Alabama Rules of Criminal Procedure

Rule 14. Arraignment and pleas.

Rule 14.3. Plea negotiations and agreements.

(a) ENTERING INTO PLEA AGREEMENTS. The prosecutor and the defendant or defendant's attorney may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor either will move for dismissal of other charges or will recommend (or will not oppose) the imposition or suspension of a particular sentence, or will do both.

(b) DISCLOSURE OF PLEA AGREEMENT. If a plea agreement has been reached by the parties, the court shall require the disclosure of the agreement in open court prior to the time a plea is offered. Thereupon, the court may accept or reject the agreement or may defer its decision as to acceptance or rejection until receipt of a presentence report.

(c) ACCEPTANCE OR REJECTION OF PLEA AGREEMENTS.

(1) If the court accepts the plea agreement, the court, after compliance with Rule 14.4, shall inform the parties that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(2) If the court rejects the plea agreement, the court shall:

(i) So inform the parties;

(ii) Advise the defendant and the prosecutor personally in open court that the court is not bound by the plea agreement;

(iii) Advise the defendant that if the defendant pleads guilty, the disposition of the case may be either more or less favorable to the defendant than that contemplated by the plea agreement;

(iv) Afford the defendant the opportunity to withdraw the defendant's offer to plead guilty;

(v) Afford the prosecutor the opportunity to change his recommendations; and

(vi) Afford the parties the opportunity to submit further plea agreements.

(d) INADMISSIBILITY OF PLEA DISCUSSIONS. If a plea discussion does not result in a plea of guilty, or if a plea of guilty is not accepted or is withdrawn, or if judgment on a plea of guilty is reversed on direct or collateral review, neither the plea discussion nor any resulting agreement, plea, or judgment shall be admissible against the defendant in any criminal or civil action or administrative proceeding.

[Amended eff. 8-1-2002.]

Committee Comments

Rule 14.3 provides formal recognition of the accepted procedure for settling cases and eliminates the necessity of the often practiced charade of putting into the record the defendant's statement that he has not been promised anything in exchange for his plea of guilty, when everyone involved knows that a "deal" has been made. This procedure puts everything out in the open where it should be. It was felt by the Advisory Committee that the rule as drafted reflects a less rigid approach to the problem of getting acceptance of the bargain on the part of the court than is sometimes practiced. The defendant who has made an agreement knows in advance of entering his plea of guilty whether the judge is or is not going to go along with the agreement. If the judge is not going to approve it, the defendant then has the choice of withdrawing the plea and going to trial or leaving it in and taking a chance. Under this section, plea negotiation is still discretionary, but when it is engaged in, the court is in a position to inquire fully into the substance of the agreements and to ensure that the defendant has made an informed choice between known alternatives. This rule, taken together with Rule 14.4 regarding acceptance of guilty pleas, may eventually reduce the number of collateral attacks by defendants who have pleaded guilty.

Ex parte Yarber, 437 So.2d 1330 (Ala.1983), was a case of first impression in Alabama in which the Supreme Court held that a defendant can compel enforcement of a plea agreement (submission to the trial court for approval), broken by the state where he has not yet pleaded guilty or otherwise relied on the agreement to his disadvantage. The Court noted that, once a plea bargain offer is made and accepted by the defendant, the prosecutor is estopped from withdrawing it, even if the defendant has not detrimentally relied on the agreement. In refusing to apply strict contract law regarding detrimental reliance, the Court further noted that negotiated plea agreements are not unenforceable merely because they are unwritten.

In *Ex parte Yarber* and subsequent decisions, our state's appellate courts have encouraged prosecutors to reduce plea agreements, and all the terms and conditions made a part thereof, to writing. *Congo v. State*, 455 So.2d 896 (Ala.1984); *Ex parte Swain*, 527 So.2d 1279 (Ala.1988); *Ex parte Cassady*, 486 So.2d 453 (Ala.1986).

In *Ex parte Cassady*, 486 So.2d at 456, the Supreme Court stated:

> "The problem involved here could have been easily avoided had the plea agreement been written and all the terms and conditions made a part of the writing. If parties would reduce their plea agreements to writing, and present them to the trial court prior to sentencing, rather than afterward, as was done here, resolution of cases questioning the existence or contents of plea agreements would be greatly facilitated. The record would also show whether or not the trial court had accepted the plea agreement."

In *Fuller v. State*, 481 So.2d 1178 (Ala.Crim.App.1985), and *Burns v. State*, 455 So.2d 113 (Ala.Crim.App.1984), the Court of Criminal Appeals noted that a distinction should be drawn between the state's ability to withdraw from an "offer" in a plea bargain case, as opposed to withdrawal of a plea bargain "agreement." Whether a plea agreement exists between a defendant and the district attorney must ultimately be determined by the trial court. *Ex parte Yarber*, supra; *Congo v. State*, supra.

Even where a plea agreement has been found to exist between the prosecutor and defendant, the appellate courts have refused to require enforcement where it is established that the agreement was induced by a fraud perpetrated against the state. *Ray v. State*, 484 So.2d 524 (Ala.Crim.App.1985).

In *Ex parte Yarber*, supra, and subsequent cases, the courts have made it clear that the defendant's remedy in compelling enforcement of a plea agreement is limited to having the state tender the negotiated plea, with its attendant terms, to the trial court for its consideration. It has been determined that refusal by the trial judge to accept a guilty plea negotiated between the defendant and the district attorney does not infringe upon the defendant's due process rights, since a trial judge is under no duty to accept a defendant's plea of guilty. *Jemison v. State,* 439 So.2d 786 (Ala.Crim.App.1983).

The *Yarber* decision has been extended to apply to negotiations of a waiver of extradition to another state in exchange for dismissal of charges in Alabama*, Ex parte Olson*, 472 So.2d 437 (Ala.1985); of negotiations with a United States Attorney's Office, *Scott v. State*, 473 So.2d 1167 (Ala.Crim.App.1985); and through agreements to move for sentence reduction or suspension pursuant to Ala.Code 1975, § 20-2-81(b); *Ex parte Sides*, 501 So.2d 1262 (Ala.1986); *Ex parte Drewry*, 519 So.2d 591 (Ala.Crim.App.1987).

Note from the reporter of decisions: The order amending Rule 14.3(c)(1), effective August 1, 2002, is published in that volume of *Alabama Reporter* that contains Alabama cases from 810 So.2d.