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### Banka (Jack) v. State, 136 Nev. Adv. Op. 81 (Dec. 10, 2020)

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## CRIMINAL LAW: NECESSARY DISCLOSURES TO CRIMINAL DEFENDANTS IN PLEADING

### **Summary**

A criminal defendant who enters a plea is entitled to know about the consequences of his plea, in particular, the range of the fine which must be assessed against him. The standard for this disclosure is high: in the case of a fine, the existence of the fine must be disclosed, as well as the maximum and minimum amounts.

### **Background**

The defendant drove a vehicle while intoxicated and struck and injured another person with his car, fracturing his sternum. A blood draw was conducted shortly afterward and revealed that his blood-alcohol content was far in excess of the legal maximum for sober driving. The defendant entered an *Alford* guilty plea for driving under the influence with an increased penalty due to substantial bodily harm.<sup>2</sup>

Before entering his guilty plea, the defendant was told that there would be a fine as great as \$5,000, but he was not told that a minimum fine was required by law. Moreover, remarks by the judge prior to entering his *Alford* plea led the defendant to believe that he could simply be charged with a nominal fine. The defendant's request to withdraw his guilty plea was denied by the trial court because he was found to be aware of the consequences of entering a guilty plea.

### **Discussion**

Nevada requires that criminal defendants have a full understanding of the direct consequences of entering a guilty plea.<sup>3</sup> Previously, this has been interpreted to require that defendants are aware that a fine can (or must) be assessed against them, as well as the maximum amount of that fine. However, the Court interpreted a minimum statutory fine as a direct consequence of a guilty plea, because of its immediate and automatic effect against the defendant.

Nevada courts should allow a defendant to withdraw a guilty plea when withdrawal would be fair and just.<sup>4</sup> In this case, incomplete information on the part of the defendant was an adequate reason to permit withdrawal of the plea.

### **Conclusion**

Criminal defendants must have a full understanding of the direct consequences of entering a guilty plea. The direct consequences of such a plea are those that have an immediate and automatic effect on the defendant. As relates to a statutorily-required fine, defendants are entitled to know of the existence of the fine itself, as well as the maximum and minimum amounts of such a fine.

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<sup>1</sup> By Joshua Nelson.

<sup>2</sup> The *Alford* plea allows a criminal defendant to maintain their innocence but concede that a judge or jury is likely to find them guilty. *North Carolina v. Alford*, 400 U.S. 25, 25 (1970). The defendant was charged under NEV. REV. STAT. 484C.110(1) and 484C.430(1).

<sup>3</sup> *Little v. Warden*, 117 Nev. 845, 849, 34 P.3d 540, 543 (2001).

<sup>4</sup> *Stevenson v. State*, 31 Nev. 598, 604, 354 P.3d 1277, 1281 (2015).