

Alabama Rules of Criminal Procedure

Rule 14. Arraignment and pleas.

Rule 14.4. Acceptance of guilty plea.

(a) COLLOQUY WITH DEFENDANT. In all minor misdemeanor cases, the execution of a form similar to Form C-44B will be sufficient and no colloquy shall be required. In all other cases, except where the defendant is a corporation or an association, the court shall not accept a plea of guilty without first addressing the defendant personally in the presence of counsel in open court for the purposes of:

(1) Ascertaining that the defendant has a full understanding of what a plea of guilty means and its consequences, by informing the defendant of and determining that the defendant understands:

(i) The nature of the charge and the material elements of the offense to which the plea is offered;

(ii) The mandatory minimum penalty, if any, and the maximum possible penalty provided by law, including any enhanced sentencing provisions;

(iii) If applicable, the fact that the sentence may run consecutively to or concurrently with another sentence or sentences;

(iv) The fact that the defendant has the right to plead not guilty, not guilty by reason of mental disease or defect, or both not guilty and not guilty by reason of mental disease or defect, and to persist in such a plea if it has already been made, or to plead guilty;

(v) The fact that the defendant has the right to remain silent and may not be compelled to testify or give evidence against himself or herself, but has the right, if the defendant wishes to do so, to testify on his or her own behalf;

(vi) The fact that, by entering a plea of guilty, the defendant waives the right to trial by jury, the right to confront witnesses against him or her, the right to cross-examine witnesses or have them cross-examined in the defendant's presence, the right to testify and present evidence and witnesses on the defendant's own behalf, and the right to have the aid of compulsory process in securing the attendance of witnesses;

(vii) The fact that, if the plea of guilty is accepted by the court, there will not be a further trial on the issue of the defendant's guilt; and

(viii) The fact that there is no right to appeal unless the defendant has, before entering the plea of guilty, expressly reserved the right to appeal with respect to a particular issue or issues, in which event appellate review shall be limited to a determination of the issue or issues so reserved; and

(2) Determining that the plea is voluntary and not the result of force, threats, or coercion, nor of any promise apart from the plea agreement that has been disclosed to the court as provided in Rule 14.3(b); and

(3) Giving the defendant an opportunity to state any objections he or she may have to defense counsel or to the manner in which defense counsel has conducted or is conducting the defense.

(b) **FACTUAL BASIS FOR PLEA.** Notwithstanding the acceptance of a plea of guilty, the court shall not enter a judgment upon such plea without being satisfied that there is a factual basis for the plea.

(c) **RECORD OF PROCEEDINGS.** A verbatim record of the proceedings at which the defendant enters a plea of guilty to a felony shall be made; provided, however, that in the district court such record may be made by mechanical or electronic recording certified by the judge accepting the plea. A copy of a written Explanation of Rights and Plea of Guilty similar to Forms C-44B, CR-51, and CR-52 or, in the case of a youthful offender, Form C-44A, executed by the defendant, the defendant's attorney, if any, and the court, shall be filed and made a part of the record.

(d) **USE OF FORM.** The court may comply with the requirements of Rule 14.4(a) by determining from a personal colloquy with the defendant that the defendant has read, or has had read to the defendant, and understands each item contained in Form C-44B, CR-51, CR-52, or Form C-44A, as the case may be.

(e) **WITHDRAWAL OF GUILTY PLEA.** The court shall allow withdrawal of a plea of guilty when necessary to correct a manifest injustice. Upon withdrawal of a guilty plea, the charges against the defendant as they existed before any amendment, reduction, or dismissal made as part of a plea agreement shall be reinstated automatically.

[Amended 11-2-90, eff. 1-1-91; Amended eff. 8-1-2002.]

Committee Comments

Section (a) adopts the requirement that the court address the defendant personally in open court in the presence of counsel (unless counsel has been waived pursuant to Rule 6.1(b)) and is applicable in all cases except those involving minor misdemeanors and offenses where the defendant is a corporation. See Rule 1.4(r) for the definition of “minor misdemeanor.” See Rule 11(c), Fed.R.Crim.P. This procedure is called for by ABA, Standards for Criminal Justice, *Pleas of Guilty* 14-1.4 (2d ed. 1986), and is widely practiced by Alabama trial judges. See, e.g., *Johnson v. State*, 52 Ala.App. 94, 289 So.2d 662 (1973). The record should affirmatively reflect the questions asked and the defendant’s responses. This practice will protect the courts by providing an adequate basis for review on appeal.

