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SCHALLER, J., concurring in part and dissenting in part. I agree with part I of the majority decision. I respectfully disagree, however, with part II, in which the majority concludes that (1) there is a fundamental inconsistency between an *Alford*[1] plea and a probation condition that requires an admission of guilt, and (2) that ''the defendant did not have prior fair warning . . . that his denials . . . [of a problem] could dissipate his purpose in pleading under the *Alford* doctrine [and] could result . . . [in] a revocation of probation,'' thereby denying him his right to due process. I believe that (1) there is no inconsistency, and (2) the court was not required to notify the defendant that compliance with his probation might require him to admit culpability or acknowledge a problem with the type of behavior that constitutes the underlying crime because such notice is a collateral consequence of his plea. I would affirm the judgment of the trial court.

An examination of the record reveals that the defendant entered a guilty plea under the *Alford* doctrine, which the court explained to the defendant during the plea canvass: ''[Y]ou plead guilty, but you don't agree necessarily with everything that the state claims that you did or what they claim they could prove at trial. But you would rather plead guilty rather than run the risk of having another trial. Is that correct?'' The defendant replied, ''Correct.'' The court accepted the defendant's plea. At sentencing, in addition to the usual conditions, the court required the defendant to participate in ''sex offender treatment as deemed appropriate by probation . . . .'' On July 31, 1998, the defendant signed his conditions of probation, which included participation in sex offender treatment. Thereafter, his probation officer referred him to Special Services Center for the Treatment of Problem Sexual Behavior (also known as Connections, Inc.) for sex offender treatment[2] (special services).

On December 14, 1998, the defendant signed a treatment contract with special services, which contained the following applicable clause: ''12 (a) If I am a Parole or Transitional Supervision client, I understand that my release and acceptance into treatment is based on my continued acknowledgment of my sexual offense behavior.

''(b) If I am a Probation client, I understand that denial of my behavior means I am accorded a conditional acceptance. Unwillingness to acknowledge my behavior within six months may mean the possibility of termination.'' The paragraph above the defendant's signature stated: ''I understand and agree that *any* violation of the conditions of this contract may be grounds for termination from the Program. I also understand that my

probation/parole/transitional supervision officer and/or [department of children and families] worker will be notified immediately of any violation of this contract. I understand that a copy of this contract will be forwarded to my supervising officer." (Emphasis in original.)

On July 28, 1999, the defendant's treatment counselor informed the defendant that he would have one more week to decide to either admit his offense or to submit to a physiological detection of deception test. His treatment counselor further informed him that failure to do one or the other would result in his discharge from counseling. The following day, July 29, 1999, the defendant's probation officer informed him that discharge from treatment would result in violation of his probation.

On August 7, 1999, special services notified the defendant's probation officer that the defendant had been discharged from its treatment program for failing to acknowledge his culpability for the offense, which set him apart from other members of the group. Thereafter, the defendant's probation was revoked.

The defendant argues that the court improperly (1) applied General Statutes § 53a-32a retroactively to him[3] and (2) concluded that he violated his probation. Specifically, he argues that the court improperly revoked his probation after concluding that he violated his probation by failing to complete his sexual offender treatment. The crux of the defendant's argument is that his probation requirement to complete sexual offender treatment conflicted with his plea under the *Alford* doctrine because a treatment condition required him to admit culpability while the *Alford* doctrine allowed him to maintain his innocence while pleading guilty. During the course of treatment, the defendant refused to admit culpability or to acknowledge a problem with the type of behavior underlying the crime to which he pleaded guilty. He therefore was discharged from treatment. He argues that the court's failure to inform him that he would have to acknowledge responsibility or culpability to complete treatment and that failure to complete treatment would result in a revocation of probation denied him due process.

The majority accepts the defendant's argument and concludes that (1) there is a fundamental inconsistency between an *Alford* plea and a probation condition that requires an admission of guilt, and (2) the defendant was not given fair warning that even though he pleaded guilty under the *Alford* doctrine he would be required to admit his guilt in sexual offender treatment or be discharged from treatment, resulting in violation of his probation.[4] I respectfully disagree with both conclusions.

