Journal of Criminal Law and Criminology

Volume 62 | Issue 4 Article 6

1972

Involuntary Confessions: North Carolina v. Alford, 400 U.S. 25 (1970)

the Standard Juvenile Court Act, and the Legislative Guide for Drafting Family and Juvenile Court Acts—all of which fail to recommend jury trials for juveniles.[90]

There is some existing authority contrary to the Court's position. A few courts, both state and federal, have concluded that the fourteenth amendment guaranteed juveniles the right to trial by jury.[91] Particularly noteworthy is a recent, post-*McKeiver* decision of the Alaska Supreme Court which unanimously held that juveniles were to be accorded the right to trial by jury.[92] The Alaska court based its decision upon the similarity between juvenile and criminal proceedings—possible incarceration and stigmatization—and their recognition that public trials would discourage arbitrariness or casualness during the proceedings.[93] The National Crime Commission Report, cited by Blackmun, suggested that the informal procedural atmosphere of the juvenile court might pose a substantial barrier to the effective treatment of young offenders whose sense of justice was offended by the seemingly all-powerful judge.[94] Indisputably, both tradition and authority strongly substantiate the Court's conclusion, but the existence of contrary authority at least indicates continued experimentation with the juvenile trial concept.

The *McKeiver* case, viewed in historical context, appears to signal the end of the Supreme Court's involvement in the reshaping of state juvenile court systems. The further extension of constitutional safeguards into the adjudicative phase of state delinquency proceedings is unlikely, since *McKeiver* effectively reverses the trend established by *Kent*, *Gault* and *Winship*. The Court's holding seems to implicitly embody a judicial determination that while existing juvenile systems may suffer from severe shortcomings, these problems should not be attacked from the highest level of judicial decision-making. Indeed, the express failure of the plurality to come to grips with the Court's previous rationale in the juvenile and jury trial cases clearly suggests the emergence of different judicial concerns. As a result, existing state practices have been left unchanged and the states can probably expect little future judicial interference with the mechanics of their respective juvenile systems.

[90] UNIFORM JUVENILE COURT ACT § 24(a); STANDARD JUVENILE COURT ACT art. V, § 19; UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, CHILDREN'S BUREAU, SOCIAL & REHABILITATIVE SERVICE, LEGISLATIVE GUIDE FOR DRAFTING FAMILY AND JUVENILE COURT ACTS § 29(a) (1969). *See* W. SHERIDAN, STANDARDS FOR JUVENILE AND FAMILY COURTS 73 (1968).

[91] Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968); Nieves v. United States, 280 F. Supp. 994 (S.D.N.Y. 1968); RLR v. Alaska, 487 P.2d 27 (Alas. 1971), noted in CCH Pov. L. Rptr., ¶ 13,528 (1971).

[92] Although the Alaska Supreme Court relied on the due process requirements of the Alaska constitution, the opinion hinted disagreement and dissatisfaction with the Supreme Court's result in *McKeiver*. 487 P.2d at 30–32. Furthermore, the language of the Alaska Constitution and the United States Constitution does not differ noticeably. *Id.* at 29–30.

[93] *Id.* at 32.

[94] NAT'L. CRIME COMM'N. REPORT 85; *see* note 82 *supra*.

INVOLUNTARY CONFESSIONS

North Carolina v. Alford, 400 U.S. 25 (1970)

The Supreme Court has consistently held that in order for a guilty plea to be valid it must represent the voluntary and intelligent act of a defendent. In *Herman v. Claudy*[1] a unanimous Court held that a conviction based on a coerced plea of guilty violated a defendant's right to due process.[2] In so deciding, the Court recognized that a guilty plea may be coerced by an unintelligent waiver of right to counsel and under such circumstances the coerced plea of guilty must be considered invalid.

In *United States v. Jackson*[3] the Court expanded its scrutiny of guilty pleas. In *Jackson*, the petitioner challenged a section of the Federal Kidnapping Act which provided a maximum penalty of death for any defendant who did not either plead guilty or obtain a bench trial.[4] The Court, in invali-

[1] 350 U.S. 116 (1956).

[2] Mr. Justice Black, writing for the unanimous court in *Herman* said that in circumstances in which defendant's rights could not have been protected in the absence of counsel, "[I]t is entirely possible that petitioner's prior confession caused him, in the absence of counsel . . . to plead guilty." *Id.* at 122.

[3] 390 U.S. 570 (1968).

