9] The record must also reflect a sufficient factual basis for the plea.[10]

Inability to Exercise the Right to a Jury Trial. In non-pandemic times, resource shortages and backlogs in the courts have sometimes contributed to defendants being held in custody for lengthy periods. Defendants held during COVID-19 have encountered a different situation. The prospective delay they have faced in their ability to resolve their case by way of trial has been indeterminate. For much of the year, jury trials were suspended indefinitely, and in some districts, they still are. For some defendants, that has meant that the only prospect of getting out of jail was and is through a guilty plea. This dynamic, where the right to trial exists but cannot be exercised, may raise due process concerns with respect to the entry of guilty pleas. In some instances, the indefinite nature of jury trial suspensions, particularly for defendants in custody, may have had the effect of coercing them to plead guilty and warrant relief. The U.S. Supreme Court has repeatedly held that the coercion of a guilty plea violates the constitutional right to due process.[11]

North Carolina courts considering speedy trial claims have said that pretrial incarceration caused by case backlogs can infringe on defendants' constitutional rights, but the bar for obtaining relief is a high one.[12] The prejudice worked by COVID-related delays is arguably different from the prejudice alleged in the speedy trial context. Before the pandemic, defendants in districts with large backlogs may have faced delays getting their case to trial, but all would have had some means of estimating how long their wait might be. By contrast, defendants held in custody while awaiting trial during the pandemic have had little way to estimate how long their wait might last. The suspension of jury trials was indefinite. The orders

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[8] *Boykin v. Alabama*, 395 U.S. 238, 242–43 (1969).

[9] *See generally* 2 JULIE R. LEWIS & JOHN RUBIN, NORTH CAROLINA DEFENDER MANUAL § 24.3B, The Plea Procedure (June 2018) (detailing required plea colloquy).

[10] G.S. 15A-1022(c); *State v. Atkins*, 349 N.C. 62, 96 (1998) ("The trial court may consider any information properly brought to its attention, and the trial record must reflect the information and evidence relied upon in reaching the decision that an adequate factual basis does exist.").

[11] *E.g.*, *Fontaine v. United States*, 411 U.S. 213, 214–15 (1973); *Boykin v. Alabama*, 395 U.S. 238, 242–43 (1969); *United States v. Jackson*, 390 U.S. 570, 583 (1968); *Waley v. Johnston*, 316 U.S. 101, 104 (1942).

[12] *See State v. Farmer*, 262 N.C. App. 619, 625 n.3 (2018) (stating that courts and prosecutors should "carefully attend to the backlog of cases" and although "the facts and circumstances in this case . . . did not show a clear constitutional violation" where defendant was tried more than five years after indictment but did not file speedy trial motions, "a slight shift in relevant facts could have easily . . . require[d] dismissal"), *aff'd*, 376 N.C. 407 (2020); *but see State v. Farook*, 850 S.E.2d 592, 607–09 (N.C. App. Oct. 20, 2020) (vacating murder conviction on speedy trial grounds and rejecting State's attempt to meet "its burden of production . . . regarding the reasons for delay" by relying on the court's prior recognition of "a backlog of cases . . . during this same time period" in *Farmer*, noting that "[d]uring the pendency of his case, defendant filed two *pro se* motions to dismiss his case due to speedy trial violations, and his attorney filed one").

suspending trials were regularly renewed, and resumption was tied to public health metrics that for months were concerning or at least uncertain.

In some cases, the indeterminate nature of these delays may have legal significance. Courts have vacated pleas in which the lack of material information has "had a significant effect on [a defendant's] 'assessment of his strategic position'" and "prevented [him] from engaging in the calculus necessary to enter a plea on which [a] Court can rely in confidence."[13] Although the suspension of jury trials has been motivated by concerns for public health and safety, the indeterminate nature of the delay may have had this impact on some defendants.

