

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 142

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending Rule 11 of the Alaska Rules of  
7 Criminal Procedure to require court instruction on  
8 possible immigration and naturalization consequences  
9 of guilty or no contest pleas."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 \* Section 1. Rule 11(c), Alaska Rules of Criminal Procedure, is amended  
12 to read:

13 (c) PLEAS OF GUILTY OR NOLO CONTENDERE. The court shall not accept a  
14 plea of guilty or nolo contendere from a defendant without first addressing  
15 the defendant personally and

16 (1) determining that he understands the nature of the charge;  
17 and

18 (2) informing him that by his plea of guilty or nolo contendere  
19 he waives his right to trial by jury or trial by a judge and the right to  
20 be confronted with the witnesses against him; and

21 (3) informing him:

22 (i) of the mandatory minimum punishment, if any, and the  
23 maximum possible punishment provided by the statute defining the  
24 offense to which the plea is offered, and

25 (ii) that the defendant has the right to plead not guilty or  
26 to persist in that plea if it has already been made, or to plead  
27 guilty; and

28 (4) informing him that if he is not a citizen of the United  
29 States, the conviction may result in deportation, exclusion from admission

1 to the United States, or denial of naturalization, under federal law; in  
2 the absence of a record that the court provided this warning, the defendant  
3 shall be rebuttably presumed not to have received it; at the time of enter-  
4 ing a plea, the court may not require the defendant to disclose his legal  
5 status in the United States.

6 \* Sec. 2. Rule 11(h), Alaska Rules of Criminal Procedure, is amended to  
7 read:

8 (h) PLEA WITHDRAWAL.

9 (1) The court shall allow the defendant to withdraw his plea of  
10 guilty or nolo contendere whenever the defendant, upon a timely motion for  
11 withdrawal, proves that withdrawal is necessary to correct manifest injus-  
12 tice.

13 (i) A motion for withdrawal is timely and is not barred  
14 because made subsequent to judgment or sentence if it is made with due  
15 diligence.

16 (ii) Withdrawal is necessary to correct a manifest injustice  
17 whenever it is demonstrated that:

18 (aa) The defendant was denied the effective assis-  
19 tance of counsel guaranteed by constitution, statute or rule, or

20 (bb) The plea was not entered or ratified by the  
21 defendant or a person authorized to act in the defendant's behalf, or

22 (cc) The plea was involuntary, or was entered without  
23 knowledge of the charge or that the sentence actually imposed could be  
24 imposed, or

25 (dd) The defendant did not receive the charge or  
26 sentence concessions contemplated by the plea agreement, and

27 (A) the prosecuting attorney failed to seek or  
28 opposed the concessions promised in the plea agreement, or

29 (B) after being advised that the court no longer

1           concluded and after being called upon to affirm or withdraw the  
2           plea, the defendant did not affirm the plea, or

3                       (ee) The court failed to advise the defendant under  
4           (c)(4) of this rule, and the defendant later shows that the plea and  
5           conviction will have one of the consequences enumerated in that rule.

6                       (iii) The defendant may move for withdrawal of the plea  
7           without alleging innocence of the charge to which the plea has been  
8           entered.

9                       (2) Once the plea has been accepted by the court and absent a  
10          showing that withdrawal is necessary to correct a manifest injustice, a  
11          defendant may not withdraw a plea of guilty or nolo contendere as a matter  
12          of right. Before sentence, the court in its discretion may allow the  
13          defendant to withdraw a plea for any fair and just reason unless the prose-  
14          cution has been substantially prejudiced by reliance upon the defendant's  
15          plea.

16                      (3) A plea of guilty or nolo contendere which is not accepted or  
17          has been withdrawn shall not be received against the defendant in any  
18          criminal proceeding.