[4] 18 U.S.C. § 1201(a) (1964), The Federal Kidnapping Act, stated:

Whoever knowingly transports in interstate com-

dating and severing that section of the Act, reasoned that the effect of the provision was to encourage a defendant to choose between exercising his fifth and sixth amendment rights, and his fear of receiving the death penalty. The result of such an enforced choice was to discourage the assertion of these rights. The Court said:

> If the provision had no other purpose or effect than to chill the assertion of constitutional rights then it would be patently unconstitutional. [T]he evil in the federal statute is not that it coerces guilty pleas and jury waivers, but simply that it encourages them.[5]

It was this encouragement, or coercion, upon a defendant's freedom to decide whether he would or would not plead guilty that was struck down by the majority in *Jackson*.[6]

Two later decisions continued this trend toward thorough examination of guilty pleas. In *McCarthy v. United States*[7] the Court invalidated a plea of guilty which had been accepted by a trial judge who had failed to comply with the procedures provided for in Rule 11 of the Federal Rules of Criminal Procedure.[8] In so doing, the Court mandated that full compliance with Rule 11 must precede acceptance of guilty pleas by federal judges. The Court required compliance with the rule because:

> A defendant who enters such a plea [guilty] simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accuser. Consequently, if a defendant's guilty plea *is not equally voluntary and knowing*, it has been obtained in violation of due process and is therefore void. [emphasis added][9]

A second case, *Boykin v. Alabama*,[10] extended the *McCarthy* mandate to the states.

However, recent changes in the composition of the Court seem to have resulted in a change in the Court's examination of guilty pleas. In *Brady v. United States*,[11] *McMann v. Richardson*,[12] and *Parker v. North Carolina*,[13] the Court held generally that a defendant who pleads guilty with the advice of competent counsel, notwithstanding the fact that the plea may have been motivated by a coerced confession or by fear of a harsher sentence, not only waives his fifth amendment right to demand a jury trial, but may also, in effect, relinquish his right to habeas corpus review.[14] The Court

---

merce any person who has been unlawfully seized, confined, . . . and held for ransom or reward or otherwise . . . shall be punished (1) by death if the kidnapped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by the imprisonment for any term of years or for life, if the death penalty is not imposed.

Thus, the defendant who pleads guilty or who obtains a bench trial is able to escape the risk of the death penalty.

[5] 390 U.S. at 581, 583.

[6] In Griffin v. California, 380 U.S. 609 (1965), the Court held that the California procedure of permitting the prosecutor to comment on the defendant's failure to testify violated the fifth amendment right against self-incrimination. Mr. Justice Douglas, for the majority, concluded that the procedure compelled the accused to testify against himself, stating:

> It [the commenting] is a penalty imposed by courts for exercising a constitutional privilege. It cuts down on the privilege by making its assertion costly.

Id. at 614.

It may be argued that by analogizing *Griffin* to the procedure in *Jackson*, any petitioner who was forced or coerced into entering a plea of guilty was penalized by the Court in a manner similar to that in *Griffin*.

[7] 394 U.S. 459 (1969).

[8] FED. R. CRIM. P. 11 states:

> A defendant may plead not guilty, guilty, or with the consent of the court, *nolo contendere*. The Court may refuse to accept a plea of guilty, and shall not accept such a plea or a plea of *nolo contendere* without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature and the consequences of the plea. . . . The Court shall not enter a judgement upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

In McCarthy v. United States, 394 U.S. 459 (1969), the petitioner's lawyer had answered the pertinent questions for the defendant. The Court held that Rule 11 must be complied with completely and that in order for the plea to be valid the judge must address the defendant directly and be satisfied that the accused knows the nature of the crime and the consequences of his plea.

[9] *Id.* at 466.

[10] 393 U.S. 238 (1969).

[11] 397 U.S. 742 (1970).

[12] 397 U.S. 759 (1970).

[13] 397 U.S. 790 (1970).

[14] In Brady v. United States, 397 U.S. 742 (1970) the defendant was charged with kidnapping and faced a maximum penalty of death. He first chose to plead not guilty, then found out that a co-defendant had confessed. He changed his plea and received a thirty-year sentence. The Court rejected his claim that his plea of guilty had been coerced by fear of the death penalty, holding that the plea was both voluntary and intelligent. In McMann v. Richardson, 397 U.S. 759 (1970), three defendants' claims that their confessions were coerced and that their pleas of guilty were the products of the coerced confessions were considered. Mr. Justice White recognized that a valid guilty plea must be voluntary and intelligent but found nothing to indicate that the pleas, as distinguished from the confessions, were involuntary. In Parker v. North Carolina, 397 U.S. 790 (1970), the defendant was indicted for first-degree burglary, a capital offense. The Court, relying on *Brady*, dismissed Parker's claim that his plea was compelled by fear of the death penalty, though the death sentence discourse in *Brady* was only dicta. Thus, they never

has raised the assumption that any plea of guilty rendered with the advice of competent counsel and in compliance with proper judicial procedure is voluntary and will most likely be deemed to be intelligent as well.[15] No longer will the Court look to see whether the circumstances surrounding the plea indicate the possibility of coercion. The basic question now is whether the defendant, in light of all the surrounding circumstances, made a rational decision.