First, I address the issue of whether there is a fundamental inconsistency between an *Alford* plea and a probation condition that requires an admission of culpability or acknowledgement of a problem with the type of behavior underlying the crime to which a defendant pleads guilty. To determine whether there is an inconsistency, an evaluation of the fundamental principle on which all *Alford* pleas are based is necessary. The *Alford* plea has its roots in *North Carolina* v. *Alford*, 400 U.S. 25, 91 S. Ct 160, 27 L. Ed. 2d 162 (1970), in which the United States Supreme Court upheld the defendant's guilty plea even though he continued to proclaim his innocence. In *State* v. *Palmer*, 196 Conn. 157, 491 A.2d 1075 (1985), our Supreme Court observed that ''[a] guilty plea under the *Alford* doctrine is a judicial oxymoron in that the defendant does not admit guilt but acknowledges that the state's evidence against him is so strong that he is prepared to accept the entry of a guilty plea nevertheless.'' Id., 169 n.3.

Significantly, the court in *Alford* concluded that there was no significant difference between a plea that refused to admit commission of the criminal act and a plea containing a protestation of innocence as long as the defendant intelligently concluded that his interest required entry of a guilty plea and the record before the judge contained strong evidence of actual guilt. *North Carolina* v. *Alford*, supra, 37. In *Alford*, the court observed that a guilty plea under which the defendant maintains his innocence is the practical equivalent of a plea of nolo contendere. Id. An *Alford* plea, therefore, ''has the same legal effect as a plea of guilty or nolo contendere on all further proceedings within the indictment.'' *State* v. *Banks*, 24 Conn. App. 408, 412, 588 A.2d 669 (1991). In other words, an *Alford* plea contains neither a special promise that a defendant will never have to admit his guilt, nor that the defendant's protestations of innocence will extend to future proceedings. See *North Carolina* v. *Alford*, supra, 37; see also *People* v. *Birdsong*, 958 P.2d 1124, 1129 (Colo. 1998) (en banc); *State* v. *Alston*, 139 N.C. App. 787, 793, 534 S.E.2d 666 (2000); *State ex rel. Warren* v. *Schwarz*, 219 Wis. 2d 615, 633–34, 579 N.W.2d 698, cert. denied sub nom. *Warren* v. *Wisconsin*, 525 U.S. 966, 119 S. Ct. 413, 142 L. Ed. 2d 335 (1998).

It is common practice for trial courts to impose various types of treatment, including sexual offender, mental health, and alcohol and drug abuse treatment, as conditions of probation to individuals who either have pleaded guilty, nolo contendere or guilty under *Alford*. See, e.g., General Statutes § 53a-30 (a). The objectives of probation are ''to foster the offender's reformation and to preserve the public's safety,'' and requiring treatment correlates with those objectives. (Internal quotation marks omitted.) *State* v. *Misiorski*, 250 Conn. 280, 287, 738 A.2d 595 (1999). ''It is a central tenet of sex

offender treatment to require the offender to admit his or her guilt. . . . This requirement, like any other condition of probation, serves the goals of rehabilitation and protection of the state and community interest.'' (Citations omitted.) *State ex rel. Warren* v. *Schwarz*, supra, 219 Wis. 2d 632 n.10.

I conclude that there is no fundamental inconsistency between an *Alford* plea and a probation condition that requires an admission of culpability or an acknowledgement of a problem with the type of behavior underlying the crime to which a defendant pleaded guilty. *Alford* pleas are not treated differently from nolo contendere pleas, which themselves, are not treated differently from guilty pleas.[5] There is no special promise to a defendant who pleads under *Alford* that he will never have to admit culpability or acknowledge that he has a problem with the type of behavior underlying the crime to which he pleaded guilty. Furthermore, probation is a conditional release and is designed to assist in the defendant's reformation while preserving public safety. If the defendant is unwilling to acknowledge that he has a problem that needs reforming, then the purpose of rehabilitation is not being met and public safety is jeopardized. I, therefore, conclude that there is no inconsistency in requiring a person who pleads under the *Alford* doctrine to admit during treatment culpability or to acknowledge that he has a problem with the type of behavior underlying the crime to which he pleaded guilty and to revoke probation if the person fails to do so. Such a result as revocation of probation is consistent with any other type of violation of probation.