These considerations underscore the need to be sensitive to concerns about the voluntariness of pleas entered during the pandemic.[14] Where it can be determined that the defendant's plea was influenced by indeterminate delays, appellate courts might conclude that the fact delays were not a result of intentional conduct on the part of the State "does not lessen [the] impact" on the defendant.[15] This may be particularly true where, as discussed below, defendants were being held in facilities with significant COVID-19 outbreaks.

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[13] *United States v. Lockhart*, 947 F.3d 187, 194 & 197 (4th Cir. 2020) (en banc) (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 85 (2004)).

[14] *See also Blackledge v. Allison*, 431 U.S. 63, 75 (1977) (stating that courts should not "exclud[e] all possibility that a defendant's representations at the time his guilty plea was accepted were . . . the product of . . . duress . . . as to make the guilty plea a constitutionally inadequate basis for imprisonment"); *State v. Benfield*, 264 N.C. 75, 77 (1965) (holding that due process is violated when a defendant is improperly induced to plead guilty; defendant's plea was determined to be involuntary where it was tendered during trial after he was told his companion received a suspended sentence and judge told counsel he was inclined to give a long sentence if the case went to the jury and they convicted). North Carolina's appellate courts have sometimes vacated guilty pleas where defendants pled guilty without the benefit of all relevant information, even when a fully-informed defendant may have made the same decision. *Compare, e.g.*, *State v. Reynolds*, 218 N.C. App. 433, 437–38 (2012) (vacating guilty pleas because defendant was told "maximum possible sentence would be 168 months' imprisonment when, in fact, the maximum sentence was 171 months," determining it cannot be "sa[id] that an additional three months of possible imprisonment is not prejudicial") *with United States v. Massenburg*, 564 F.3d 337 (4th Cir. 2009) (rejecting argument that guilty plea was unknowing because defendant believed he faced a maximum sentence of ten years and federal district court failed to advise him that he actually faced fifteen years, where nothing in the record indicated defendant would not have pled guilty if properly informed).

[15] *Santobello v. New York*, 404 U.S. 257, 262 (1971); *see also id.* at 260 (stating that an "enormous increase in the workload of [an] . . . understaffed prosecutor's office[. . . .] does not excuse" a "lapse in orderly prosecutorial procedures" that interferes with plea bargaining); *State v. Labrecque*, 2020 VT 81, ¶¶ 26–28 (Vt. Sept. 3, 2020) (ultimately denying bail to defendant who was charged with serious sexual offenses, but rejecting State's argument that "COVID-related delays "should not be attributed to the government," concluding that the "government bears the responsibility of bringing [a] defendant to trial, even when it is delayed in the exercise of that responsibility by a public health emergency"). In *Santobello*, the U.S. Supreme Court held that a prosecutor's failure to comply with terms of a plea, although unintended, undermined the voluntariness of the defendant's plea. The defendant had agreed to plead guilty to a lesser charge in exchange for the prosecution's agreement to make no recommendation as to the sentence. At a subsequent hearing, a different prosecutor, unaware of the State's prior commitment, recommended the maximum one-year sentence, which the trial court

Dangerous Jail Environments. Throughout the pandemic, some people in custody have challenged their incarceration as violative of their right to due process and right to be free of cruel or unusual punishments. Medically-vulnerable prisoners and pretrial detainees have secured their release from custody after filing state habeas corpus petitions that characterized a COVID-19 outbreak in their facility as an "event" that "entitled [them] to be discharged" pursuant to G.S. 17-33(2).[16] Others have been resentenced and released in response to COVID-related concerns with the consent of local District Attorneys through MARs filed under G.S. 15A-1420(e).[17] Thousands of additional prisoners will be released by the end of August 2021 as the result of a settlement of a lawsuit brought by civil rights groups that sought a remedy for dangerous prison conditions caused by the spread of COVID-19.[18]

