

A pro se defendant was charged with mail fraud. The defendant pleaded guilty and was sentenced to three years in prison. In response to the sentence, the defendant stated that he had been induced to plead guilty after the prosecutor assured him that the judge would only impose a three-month sentence and a small fine. After hearing evidence on the issue, the judge set aside the judgment and allowed the defendant to withdraw the guilty plea. At trial, the defendant testified to his innocence. The prosecution now seeks to introduce a certified copy of the guilty plea in which the defendant admitted to mail fraud.

Is the certified copy of the guilty plea admissible?

- A. No, because the guilty plea was withdrawn.
- B. No, because the privilege against self-incrimination bars the admission of a prior incriminating statement.
- C. Yes, because a certified guilty plea is a self-authenticating public record.
- D. Yes, to impeach the defendant with a prior inconsistent statement.

Explanation:

Pleas, plea discussions & related statements

(FRE 410)

General rule	The following are <i>not</i> admissible against Δ in civil or criminal case: Withdrawn guilty pleas Nolo contendere (ie, no contest) pleas Statements made during proceeding on above pleas Statements made during plea discussions with prosecutor
Exceptions	Statement during same plea discussions is introduced & both statements should in fairness be considered Criminal proceeding for perjury or false statement if Δ's statement under oath, on record & with counsel

FRE = Federal Rule of Evidence; **Δ** = Defendant.

In civil and criminal cases, statements made during **settlement and plea negotiations** are generally **inadmissible against the defendant** who participated in the negotiations or made the plea. This **includes guilty pleas** that are **later withdrawn**, since admitting the guilty plea would effectively nullify the order permitting withdrawal. Therefore, the certified copy of the guilty plea at issue here is *not* admissible against the defendant.

(Choice B) The Fifth Amendment privilege against self-incrimination allows a witness (here, the defendant) to refuse to give testimony that tends to incriminate him/herself. But this is not a basis for excluding the certified guilty plea because the privilege, when invoked, only applies to current (not prior) statements.

(Choice C) Tangible evidence (eg, documents) must generally be authenticated through extrinsic evidence that shows the thing is what the proponent claims it to be before it can be admitted. And though certain evidence (eg, certified copies of public records) is **self-authenticating** and does not require such proof, that evidence can still be excluded on other grounds (as seen here).

(Choice D) The rule excluding statements made during plea negotiations applies even when such statements are offered for impeachment purposes. Therefore, the prosecutor cannot introduce the certified copy of the guilty plea to impeach the defendant's testimony at trial.

Educational objective:

Evidence of statements made during settlement or plea negotiations is generally inadmissible against a defendant. This includes a guilty plea that is later withdrawn.

References

Fed. R. Evid. 410(a)(1) (evidence of withdrawn guilty plea is inadmissible against defendant).

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