Acceptance of Alford Guilty Pleas

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In *North Carolina v. Alford*, 400 U.S. 25 (1970), the United States Supreme Court concluded that it is constitutionally permissible for a defendant who does not admit guilt to enter a plea of guilty. Such a plea, now known as an *Alford* plea, is constitutional as long as the defendant "voluntarily, knowingly, and understandingly" enters the plea and there is a "strong factual basis" for the plea. The Court left to each state how to handle such pleas—whether to prohibit them, to allow each judge to decide whether to accept them, or to require their acceptance. Which category is North Carolina in?

North Carolina's statutes have seemed clear to me. G.S. 15A-1023(c) addresses "open" pleas, meaning the defendant pleads guilty to the charges without a deal about sentencing. The statute provides that the judge "must" accept the plea as long as it the product of "informed choice" (essentially, it is voluntary, knowing, and understanding) and there is a factual basis for the plea. G.S. 15A-1022(b) addresses pleas when the State and the defendant have agreed on a sentence, thus limiting the judge's sentencing discretion. In that instance, the judge may reject the plea. This dual approach preserves the prosecutor's discretion on the charges to pursue, the defendant's autonomy about whether to accept or contest the charges, and the judge's authority to determine the sentence.

A recent Court of Appeals decision, *State v. Chandler*, ___ N.C. App. ___ (Apr. 16, 2019), may cloud this area. In a two-to-one decision, the court upheld the trial level judge's rejection of an open guilty plea where the defendant maintained his innocence. Because there was a dissent, the case will go to the North Carolina Supreme Court for further review. Here's where things stand so far.

The facts in *Chandler*. The defendant was charged with first-degree statutory sex offense, a Class B1 felony, and taking indecent liberties with a child, a Class F felony. The State and the defendant entered into a plea agreement in which the State would dismiss the first-degree sex offense charge in exchange for the defendant's open guilty plea to the indecent liberties charge. The opinion does not review the facts of the charged crimes and instead focuses on the procedure in the case.

The opinion quotes an extended portion of the exchange between the judge and defendant. In addition to the questions required to be asked on taking a guilty plea (*see* G.S. 15A-1022), the judge asked the defendant, "Are you, in fact, guilty?" The defendant answered yes. The judge observed, "[Y]ou hesitated a little bit there and looked up at the ceiling. I want to make sure that you understand that you're pleading guilty to the charge." In the back and forth that ensued, the defendant asserted his innocence but added that he was pleading guilty to keep his granddaughter from having to go through more trauma by going to court. He also said he had discussed with his lawyer his right to a jury trial and told his lawyer that he was willing to plead guilty, again stating that he wanted to keep his granddaughter from having to go through the court system.

The judge refused to accept the plea:

> Okay, I understand, [Defendant]. Let me explain something to you. I practiced law 28 years before I became a judge 17 years ago, and I did many trials and many pleas of guilty and represented a lot of folks over the years. And I always told my clients, I will not plead you guilty unless you are, in fact, guilty. I will not plead you guilty if you say "I'm doing it because of something else. I didn't do it." And that's exactly what you told me just then, "I didn't do it." So for that reason I'm not going to accept your plea. Another judge may accept it, but I will

> never, ever, accept a plea from someone who says, "I'm doing it because of another reason, I really didn't do it." Slip Op. at 4.

The case was continued and, when it came on for trial six months later, the defendant pleaded not guilty. He was convicted and sentenced by the trial judge to consecutive sentences of active imprisonment of 192 to 291 months for first-degree statutory sex offense and 16 to 29 months for indecent liberties. Presumably, a similar sentence range for indecent liberties would have applied had the earlier judge accepted the defendant's guilty plea.

May a judge reject an *Alford* plea in North Carolina? Three different views on this question can be seen in *Chandler*. The above colloquy, in which the judge states he will "never, ever" accept a plea from someone who says he didn't do it, indicates that the judge believed he had the authority to reject an *Alford* plea, including an open plea as in the case before him. I have heard that other trial judges may share this view.

The majority in *Chandler* didn't specifically decide this question. In essence, the majority distinguished between guilty pleas, which involve an admission of guilt, and *Alford* pleas, which do not. According to the majority, the defendant sought to enter the first type of guilty plea. The majority noted that the Transcript of Plea form prepared by the Administrative Office of the Courts distinguishes between guilty pleas and *Alford* pleas. The defendant checked the guilty plea box, not the *Alford* plea box. The majority recognized that the defendant told the judge that he was pleading guilty so the victim would not have to testify, one of a number of reasons a defendant might choose to enter an *Alford* plea. But, the defendant did not assert that it was in his best interest to plead pursuant to *Alford*. Slip Op. at 9. The majority concluded that the defendant's assertion of innocence was inconsistent with a guilty plea involving an admission of guilt. Therefore, the judge could find that the plea was not knowing, voluntary, or intelligent and reject it.

The dissent found that the distinction discussed in the majority opinion doesn't exist under North Carolina law, at least as a basis for rejecting a guilty plea. "Our General Assembly has provided three types of pleas: guilty, not guilty, and no contest (*nolo contendere*)." Slip Op. at 3 (Dillon, J., dissenting). *Alford* pleas are a subset of guilty pleas; they are not a fourth type of plea. The dissent recognized that the State may require the defendant to admit the crime as a condition of a plea arrangement. The State also may choose to forgo that condition if the defendant professes innocence during the plea colloquy. The decision is the State's to make. "But it is of no concern of the trial court." *Id.* at 1. As long as the guilty plea is the product of the defendant's informed choice and is supported by a factual basis (which in the dissent's view it was in *Chandler*), the judge must accept the plea. An admission of guilt is not necessary to establish a factual basis.

Which view of the trial court's authority will prevail depends on the North Carolina Supreme Court, although I tipped my hand about my view at the beginning of this post. As a legal matter, the statutes seem clear: they require acceptance of an open *Alford* plea. The majority opinion in *Chandler* did not dispute that result.

This result also makes sense to me as a policy matter. Among other things, it leaves to the defendant whether to plead guilty or risk greater punishment. A law review article written soon after the U.S. Supreme Court decided *Alford* in 1970 responds to one of the main arguments being made against such pleas—that they may lead to the conviction of innocent people. *See* Albert W. Alschuler, The Defense Attorney's Role in Plea Bargaining, 84 Yale L. J. 1179, 1278–1306 (1975). The availability of *Alford* pleas doesn't strike me as the cause of that problem. More likely are the inability to make bond before the case can come to trial, concerns about the prosecution of additional or greater charges about the occurrence, and the potential imposition of a longer sentence by the trial judge if the defendant goes to trial. Those are larger issues for another day and another case.