In each of these cases, relief was granted because facilities could not effectively combat the spread of the virus, and they were dangerous places for people with medical vulnerabilities because of the inability to socially distance. Under these circumstances, some people held in custody pretrial may have felt compelled to plead guilty in order to obtain their release or a transfer to what they might have perceived to be a safer, prison facility. To the extent pleas were the product of a fear of contracting COVID-19 in jail, they may fall short of the requirements of a voluntary plea and warrant postconviction relief.[19] Appellate courts reviewing such claims might consider some of the same factors that a habeas court would consider, including whether the person in custody had a pre-existing medical condition that made them particularly vulnerable to COVID-19 and the extent of any outbreak at their facility at the time the plea was entered.[20]

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imposed. While the U.S. Supreme Court noted that the sentencing judge "stated that the prosecutor's recommendation did not influence him and we have no reason to doubt that," it concluded the interests of justice were served by remanding the case to the state courts for further consideration. *Santobello*, 404 U.S. at 262–63.

[16] *See, e.g.*, *State v. Daw*, No. COA20-680, 2021 WL 1742081, at *17 (N.C. Ct. App. May 4, 2021) (discussing COVID-19 pandemic and holding that "an incarcerated person may petition for issuance of a writ of habeas corpus under [G.S.] 17-33(2) based on the occurrence of an 'act, omission, or event' entitling the party to discharge"), *temporary stay allowed*, No. 174P21-1, 2021 WL 2103774, at *1 (N.C. May 25, 2021); Order, *Edwards v. Hooks*, No. 17CRS221491 (N.C. Super. Ct. April 15, 2021) (granting habeas relief to state prisoner on basis of medical conditions rendering her particularly vulnerable to COVID-19); *see also* Ian A. Mance, *Securing the Release of People in Custody in North Carolina During the COVID-19 Pandemic*, ADMINISTRATION OF JUSTICE BULLETIN No. 2020/02 (UNC Sch. Gov't, June 2020).

[17] *See generally State v. Chevallier*, 264 N.C. App. 204, 213–14 (2019) (stating that parties may enter into agreement for appropriate relief).

[18] *See generally* Virginia Bridges, *NC to Release 3,500 State Prison Inmates Early in COVID Lawsuit Agreement*, NEWS & OBSERVER, Feb. 25, 2021.

[19] *See Moore v. State of Michigan*, 355 U.S. 155, 163–65 (1957) (reversing conviction and holding that evidence "raise[d] an inference of fact that [defendant's] refusal of counsel was motivated to a significant extent by [fear and] the desire to be removed from the Kalamazoo jail at the earliest possible moment"); *see also Haley v. State of Ohio*, 332 U.S. 596, 606 (1948) (recognizing that "conduct devoid of physical pressure but not leaving a free exercise of choice is the product of duress as much so as choice reflecting physical constraint").

[20] *Daw*, 2021 WL 1742081, at *36–37.

Pandemic-Related Ineffective Assistance of Counsel. Some people may also seek to raise ineffective assistance of counsel ("IAC") claims through MARs in situations where pandemic-related issues undermined the effectiveness of their representation or interfered with their access to counsel and contributed to their decision to plead guilty.[21] The U.S. Supreme Court has held that a plea is not knowing and voluntary if a person received ineffective assistance of counsel during plea bargaining.[22] In North Carolina, G.S. 15A-1415(b)(8) permits defendants to raise ineffective assistance of counsel as a ground for establishing the illegality of a conviction or sentence.

