
23.7 Other Issues

A. Inadmissibility of Plea Negotiations at Trial

G.S. 15A-1025 states: "The fact that the defendant or his counsel and the prosecutor engaged in plea discussions or made a plea arrangement may not be received in evidence against or in favor of the defendant in any criminal . . . action . . . ." If plea negotiations fall apart, and the case goes to trial, neither side may introduce evidence about the prior plea negotiations. *State v. Bostic*, 121 N.C. App. 90 (1995) (G.S. 15A-1025 clearly prohibited introduction of evidence that defendant refused a plea bargain because he refused to admit guilt); *see also* N.C. R. EVID. 410 (Inadmissibility of pleas, plea discussions, and related statements).

G.S. 15A-1025 "was designed to facilitate plea discussions and agreements by protecting both defendants and prosecuting officials from being 'penalized for engaging in practices which are consistent with the objectives of the criminal justice system.'" *State v. Wooten*, 86 N.C. App. 481, 482 (1987) (citation omitted). A defendant is entitled to a new trial if he or she can show prejudice from the prosecutor's introduction of evidence obtained during plea negotiations. *See State v. Walker*, 167 N.C. App. 110, 122 (2004) (admission of incriminating letters from defendant to the prosecutor discussing defendant's regret and his willingness to confess and "help in any way in order to get probation" constituted a plea discussion; admission was highly prejudicial and potentially influenced the jury's decision), *vacated in part on other grounds*, 361 N.C. 160 (2006); *Wooten*, 86 N.C. App. 481, 481 (testimony by officer that defendant spoke with him after arrest and said that "[defendant's] lawyer wanted to plead him to six years to the offense and he wanted to know what he should do"; this testimony referred to a plea bargain negotiated by defense counsel and prosecutor and therefore was expressly prohibited by G.S. 15A-1025). *But cf. State v. Flowers*, 347 N.C. 1 (1997) (letter from defendant to prosecutor, in which defendant admitted guilt, requested that co-defendants not be tried for murder, requested that his counsel be removed, and mentioned possibility of a plea bargain without any specifics, was not barred by G.S. 15A-1025; prosecutor did not respond to defendant's letter, did not engage in plea discussions with defendant, and did not enter into plea arrangement with defendant).

The limitations set out in G.S. 15A-1025 apply only to evidence of communications related to plea bargaining between the prosecutor and the defense. Plea negotiations with a third party, including a law enforcement officer, may be admissible against the defendant. *See Bostic*, 121 N.C. App. 90, 102 (statement made by defendant to inmate

that he hoped to get a plea was admissible because the statement "did not in any way indicate that 'defendant or his counsel and the prosecutor engaged in plea discussions'"); *State v. Lewis*, 32 N.C. App. 298 (1977) (finding discussion between arresting officer and defendant admissible and declining to expand G.S. 15A-1025 beyond its explicit parameters).

B. Challenging Former Guilty Pleas

Where a defendant challenges the validity of a guilty plea through an appeal or a petition for writ of certiorari, the record must affirmatively show that the guilty plea was made knowingly and voluntarily; otherwise, the plea is invalid. *Boykin v. Alabama*, 395 U.S. 238 (1969). However, at the end of a direct appeal, or when the time for appeal has expired, a "presumption of regularity" applies to a guilty plea. *Parke v. Raley*, 506 U.S. 20 (1992). The "presumption of regularity" shifts the burden to the defendant to show that his or her plea was involuntary. This can be a difficult burden to carry. *See State v. Bass*, 133 N.C. App. 646 (1999) (defendant unsuccessful in overturning prior uncounseled guilty plea that became basis of capital aggravating circumstance).

North Carolina courts also have held that the proper procedure for challenging a prior guilty plea on *Boykin* grounds is to file a motion for appropriate relief in the original cause. A defendant may not raise the issue of the voluntariness of a plea that is being used as a sentencing enhancement, or as the basis for a habitual felon charge, at the sentencing hearing or during a habitual felon trial. *See State v. Creason*, 123 N.C. App. 495 (1996) (collateral attack on prior conviction used as basis of habitual felon charge improper; proper procedure for adjudicating *Boykin* claim was motion for appropriate relief in the original cause), *aff'd per curiam*, 346 N.C. 165 (1997); *State v. Stafford*, 114 N.C. App. 101 (1994) (claim that prior pleas of guilty used to support habitual impaired driving charge were received in violation of *Boykin* could not be raised in habitual impaired driving case; defendant must file MAR in original cause); *State v. Noles*, 12 N.C. App. 676 (1971) (defendant could not collaterally attack voluntariness of underlying guilty plea on appeal of revocation of probation; proper procedure is to file MAR in original cause). *Cf. Custis v. United States*, 511 U.S. 485 (1994) (if conviction is obtained in violation of right to counsel, defendant may collaterally attack conviction in case in which conviction is proposed to be used); *see also* G.S. 15A-980 (allowing motion to suppress prior conviction for violation of right to counsel).

For further discussion of this topic, see Robert L. Farb, Boykin v. Alabama *and Use of Invalid Guilty Pleas*, UNC SCH. OF GOV'T (Feb. 1, 2010), and Jessica Smith, *Pleas and Plea Negotiations in North Carolina Superior Court*, NORTH CAROLINA SUPERIOR COURT JUDGES' BENCHBOOK (UNC School of Government, June 2015).

C. Concessions of Guilt during Trial

There may be situations in which conceding your client's guilt to a lesser-included offense is your best strategy. Concessions of guilt have the same practical effect as guilty pleas because they deprive the defendant of his or her right against self-incrimination, the

right of confrontation, and the right to trial by jury. *See State v. Harbison*, 315 N.C. 175 (1985). A defense attorney may not concede guilt without his or her client's explicit consent, and that consent must be given knowingly and voluntarily. *Id*. at 180 (holding that "ineffective assistance of counsel, per se in violation of the Sixth Amendment, has been established in every criminal case in which the defendant's counsel admits the defendant's guilt to the jury without the defendant's consent."); *see also McCoy v. Louisiana*, ___ U.S. ___, 138 S. Ct. 1500, 1511 (2018) (holding that the Sixth Amendment guarantees a defendant the right to choose the objective of his or her defense, which includes refusing to allow counsel to concede guilt; "counsel's admission of a client's guilt over the client's express objection is error structural in kind" and is not subject to harmless-error review).

For an in-depth discussion of admissions of the defendant's guilt during trial, see *infra* § 28.6, Admissions of Guilt During Opening Statement, and § 33.6, Admissions of Guilt During Closing Argument.