



## INVOLUNTARY GUILTY PLEA – *BOYKIN* ERROR

It is well settled that, “when a criminal defendant waives the fundamental right to trial by jury and pleads guilty, due process requires that the waiver be knowing, voluntary and intelligent” (*People v Hill*, 9 NY3d 189, 191 [2007], citing NY Const art 1 § 6; *see People v Mox*, 20 NY3d 936, 938 [2012]). The record of the plea allocution must show that the defendant understood the consequences of entering a guilty plea and affirmatively waived his constitutional trial-related rights—the right to a jury trial and to confront the People’s witnesses and the privilege against self-incrimination (*see Boykin v Alabama*, 395 US 238, 243 [1969]; *People v Tyrell*, 22 NY3d 359, 365 [2013]).

The record must contain “an affirmative showing” that the defendant waived these constitutional rights (*see People v Tyrell*, 22 NY3d at 365). Waiver cannot be presumed from a silent record, and the absence of such a waiver renders the plea involuntary (*see id.*).

While the trial court is not required to enumerate each right and elicit a detailed waiver before accepting the plea, the court must ensure that the defendant understood the nature of the rights being waived (*see People v Tyrell*, 22 NY3d at 365). For example, a valid waiver could be established by showing that the defendant discussed the constitutional implications of accepting a guilty plea with counsel (*see*

*id.*; *People v Conceicao*, 26 NY3d 375, 383-385 [2015]; *see also People v Lopez*, 213 AD3d 606 [1st Dept 2023]; *People v Karadag*, 181 AD3d 620, 620-621 [2d Dept 2020]).

### **Preservation**

A claim that a *Boykin* error rendered a guilty plea involuntary survives a valid waiver of appeal but must generally be preserved for appellate review by the filing of a motion to withdraw the plea before the sentence is imposed (*see People v Williams*, 27 NY3d 212, 221-222 [2016]; *People v Seaberg*, 74 NY2d 1, 10 [1989]). Only issues specifically addressed in the motion are deemed preserved (*see People v Washburn*, 192 AD3d 1267, 1268-1269 [3d Dept 2021]).

However, preservation may not be required in certain cases, such as where the defendant had no practical ability to file a motion to withdraw the plea before sentencing or where the allocution “clearly casts significant doubt upon the defendant’s guilt or otherwise calls into question the voluntariness of the plea” (*People v Lopez*, 71 NY2d 662, 666 [1988]; *see People v Conceicao*, 26 NY3d 375 [2015]; *People v Pace*, 192 AD3d 1274, 1275 [3d Dept 2021]).

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