

A Study on the Rationality of the Plea of Not Guilty After Pleading Guilty and Accepting Punishment

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Abstract

Although the leniency mechanism has been formally established as a legal mechanism, it needs to be improved gradually in the concrete implementation. At the moment, the criminal procedure requires that counsel be independent of counsel, so even if the victim pleads guilty in court, in principle, counsel may still insist on an acquittal. But from the point of view of judicial practice, people can still see a lot of the opposite of the two, and to squeeze the right to defense lawyers. (Gao, J.) in such circumstances, it is necessary to reconsider the question of whether an innocent plea can still be obtained after the accused has confessed his guilt and given a punishment, on the basis of a more precise and clear basic logic that a guilty plea can be given leniency, it is of great significance to examine the error of law practice. Judging from the research results at this stage, the rationality of the plea of not guilty after confession and punishment is mainly reflected in the following three aspects: the Balance and connection between the overall efficiency and the fairness of individual cases, the difficulties and solutions of the identification of form and substance, and the construction of the standard system of transparent and unified leniency. On the basis of a deep understanding of the connotation of the leniency system, the applicable standards of the leniency system are gradually improved to promote the level of judicial protection in Living Up.

Keywords: plea of guilty, plea of not guilty, the construction of leniency standard system

1. Interpretation of the System of Leniency to Those Who Confess Their Crimes and Accept Punishment

1.1 Judicial Interpretation and Functional Orientation of the System of Leniency in Pleading Guilty and Confessing Punishment

The leniency system of confession and punishment is the product of our country's reference to the western plea bargaining system and the basic conditions of our country. The criminal procedure established leniency in pleading guilty as an important principle in criminal proceedings, article 15 stipulates: "If a criminal suspect or defendant voluntarily and truthfully confesses his crime, confesses the facts of the crime he is accused of, and is willing to accept punishment, he may be given leniency in accordance with the law."

The system of leniency in pleading guilty and confessing punishment is a legal system of leniency in accordance with the law for criminal suspects and defendants who freely and honestly confess their crimes and sincerely repent and confess their punishment, it is a comprehensive legal system of entity norm and procedure safeguard. In terms of system orientation, it is the deepening development and systematization of the criminal policy of temper justice with mercy and confession with leniency, which is the result of the natural evolution of China's criminal legal system.

1.2 "Confession", "Confession" and "Leniency"

As for the concept of "Confession of guilt", there is currently little controversy in theory and judicial practice, according to the original Article 15 of the Criminal Procedure, reference to 2003 issued by the first part of the two high school, "The accused plead guilty to a number of cases," Article 1, and "Guidance" article 6 applicable.

If we want to understand the connotation of "Confession of punishment", it should be based on "Confession of guilt". In other words, "Confession of crime" is the basis and premise of "Confession of punishment". If the accused only "Confession of punishment" but not "Confession of crime", it will lose its theoretical basis and practical significance. Compared with "Confession of crime", "Confession of punishment" is more a comprehensive consideration of both procedural law and Substantive Law.

There is a logical relationship between “Confession of crime” and “Confession of punishment” in the system of leniency for confession of crime. Although “Repentance” belongs to the category of “Sin”, it is still an important index for the evaluation of “Confession of punishment”. When the charge changes, the accused must admit his punishment again. The execution of property penalty can not be regarded as the standard to evaluate “Confession of punishment”, which artificially limits the application of the system of leniency to confession punishment. In the case of the accused’s admission of punishment, a sentencing defence can still be made, especially if the defender is able to make a sentencing defence throughout the proceedings. (Yan, D.-F., & Shao, Q.-J., 2018) The “Confession of punishment” in the stage of investigation and investigation is of generality and fuzziness, and should not be strictly required.

Looking back on the “Leniency” of the grasp, it is both substantive leniency and procedural simplification of the two aspects. The substantial leniency means that the criminal suspect and the defendant, under the condition of confessing their crimes, can be reduced or exempted from punishment by taking the defender as the intermediary and negotiating with the prosecution. Procedural leniency refers to the use of lighter coercive measures against criminal suspects and defendants as well as simplified procedures.

“May leniency”, is refers to should manifest the legal stipulation and the policy spirit generally, gives leniency to handle. However, leniency may not be given in all cases, and if the guilty plea and punishment of a criminal suspect or defendant is not sufficient for a lighter punishment, if the nature of the crime and the harmful consequences are especially serious, the means of the crime are especially cruel, and the social impact is particularly severe, according to law, no leniency shall be meted out.