The majority argues that the defendant should have been placed in a different type of treatment program for sexual offenders who do not admit culpability. I am not persuaded. There is nothing in the record to show that the defendant requested the opportunity to participate in a different sexual offender treatment program or filed a motion pursuant to § 53a-30 (c) to modify the conditions of his probation. Moreover, the evidence indicates that the defendant would not qualify for treatment with the special group of persons who did not acknowledge culpability because of his uncooperative attitude during treatment at special services.

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Next, I address the majority's conclusion that the defendant was not given fair warning that even though he pleaded guilty under the *Alford* doctrine, he would be required to admit his guilt in sexual offender treatment or be discharged from treatment, which would result in violation of his probation. See footnote 3. Although the majority states in a footnote that it does not impose a duty on the trial court to advise the defendant of the rules of a treatment program, the practical effect of the majority decision is that if a trial court does not so advise the defendant, the defendant will

not have fair notice. In other words, the majority's conclusion amounts to imposing an obligation on the trial court at the plea hearing to inform the defendant that compliance with the sexual offender treatment requirement of his probation might require him to admit culpability or acknowledge a problem with the type of behavior underlying the crime to which he pleaded guilty. I respectfully disagree.

The trial court's mandatory advisement to the defendant during the plea hearing does not extend to the specific requirements of a treatment program in which the defendant must participate to comply with his probation because such requirements are collateral consequences of his plea. Rather, the trial court must advise the defendant only of the direct consequences of the guilty plea to satisfy the due process concerns that a plea be made knowingly, voluntarily and with a full understanding of the consequences thereof. *State* v. *Andrews*, 253 Conn. 497, 502–504, 752 A.2d 49 (2000); see also *Ramos* v. *Commissioner of Correction*, 67 Conn. App. 654, 662–63, 789 A.2d 502 (2002). Accordingly, a guilty plea is not rendered invalid by a trial court's failure to warn a defendant of the collateral consequences of his guilty plea. See *State* v. *Andrews*, supra, 505.

''Although a defendant must be aware of the direct consequences of a plea, the scope of 'direct consequences' is very narrow. J. Bond, Plea Bargaining and the Guilty Plea (2d Ed.) § 3.38. In Connecticut, the direct consequences of a defendant's plea include only the mandatory minimum and maximum possible sentences; Practice Book § [39-19 (2) and (4)]; the maximum possible consecutive sentence; Practice Book § [39-19 (4)]; the possibility of additional punishment imposed because of previous conviction(s); Practice Book § [39-19 (4)]; and the fact that the particular offense does not permit a sentence to be suspended. Practice Book § [39-19 (3)]; cf. J. Bond, supra [§ 3.38]. The failure to inform a defendant as to all possible indirect and collateral consequences does not render a plea unintelligent or involuntary in a constitutional sense.'' (Internal quotation marks omitted.) *State* v. *Andrews*, supra, 253 Conn. 504–505. To date, no direct consequences beyond those set forth in Practice Book § 39-19 have been identified by our Supreme Court or by this court; however, several characteristics of direct consequences have been defined as those consequences that have a definite, immediate and largely automatic effect on the range of the defendant's punishment. *State* v. *Andrews*, supra, 507 & n.8; see also *Ramos* v. *Commissioner of Correction*, supra, 663.

Because the possible requirement that the defendant admit culpability or acknowledge a problem with the type of behavior underlying the crime to which he pleaded guilty is not defined as a direct consequence

under Practice Book § 39-19, we need to evaluate whether that consequence has the characteristics of a direct consequence. The issue here, then, is whether the defendant's probation requirement to participate in sexual offender treatment, specifically the treatment program's requirement to admit culpability or to acknowledge that he has a problem with the type of behavior underlying the crime to which he pleaded guilty, had a definite, immediate and largely automatic effect on the range of the defendant's punishment and, thus, was a direct consequence of his plea.

