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PLEA BARGAINING, PLEA OF GUILTY AND CONFESSIONS – INVESTIGATING THE TRIANGULAR RELATIONSHIP

Daniel Arthur Ohene-Bekoe* and
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PLEA BARGAINING, PLEA OF GUILTY AND CONFESSIONS – INVESTIGATING THE TRIANGULAR RELATIONSHIP

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ABSTRACT

The minimal concern is whether plea bargain is a type of confession or plea of guilty. Traditionally, the courts presented the guilty plea as a “confession” and as a gesture of remorse, in that, it was commonly relied upon as a mitigating factor in sentencing. Technically, an unambiguous plea of guilty to a criminal charge amounts to a judicial confession to have committed the offence. For the plea to amount to a confession and a demonstration of remorse or contrition, it must logically amount to an acceptance by the defendant of the truth of the allegations in the prosecution’s case. With this understanding of the guilty plea, the need for trial is obviated, relieving the prosecution of their statutory burden of proving the charge. Thus, it is ideal to analyse plea bargaining with confessions and plea of guilty as they all facilitate convictions without trial.

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1.0 INTRODUCTION

Plea bargaining is gaining global traction. Attention has been focused primarily on the advantages and disadvantages of plea bargaining.¹ The minimal concern is whether plea bargain is a type of confession or plea of guilty. Traditionally, the courts presented the guilty plea as a “confession” and as a gesture of remorse, in that, it was commonly relied upon as a mitigating factor in sentencing.² Technically, an unambiguous plea of guilty to a criminal charge amounts to a judicial confession to have committed the offence.³ For the plea to amount to a confession and a demonstration of remorse or contrition, it must logically amount to an acceptance by the defendant of the truth of the allegations in the prosecution’s case. With this understanding of the guilty plea, the need for trial is obviated, relieving the prosecution of their statutory burden of proving the charge.⁴ Thus, it is ideal to analyse plea bargaining with confessions and plea of guilty as they all facilitate convictions without trial.

This article, thus, analyses the various concepts that are often catalogued under the plea-bargaining concept by exploring their key features, implications, inter alia. The article begins with an introduction after which there is an overview of plea bargaining. Additionally, the article provides a general overview of the law on confessions. It discusses confessions obtained during custodial interrogations and assesses the Supreme Court’s treatment of confessions in police custody. The article further articulates important elements of plea of guilty. The remarkable parallels in the factors taken into consideration by the Courts in accepting a plea or confession and the waiver of constitutional rights pertaining to the law on plea bargaining, confessions and plea of guilty are examined. Furthermore, plea bargaining, plea of guilty and confessions are contrasted. Lastly, the article ends with a conclusion.

2.0 THE LAW ON PLEA BARGAINING

As noted by Justice Anthony Kennedy, ‘the reality is that criminal justice today is, for the most part, a system of pleas, not a system of trials.’⁵ The vast majority of criminal litigation today is resolved by plea bargain rather than by trial.⁶ Plea bargaining is not merely an addendum to contemporary criminal prosecution; it is contemporary criminal prosecution.⁷ Today, ‘plea bargaining is a defining, if not the defining, feature of the present federal criminal justice system.’⁸ Plea bargaining is the process by which defendants give up their right to trial

¹ Frank H. Easterbrook, ‘Plea Bargaining as Compromise’ (1992) 101 Yale Law Journal 1969.

² Juliet Horne, ‘Plea Bargains, Guilty Pleas and the Consequences for Appeal in England and Wales’ (2013) Legal Studies Research Paper No. 2013-10.

³ Solomon Nana Acheampong v The Republic (HC, 29 July 2019).

⁴ Ibid.

⁵ Aditi Juneja, ‘A Holistic Framework to Aid Responsible Plea-Bargaining by Prosecutors’ (2017) 11 New York University Journal of Law and Liberty 600.

⁶ Derek Teeter, ‘A Contracts Analysis of Waivers of the Right to Appeal in Criminal Plea Bargains’ (2005) 53 University of Kansas Law Review 727, 729 (discussing plea bargains in federal criminal cases).

⁷ Robert E. Scott and William J. Stuntz, ‘Plea Bargaining as Contract’ (1992) 101 Yale Law Journal 1909, 1912.

⁸ Mary Patrice Brown and Stevan E. Bunnell, ‘Negotiating Justice: Prosecutorial Perspectives on Federal Plea Bargaining in the District of Columbia’ (2006) 43 American Criminal Law Review, 1063, 1064.

and instead plead guilty in exchange for concessions from the prosecution, generally in the form of withdrawal of charges or lighter sentences.⁹ The plea bargaining process is 'merely an extension of the screening process in an effort to find the correct result for a matter before the court.'¹⁰

The introduction of plea bargaining marked a significant milestone in Ghana's criminal justice system. Plea bargaining was introduced in Ghana by an amendment to the Criminal and Other Offences (Procedure) Act, 1960 (Act 30).

Discussions in the bargaining process can focus on any aspect of the case, including what charges the Republic will elect to bring, what facts will be included in the agreement, and what proposed sentence will be submitted to the judge.¹¹ In plea bargaining, the prosecutor may elect to use charge bargaining. Charge bargaining refers to a promise by the prosecutor to reduce or dismiss some of the charges brought against the defendant in exchange for a guilty plea.¹² Alternatively, the prosecutor may also opt for sentence bargaining. Sentence bargaining refers to a promise by the prosecutor to recommend a specific or lenient sentence or refrain from making any sentence recommendation following the accused person's guilty plea.¹³ Additionally, the prosecutor may deploy fact bargaining. Under fact bargaining, a prosecutor agrees not to contest an accused person's version of the facts or agrees not to reveal aggravating factual circumstances to the court. There is an agreement for a selective presentation of facts in return for a plea of guilty. This form of bargaining is likely to occur when proof of an aggravating circumstance would lead to a mandatory minimum sentence or to a more severe sentence under sentencing guidelines.¹⁴

The benefits of plea bargaining are considerable as such it is deemed as an indispensable tool without which certain 'judicial systems would collapse'.¹⁵ Scholars who support plea bargaining offer scores of reasons for its increased practice in the world, including crowded

⁹ Daniel S. McConkie, 'Judges as Framers of Plea Bargaining' (2015) 26 *Stanford Law & Policy Review*, 61, 66.