1.3 The Current Situation and the Existing Problems

The theory of the system of confession and punishment comes from the plea bargaining in common law system and the justice of negotiation in civil law system. This consultative nature, with “Information asymmetry” and “Power imbalance” characteristics, which led to the risk of the system. Because of this, in the civil law system and the common law system, the legitimacy of the consultative judicial process always precedes the consultative judicial process itself, and in the application and promotion of the Consultative Judicial System in the United States and Germany, also through the gradual improvement of the defense system, expand the coverage of defense lawyers, in order to support the power of criminal suspects and defendants, make up for the lack of the power of both sides, so as to achieve the perfection and justice of the form of consultation justice based on the pursuit of efficiency, and finally realize the legitimacy of the proceedings. Because of this, when China fully realizes the construction of due process and the lack of a complete defense mechanism, as well as the establishment of a consultative judicial system, the voluntariness and truthfulness of the punishment of the guilty suspect and the accused will be affected to a certain extent. (Zhou, X., 2020) Therefore, in the process of constructing the defense system and the criminal policy of temper justice with mercy, the defense system should be further perfected on the basis of the establishment of the criminal procedure in our country, so as to guarantee the justice and legality of the judiciary.

2. The Nature of the Plea of Not Guilty

Strictly speaking, a plea of not guilty is not the outcome we want, but rather a defense plan or strategy, and the defense is not just giving its opinion in court. (Wang, Y.-C., 2017) It is an important part of defense both in the police investigation and in the legal opinion examination of the indictment. The best result of a plea of not guilty is that the Public Security Bureau dismisses the case, the prosecutor’s Office does not prosecute, the prosecution is withdrawn or the court acquits. In practice, however, the achievement of the best outcome is closely linked to the circumstances of the case and many cases are unlikely to be dismissed, prosecuted or acquitted, provided that it is theoretically feasible, defense lawyers can still plead not guilty to a suspect or defendant in order to obtain a lesser punishment.

First, let’s be clear that not all cases are suitable for an acquittal. On the one hand, a lawyer’s defense opinion must be based on the law, but even if it is based on legal theory, it must be supported by sufficient factual evidence and no law may be enacted for the purpose of defense, nor shall they wilfully disregard legal provisions or relevant judicial interpretations for the purpose of defence. On the other hand, a lawyer’s opinion needs to respect the facts. Although the procuratorial organs have different opinions on the determination of facts, they can not go against the facts or fabricate the facts. If counsel does not respect the facts and enters a plea of not guilty, such a plea is not acceptable and is in essence an invalid one, with an irreversible negative impact on the outcome.

Secondly, generally speaking, the plea of not guilty is carried out from two angles. First, from the point of view of crime, starting with the elements, the charge against the suspect or defendant is not established. Secondly,

from the point of view of criminal procedure, with the rules of evidence and standards of proof, the available evidence is not sufficient to eliminate reasonable doubt and reach the sole conclusion of guilt. Either way, the outcome of the factual treatment depends on the circumstances of the evidence. It is a basic skill for a professional criminal defense attorney to find a break in a large number of case materials, but how many lawyers can do it. Once you find a breakthrough or a key point, you can improve your defense from a different angle. In order to perfect the legal opinion or the defense opinion, we should not only have the rationality and the legitimacy, but also stand in the procuratorate or the procuratorate's position to consider the problem, timely and carefully put forward the rebuttal opinion.

3. Reflection and Perfection of Innocent Plea After Confession and Punishment

3.1 The Balance and Connection Between Overall Efficiency and Justice of Individual Case

Efficiency and justice have always been one of the controversial points in the theory of leniency to those who confess their crimes. A view that, since the suspect, the accused have confessed, there is no plea of not guilty! Another view is that a guilty plea is not necessarily guilty, and in addition, whether the facts and evidence can be convicted, lawyers can certainly plead not guilty in accordance with the law. (Fen, C.-Y., 2019) It is true that the separation of a plea of guilty and a plea of not guilty can greatly reduce the pressure on the prosecutors and improve the efficiency of the proceedings, but in the spirit of "Presumption of innocence", before the gavel is hammered, no one can be presumed guilty. Therefore, I agree with the second point of view.