There are a number of situations in which COVID-related complications could lead to a claim of ineffective assistance of counsel. A defense attorney's expressed reluctance or unwillingness to go to court due to safety concerns might in some instances undermine the voluntariness of a defendant's subsequent guilty plea because of its effect on their belief in their ability to otherwise obtain a timely and fair resolution of their case.[23] Other COVID-related grounds for post-conviction IAC relief might include failure to conduct a proper investigation before entry of the plea or failure to develop mitigating circumstances before sentencing.[24] Courts have recognized that "COVID-19 has generally hindered . . . parties' abilities to interview witnesses and conduct investigations,"[25] and they have granted various remedies to alleviate the particular harm.[26]

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[21] *See Lafler v. Cooper*, 566 U.S. 156, 165 (2012) (recognizing, in case in which counsel's advice led the defendant to reject plea offer, that the Sixth Amendment right to effective counsel "applies to pretrial critical stages that are part of the whole course of a criminal proceeding, a proceeding in which defendants cannot be presumed to make critical decisions without counsel's advice"); *see also* Ian A. Mance, *COVID-19 Jail Restrictions and Access to Counsel*, ADMINISTRATION OF JUSTICE BULLETIN NO. 2020/04 (UNC Sch. Gov't, Oct. 2020) (discussing COVID-mitigation policies at jails and their potential interference with the right to counsel); Ian A. Mance and John Rubin, *Indigent Defense Attorneys and COVID-19: Frequently Asked Questions About Practicing During a Pandemic*, ADMINISTRATION OF JUSTICE BULLETIN No. 2020/03 (UNC Sch. Gov't, Sept. 2020) (discussing possible attorney-client conflicts of interest related to pandemic-related safety concerns).

[22] *See Missouri v. Frye*, 566 U.S. 134, 141 (2012) (so holding).

[23] Mance & Rubin, *Indigent Defense Attorneys and COVID-19*, *supra* note 21, at 9–10 (discussing responsibilities of attorney to avoid compromising client's interests).

[24] *See Strickland v. Washington*, 466 U.S. 668, 691 (1984) (holding "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary"); *Ayestas v. Davis*, 138 S. Ct. 1080, 1095–96 & 1101 (2018) (vacating Fifth Circuit opinion denying petitioner relief on IAC claim that alleged "trial counsel was deficient in failing to conduct an investigation" of mitigating circumstances); *State v. Frogge*, 359 N.C. 228, 241 (2005) ("The test . . . is whether a strategic decision was made after sufficient investigation, not whether that decision was later proven to be correct." (citing *Wiggins v. Smith*, 539 U.S. 510 (2003)).

[25] *United States v. McArdle*, No. 2:20-CR-56-JRG-HBG, 2021 WL 149411, at *5 (E.D. Tenn. Jan. 15, 2021).

[26] *See, e.g.*, *Brown v. Davis*, 482 F. Supp. 3d 1049 (E.D. Cal. 2020) (granting motion to prospectively equitably toll limitations deadline for filing federal habeas petition because COVID-19 pandemic impeded, among other things, the defense's ability to investigate claims); *Pineda-Laurencio v. Gittere*, No. 219CV00477LRHEJY, 2020 WL 6136218, at *1 (D. Nev. Oct. 19, 2020) (granting "motion for stay . . .

Invalid Waiver of Counsel and Denial of Counsel. As with guilty pleas waiving trial rights, waivers of counsel must be knowing and voluntary.[27] The Supreme Court of North Carolina has said trial courts may accept pleas from uncounseled defendants "only" after a "thorough inquiry" and determination the defendant was advised of the right to counsel and right to assignment of counsel; that they understand and appreciate the consequence of waiving counsel; and that they comprehend the charges, proceedings, and range of permissible punishments.[28] The Court has held that for such a waiver to be valid, "the record must show that the defendant was literate and competent, [and] that . . . he was voluntarily exercising his own free will."[29] It has also said waiver may not be presumed from a silent record.[30]

For a number of reasons, attorneys should examine cases in which a defendant waived counsel and entered a guilty plea during the pandemic. As discussed in the preceding section, COVID-19 has disrupted defense attorneys' ability to meet with people in custody, and in some cases, attorneys' own concerns about COVID-19 may have had the effect of slowing resolution of a defendant's case. Under such circumstances, it is possible that some defendants waived counsel without being adequately informed of the consequences or as a means of accelerating the disposition of their case, calling into question whether the waiver was voluntary. An invalid waiver of counsel amounts to a denial of a person's right to counsel, a violation that may be raised in a MAR to vacate a conviction or in a subsequent prosecution in which the State proposes to use a prior conviction.[31]

In addition to issues with waivers of counsel, there may also be counsel issues involving represented defendants who entered guilty pleas virtually. Courts around the state have regularly encountered the same bandwidth issues with which many people working remotely from home have struggled. Some places lack the broadband infrastructure necessary to deliver

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until such time as conditions, with respect to the COVID-19 pandemic, are such that . . . counsel can adequately investigate").