¹⁰ Mary Lou Dickie, 'Through the Looking Glass — Ethical Responsibilities of the Crown in Resolution Discussion in Ontario' (2005) 50 *Criminal Law Quarterly* 128, 147.

¹¹ Carol A. Brook et al., 'A Comparative Look at Plea Bargaining in Australia, Canada, England, New Zealand, and the United States' (2016) 57 *William & Mary Law Review* 1147, 1164-1167.

¹² Daniel A. Ohene-Bekoe and Emmanuella Okantey, 'Is the Victim Victimized? The Victim in the Plea Bargaining Process in Ghana' (2022) 7 *Ghana School of Law Students Journal* 149, 153 (This can be further classified into multiple charge and unique charge. In multiple charges, some charges are dropped in return for a plea of guilty to one of them. In a unique charge, a serious charge is dropped in exchange for a plea of guilty to a less serious charge. The multiple charge is also known as the horizontal charge bargaining and the unique charge as vertical charge bargaining).

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Hedieh Nasheri, *Betrayal of Due Process: A Comparative Assessment of Plea Bargaining in the United States and Canada* (University Press of America 1998) 25.

court dockets;¹⁶ pretrial detention;¹⁷ lawyer characteristics and incentives;¹⁸ increasingly careful selection of cases by police and prosecutors;¹⁹ greater access to defence counsel;²⁰ increasingly cumbersome and time consuming jury trial procedures;²¹ and sentencing practices that made penalties at trial more certain.²²

Despite its associated benefits, the obvious problems with plea bargaining are worrisome. Plea bargaining has not been spared by critics especially with regards to its nature and fundamental assumptions. The presumption that parties to plea bargain are rational has been criticised vehemently.²³ It has been argued that innocent people are likely to be coerced to accept plea bargain²⁴ in order to avoid harsher punishments.²⁵ Also, the critics posit that it allows criminals to escape the criminal justice system without the punishment that was prescribed by law²⁶.

2.1 Plea Bargaining under the Criminal and Other Offences (Procedure) (Amendment) Act, 2022 (Act 1079)

An accused or his counsel, if represented where the circumstances so permit, may at any time before judgment, enter a plea bargain with the prosecutor.²⁷ No plea agreement shall be entered into between a prosecutor and accused, without the prior written consent of the Attorney-General.²⁸ Where the accused agrees to plea bargaining, he forfeits numerous constitutional rights and procedural rights granted by statutes especially the right to a full trial. Other rights that are eviscerated are the presumption of innocence, examination of witnesses and right to remain silent.²⁹

¹⁶ Arnold Enker, 'Perspectives on Plea Bargaining' (1967) President's Commission on Law Enforcement and Administration of Justice, Task Force Report' The Courts 108, 112.

¹⁷ Ronald F. Wright, 'Trial Distortion and the End of Innocence in Federal Criminal Justice' (2005) 154 University of Pennsylvania Law Review 79, 124.

¹⁸ Malcolm M. Feeley, 'Perspectives on Plea Bargaining' (1979) 13 Law & Society Review 199, 200.

¹⁹ Lynn M. Mather, Comments on the History of Plea Bargaining, (1979) 13 Law & Society Review 281, 284.

²⁰ Feeley, (n 19) 201.

²¹ Albert W. Alschuler, 'Plea Bargaining and Its History' (1979) 79 Columbia Law Review, 1, 41.

²² Wright (n 18), 129.

²³ Daniel D. Bonneau and Bryan C. McCannon, 'Bargaining in the Shadow of the Trial? Deaths of Law Enforcement Officials and the Plea Bargaining Process' (2019) Law & Society: Criminal Procedure eJournal 3 <<https://www.semanticscholar.org/paper/Bargaining-in-the-Shadow-of-the-Trial-Deaths-of-Law-Bonneau-McCannon/826ae367a29ec69b318a69c4aa4605303f678657>> accessed 21 January 2024.

²⁴ Oren Bar-Gill & Oren Gazal Ayal, 'Plea Bargains Only for the Guilty' (2006) 49 Journal of Law and Economics 353, 354.

²⁵ Lucian E. Dervan and Vanessa A. Edkins, 'The Innocent Defendant's Dilemma: An Innovative Empirical Study of Plea Bargaining's Innocence Problem' (2013) 103 Journal of Criminal Law and Criminology 1, 2-5; F. Leverick, 'Sentence Discounting for Guilty Pleas: An Argument for Certainty Over Discretion' (2014) Criminal Law Review, Issue 5, 338, 340.

²⁶ Reginald Heber Smith and Herbert B. Ehrmann, 'The Criminal Courts' in Roscoe Pound & Felix Frankfurter (eds), *Criminal Justice in Cleveland* (The Cleveland Foundation, 1922) 229, 237-238.

²⁷ Criminal and Other Offences (Procedure) (Amendment) Act 2022 (Act 1079), s 162A.

²⁸ *Ibid*, s 162B.

²⁹ *Ibid*, s 162C (2).

Besides, the law also provides for the requirement of plea bargaining. The law requires a plea agreement to be in writing witnessed by the accused and his counsel if represented.³⁰ Where an accused person has negotiated with a prosecutor through an interpreter, the interpreter shall certify that he is proficient in that language and that he interpreted accurately during the negotiations and in respect of the contents of the plea agreement.³¹

The court shall not accept any plea agreement, unless it satisfies itself that the agreement was voluntarily obtained and the accused was competent to enter into such agreement.³² The court may give a decision based on plea agreement or make any such orders as it seems necessary including an order to reject the plea agreement for sufficient reasons, except that, such rejection shall not operate as a bar to any subsequent negotiations preferred by the parties.³³ Where the court accepts a plea agreement, it shall proceed to convict the accused person.³⁴

It is pertinent to note that, there are some limitations regarding the application of plea bargaining in Ghana. Plea bargaining is available to an accused who is charged with any offence except offences punishable by death.³⁵ Some offences are not applicable under the plea agreement such as, treason or high treason, high crime, rape, defilement, genocide, robbery, murder, kidnapping, piracy, hijacking, abduction and offences related to public elections.³⁶ A plea agreement may be set aside by the parties on grounds of fraud, misrepresentation, mistake, duress, illegality, incapacity, undue influence or in breach of the rules of natural justice.³⁷

3.0 THE LAW ON CONFESSIONS

Confessions have always been the main simplifier and expediter of criminal proceedings. When a defendant confesses, the preliminary investigation may be curtailed or terminated³⁸. Confessions may be very powerful before a jury; a confession may “trump” all other evidence in the case.³⁹ A confession has long been held as the key in any case, as ‘the introduction of a confession makes the other aspects of a trial in court superfluous.’⁴⁰

³⁰ Ibid, s 162F.