Subsection (a)(1) requires a full colloquy to ensure that the defendant understands what the “plea connotes and ... its consequence” as required by *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Sub-subsection (i) requires that the nature of the charge and the material elements of the offense be explained so that the defendant understands what he is accused of. The provision is similar to Rule 11, Fed.R.Crim.P. “[R]eal notice of the true nature of the charge [is] the first and most universally recognized requirement of due process ...” *Smith v. O’Grady*, 312 U.S. 329, 334, 61 S.Ct. 572, 574, 85 L.Ed. 859 (1941). The instant provision is designed to meet that requirement. See ABA, Standards for Criminal Justice, *Pleas of Guilty*, comments to 14-1.4(a) (2d ed. 1986). The method used to determine whether the defendant understands the charge is left to the sound discretion of the trial judge; it will vary according to such factors as age, intellectual capacity, educational background, and complexity of the charge. For example, the defendant’s plea of guilty to second degree murder was set aside on the finding that the requisite element of the offense—that the assault was “committed with a design to effect the death of the person killed”—was not explained to the defendant. Considering the youth and low intelligence of the defendant, the court held the plea was not voluntary. *Henderson v. Morgan*, 426 U.S. 637, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976).

Sub-subsection (ii) is designed to meet the requirement of Alabama decisions holding that the defendant must be informed of the maximum and minimum possible sentences as an “absolute constitutional prerequisite to acceptance of a guilty plea.” See *Carter v. State*, 291 Ala. 83, 277 So.2d 896 (1973); *Knight v. State*, 55 Ala.App. 565, 317 So.2d 532 (1975). While not required under the rule, trial judges are free to follow what the Alabama Supreme Court has termed the “better practice” of eliciting the “maximum and minimum sentences from the defendant himself, so that his knowledge thereof appears on the face of the record.” *Carter v. State*, 291 Ala. at 85, 277 So.2d at 898.

The habitual felony offender statute requires that a criminal defendant who, having been previously convicted of any felony, commits another felony for which he is convicted must receive additional penalties. Ala.Code 1975, § 13A-5-9.

Furthermore, any person who possesses a firearm during the commission of trafficking in a controlled substance will receive an additional five-year sentence and an additional \$25,000 fine. Ala.Code 1975, § 13A-12-231.

Any person who uses a firearm or deadly weapon in the commission of a Class A felony will receive a minimum sentence of twenty (20) years and in the commission of a Class B or C felony a minimum of ten (10) years. Ala.Code 1975, § 13A-5-6.

In addition to any other penalty, a person who sells a controlled substance within three (3) miles of a school will receive an additional five-year sentence with no provision for probation. Ala.Code 1975, § 13A-12-250. The additional punishment also applies to any person selling controlled substances within three (3) miles of a public housing project. Ala.Code 1975, § 13A-12-270.

A person over the age of 18 who sells controlled substances to a person under the age of 18 shall, upon conviction, be punished as a Class A felony offender and shall not be granted probation. Ala.Code 1975, § 13A-12-215.

Sub-subsection (iii), requiring that the trial judge inform the defendant that the sentence may run concurrently or consecutively with another sentence, is included to insure that the defendant is aware of the additional consequences of his guilty plea. See *Cooper v. State*, 47 Ala.App. 178, 252 So.2d 104 (1971). Compare ABA, Standards for Criminal Justice, *Pleas of Guilty* 14-1.4 (2d ed. 1986). Under the corresponding federal rule, the court is not required to disclose information concerning additional consequences that might follow from his plea of guilty, although it is free to do so if it feels that the information is “likely to be of real significance to the defendant.” Comment to Rule 11, Fed.R.Crim.P. The Advisory Committee believes that, in light of the *Boykin* requirement that the trial judge “make sure that [the defendant] has a full understanding of what the plea connotes and of its consequence,” the better practice is routine disclosure of such information.

Sub-subsections (iv), (v), (vi), and (vii) are intended to meet the *Boykin* requirement that the defendant fully understand the constitutional rights which he waives by pleading guilty.

