Package Deal Plea Bargains

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The court of appeals decided *State v. Salvetti* this week. The case involves several interesting issues, but I want to focus on the court's approval of "package deal" plea bargaining.

In *Salvetti*, the defendant and his wife were charged with abusing their son. The defendant entered into a plea bargain, under which he pled guilty to Class E felony child abuse in exchange for the dismissal of a charge of Class C felony child abuse. His wife entered into what appears to have been a similar arrangement. Subsequently, the defendant moved to withdraw his plea, alleging in part that he was innocent and that he entered into the plea bargain only because it was part of a package deal, i.e., because the state's plea offer to his wife was contingent on the defendant pleading guilty as well. This, he asserted, amounted to "improper pressure" to plead guilty in violation of G.S. 15A-1021(b) and the Constitution. There's some support for this argument in *Bordenkircher v. Hayes*, 434 U.S. 357, 365 n. 8 (1978), where the Court noted that a plea bargain involving leniency for a third person "might pose a greater danger of inducing a false guilty plea by skewing the assessment of the risks a defendant must consider."

Back to *Salvetti*, the trial court denied the defendant's motion to withdraw his plea, and the court of appeals affirmed. Here's what it said, pretty much in its entirety:

Package plea deals offer leniency for a third party that are made contingent on the defendant pleading guilty. While North Carolina appellate courts have not directly addressed the issue of the voluntariness of package deal pleas, other jurisdictions both federal and state, have found they are not per se involuntary. *See United States v. Mescual-Cruz*, 387 F.3d 1, 7 (1st Cir. 2004); *Howell v. State*, 185 S.W.3d 319, 334 (Tenn. 2006)(concluding that a majority of jurisdictions have found package pleas are not invalid per se).

The Fourth Circuit has noted that package plea deals present a greater risk of inducing a false guilty plea by altering the defendant's assessment of the attendant risks. *[United States] v. Marrow*, 914 F.2d 608, 613 (4th Cir. 1990). We hold that the prosecutor did not use improper pressure to induce defendant's guilty plea, thus defendant's argument is without merit.

The bottom line, obviously, is that the court approved the use of package deal plea bargains. But I still recommend the following, based on a review of the case cited by the court and a number of other cases on package deals.

- Package deals should be disclosed to the court. The overwhelming majority of courts considering package deals have required that they be disclosed to the judge taking the pleas. *See, e.g., Mescual-Cruz, supra; Howell, supra; In re Ibarra*, 666 P.2d 980 (Cal. 1983).
- The judge taking the pleas should be especially alert to any indication that any plea is the result of one defendant's coercion of another. Some courts have required alterations to the plea colloquy in package deal cases in an attempt to sniff out coercion, *see, e.g., Ibarra, supra*, but most have simply encouraged judges to be particularly vigilant.
- Although courts have generally recognized that one defendant may properly "elect[] to sacrifice himself" for another, *United States v. Carr*, 80 F.3d 413 (10th Cir. 1996), the risk of an *innocent* defendant sacrificing himself for another appears to be greatest when the relationship between the defendants is very close -- for example,

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parent and child -- and the punishment to be avoided by the plea bargain is very severe -- for example, the death penalty. Even in such circumstances, package deals probably are not *per se* invalid, but both prosecutors and judges should proceed with extra caution when the stakes are high and the defendants are close.

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