³¹ Ibid.

³² Ibid, s 162H.

³³ Ibid, s 162J.

³⁴ Ibid, s 162I.

³⁵ Ibid, s 162R.

³⁶ Ibid.

³⁷ Ibid s 162M.

³⁸ Stephen C. Thaman, ‘Plea-Bargaining, Negotiating Confessions and Consensual Resolution of Criminal Cases’ (2007) General Reports of the XVIIIth Congress of the International Academy of Comparative Law 951.

³⁹ Brandon L. Garrett, ‘Contaminated Confessions Revisited’ (2015) 101 Virginia Law Review 395, 407.

⁴⁰ Saul M. Kassin, ‘The Psychology of Confession Evidence’ (1997) 52 American Psychologist, Volume 52, 221 (quoting C.T. McCormick, *Handbook of The Law of Evidence* 316 (2d edn, West Publishing Company 1972) 316).

Confessions act as catalysts in the determination of criminal trials. Under the Evidence Act,⁴¹ confessions are categorised as hearsay and have no clear definition. In the absence of any statutory definition of confessions, resort is made to definitions suggested by jurists and the definitions expressed in judicial decisions. A confession is an acknowledgment in express words, by the accused in a criminal case, of the truth of the main fact charged or of some essential part of it.⁴² In *Ekow Russell v The Republic*, the Supreme Court speaking through Akamba JSC, stated the law on confession as follows:

A confession is an acknowledgment in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused. It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person's own free will without any fear, intimidation, coercion, promises or favours.⁴³

Thus, a confession may be inadmissible if the statement was not voluntarily made due to police coercion.⁴⁴

A confession amounts to sufficient evidence of the admission of an offence. A conviction could be based solely on the evidence of a confession. There is a plethora of decided cases to the effect that a court can rely solely on a confession statement made by an accused person to found a conviction. Van Lare JSC expressed in the case of *State v Aholo* that:

A conviction can quite properly be based entirely on the evidence of a confession by a prisoner, and such evidence is sufficient as long as the trial judge, as in this case, enquired most carefully into the circumstances in which the alleged confession was made and was satisfied of its genuineness.⁴⁵

The case of *Tiduri v The Republic* also supports the proposition that conviction can be obtained by relying on a confession statement only. In this case, one of the questions decided on appeal was whether the trial judge had erred in relying solely on the accused person's statement to convict him. In dismissing the appeal, the appellate court per Benin J (as he then was) held at holding 2 that:

⁴¹ Evidence Act of Ghana 1975 (NRCD 323), s 120.

⁴² William Richardson, *The Law of Evidence* (3rd edn, Brooklyn Law School 1928) 268.

⁴³ *Ekow Russell v The Republic* [2017-2020] SCGLR 469.

⁴⁴ Steven Penney, 'Theories of Confession Admissibility: A Historical View' (1998) 25 *American Journal of Criminal Law* 309.

⁴⁵ [1961] GLR 626.

The Learned trial magistrate was right in placing reliance on the caution statement of the accused, and he could even have convicted him solely on his own statement because the statement was admissible (having been voluntarily made in conformity with the requirements of section 120 of the Evidence Decree 1975 (NRCD 323), was tendered in evidence as part of the prosecution's case without objection. Accordingly, by the provisions of section 6(1) of NRCD 323, the court could consider it.⁴⁶

3.1 Classifications of Confessions

A confession may take various forms. A judicial confession is one made to the court. An extra-judicial confession, on the other hand, is one made to a person outside of the court. It may even consist of conversations with oneself, which may be adduced as evidence once overheard by another.⁴⁷

Judicial confessions are also referred to as formal confessions. They are those which are made before a magistrate⁴⁸ or in court in the due course of legal proceedings. A judicial confession has been defined by Justice S. A. Brobbey⁴⁹ as one that is given during judicial proceedings by an accused who pleads guilty. It also includes confession given during committal proceedings which may form part of what are described as statutory statements.

Extra-judicial confessions also referred to as informal confessions, are those which are made by the accused elsewhere than before a magistrate or in court. It is not necessary that the statements should have been addressed to any definite individual. It may take the form of a prayer or a confession to a private person.⁵⁰

3.2 Confessions in Police Custody

It seems confessions obtained during custodial interrogation are involuntary since pressure is mounted on the suspects to confess. The injustice and cruelty resulting from the early practice of extorting confessions from accused persons eventually led to the development of certain precautionary rules aimed at controlling the admissibility of confessions⁵¹. A cursory

⁴⁶ [1991] 1 GLR 209.

⁴⁷ See *Sahoo v State of U.P.* 1966 AIR 40 [where the appellant after murdering his daughter-in-law, was seen and heard by many people living there uttering words while stating that I finished her and now I am free from any daily quarrel. The Supreme Court held in this case that the accused's declaration or self-conversation should be considered a confession to prove his guilt, and that such confession should be recognised as important in proof of administering justice, and that the fact that the statements were not conveyed to anyone else does not negate the relevance of a confession. As a result, a confession made to oneself is good evidence that can be used in a court of law. The Court further clarified that confession need not be made by the accused to someone else mere muttering is sufficient.]

⁴⁸ See *Agyiri alias Otabil v The Republic* [1987-1988] 1 GLR 58.

⁴⁹ Stephen A. Brobbey, *Essentials of the Ghana Law of Evidence* (Datro Publication, 2014) 119.

⁵⁰ See *Dua v The Republic* [1987-1988] 1 GLR 343, where the accused confessed to his relative at Osu that he killed his wife. The Court of Appeal upheld his conviction on the basis that the confession was given voluntarily.

⁵¹ M. C. Slough, 'Confessions and Admissions' (1959) 28 Fordham Law Review 96, 98.

look at NRC 323 reveals safeguards in place to protect suspects from police custodial torment. Under the law, confessions made to a police officer is not admissible, unless made in the presence of an independent witness.⁵² This is to deflect allegations levelled against police officers of tormenting or torturing suspects upon arrest.