North Carolina v. Alford[16] continues the trend begun in *Brady* by even further narrowing the definitional scope of the terms "voluntary" and "knowing." In *Alford* the defendant plead guilty to a charge of second-degree murder in order to avoid a possible death penalty. Despite the guilty plea, the defendant at all times protested that he was in fact innocent. The Court found that strong evidence negated the defendant's claim of innocence and provided a sound basis for a guilty plea, so that the defendant, advised by competent counsel, intelligently concluded that he should plead guilty to a negotiated lesser offense. There was no constitutional error in the trial court's acceptance of the guilty plea, despite the defendant's claim of innocence.

Alford was indicted for first-degree murder, a capital offense in North Carolina. While there were no eyewitnesses to the crime, a strong circumstantial case was made by the state.[17] Conviction under the North Carolina statute could result in a maximum penalty of death, but, if the accused plead guilty and the plea was accepted by the prosecution and the court, the maximum sentence imposed would be life imprisonment.[18] The prosecution agreed to a charge of second-degree murder in exchange for a plea of guilty. Upon advice of counsel, Alford plead guilty to the inferior charge. At the time of sentencing Alford protested that he had not committed the murder, but that he was pleading guilty to avoid the death penalty. He stated that:

> I pleaded guilty on second-degree murder because they said that there is too much evidence, but I ain't shot no man, but I take the fault for the other man. We never had no argument in our life and I just pleaded guilty because they said if I didn't they would gas me for it, and that is all.[19]

Alford was denied relief in a state post-conviction hearing, and his petition for a writ of habeas corpus was denied by both the district court and a federal circuit court judge. The Court of Appeals for the Fourth Circuit accepted Alford's petition[20] on the basis of *United States v. Jackson*,[21] which Alford alleged invalidated the North Carolina statute.[22] Alford claimed that his plea was the product of fear and coercion, and that the North Carolina statute had forced him to plead guilty at the expense of his constitutional rights to a trial by jury, freedom from self-incrimination, and his right to confront his accusers. The divided circuit panel, relying

reached Parker's challenge to the North Carolina statute. Parker's claim that his coerced confession had forced him to plead guilty was dismissed on the basis of *McMann*.

[15] The opinions in *McMann*, *Brady*, and *Parker* seem to have overlooked a standard for the waiver of constitutional rights established many years before in Johnson v. Zerbst, 304 U.S. 458 (1938). In *Johnson* the Court held that for a waiver of constitutional rights to be effective it must be an "intentional relinquishment or abandonment of a known right." *Id.* at 464. This standard emphasizes "free choice" of a defendant in a context of uncoerced exercise of the rational faculties of a defendant. In *McMann*, *Brady*, and *Parker* the Court seemed to *assume* that the decisions of the defendants were free and voluntary acts of informed men.

[16] 400 U.S. 25 (1970).

[17] The prosecution alleged that it had witnesses who would testify to having overheard an argument between Alford and the dead man during which Alford threatened the life of the deceased. Alford was also unable to account for his whereabouts at the time of the murder. There was further circumstantial evidence which on the whole seemed to point to Alford's guilt.

[18] N.C. GEN. STAT. §§ 14–17 (1953):
Murder in the first and second degree defined: punishment.—A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, burglary, or other felony, shall be deemed to be murder in the first degree *and shall be punished with death:* Provided, if at the time of rendering its verdict in open court, the jury shall so recommend, the punishment shall be imprisonment for life in the State's prison, and the court shall so instruct the jury. [emphasis added]
N.C. GEN. STAT. §§ 15–16 2.1(a)–(b) (1965):
An accused who pleads guilty to one of the four capital crimes is to be sentenced to life imprisonment.
The provision permitting guilty pleas in capital cases was repealed in 1969. Though under present North Carolina law it is not possible to plead guilty to a capital charge, it seemingly remains possible for a person charged with a capital offense to plead guilty to a lesser charge.

[19] 400 U.S. at 25 n. 2.

[20] Alford v. North Carolina, 405 F.2d 340 (1968).

[21] 390 U.S. 570 (1968).