Section (b) satisfies the requirement in *Clark v. State*, 294 Ala. 485, 488, 318 So.2d 805, 807-808 (1974), that:

“In a plea of guilty proceedings, the judge should undertake a factual inquiry to determine if the plea is voluntarily made with an understanding of the nature of the charge and the consequences of the plea. *Further, the judge should be satisfied that there is a factual basis for the plea....*

“In such proceedings a trier of fact does not seek to determine if the accused’s actions would justify a conviction on the full charge contained in an indictment, but only if such action satisfies the degree of guilt admitted by the plea.” (Emphasis added.)

The court may meet this requirement by eliciting an in-court statement from the defendant, by an in-court statement from the district attorney, or from evidence presented, including that of witnesses, which may be hearsay in whole or in part.

Section (c) requires that the court keep a verbatim record of pleas of guilty to felonies. In *Jarman v. State*, 54 Ala.App. 557, 310 So.2d 481 (1975), the appellant pleaded guilty to a misdemeanor and was sentenced to 90 days’ imprisonment. The court reversed and remanded, since the “record [was] completely devoid of any colloquy between the trial judge and the appellant and his attorney, which is necessary to show compliance with *Boykin*,” pointing out that “[t]he record itself or the minute entry must affirmatively reflect the questions asked and answers given at the time of taking the guilty plea” quoting *Allen v. State*, 50 Ala.App. 310, 278 So.2d 758 (1973), citing *McGullion v. State*, 49 Ala.App. 248, 270 So.2d 680 (Ala.Crim.App.1972).

Section (d) is included to accommodate the current Alabama practice of informing the defendant of his rights through a form similar to that approved in *Ireland v. State*, 47 Ala.App. 65, 250 So.2d 602 (1971), and subsequent cases. The rule, however, specifically retains the requirement that the trial judge personally address the defendant in order to determine that he understands the contents of the form and that the judge specifically question the defendant concerning the information contained in each item. Thus, in every case, the record should affirmatively show a colloquy between the trial judge and the defendant concerning all such matters. *Twyman v. State*, 293 Ala. 75, 300 So.2d 124 (1974), held that where the record affirmatively shows that the defendant was informed of and understood his rights, the record need not include a full transcript of the colloquy. Subsequent cases in the Court of Appeals have held that while a full colloquy is not required where the form is used, the record must show that the trial judge made inquiry as to the defendant’s understanding of the rights set out in the form. This rule requires such a colloquy and requires that specific inquiry be made with regard to the rights set out in Rule 14.4(a)(1) and (2). Such procedure will ensure that the form herein approved does not “become so commonplace and perfunctory that [it fails] to serve the purpose for which [it is] intended.” See *Twyman v. State*, 293 Ala. 75, 83, 300 So.2d 124, 131 (1974) (Heflin, C.J., dissenting).

Section (e) permits withdrawal of a guilty plea when necessary to correct a manifest injustice. In such case, if the charges have been reduced or amended to accommodate the guilty plea as part of the overall agreement, withdrawal of the plea automatically reinstates the original charges.

Conversely, if trial has commenced before a jury, the parties may reach a plea agreement at any time prior to return of a verdict by the jury. If such an agreement is reached and approved by the court, the court may tentatively permit a withdrawal of the plea of not guilty and may proceed to accept defendant's plea under Rule 14.4, outside the presence of the jury. Once accepted by the court, the jury may be discharged without necessity for submission of the agreement to the jury.

**Court Comment to Amendment
Effective August 1, 2002.**

This amendment added sub-subsection (a)(1)(viii) requiring that the defendant be informed that he or she has no right to appeal unless the defendant, before entering the guilty plea, reserves the right to appeal with respect to a particular issue. It added subsection (a)(3) requiring the trial court, before accepting a guilty plea, to give the defendant the opportunity to object to the way defense counsel had conducted the defense. It also changed the form numbers in the rule to correspond to the Appendix of Forms currently published with the Rules of Criminal Procedure. Rule 26.9 governs a defendant's appeal rights in the event the court rejects a plea bargain, the defendant moves to withdraw a plea, and that motion is denied.

Note from the reporter of decisions: The order amending Rule 14.4, effective August 1, 2002, is published in that volume of *Alabama Reporter* that contains Alabama cases from 810 So.2d.