In the case of *Kwaku Frimpong alias Iboman v The Republic*, Dotse JSC highlighted the significance of the presence of an independent witness as follows:

The rationale for the above elaborate provisions is clear. They are to ensure that the rights of the declarant, i.e. accused who is under restriction are not trampled upon by the Police or the investigative agencies. These constitute the rights of all accused persons as has been protected in the Constitution 1992.⁵³

4.0 THE LAW ON GUILTY PLEA

Under our criminal jurisprudence, in the event that an accused person pleads guilty, he automatically forfeits some constitutional rights. The prosecution need not prove the accused person's guilt beyond reasonable doubt.⁵⁴ A confession or an acceptance of the commission of a crime one is charged with amounts to a plea of guilty. The court ought to scrutinise the guilty plea before convicting the accused. That is, the court before accepting the plea, shall explain to the accused the nature of the charge and the procedure which follows the acceptance of a guilty plea.⁵⁵ Ordinarily, where the accused person pleads guilty and is recorded by the court, the court can proceed to convict the accused person in the event the facts of the case presented support the conviction. In the case of *Tetteh Asamadey alias Osagyefo v Commissioner of Police*, it was held that it is incumbent upon a trial judge to record the facts narrated by the prosecution after the accused has pleaded guilty because he takes into consideration those facts in convicting the accused and in imposing a sentence.⁵⁶

The accused person may withdraw his guilty plea and plead not guilty⁵⁷. Any statement made by the accused in answer to the court shall be recorded in writing and shall form part of the record of proceedings.⁵⁸ In circumstances where the accused pleads guilty but adds words illustrative of a defence, the court shall enter a plea of not guilty and record it as having been entered by order of the court.⁵⁹ In the case of *State v Poku & Anor*,⁶⁰ an accused person

Available at: <https://ir.lawnet.fordham.edu/flr/vol28/iss1/2>

⁵² Evidence Act 1975 (n 41), s 120(2) [This provision acts as the safety valve that protects the suspect].

⁵³ *Kwaku Frimpong alias Iboman v The Republic* [2012] 1 SCGLR 297.

⁵⁴ Evidence Act, (n 41), s 13.

⁵⁵ Criminal and Other Offences (Procedure) Act (Act 30), s 199(2).

⁵⁶ *Tetteh Asamadey alias Osagyefo v Commissioner of Police* [1963] 2 GLR 400.

⁵⁷ Criminal and Other Offences (Procedure) Act (Act 30) s, 199(2).

⁵⁸ *Ibid*, s 199(3).

⁵⁹ *Ibid*, s 199(4).

⁶⁰ *State v Poku & Anor* 1967 C.C. 31.

pleaded guilty with explanation. The explanation was not recorded and he was convicted on the plea of guilty only. The Court held that, where an accused person pleads guilty to a charge the court must record:

- a) the facts of the case to enable one know whether they support the charge; and
- b) any explanation that the accused offers, to make sure that the accused really meant to plead guilty. If the explanation is inconsistent with the plea of guilty, the court must enter a plea of not guilty.

5.0 THE PARALLELS

A careful analyses of plea bargaining, plea of guilty and confessions would reveal a close and interconnected relationship. These are abbreviated trial mechanisms in the criminal justice system which mechanisms sometimes complement one another. The remarkable parallels in the factors taken into consideration by the courts in accepting a guilty plea, plea bargain or confession would be examined.

5.1 Court Considerations

Daily, hundreds of juvenile and adult defendants decide whether to plead guilty.⁶¹ It is estimated that every two seconds a defendant pleads guilty.⁶² Defendants in the criminal justice system are inherently vulnerable as a result of the imbalance of power between themselves and the state.⁶³

Ghana's justice system, fortunately, is not based on the vulnerable accused, but on the idea of an accused who can freely make decisions based on the alternatives available. Nonetheless, in reality that is not the case for the accused since he must make a decision of going to trial to prove his innocence or plead guilty. That is why, some safety valves have been put in place to provide necessary protections to ensure that the presumption of innocence is sufficiently respected in practice. When accepting a plea or admitting confession statements, the court must consider certain factors. According to Wigmore⁶⁴, among the factors to be considered are: the character of the accused (health, age, education, intelligence, mental condition, physical condition); character of detention, if any (delay in arraignment, warning of rights, incommunicado conditions, access to lawyer, relatives and friends); manner of interrogation (length of session(s), relays, number of interrogators, conditions, manner of interrogators); and force, threats, promises or deceptions.

⁶¹ George Fisher, *Plea Bargaining's Triumph: A History of Plea Bargaining in America* (1st edn, Stanford University Press 2003) 223-227.

⁶² Timothy Lynch, 'The Case Against Plea Bargaining' (Fall 2003) Regulation, 24.

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=511222> accessed 17 September 2023.

⁶³ J Peay and E Player, 'Pleading guilty: Why Vulnerability Matters' (2018) Volume 81, Issue 6 Modern Law Review, 929.

⁶⁴ John Henry Wigmore, *Evidence in Trials at Common Law* (4th edn, Volume 3, Little Brown 1970), s 818, 352.

The following are some of the factors the court takes into consideration before accepting a plea bargain or plea of guilty or admitting confession:

5.1.1 Coercion

Under the doctrine of “unconstitutional conditions”, which posits that ‘even if a state has absolute discretion to grant or deny a privilege or benefit, it cannot grant the privilege subject to conditions that improperly “coerce”, “pressure”, or “induce” the waiver of constitutional rights.’⁶⁵ This implies all pleas must be entered willingly without any threat from the prosecutor or the court. Coercion or duress⁶⁶ is sufficient enough to render a statement or plea involuntary. It is well recognised that coercion need not be physical to be effective.⁶⁷ Coercion could be psychological as well as physical. Indeed, most successful interrogation techniques are almost purely psychological.⁶⁸ Prosecutors’ questioning rely on psychological coercion and social influence techniques in an attempt to obtain a guilty plea. For example, defendants who agree to a plea may be misled on the strength of the evidence against them giving them a false sense of what may occur at trial.⁶⁹

With respect to confessions, it is a principle of law that a confession is not admissible unless the prosecution shows that the statement was made voluntarily ‘in the sense that it has not been obtained by him either by fear of prejudice or hope of advantage exercised or held out by a person in authority.’⁷⁰ A statement given by an accused under coercion is not voluntary, thus, is inadmissible.