[22] The same statutory structure had been questioned in Parker v. North Carolina, 397 U.S. 790 (1970). The North Carolina courts in *Parker* and in *Alford* refused to consider whether the statute was unconstitutional under United States v. Jackson. The Supreme Court, in *Parker* did not reach the issue of the constitutionality of the statute.

primarily on *Jackson*, held that Alford's plea was involuntary, the product of a statutory scheme similar to that which had been expressly rejected by the Supreme Court in Jackson. The majority of the panel said that:

> *Jackson* held invalid the death penalty provision of the Federal Kidnapping Act on the basis that it had a chilling effect upon the Sixth Amendment right to a jury trial, and the Fifth-Amendment right "not to plead guilty" . . . [W]hile the instant case, a state prosecution, concerns the Fourteenth Amendment . . . the test of what violates the Fourteenth Amendment in this area is the same.[23]

The Supreme Court, Mr. Justice White writing the opinion for the majority,[24] reversed the decision of the Fourth Circuit. The Court's decision was addressed to Alford's two primary contentions. Alford's first claim was that the Court's decision in *United States v. Jackson* had rendered the North Carolina statutory scheme which had produced his plea of guilty unconstitutional, and therefore his plea was coerced and invalid. Mr. Justice White rejected this claim, though never expressly mentioning the statute.

> We held in *Brady v. United States* . . . that a plea of guilty which would not have been entered except for the defendant's desire to avoid a possible death penalty and to limit the maximum penalty to life imprisonment or a term of years was not for that reason compelled within the meaning of the Fifth Amendment. *Jackson* established no new test for determining the validity of guilty pleas. The standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.[25]

Thus, the Court rejected Alford's claim that *Jackson* had rendered the North Carolina statute unconstitutional.[26] In speaking to the question of whether the statute had forced Alford's plea of guilty and in answering Alford's contention that the state should not have allowed him to so plead, the Court said:

> The States in their wisdom may take this course by statute or otherwise and may prohibit the practice of accepting guilty pleas to a lesser offense under any circumstances. But this is not the mandate of the Fourteenth Amendment and Bill of Rights.[27]

In effect, Mr. Justice White said that *Jackson* is not applicable to the States, and that in the consideration of guilty pleas precedence will be given to the standards established in *McCarthy* and interpreted in *Brady*. The result of this is to make *Jackson* applicable only in a federal case of similar circumstances.[28] In fact, Mr. Justice White said that had this been the only issue raised by Alford in his appeal, the Court would have, "without more," vacated the Court of Appeal's decision.[29]

Alford's second claim was that because his original plea of guilty was coerced, he never expressly admitted his guilt, and, since a plea of guilty ordinarily subsumes not only the plea but also an admission of guilt, his plea is invalid. The question for the Court was whether a plea of guilty without an express admission of guilt may be constitutionally accepted. The Court had not previously been confronted with this precise issue. Mr. Justice White likened Alford's plea to one of nolo contendere. Relying on *Hudson v. United States*[30] he said that:

> Implicit in the *nolo contendere* cases is a recognition that the Constitution does not bar imposition of a prison sentence upon an accused who is unwilling expressly to admit his guilt, but who, faced with grim alternatives, is willing to waive his trial and accept the sentence.[31]

The fact that Alford's plea was one of guilty and not nolo contendere was considered to be of no con-

[23] 405 F.2d at 343.

[24] Mr. Justice White was also the Court's spokesman in *McMann, Brady,* and *Parker*. Mr. Justice Brennan spoke for the dissenters in *McMann, Brady, Parker,* and *Alford*.

[25] 400 U.S. at 31.

[26] The Court never directly held that the North Carolina statute was not unconstitutional, rather they held that under *Brady* the plea was not coerced by the statute and that *Jackson* had not, by itself, had the effect of rendering the statute unconstitutional. The Court seemingly avoided the issue of the statute itself, but the decision is based upon the implicit assumption that the statute in itself was not coercive and therefore the plea was valid.

[27] 400 U.S. at 39.

[28] Ultimately, the Court's reliance on the practical, administrative needs of the criminal justice system and its eagerness to encourage plea bargaining call into question any continuing validity of *Jackson*.

[29] 400 U.S. at 31.

[30] 272 U.S. 451 (1926). Petitioners contested their sentences of one year and one day upon their pleas of nolo contendere to charges of mail fraud and conspiracy to use the mails to defraud. Writing for a unanimous Court, Mr. Justice Stone stated: "Like the implied confession, this plea [nolo contendere] does not create an estoppel, but, like the plea of guilty, it is an admission of guilt for the purposes of the case." *Id.* at 455.

