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Prevalence of plea bargaining. Although the right to a trial by jury is considered one of the most fundamental rights afforded to criminal defendants under the U.S. Constitution, jury trials are actually the exception to the way in which most American criminal cases are resolved. Jacqueline E. Ross, *The Entrenched Position of Plea Bargaining in United States Legal Practice*, 54 AM. J. COMP. L. 717 (Supp. 2006). Guilty pleas are "the predominant method by which most criminal cases are resolved—approximately 93 percent of cases in the federal system and approximately 91 percent in the states." ABA STANDARDS FOR CRIMINAL JUSTICE: PLEAS OF GUILTY, at xi–xii (3d ed. 1999); *see also State v. Alexander*, 359 N.C. 824 (2005) (stating that 96% of criminal cases that survived dismissal in North Carolina during fiscal year 2002–03 resulted in guilty pleas).

The U.S. Supreme Court sanctioned plea agreements in *Santobello v. New York*, 404 U.S. 257, 260–61 (1971), stating:

> The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called "plea bargaining," is an essential component of the administration of justice. Properly administered, it is to be encouraged. If every criminal charge were subjected to a full-scale trial, the States and the Federal Government would need to multiply by many times the number of judges and court facilities.
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> Disposition of charges after plea discussions is not only an essential part of the process but a highly desirable part for many reasons. It leads to prompt and largely final disposition of most criminal cases; it avoids much of the corrosive impact of enforced idleness during pre-trial confinement for those who are denied release pending trial; it protects the public from those accused persons who are prone to continue criminal conduct even while on pretrial release; and, by shortening the time between charge and disposition, it enhances whatever may be the rehabilitative prospects of the guilty when they are ultimately imprisoned. *See Brady v. United States*, 397 U.S. 742, 751–752 (1970).

See also State v. Slade, 291 N.C. 275, 277 (1976) (noting that "'plea bargaining' has emerged as a major aspect in the administration of criminal justice"); ABA STANDARDS FOR CRIMINAL JUSTICE: PLEAS OF GUILTY, at xiii (3d ed. 1999) (noting that the allowance of negotiated guilty pleas "is an appropriate and beneficial part of the criminal justice system" and "is necessary to ensure the continued functioning of the system in those cases that go to trial").

The use of plea agreements has also been sanctioned by the N.C. General Assembly. *See State v. Khan*, 366 N.C. 448, 453 (2013) (noting that because a defendant who pleads guilty is giving up rights guaranteed by the federal and state constitutions, the individual statutes set out in Chapter 15, Article 58 of the N.C. General Statutes "set out a procedure that is transparent to the parties and to the public."); G.S. Ch. 15A, Art. 58 Official Commentary (recognizing and listing a number of benefits that result from "bring[ing] plea negotiations out of the back room and put[ting] them on the record.") (located immediately before G.S. 15A-1021).

Basic characteristics of plea bargains. "Generally, a plea arrangement or bargain is '[a] negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor, usu[ally] a more lenient sentence or a dismissal of the other charges.'" *State v. Alexander*, 359 N.C. 824, 830–31 (2005) (quoting BLACK'S LAW DICTIONARY 1173 (7th ed. 1999)). Although occurring in the context of a criminal proceeding, a plea bargain remains contractual in nature. *State v. Rodriguez*, 111 N.C. App. 141, 144 (1993) (noting that "[a] plea agreement will be valid if both sides voluntarily and knowingly fulfill every aspect of the bargain").

Plea bargaining is expressly permitted in North Carolina, and the trial judge is permitted to participate. *State v. Simmons*, 65 N.C. App. 294 (1983) (citing G.S. 15A-1021). However, there is no constitutional right to plea bargain—the prosecutor need not make any plea offer if he or she prefers to go to trial. *Weatherford v. Bursey*, 429 U.S. 545 (1977); *see also State v. Collins*, 44 N.C. App. 141 (1979), *aff'd*, 300 N.C. 142 (1980).

Pleading guilty to a crime waives a number of significant constitutional rights, including the right to a jury trial, the right to put the State to its proof, and most defenses to a crime. *Boykin v. Alabama*, 395 U.S. 238, 242–43 (1969); *State v. Ford*, 281 N.C. 62 (1972); *see also State v. Caldwell*, 269 N.C. 521 (1967) (by pleading guilty, the accused generally waives all defenses other than that the indictment charges no offense). Thus, as a matter of due process under the Fifth and Fourteenth Amendments to the U.S. Constitution, the decision to plead guilty must be "knowing and voluntary." *See Boykin*, 395 U.S. 238; *Johnson v. Zerbst*, 304 U.S. 458 (1938); *State v. Bozeman*, 115 N.C. App. 658 (1994). This means that:

- the decision to plead guilty must be the client's;
- the client must be informed about his or her options and the consequences of pleading guilty; and
- the client may not be coerced by any party, including the court, to plead guilty.

See North Carolina v. Alford, 400 U.S. 25 (1970); *State v. Pait*, 81 N.C. App. 286 (1986). If a defendant's guilty plea is not made voluntarily and knowingly, "it has been obtained in violation of due process and is therefore void." *Boykin*, 395 U.S. 238, 243 n.5.