Is the legal position in Ghana different? Ghana’s law on confessions is captured in section 120 of NRCDC 323. Prior to the enactment of NRCDC 323, the Supreme Court in *State v Otchere*,⁷¹ affirmed the aforementioned position when it stated that:

A confession made by an accused person in respect of the crime for which he is tried is admissible against him provided it is affirmatively shown on the part of the prosecution that it was free and voluntary and that it was made

⁶⁵ Richard A. Epstein, ‘Foreword: Unconstitutional Conditions, State Power, and the Limits of Consent’ (1988) 102 Harvard Law Review 4.

⁶⁶ The terms ‘coercion’ and ‘duress’ are used interchangeably throughout this article.

⁶⁷ American Law Institute, *Model Code of Pre-Arrest Procedure - Complete Text and Reporters’ Commentary* (1975) S 140.4.

⁶⁸ Kamisar, ‘What Is an Involuntary Confession? Some Comments on Inbau and Reid’s Criminal Interrogation and Confessions’ (1963) 17 Rutgers Law Review 728.

⁶⁹ M. Joselow, ‘Promise-Induced False Confessions: Lessons from Promises in Another Context (2019) Volume 60 Issue 6 Boston College Law Review, 1641-1688.

⁷⁰ Ronald Joseph Delisle and Don Stuart, *Learning Canadian Criminal Procedure* (6th edn, Carswell Publishing 2000) 356.

⁷¹ *State v Otchere* [1963] 2 GLR 463.

without the accused person's being induced to make it by any promise or favour, or by menaces, or undue terror.⁷²

With regards to plea bargaining, it is argued that it is coercive in itself due to prosecutors' charging decisions, judges' imposition of sentences, and legislators' enactment of criminal acts with harsh penalties.⁷³

5.1.2 Misunderstanding of Charges

This stems from the fact that many accused persons do not know or understand the plea process and the legalese used.⁷⁴ In order to determine whether the accused person appreciates the charges, the court will inquire whether the accused understands the nature of the allegations. That is, the ability of the accused to know the similarity between his act and the crime for which he has pleaded or confessed to.

5.1.3 Misunderstanding of the Implications of the Plea

The accused must be informed of the direct consequences of entering into a plea. It is involuntary once the accused would not have entered the plea if he knew of the consequences. An accused's failure to understand the direct consequences of a plea of guilty is a defect that vitiates a conviction. It is however noteworthy that failure or refusal to communicate collateral or indirect consequences to defendants does not render the plea nugatory.⁷⁵

5.1.4 Misrepresentation/Inaccuracy of Facts

The parties may themselves conceal certain relevant facts from the public as well as the court in order to have a win-win situation⁷⁶. Nonetheless, where the accused enters a plea without being privy to the correct information or based on unknown facts of the case or the prosecutor's misrepresentation of facts or false information, that plea could be considered involuntary.

⁷² Ibid, 479; See also, *Anang v The Republic* [1984-1986] 1 GLR 458, where one of the issues raised on appeal was the admissibility of a statement made under "pressure" (duress) and therefore not voluntary. The Court of Appeal's decision was that the statement Anang, the appellant, made was not voluntary and was consequently not admissible in evidence (against him).

⁷³ Rachel E. Barkow, 'Separation of Powers and the Criminal Law' (2006) 58 Stanford Law Review 989, 1034.

⁷⁴ Hussemann, Jeanette and Siegel, Jonah, 'Pleading Guilty: Indigent Defendant Perceptions of the Plea Process' (2019) Volume 13 Issue 2 Article 3 Tennessee Journal of Law and Policy 29.

⁷⁵ Under the 1992 Constitution of Ghana, there are certain positions that one cannot occupy when convicted of an offence that borders on dishonesty, such as Member of Parliament (art 94(2)(c)(i)), Speaker of Parliament (art 95(1)), President or Vice President (art 60(3) and 62(c)), Ministers of State (Article 78(1)), and Deputy Ministers of State (art 79(2)). Also, under the Companies Act, 2019, (Act 992), s 172(2)(a), 177(1)(a)(i) and 177(2)(a) bar an individual from holding key positions such as director, receiver, auditor or liquidator in a company where that individual has been convicted of an offence relating to dishonesty. These are collateral consequences because it affects the individual in particular unlike direct consequence that has immediate effect on the individual's punishment such as imprisonment, payment of fines or signing a bond.

⁷⁶ Mari Byrne, 'Baseless Pleas: A Mockery of Justice' (2010) 78 Fordham Law Review 2961, 2964; Thea Johnson, 'Fictional Pleas' (2019) 94 Indiana Law Journal 855; Stephen J. Schulhofer & Ilene H. Nagel, 'Plea Negotiations Under the Federal Sentencing Guidelines: Guideline Circumvention and Its Dynamics in the Post-Mistretta Period' (1997) 91 Northwestern University Law Review 1284, 1289-90 at 1293.

Prior to the commencement of a criminal trial, the prosecution must make all necessary disclosures.⁷⁷ It is for the judge to verify the fairness and transparency of the consensus reached by the accused and prosecution. Through necessary disclosures, the accused's bargaining power is enhanced. Uncertainties concerning the trial are reduced and the accused is able to properly, carefully, dispassionately and accurately assess the benefit and the adverse consequences of accepting a plea bargain.⁷⁸

Furthermore, it ensures that a plea is not entered into by an accused based on false or misleading information rendering it involuntary.