[31] 400 U.S. at 36.

stitutional significance. The result is that an express admission of guilt is not a constitutional prerequisite to sentencing.

After determining the fact that Alford would be sentenced without an express admission of guilt, and that the North Carolina statute was not unconstitutional, Mr. Justice White said that because of the strength of the state's case and the possibility that he could face a more severe sentence if convicted after trial, Alford's decision to plead guilty was a rational one and the plea is valid.[32]

The effects of the Alford decision may be analyzed in different ways. In Mr. Justice White's view the concept of voluntariness has not been changed by this case and the *Brady*, *McMann*, and *Parker* decisions. The test of "voluntariness" under such a reading is whether the defendant's plea was rational in regard to his alternative courses of action.[33] Mr. Justice White cautioned in his opinion:

> The prohibitions against involuntary or unintelligent pleas should not be relaxed, but neither should an exercise in arid logic render those constitutional guarantees counter productive and put in jeopardy the very human values they were meant to preserve.[34]

However, the dissenters in *McMann*, *Brady*, and *Parker* had argued that the concept of voluntariness had been replaced by Mr. Justice White's requirement of an opportunity to make a rational choice between a trial and a plea of guilty. As defined by Mr. Justice Brennan:

> [I]nvoluntary has traditionally been applied to situations in which an individual, while perfectly capable of rational choice, has been confronted with factors which the government may not constitutionally inject into the decision making process.[35]

It is clear that there has been a change from the *Herman v. Claudy* determination of voluntariness in terms of

> [W]hether, under all the circumstances of the case, the pressures brought to bear on the defendant were sufficient to render a plea involuntary.[36]

This change has come in the removal by the Court of factors previously considered to be coercive. A plea must still be voluntary, but the Court has manipulated this concept to mean "rational" and rational means "in spite of" coercive factors, not in regard to them.[37]

Alford may be viewed as simply removing one more factor, the express admission of guilt. In removing this factor the Court also goes one step further in holding that allegedly coercive factors do not entitle the petitioner to habeas corpus relief, especially if the prosecutor has made it clear on the record that the defendant made a seemingly "good deal." It may be argued that the combination of *Brady*, *McMann*, *Parker* and *Alford* with the *McCarthy-Boykin* rule renders it almost impossible for most petitioners to receive a hearing on the validity of their guilty plea. Mr. Justice Brennan's dissent in *McMann* would still seem appropriate.

> The Court moves yet another step toward the goal of insulating all guilty pleas from subsequent attack no matter what unconstitutional action of the government may have induced a particular plea.[38]

And in his dissent in *Alford*, Mr. Justice Brennan made it clear just how far he thought the Court had gone.

> Today the Court makes clear that its previous holding was intended to apply even when the record demonstrates that the actual effect of the unconstitutional threat was to induce a guilty plea

[32] It is assumed that the guilty plea is generally the result of bargaining between the defendant and the State and it is this plea bargaining process that the Court in *Alford* is attempting to insulate and promote. Mr. Justice White seems to regard this plea bargaining process and the ultimate plea of guilty as part of a rational, voluntary decision-making procedure on the part of the defendant and in his own best interest.

[33] One commentator has remarked regarding Justice White's opinions in *McMann*, *Brady*, and *Parker* that:

> the rhetoric of his opinions is laden with references to admissions of guilt and admissions that the defendant committed the crime. *Foreword—The Supreme Court Review*, 84 HARV. L. REV. 70 (1970).

In any case, it would seem necessary that the State put forth at least some evidence of the likelihood of the defendant's having been involved in the crime charged in order to insulate the plea from collateral attack.

[34] 400 U.S. at 39.

[35] Parker v. North Carolina, 397 U.S. 790 (1970) (Brennan, J., dissenting). Mr. Justice Brennan also argued that the decision of the Court in *Parker* was inconsistent, since, in his opinion, "the defect in the North Carolina statutory scheme was more serious than that in the statute considered in *Jackson*, for under the Federal Kidnapping Act a defendant at least had a potential opportunity to avoid the death penalty and have his guilt determined in a bench trial." *Id.* at 813. Brennan's position is that if it can be shown that the unconstitutional procedure substantially contributed to the plea of guilty, the plea is invalid.

[36] 350 U.S. at 116.

[37] Arguments against the constitutionality of plea bargaining may be found in Note, *The Unconstitutionality of Plea Bargaining*, 83 HARV. L. REV. 1387 (1970).

[38] 397 U.S. at 775. (Brennan, J., dissenting).