[27] *See generally* JOHN RUBIN, PHILLIP R. DIXON, JR., AND ALYSON A. GRINE, NORTH CAROLINA DEFENDER MANUAL, VOL. 1 PRETRIAL, § 12.6B, Mandatory Procedures for Waiving Counsel (2d ed. 2013).

[28] *State v. Thacker*, 301 N.C. 348, 354–55 (1980). The Court has cited the School of Government's "fourteen-question checklist 'designed to satisfy' . . . [G.S] 15A-1242" as a mechanism that "illustrate[s] the sort of 'thorough inquiry' envisioned by the General Assembly when this statute was enacted[.]" *State v. Moore*, 362 N.C. 319, 327–28 (2008) (citing 1 Super. Court Subcomm., Bench Book Comm. & N.C. Conf. of Super. Court Judges, *North Carolina Trial Judge's Bench Book* § II, ch. 6, at 12–13 (Inst. of Gov't, Chapel Hill, N.C., 3d ed. 1999)).

[29] *Thacker*, 301 N.C. at 354 (citing *Faretta v. California*, 422 U.S. 806 (1975)); *see also State v. LeGrande*, 346 N.C. 718, 722–23 (1997) (stating that "[b]efore a defendant is allowed to waive appointed counsel, the trial court must insure that constitutional and statutory standards are satisfied," "the defendant must 'clearly and unequivocally' waive his right to counsel," and the trial court must conduct inquiry to "determine whether the defendant knowingly, intelligently, and voluntarily waived his right to in-court representation" (citations omitted)).

[30] *State v. Neeley*, 307 N.C. 247 (1982); *State v. Blackmon*, 284 N.C. 1 (1973).

[31] JOHN RUBIN, PHILLIP R. DIXON, JR., AND ALYSON A. GRINE, NORTH CAROLINA DEFENDER MANUAL, VOL. 1 PRETRIAL, § 12.2, Consequences of Denial of Counsel (2d ed. 2013) (citing G.S. 15A-980; *Custis v. United States*, 511 U.S. 485 (1994); G.S. 20-179(o)).

reliable video and audio during periods of peak usage. As a result, courts have at times had to instruct participants to turn off their video feeds and mute their audio in attempts to improve transmission quality and improve communication. In some districts, defendants have entered guilty pleas from a different physical location than their attorney, forced to rely on internet-based communication that may suffer from similar technical issues. Under these conditions, questions may arise as to whether a defendant was denied counsel by not having their counsel present and not being able to meaningfully communicate with them.[32]

[32] *See* JOHN RUBIN, PHILLIP R. DIXON, JR., AND ALYSON A. GRINE, NORTH CAROLINA DEFENDER MANUAL, VOL. 1 PRETRIAL, § 12.7C, Presumptive Prejudice (2d ed. 2013) (discussing cases in which absence of counsel and restrictions on assistance, among other things, constituted actual or constructive denial of counsel and prejudice was presumed); *see also State v. Rouse*, 234 N.C. App. 92, 92–94 (2014) (rejecting argument "that denial of counsel is not a cognizable claim on appeal from a guilty plea" and holding that the denial of counsel at a sentencing hearing constituted structural error that required vacating the judgments and remanding for further proceedings where "the transcript of the . . . hearing clearly show[ed the defendant] was brought into court and required to proceed without the assistance of counsel").