5.1.5 Competency to enter Plea

The test of competence to enter a guilty plea applies mutatis mutandis to that of standing trial. The courts sometimes take the view that persons without capacity (the insane, mentally defective, or otherwise, gravely mentally disabled) act involuntarily. This is attributable to the absence of mens rea.⁷⁹

All the above factors are taken into consideration by the courts in determining whether plea bargaining, plea of guilty or confessions are knowingly and voluntarily made. In determining what "voluntariness" is, Taylor J in *Republic v Konkomba* opined as follows:

In my view, in ordinary parlance, 'voluntary statement' means a statement offered by a person on his own, freely, willingly, intentionally, knowingly and without any interference from any person or circumstance. If a person of unsound mind makes a statement, it is not voluntary, due to the interference induced by insanity; if short of insanity, a person makes a statement not because he wishes to make it but because of circumstances however induced, it will not be voluntary because of the interfering circumstances. If a statement is induced by threats and violence, it cannot be said to have been made without interference from any person and so it is not voluntary. If a statement is induced by promises, then it is not offered by the person on his own volition and it is accordingly involuntary.⁸⁰

⁷⁷ *The Republic v Baffoe-Bonnie and Others* [2017-2018] 2 SCLR 808. Here, the Supreme Court held that in order to meet the requirement of a fair trial in criminal matters, it is the duty of the prosecution in both trials on indictment and summary trials, to disclose to the defence copies of witnesses' statements, copies of documents and exhibits in the possession of the prosecution, including materials which the prosecution intends to tender before a trial court ... even where the prosecution has evidence in its possession which it may not tender at the trial, it must still disclose that evidence to the defence ... the disclosure of any documents or other materials in the possession of the prosecution is to be made before the commencement of the trial or within a reasonable time in the course of the trial, before the documents are tendered as evidence in court by the prosecution.

⁷⁸ Sophia Waldstein, 'Open-File Discovery: A Plea for Transparent Plea—Bargaining' (2020) Temple Law Review Volume 92, 517.

⁷⁹ Francis Bowes Sayre, 'Mens Rea' (1932) 45 Harvard Law Review 974, 1004.

⁸⁰ *Republic v Konkomba* [1979] GLR 270, 278 (HC).

5.2 Waiver of Constitutional Rights

There are a few constitutional rights that an accused waives when he pleads guilty. These rights include: the right to a trial by jury⁸¹, the right to testify or not to testify at trial⁸², the privilege against self-incrimination,⁸³ the right to confront one's accusers, the right to plead 'not guilty'⁸⁴, the right to require the prosecution to prove your guilt beyond a reasonable doubt⁸⁵, the right to compel favourable witnesses and the right to present any available defences at trial.

5.2.1 Right to Appeal

Since time immemorial, a citizen's right to appeal has been accorded much respect. This justifies why Apostle Paul's right to appeal was upheld by Governor Porcius Festus as recorded in the book of Acts in the Bible, chapter 25: 8-12. The right to appeal, as fundamental as it is, was respected and enforced under the constitution of the ancient Roman Empire. The right accorded Apostle Paul is not different from what our 1992 Constitution guarantees. The right to appeal in criminal cases has been variously described as a fundamental component of procedural fairness and the 'final guarantor of the fairness of the criminal process.'⁸⁶

It is trite that an appeal is a creature of Statute and or the Constitution and for that matter a party who intends to invoke the appellate jurisdiction of a court must strictly comply with and or satisfy the law that grants him or her the right to appeal. In the case of *Sandema-Nab v Asangalisa and Others*, the Supreme Court delivered at page 306 of the report as follows:

Now it must be appreciated that an appeal is a creature of statute and therefore no one has an inherent right to it. Where a statute does not provide for right to appeal, no court has jurisdiction to confer that right in a

⁸¹ 1992 Constitution of Ghana, art 19 (2)(a); Criminal Procedure Act 1960 (Act 30), s 204; See also, *Addai v The Republic* [1973] 1 GLR 312.

⁸² 1992 Constitution of Ghana, art 19(10). See also, *Okyerere v The Republic* [1972] 1 GLR 99 [Hayfron-Benjamin JJ] (as he then was) stated that where an accused person in the exercise of his constitutional right refuses to give evidence at his trial, fails or refuses to give a statement to the police when he is charged with a crime, the trial judge ought not to infer guilt from the accused person's constitutional right to keep silent.

⁸³ Evidence Act (n 41), s 97(1).

⁸⁴ Accused is not under any obligation to prove his innocence as the burden of proof is on the prosecution throughout the trial. The Supreme Court aptly put it in the case of *Mallam Ali Yusif vrs The Republic* [2003-2004] SCGLR 174 that: the burden of producing evidence and the burden of persuasion are the components of 'the burden of proof'. Thus, although an accused person is not required to prove his innocence, during the course of his trial.

⁸⁵ See *Gligah and Another v The Republic* [2010] SCGLR 870, 4, where the Supreme Court speaking with unanimity stated the principle of law thus:- "under article 19 (2) (c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary was proved. In other words, whenever an accused person was arraigned before any court in any criminal trial, it was the duty of the prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof was therefore on the prosecution and it was only after a prima facie case had been established by the prosecution that the accused would be called upon to give his side of the story." See also, *Lutterodt v Commissioner of Police* [1963] 2 GLR 429; *Darko v Republic* [1968] 203.

⁸⁶ David Rossman, 'Were There No Appeal: The History of Review in American Criminal Courts' (1990) 81 Journal of Criminal Law and Criminology 518.

dispute determined under that statute. Similarly, where a right to appeal is conferred as of right or with leave or with special leave, the right is to be exercised within the four corners of that statute and the relevant procedural regulations, as a court will not have jurisdiction to grant deviations outside the parameters of that statute.⁸⁷

Thus, where a statute denies one a right to appeal, an appellate court's appellate jurisdiction is ousted.

5.2.1.1 Does an Accused Person, Convicted on a Plea of Guilty have a Right to Appeal?

On arraignment, a defendant is asked how he pleads in response to the charges read to him.⁸⁸ By pleading guilty⁸⁹, the accused person admits that he committed the act charged, that the act is prohibited by law, and that he has no defence for his actions. In the event that an accused person pleads guilty, he cannot challenge the conviction. This is clearly provided for in the Criminal and other Offences (Procedure) Act, 1960⁹⁰. Subsection (3) of Section 324 provides that 'no appeal shall be entertained against conviction by an accused person who has pleaded guilty and has been convicted on his plea'.

This law enjoins the appellate court not to entertain an appeal from plea of guilty. Nevertheless, there are cases where the appellate court may entertain an appeal, in spite of the provisions of section 324 (3) of Act 30. That is, where there are defects, irregularities or errors in the legal proceedings. These defects can be grouped into jurisdictional defects and non-jurisdictional defects.

5.2.1.1.1 Jurisdictional Defects

Jurisdiction is the authority conferred by law upon a court to hear and determine issues between parties or render judgment or order. Jurisdiction is fundamental; it is not simply a question of form for it prescribes the boundaries of the authority of a court. If a court tries a case over which it has no jurisdiction, the sentence becomes a nullity and is unenforceable.