Everyone has the right to be innocent. It's a basic human right. In the course of investigation, with reference to the majority of judicial precedents, we consider that the defendant can plead not guilty even after he has pleaded guilty, which does not violate the relevant provisions of the system. The statement of the facts made by the accused is not necessarily connected with the determination of the facts and whether the facts constitute a crime or not, therefore, the defendant's plea of not guilty to the accused should not be used as a basis for the next stage of the defense. If we believe that the premise of leniency in pleading guilty is the accused honest confession of his "Crime", and there is a plea of not guilty after "Pleading guilty", then in essence it does not have the constitutive elements of subjective confession and repentance, excessive restrictions on the conditions for its application will inevitably bring more uncertainty to the trial of the case, resulting in the complete opposition between the leniency of the guilty plea and the plea of not guilty, the guarantee that leads to the justice of the case procedure will be disadvantageous to the direction of the accused. Based on this, the effect of plea of not guilty after pleading guilty in most ordinary cases is lower than the expectation of the lawyer, which has seriously shaken the firmness of judicial justice.

Second, according to Article 200 of the criminal procedure, a plea of not guilty must be entered in the following circumstances: First, according to the law, it has not yet reached the element prescribed by the criminal law, that is, if the circumstances are obviously minor and the harm is not great, the element of each crime should be weighed and a plea of not guilty entered. The second is whether the standard of proof for a crime is met, that is, "The evidence is insufficient and the defendant can not be found guilty." Even if the defendant pleads guilty, it still needs to be found based on solid and sufficient evidence outside his confession. Only the defendant's confession and no other evidence, the defendant can not be found guilty and sentenced to criminal punishment, so of course to make a plea of not guilty. This provision also fully reflects the judicial system of China's citizens for the fairness of individual case protection.

3.2 The Difficulties and Solutions to the Determination of the "Voluntariness" of Confession and Punishment

The system of leniency to those who confess their crimes and plead guilty applies a tailor-made trial model to cases, and different trial models are applied to different types of cases, instead of being used for the purpose of use. (Niu, D.-R., 2019) In the trial and the judicial practice of the last two years, it has happened from time to time that the criminal suspect and the accused plead guilty and admit punishment, but it is not from the original intention. For example, those who have accepted, threatened to confess, promised to confess, been cheated to confess, or even a few who lack legal knowledge are not guilty at all. They are caught in a prison by mistake and "Confess" their crimes. In such cases, the lawyer shall of course plead not guilty. The prominent feature of the application of the system of leniency in pleading guilty in China is to choose whether or not to apply it according to the subjective repentance of the parties involved in the case itself:

One is the standard of the accused's voluntary confession and punishment. The judgment on the voluntariness of confession and punishment should adhere to the standard of combining subjectivity and objectivity. Our country's criminal procedure has explicitly ruled out illegal methods of obtaining evidence, such as extorting a confession by torture, and has set an objective standard for the voluntariness of confession by the accused, on the other hand, if the accused does not know the facts and evidence of the case, and does not know his own

accusation and the consequences of his guilty plea, it does not meet the subjective requirement of “Voluntariness”.

The other is the practical application of the leniency system. The main predicament of the voluntary realization of the accused confession and punishment is embodied in four aspects: (1) the accused passive “Voluntary” under external pressure, that is to say, the guilty plea and punishment made by the accused was made under various kinds of coercion or in order to achieve a certain goal, and it was not voluntary behavior, which could lead to the increase of the probability of the accused repentance and affect the smooth running of the judicial process. (2) a false “Voluntary”, that is, a person who has committed a criminal act and is reluctant to confess guilt, but who, in the hope of leniency, falsely “Voluntarily” admits guilt or does not commit a criminal act, but in order to take the blame for others and in order to obtain the result of leniency and false “Voluntary” confession. (3) the repentance of the accused after “Voluntary” admission of guilt and punishment, that is, the accused has confessed his guilt and punishment, but has reneged at the later stage, and the lack of construction of the repentance mechanism in our country has also led to the waste of judicial resources. (4) weakness of the defence. In the system of leniency in pleading guilty, the role of lawyers is very important. Pleading guilty means that the accused voluntarily gives up the right to plead not guilty, and the lack of lawyers’ help leads to an unclear understanding of his own legal rights, a hasty decision to plead guilty. (Jiang, Y.-F., 2019) Therefore, the professional orientation and scope of duty lawyer should be further clarified, and the defense force should be improved so that the “Voluntariness” of confession and punishment can be fully guaranteed.

