

Appendix 23-1: Checklist for Guilty Pleas

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The following checklist may be useful in checking the validity of a guilty plea.

I. Preparing the Plea Agreement (§ 23.3)

- ✓ The offenses covered by the plea agreement are within the scope of the indictment (or warrant in district court).
- ✓ If the plea is outside the scope of the initial indictment, the indictment has been dismissed with prejudice and a superseding information filed. In district court, the prosecutor should file a statement of charges.
- ✓ The plea agreement contains no conditions that are barred by law.
- ✓ The judge has agreed to any explicit sentencing provisions in the agreement.
- ✓ If the plea is “no contest,” both the prosecutor and judge have agreed to accept this form of plea. Although not required by statute, it is the better practice to inform the prosecutor and court that you intend to enter an *Alford* plea.
- ✓ The intent to appeal from the denial of any suppression motions is explicitly preserved on the face of the plea agreement.
- ✓ The defendant understands the nature of the charges and the direct consequences of the plea, including the maximum possible sentence and any mandatory minimum sentence.
- ✓ The defendant understands the major collateral consequences of the plea, including the risk of deportation for noncitizens.
- ✓ The defendant understands his or her obligations under the plea agreement, including any obligation to make restitution, to participate in treatment programs, or to testify for the State.
- ✓ The defendant understands he or she may move to withdraw the plea of guilty for any good reason until the sentence is imposed, after which the right to withdraw from the plea is very limited.
- ✓ The defendant understands the limits on his or her right to appeal from a plea bargain.
- ✓ The defendant understands that the consequences of withdrawing from a plea agreement, or successfully appealing a plea, may be a trial in which a more severe sentence is imposed.

II. The Plea Procedure (§ 23.4)

- ✓ There is a factual basis for the plea presented on the record.
- ✓ The judge personally addresses the defendant, in accordance with G.S. 15A-1022(a), to ensure that the defendant is pleading voluntarily and understands the consequences of the plea.
- ✓ The judge questions counsel about the voluntariness of the plea in accordance with G.S. 15A-1022(b).
- ✓ The full plea agreement is disclosed to the court.
- ✓ If the defendant intends to appeal the denial of a suppression motion, the court and prosecutor are informed of this intent before the entry of the plea.
- ✓ The defendant is given the opportunity to plead to any other outstanding charges pursuant to G.S. 15A-1011(c).

III. Felony Sentencing (§ 23.5)

- ✓ If a sentence is not a negotiated part of the plea agreement, counsel must be prepared for a full sentencing hearing, in which the State may present evidence of the defendant's prior record and any aggravating factors and the defendant has the burden of proving mitigating factors.
- ✓ If a negotiated sentence falls within the aggravated range in the sentencing chart, the defendant must admit the existence of the aggravating factors and the judge must question him or her in accordance with the procedures set out in G.S. 15A-1022 and G.S. 15A-1022.1. If the negotiated sentence falls within the mitigated range, the defendant must present evidence to support a mitigating factor or factors and the judge must make findings to support the sentence.

IV. Appeal from Guilty Pleas (§ 23.6)

- ✓ A defendant who enters a plea of guilty on a misdemeanor in district court may appeal for a trial de novo in superior court.
- ✓ A defendant who enters a plea of guilty on a felony in superior court generally may appeal only: (i) the legality of his or her sentence; (ii) the judge's denial of a motion to withdraw a plea; or (iii) the denial of a suppression motion if properly preserved.
- ✓ Certain other issues, such as the voluntariness of the plea, ineffective assistance of counsel, or capacity to plead guilty, may be raised either through a petition for writ of certiorari in the appellate court or a motion for appropriate relief in the trial division, depending on the issue.

V. Other Issues (§ 23.7)

- ✓ If plea negotiations fall apart and the case goes to trial, evidence of the negotiations is inadmissible.
- ✓ If the State intends to use a prior guilty plea as a sentencing enhancement, the proper procedure for challenging the former plea on *Boykin* grounds (plea not knowing and voluntary) is to file a motion for appropriate relief in the original cause.

- ✓ A lawyer may not concede his or her client's guilt to a lesser included offense during a trial without the client's informed consent.