Jurisdictional defects are defects that affect the power vested in the court to try a defendant. Taylor J in the case of *Kpegoro v The Republic*,⁹¹ (*Kpegoro's case*) in addressing a similar argument with respect to jurisdiction, was of the opinion that:

Now what is the proper forum for the trial of an offence under section 1 (h) of the Subversion Decree, 1972 (N.R.C.D. 90)? The Decree itself in its section 4 provides the answer ... The offences under which the appellants were tried

⁸⁷ Sandema-Nab v Asangalisa and Others [1996-1997] SCGLR 302. See also, *Nye v Nye* (1967) GLR 76; *Bosompem and Others v Tetteh Kwame* [2011] 1 SCGLR 397.

⁸⁸ Thomas O'Malley, *The Criminal Process* (Round Hall 2009) 471.

⁸⁹ Criminal and Other Offences (Procedure) Act (n 55), s 239(1) states to the effect that a plea of guilty, when recorded, constitutes a conviction.

⁹⁰ Criminal and Other Offences (Procedure) Act, (n 55).

⁹¹ *Kpegoro v The Republic* [1980] GLR 580 (HC).

before the circuit court, are only justiciable by a military tribunal as section 4 of the Subversion Decree, 1972 (N.R.C.D. 90), too plainly shows. ... I think therefore that the prosecution of this case before the circuit court is wrong. The circuit court has no jurisdiction and the conviction is therefore null and void.⁹²

Prior to *Kpekoro's case*, *Watara v The Republic*⁹³ was cited as bestowing a blessing upon the principle of jurisdiction. Osei-Hwere J (as he then was) stated as follows:

Indeed, in the instant case, as nothing emerged from the facts given at the trial throwing light on the gravity of the offence which did not appear in the charge itself the trial magistrate could not have had the power to commit for sentence under section 178 (1) of Act 30. It is clear from the foregoing that the purported committal of the appellant for sentence by the circuit court can in no way be justified.⁹⁴

5.2.1.1.2 Non-Jurisdictional Defects

Non-jurisdictional defects directly affect the guilty plea. In the case of *Alpha Zabrama v The Republic*⁹⁵, Taylor J, as he then was, stated that an accused person can still challenge conviction after pleading guilty under the following circumstances:

- i. if it could be shown that an appellant did not appreciate or understand the charge or procedure, thus, pleaded guilty by mistake;⁹⁶
- ii. if it could be shown that the appellant had pleaded guilty to a non-existent crime;⁹⁷
- iii. if the appellant pleaded guilty but gave an explanation which practically amounted to a defence or negated the plea of guilty as in the instant case;⁹⁸
- iv. if the plea of guilty was such as, in fact, to be no plea at all;⁹⁹
- v. if on the admitted facts upon which the prosecution was founded, no offence was disclosed upon which the appellant could legally be convicted on the charge preferred;¹⁰⁰;

⁹² Ibid, 589 – 590.

⁹³ *Watara v The Republic* [1974] 2 GLR 24.

⁹⁴ Ibid, 36.

⁹⁵ *Alpha Zabrama v The Republic* [1976] 1 GLR 291.

⁹⁶ *Essien v R.* (1950) 13 W.A.C.A. 6, 7; *Kofi alias Fiozo v The State* [1965] G.L.R. 28, 30 and *Duah v Commissioner of Police* (1950) 13 W.A.C.A. 85 applied.

⁹⁷ *Glah and Another v The Republic* [1992] 2 GLR 15 and *Amadu v The Republic*, High Court, (HC, 17 March 1967).

⁹⁸ *Ofei v The State* [1965] G.L.R. 680 and *Kotokoli v The Republic*, (HC, 7 November 1969).

⁹⁹ *R. v Lloyd* (1923) 17 Cr.App.R. 184 185 [Lord Hewart CJ]; *C.C.A.*; *R. v Baker* (1912) 7 Cr.App.R. 217, C.C.A.; *R. v Hussey* (1924) 18 Cr.App.R. 121, C.C.A.; *R. v Nze* (1941) 7 W.A.C.A. 24 and *Yakubu v The State*, (HC, 17 November 1966).

¹⁰⁰ *Osei Tutu v The State* [1965] G.L.R. 593, 596 (HC) [Koranteng-Addow]; *R. v Forde* [1923] 2 K.B. 400; *Essien v R.* (n 97); *Duah v. Commissioner of Police* (1950) 13 W.A.C.A. 85; *Dagomba v The State*, (CA, 1 November 1966) and *Amartey v The State*, (CA, 27 January 1967).

- vi. if there had been a miscarriage of justice by an apparent wrong acceptance of a plea of guilty;¹⁰¹ and
- vii. if the plea of guilty was so ambiguous that the appellant could not be said to have unequivocally pleaded guilty.¹⁰²

The aforesaid could be raised by an accused person on appeal, after a guilty plea has been entered and conviction handed therein.¹⁰³

5.2.1.2 Can an Appeal Lie against a Conviction Based on Plea Bargaining?

A comparison can be drawn between sections 324 (3) of Act 30 and 162L of Act 1079. Under both provisions, the appellate courts are obligated not to entertain any appeal whatsoever. Section 162L of Act 1079 provides that 'where a Court convicts and sentences an accused person in accordance with a plea agreement, the conviction and the sentence shall be final and an appeal shall not lie against the judgment of the Court.'

Although, the Courts uphold appeal waivers regarding the plea of guilty, there have been instances where appeal is allowed. We therefore admonish the courts to recognise the important role played by the appellate process in the criminal justice system, particularly, regarding plea bargaining. The purpose of appeals is to correct errors and judges may err when convicting and sentencing accused persons based on plea bargaining. Therefore, a proposal is made for accused persons to be allowed a right to appeal.

6.0 DIVERGENCE

Theoretically, plea bargain, plea of guilty and confessions are similar in nature, underpinning rationales and implications, yet each is unique. That is, the accused person under these mechanisms takes responsibility for the crime perpetrated. However, these terms are not the same either in terms of their procedures or substantively.

6.1 Plea Bargaining and Plea of Guilty

Plea bargaining and plea of guilty should not be treated as same and common. Plea of guilty which is part of the statutory process of criminal trials, cannot be said to be 'plea bargaining' ipso facto.

Pursuant to subsection (1) of section 171 of Act 30, the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty to the offence(s) charged or claims to be tried. According to section 171 (3) of Act 30, a plea of guilty shall

¹⁰¹ *Kotokoli v The Republic*, (HC, 7 November 1969).

¹⁰² *Ofei v The State* [1965] G.L.R. 680, 686 (SC) [Ollennu JSC]; *Zongo v The State*, (HC, 16 March 1967) [Annan J] applied.

¹⁰³ These conditions have been applied in the cases of the *State v. Arthur Seshie*, (HC, 13 November 1964) and *Yeboah v. The State* [1964] G.L.R. 715 where they were examined in relation to section 199 of the Criminal and Other Offences (Procedure) Act, (1960).

be recorded as nearly as possible in the words used, or if there is an admission of guilt by letter under section 70 (1), the letter shall be placed on the record and the Court shall convict the accused and pass sentence or make an order against the accused unless there appears to it sufficient cause to the contrary. The Court is not obliged to convict an accused once he pleads guilty to a charge; trial may proceed accordingly.

It is noteworthy that proceeding with trial in spite of the entry of “plea of guilty” does not amount to “plea bargaining”.

6.2 Plea of Guilty and Confessions

Guilty pleas and confessions, however, are very different. A confession is evidence that must be considered with other evidence. Confessions do not directly determine the outcome of a case. A guilty plea, on the other hand, is not evidence, but a formal agreement by the defendant to enter a plea of guilt. A guilty plea’s effect is to produce direct conviction.

The US Supreme Court distinguished a guilty plea from a confession as follows: ‘a plea of guilty differs in purpose and effect from a mere admission or an extra-judicial confession; it is itself a conviction. Like a verdict of a jury it is conclusive. More is not required; the court has nothing to do but give judgment and sentence.’¹⁰⁴

The American Bar Association in the Minimum Standards for Criminal Justice shed light on the substance of a plea of guilty, ‘while a confession only relates a set of facts, and thus only requires knowledge of the factual situation, a plea is an admission of all the elements of the charge, and thus requires a sophisticated knowledge of the law in relation to the facts.’

6.3 Plea Bargaining and Confession

Plea bargaining and confessions do not have the same regulations. With confession, there is an interrogation by the police which may be coercive. Typically, confessions are obtained after hours of interrogation by the police in a confined space. This procedure differs from that of plea bargaining, where either the prosecutor or an accused may negotiate a plea agreement. Interrogations by the police do not always result in confessions or convictions. All plea bargains, however, produce convictions unless withdrawn by the parties or rejected by the court.

Plea bargaining and confessions have different procedures and are also substantively different. In criminal cases, the rule has crystallised into a voluntary confession being a sufficient ground for conviction, thereby discharging the prosecution from its burden of proof. This is pursuant to section 120 of NRCD 323.¹⁰⁵ Where an accused person’s confession to the police is retracted by him on oath in court, the court is entitled to convict on the confession statement

¹⁰⁴ *Machibroda v United States*, 368 U.S. 487, 493 (1962), quoting *Kercheval v United States*, 274 U.S. 220, 223 (1927).

¹⁰⁵ *Anas A. Anas v Kennedy Agyapong*, (HC, 15 March 2023).

if it is satisfied that the confession statement is the truth and his evidence on oath is false.¹⁰⁶ This differs from plea bargaining which allows an accused person to withdraw at any stage of the proceedings without suffering any consequences from the court by way of conviction and sentencing.¹⁰⁷

Additionally, a confession statement will not be rejected on ground of illegal means of obtaining it. That is, the extraction of a confession statement or evidence, regardless of the means by which it was procured, is not a cause for its rejection at the trial. Fundamentally, the veracity of evidence is not tainted by the illegal or inappropriate way of obtaining it. So far as the evidence is relevant and persuasive, it is deemed as if it was procured in a right way. In the event that there is any objection to the evidence, the objection would affect the admissibility of the evidence and to a large extent, credibility of the witness. Whereas a plea agreement may be rejected on grounds of illegality such as fraud, misrepresentation, undue influence, mistake, or duress, pursuant to Act 1079, the court is entitled to reject a plea agreement in accordance with law.¹⁰⁸ The court may set aside a judgment premised on a plea agreement on application by the accused person or prosecutor on stated grounds.¹⁰⁹ This implies that the court can reject the plea agreement if it is tainted with illegality since that will be in consonance with law.

7.0 CONCLUSION

In this article, we compared and contrasted plea bargaining, plea of guilty and confessions, paying particular attention to their features and the contexts in which they arise. It is noted that plea bargaining and plea of guilty when accepted by a judge with respect to the charge or offence, cease evidence taking and immediately move the case to the conviction and sentencing stage. This cannot be said of confession, where even a trial de novo may be conducted to determine the voluntariness of the statement. Also, it is noted that not all cases that result in plea of guilty are the result of plea bargaining. Again, there may be instances where confessions would have a place in negotiating plea bargains due to the evidence adduced. This would have a bearing on the terms of the plea agreement. Nonetheless, not all plea bargaining entail confessions, and not all confessions lead to plea bargaining.

Also, we noted that while appeals are allowed with respect to plea of guilty under some conditions, same cannot be said for plea bargaining. It is trite that the right to appeal is sacrosanct, nonetheless, we are of the considered view that an accused person convicted and sentenced by means of a plea bargain should be allowed to challenge the judgment on grounds of defects either jurisdictional or non-jurisdictional, as applicable to plea of guilty.

¹⁰⁶ *Sewonmim and Others v The Republic* [1976] 1 GLR 15.

¹⁰⁷ Criminal and Other Offences (Procedure) (Amendment) Act 2022 (Act 1079), s 162K.

¹⁰⁸ *Ibid*, s162J.

¹⁰⁹ *Ibid*, s 162M.

This will not only protect the criminal defendants but would also help maintain the integrity of the criminal justice system.¹¹⁰

The introduction of plea bargaining in Ghana is timely. Plea bargaining is just one of the mechanisms through which a criminal conviction is concluded. It is neither the same as plea of guilty nor has any semblance of confessions.

¹¹⁰ Steven Schmidt, 'The Need for Review: Allowing Defendants to Appeal the Factual Basis of a Conviction after Pleading Guilty' (2010) *Minnesota Law Review* 434.

