

predatory criminal sexual assault pursuant to section 12-14.1(a)(1) of the Criminal Code of 1961 (720 ILCS 5/12-14.1(a)(1) (West 2010) (now 720 ILCS 5/11-1.40(a)(1))). The State filed an amended information on December 10, 2010, charging the defendant with eight counts of predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1) (West 2010) (now 720 ILCS 5/11-1.40(a)(1))). On January 24, 2011, the court held an *Alford* plea hearing. At that hearing, the court stated the following:

"I understand that you desire to enter into what's called an Alford plea; that is, you are not voicing or announcing a plea of guilty to these charges, but the State has made a proffer of evidence, at which time, based upon that proffer of evidence, I could find you guilty of these offenses based upon the proffer[.] *** If you were entering a negotiated plea of guilty, I'd be asking you if you want to plead guilty to the charges, and you would say yes if you wanted to plead guilty. But under the Alford plea there's been this proffer made as far as what evidence the State would present at the time of trial. Based upon that proffer I would find there is sufficient evidence to find you guilty of Counts I and II and then we would proceed with the finding of guilt on these counts."

Thereafter, the court found the defendant guilty of counts I and II and dismissed the other counts.

¶ 5 On February 11, 2011, and prior to a final judgment, the defendant filed a motion to withdraw his guilty plea. On February 28, 2011, the court denied the defendant's motion to withdraw his guilty plea. On June 10, 2011, the defendant was sentenced to two consecutive 11-year terms of incarceration. The defendant filed a motion to reconsider sentence as well as a second motion to withdraw his guilty plea. The court denied both motions. This appeal followed.

¶ 6

ANALYSIS

¶ 7 First, the defendant argues, and the State concedes, that the circuit court did not inform him that he was pleading guilty when he entered an *Alford* plea. We agree. In *North Carolina v. Alford*, 400 U.S. 25 (1970), the criminal defendant was charged with first-degree murder. He claimed that he was innocent. *Id.* at 29. However, the defendant determined that he did not want to risk going to trial and, by extension, an almost-certain death penalty. *Id.* He decided that entering a plea to second-degree murder was the best option. *Id.* The defendant pled guilty while maintaining his innocence. *Id.* Thus, when a defendant enters an *Alford* plea, he pleads guilty yet still claims his innocence. *People v. Church*, 334 Ill. App. 3d 607, 614 (2002). The Illinois Supreme Court has held that an *Alford* plea is a guilty plea. *People v. Barker*, 83 Ill. 2d 319, 332 (1980). A court must have a factual basis in order to accept an *Alford* plea. *Id.* at 333.

¶ 8 The voluntariness of a guilty plea is a constitutional issue which we review *de novo*. *United States v. Amaya*, 111 F.3d 386, 388 (5th Cir. 1997). "For a guilty plea to be constitutionally valid, there must be an affirmative showing that the plea was made voluntarily and intelligently." *People v. Urr*, 321 Ill. App. 3d 544, 547 (2001). A guilty plea that is not knowingly and voluntarily given violates a defendant's due process rights. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). "To determine whether a plea is voluntarily and intelligently entered, the Illinois Supreme Court adopted Supreme Court Rule 402, which requires the court to admonish defendant on the nature of the crime charged, the sentencing range, and the rights defendant forfeits as a result of pleading guilty." *Urr*, 321 Ill. App. 3d at 547. When pleading guilty, a defendant is waiving important constitutional rights; thus, it is important that a defendant understands the implications of his guilty plea. *People v. Dennis*, 354 Ill. App. 3d 491, 496 (2004).

¶ 9 In this case, the record shows that the circuit court did not inform the defendant that

he was pleading guilty. In fact, the circuit court told the defendant that he was not pleading guilty but that it could find him guilty based on a proffer by the State. As noted above, an *Alford* plea is a guilty plea. The circuit court did not properly admonish the defendant that he was pleading guilty and thus solicited an involuntary plea from him, the result of which requires us to reverse and remand this cause so the defendant may withdraw his guilty plea if he so chooses.

¶ 10 The defendant also argues, and the State concedes, that he did not receive proper admonishments pursuant to Supreme Court Rule 402 (eff. July 1, 1997). According to Rule 402(a), a court shall not accept a plea of guilty or a stipulation without first informing a defendant of the nature of the charge, the maximum and minimum sentence possible, that the defendant has a right to plead not guilty, and that by pleading guilty, he waives his right to a jury trial or his right to confront witnesses. Ill. S. Ct. R. 402(a) (eff. July 1, 1997). According to subsection (b), the court must confirm the terms of the plea agreement and determine whether any force, threats, or promises were used to obtain the guilty plea. Ill. S. Ct. R. 402(b) (eff. July 1, 1997). Rule 402 requires substantial compliance by the circuit court. Ill. S. Ct. R. 402 (eff. July 1, 1997).

¶ 11 Here, while the court did inform the defendant about the nature of the plea agreement, it did not accurately inform the defendant of the maximum sentence he could receive. While this issue, standing alone, does not automatically trigger a violation of Rule 402 (see *People v. Fuller*, 205 Ill. 2d 308, 323 (2002)), we find that it is not the only matter about which the circuit court failed to admonish the defendant. The court admonished the defendant that the maximum sentence he could receive was 30 years' imprisonment for each count. However, section 12-14.1(b)(1) of the Criminal Code of 1961 (720 ILCS 5/12-14.1(b)(1) (West 2010) (now see 720 ILCS 5/11-1.40(b)(1))) states that the maximum penalty for the charges against the defendant is 60 years' imprisonment. Thus, the defendant was not properly

informed about the penalties he could receive.

¶ 12 Further, the court did not inform the defendant that he had a right to plead not guilty, that he was waiving his right to a jury trial and his right to confront witnesses. The court did not question the defendant to determine whether any threats had been made to solicit the plea. As discussed above, the court did not inform the defendant that he was pleading guilty. We find that all of these facts establish that the circuit court did not substantially comply with Rule 402. Ill. S. Ct. R. 402 (eff. July 1, 1997).

¶ 13 The defendant also argues that credit for time served must be recalculated. However, if the defendant decides to plead guilty or is found guilty after a trial, a new sentence will be imposed, and the circuit court will consider the defendant's mittimus at that time. The defendant makes several more arguments on appeal, but as the first two issues require us to reverse the judgment of the circuit court and remand for further proceedings, we see no need to address those arguments.

¶ 14 CONCLUSION

¶ 15 For the foregoing reasons, the judgment of the circuit court of Fayette County is reversed and the cause is remanded.

¶ 16 Reversed and remanded.