

# The Burger Court Opinion Writing Database

## *North Carolina v. Alford*

400 U.S. 25 (November 23, 1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

November 13, 1970

Re: No. 14 - North Carolina v. Alford

Dear Byron:

Please join me in your opinion.

Regards

WRB

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HUGO L. BLACK

November 9, 1970


Dear Byron:

Re: No. 14 - North Carolina v. Alford.

Please note at the end of your opinion:

"MR. JUSTICE BLACK, while adhering to his belief that United States v. Jackson, 390 U. S. 570, was wrongly decided, concurs in the judgment and in substantially all of the opinion in this case."

Sincerely yours,



H. L. B.

Mr. Justice White

cc: Members of the Conference

23

10: Mr. Justice  
Mr. Justice Black  
✓ Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

Circulated: 11-10-70

No. 14.—OCTOBER TERM, 1970

Recirculated: \_\_\_\_\_

North Carolina, Appellant, | On Appeal from the United  
v. | States Court of Appeals  
Henry C. Alford | for the Fourth Circuit.

[November —, 1970]

MR. JUSTICE BRENNAN, dissenting.

Last Term, this Court held over my dissent that a plea of guilty may validly be induced by an unconstitutional threat to subject the defendant to the risk of death, so long as the plea is entered in open court and the defendant is represented by competent counsel who is aware of the threat, albeit not of its unconstitutionality. *Brady v. United States*, 397 U. S. 742, 745-758; *Parker v. North Carolina*, 397 U. S. 790, 795. 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 from a defendant who was unwilling to admit his guilt.

I adhere to the view that, in any given case, the influence of such an unconstitutional threat "must necessarily be given weight in determining the voluntariness of a plea." *Parker v. North Carolina*, 397 U. S., at 805 (dissent). And, without reaching the question whether due process permits the entry of judgment upon a plea of guilty accompanied by a contemporaneous denial of acts constituting the crime, I believe that at the very least such a denial of guilt is also a relevant factor in determining whether the plea was voluntarily and intelligently made. With these factors in mind, it is sufficient in my view to state that the facts set out in the majority opinion demonstrate that Alford was "so

Dear Bill  
A man  
from me  
WOO

November 10, 1970

Re: No. 14 - North Carolina v. Alford

Dear Byron:

I agree with your opinion.

Sincerely,

J. M. H.

Mr. Justice White

CC: The Conference

# SUPREME COURT OF THE UNITED STATES

No. 14.—OCTOBER TERM, 1970

North Carolina, Appellant, } On Appeal from the United  
v. } States Court of Appeals  
Henry C. Alford } for the Fourth Circuit.

[November —, 1970]

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[November —, 1970]

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107 THE CHIEF JUSTICE  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

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From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Filed: \_\_\_\_\_

No. 14.—OCTOBER TERM, 1970

Recirculated: 11-12-70

North Carolina, Appellant, | On Appeal from the United  
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Henry C. Alford | for the Fourth Circuit.

[November —, 1970]

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

November 10, 1970

14 - North Carolina v. Alford

Dear Byron,

Although I voted the other way at Conference, and, indeed, circulated a proposed dissenting opinion last Term, I have decided to join your opinion for the Court in this case.

Sincerely yours,

P.S.  
/

Mr. Justice White

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
✓ Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun

1

From: White, J.

SUPREME COURT OF THE UNITED STATES

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No. 14.—OCTOBER TERM, 1970

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North Carolina, Appellant, } On Appeal from the United  
v. } States Court of Appeals  
Henry C. Alford. } for the Fourth Circuit.

[November —, 1970]

MR. JUSTICE WHITE delivered the opinion of the Court.

On December 2, 1963, Alford was indicted for first-degree murder, a capital offense under North Carolina law.<sup>1</sup> The court appointed an attorney to represent

<sup>1</sup> Under North Carolina law, first-degree murder is punished with death unless the jury recommends that the punishment shall be life imprisonment:

"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. All other kinds of murder shall be deemed murder in the second degree, and shall be punished with imprisonment of not less than two nor more than thirty years in the State's prison." N. C. Gen. Stat. § 14-17 (1953).

At the time Alford pleaded guilty, North Carolina law provided that if a guilty plea to a charge of first-degree murder was accepted by the prosecution and the court, the penalty would be life imprisonment rather than death. The provision permitting guilty pleas in capital cases was repealed in 1969. See *Parker v. North Carolina*, ante, at — n. 2. Though under present North Carolina law it is

pp 5, 6, 13

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
✓ Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun

2

From: White, J.

SUPREME COURT OF THE UNITED STATES

No. 14.—OCTOBER TERM, 1970

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 12, 1970

Re: No. 14 - North Carolina v. Alford

Dear Bill:

Please join me in your dissent.

Sincerely,

  
T.M.

Mr. Justice Brennan

cc: The Conference

November 11, 1970

Re: No. 14 - North Carolina v. Alford

Dear Byron:

I concur in your opinion.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference