New York State Office of Indigent Legal Services

Statewide Appellate Support Center
80 S. Swan St, Ste 1147, Albany, NY 12210
(518) 486-6602 | SASC@ils.ny.gov | www.ils.ny.gov

INVOLUNTARY GUILTY PLEA – *ALFORD* ISSUE

In *North Carolina v Alford* (400 US 25, 37-39 [1970]), the Supreme Court held that an express admission of guilt was not a constitutional requisite to entering a guilty plea. Therefore, a defendant who wishes to accept a beneficial plea bargain but does not want to admit factual guilt may be permitted to enter an *Alford* plea (*see id.* at 37-39; *People v Hill*, 16 NY3d 811, 814 [2011]). An *Alford* plea may also be considered if the defendant is unable to remember the alleged incident but believes that the People have sufficient evidence to obtain a conviction at trial (*see People v Spencer*, 156 AD3d 731 [2d Dept 2017]).

However, "*Alford* pleas are—and should be—rare" *(Matter of Silmon v Travis*, 95 NY2d 470, 472 [2000]). The trial court may only accept an *Alford* plea if it is the product of a voluntary and rational choice, and the record contains strong evidence of the defendant's guilt (*see id.* at 475; *People v Ryan*, 59 AD3d 751, 751-752 [3d Dept 2009]; *People v Stewart*, 307 AD2d 533, 534 [3d Dept 2003]; *see also People v Alexander*, 97 NY2d 482 n 3 [2002, Smith, J., dissenting]).

Voluntary choice

A court may not accept an *Alford* plea to cure a deficiency in the admission to an element of the offense if the record does not show that the defendant understood the nature and character of such a plea (*see People v Bovio*, 206 AD3d 1568, 1571

[4th Dept 2022]). There is no such thing as a "limited" *Alford* plea (*see People v Hill*, 16 NY3d at 814). The record must show that the defendant made an informed decision to enter an *Alford* plea to avoid the risk of being convicted after trial (*see id.*).

The court may not infer that a defendant knowingly and voluntarily chose to enter an *Alford* plea (*see People v Hill*, 16 NY3d at 814). Instead, the record must establish that the defendant was aware of the nature and consequence of the plea and decided that entering the plea was preferable to going to trial (*see People v Hill*, 16 NY3d at 814; *People v Retell*, 211 AD3d 1181, 1183 [3d Dept 2022]). The plea must be vacated if it was not "the product of a voluntary and rational choice" (*see People v Hill*, 16 NY3d at 814, quoting *Matter of Silmon v Travis*, 95 NY2d at 475).

Proof of guilt

Even if the record shows that the defendant's decision to enter an *Alford* plea was knowing and voluntary, there must be strong proof of guilt to sustain the plea (*see People v Johnson*, 167 AD3d 1512, 1514 [4th Dept 2018]; *People v Martin*, 70 AD2d 799 [1st Dept 1979]). The trial court should look beyond the People's assertion of the strength of their case and assess the available evidence (*see People v Richardson*, 72 AD3d 1578, 1579-1580 [4th Dept 2010] [plea vacated where prosecutor's statement about the strength of anticipated eyewitness testimony was belied by the content of the witnesses' written statements]).

Some courts have found that grand jury minutes furnish the requisite proof of guilt to support an *Alford* plea (*see People v Stewart*, 307 AD2d at 534; *People v Spulka*, 285 AD2d 840, 841 [3d Dept 2001]; *People v Schneider*, 259 AD2d 1024, 1025 [4th Dept 1999]). Other courts have determined that the grand jury proceeding did not provide sufficient proof (*see People v Johnson*, 167 AD3d at 1514). If the record lacks the requisite evidence of guilt, the plea must be vacated, even if it was otherwise voluntary (*see id.*)

Preservation

A challenge to an *Alford* plea generally must be preserved by a motion to withdraw the plea that specifies the grounds justifying withdrawal (*see People v Retell*, 211 AD3d 1181, 1182 [3d Dept 2022]; *People v Tchiyuka*, 160 AD3d 1488, 1488-1489 [4th Dept 2018]). However, an exception to the preservation requirement may apply if a defendant's allocution creates significant doubt about guilt, negates an essential element of the charged crime, or otherwise calls the voluntariness of the plea into question, and the trial court fails to inquire further (*see People v Lopez*, 71 NY2d 662, 666 [1988]). This exception may be particularly applicable to cases involving *Alford* pleas, since a deficiency in the plea allocution is often what prompts the initial discussion of such a plea.