Third, the accused right to broaden relief channels. This is very important for the construction of the voluntary guarantee mechanism for the accused in the system of leniency to those who confess their crimes and plead guilty, it can be explained in depth from three aspects: (1) Strengthening the judicial review of “Voluntariness” can prevent the fluctuation of confession and punishment, which leads to the waste of judicial resources, the delay of legal proceedings, and the decrease of the efficiency of handling cases, etc. , it can protect the legitimate rights and interests of the accused and prevent the occurrence of unjust, false and erroneous cases. (2) To guarantee the right of repentance and the right of withdrawal of confession and punishment, and to give the accused the right of withdrawal of confession and punishment is a relief right to guarantee the voluntary nature of confession and punishment, but the exercise of the right of withdrawal is not absolute freedom, but has its limits. (3) To strengthen the defense force, the accused should improve the awareness of the right to defense, the lawyer should further promote effective defense, duty lawyer can further improve the defense system for China’s unique mandatory assignment.

3.3 The Construction of the Standard System of Transparent and Unified Leniency

Compared with other criminal mechanisms, the leniency mechanism is not omnipotent. What cases and under what circumstances the criteria should be applied must also be based on practice and not on the disregard of objective circumstances, the imposition of application in disregard of conditionalities or the establishment of unrealistic indicators. Therefore, no matter how to apply the leniency standard or how to specifically study how to apply the leniency standard, we must, under the guidance of the specific judicial practice, make reasonable theoretical analysis and correct practical summary, to make a targeted study.

First of all, it is necessary to further improve the criteria of leniency in pleading guilty, that is, to further clarify what circumstances can be leniency in pleading guilty, what circumstances can not be leniency in pleading guilty, and clearly define what circumstances can not be leniency in pleading guilty. (Zhang, W., 2022) In particular, we should classify confessions according to the inherent logic of the leniency regime. (1) If the criminal suspect or the victim simply confesses to the crime and is willing to accept the punishment, but can not repair the relationship with the victim well, and the assessment result indicates that the personal risk is high, it is not appropriate to grant leniency to the person who confesses to the crime. (2) The criminal suspect and the victim not only confess their crimes truthfully and are willing to accept the punishment, but also can repair the relationship with the victim. Through the personal risk assessment, the punishment of full confession can be imposed, and the procedural confession of guilt can be applied with leniency, the punishment may also be meted out with a plea of guilty and leniency. (3) An honest confession of guilt and willingness to accept punishment by the suspect or the victim, while at the same time being able to repair the relationship with the victim or being able to pass a personal risk assessment, is to some extent a confession of guilt between the former two, call it a partial confession. In this case, both procedural leniency and penalty leniency may be applied, but the scope of penalty leniency should be less than the scope of all confessions.

Secondly, in the specific scope of leniency, it is necessary to improve the standard of leniency according to the inherent logic of leniency. In particular, the broad scope can not be determined by the time of confession and the

time of penalty, which can only affect the efficiency of the proceedings. If we take this as the main standard of measurement, we will have the suspicion of substituting efficiency for justice, which violates the principle of adaptability between crime and punishment. Therefore, in determining the broad scope, the results of the assessment of the personal risk of the criminal suspect and the victim and the extent to which their relationship with the victim has been repaired should be taken as the main measurement indicators, with the time of confession and the time of punishment as auxiliary indicators, to determine the extent of the sentence.

References

- Fen, C.-Y. (2019). Plead guilty and plead not guilty. *The Rule of Law by the People*, (23), 110-111.
- Gao, J. Procuratorial Thinking on the defense of innocence in the case of confession of guilt and punishment. *Beijing Fangshan District People's Procuratorate*.
- Jiang, Y.-F. (2019). On the voluntary guarantee of the accused admission of guilt and punishment. *Journal of Shandong Police College*, (2).
- Niu, D.-R. (2019). A study on the voluntary nature of the accused under the system of leniency to those who confess their crimes under the new criminal procedure. *Journal of Jiangxi Police Academy*, (3).
- Wang, Y.-C. (2017). Guilty plea and punishment from the perspective of wide legal norms interpretation and system design. The theory and practice of the system of leniency in pleading guilty and confessing punishment: *Proceedings of the Thirteenth National Senior Prosecutors Forum*.
- Yan, D.-F., & Shao, Q.-J. (2018). On criminal defense counsel's cautious plea of not guilty. *Rule of Law and Society*, (8).
- Zhang, W. (2022). Criminal integration of the application and improvement of the system of leniency to guilty plea. *Journal of Law*, 43(2), 147-157.
- Zhou, X. (2020). An empirical study on the protection of the rights of the accused who plead guilty and punish. *French Business Studies*, (1), 36.

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