I conclude that the treatment requirement to admit culpability or to acknowledge that the defendant has a problem with the type of behavior underlying the crime to which he pleaded guilty does not have definite, immediate and largely automatic effect on the defendant's punishment. The treatment requirement, therefore, is a collateral consequence and is not required to be included in an advisory canvass. First, it is not definite because it largely depends on the defendant's willingness to admit in a rehabilitative setting that he has a problem with the type of behavior underlying the crime to which he pleaded guilty. Some defendants who are unwilling to admit guilt at the plea stage could well be amenable to acknowledging a problem at the treatment stage. See, e.g., *People* v. *Birdsong*, supra, 958 P.2d 1128; *State ex rel. Warren* v. *Schwarz*, supra, 219 Wis. 2d 638. Second, it is not immediate, either in time or in impact, because the probation revocation would not have occurred if while receiving treatment he had admitted culpability or acknowledged that he had a problem with the type of behavior underlying the crime to which he pleaded guilty. Finally, it was not automatic because compliance with the requisite condition of his probation was within the defendant's own control. See, e.g., *State* v. *Waskiewicz*, 68 Conn. App. 367, 372, 789 A.2d 1164 (2002) (concluding that defendant, discharged from rehabilitation program required for probation, had control over own behavior and could have complied with rules of program, but failed to do so; thus, revocation justified). Moreover, it did not alter his total effective sentence or result in the imposition of any additional punishment. At sentencing, the trial court required the defendant to complete successfully sexual offender treatment, having suspended his twelve year sentence and ordering five years probation. When the defendant violated that condition of his probation, the court committed the defendant to the commissioner of correction to serve the twelve year term originally imposed. The condition, therefore, had no effect on the range of his punishment and hence was not a direct consequence of his plea.

I further disagree with the majority that the defendant did not have prior fair warning. "[A] defendant may receive notice and fair warning sufficient to comport with due process without necessarily receiving that

notice from a court. Indeed, probation officers can provide adequate warning. Courts universally require, however, some set of circumstances, be it in a courtroom or in a meeting with a probation officer, a prohibition or common sense inference of a prohibition drawn from the situation, that creates an understanding and appreciation that engaging in certain conduct may result in a termination of conditional liberty.'' *State* v. *Reilly*, 60 Conn. App. 716, 731, 760 A.2d 1001 (2000).

The defendant did receive notice and fair warning, sufficient to comport with due process, that his failure to admit culpability or to acknowledge that he had a problem with the type of behavior underlying the crime to which he pleaded guilty would result in his discharge from treatment and revocation of his probation. The record shows that the defendant agreed in court to the probation condition to obtain sex offender treatment as deemed appropriate by probation. The defendant not only agreed to that condition during the oral plea colloquy with the court, but also personally signed his conditions of probation on July 31, 1998. The defendant's probation officer referred him for sexual offender treatment to special services, with which the defendant had signed a contract. The contract contained a clause that specifically informed him that part of his treatment would include his ''continued acknowledgment of [his] sexual offense behavior'' and that ''[u]nwillingness to acknowledge [his] behavior within six months may mean the possibility of termination.'' There is no evidence that the defendant objected to signing the contract with special services. The defendant was informed by his probation officer and by his treatment counselor that failure to admit his offense would result in discharge from counseling and violation of his probation. See, e.g., id., citing *Mace* v. *Amestoy*, 765 F. Sup. 847, 849–50 (D. Vt. 1991). At no time did the defendant request that his probation officer assign him to a different sex offender treatment program that did not require an acknowledgement of a problem with the type of behavior of the underlying crime. Either prior to signing the contract with special services or once the defendant realized that during treatment he had to acknowledge that he had a problem with the type of behavior underlying the crime to which he pleaded guilty to fulfill his treatment, the defendant could have requested the court to modify his probation conditions on the basis that a sexual offender treatment program requiring such an admission or acknowledgement conflicted with his *Alford* plea. Instead, the defendant continued the treatment program until he was discharged more than seven months later. He should not be rewarded for his untimely objection to the probation condition after having acquiesced on so many occasions. Moreover, it is unreasonable to expect the trial court to anticipate the requirements of every treatment program that probation may require a defendant to complete. ''An infinity

of consequences flow from a guilty plea. A trial judge, or any human being for that matter, is in no position to advise on all the ramifications of a guilty plea personal to a defendant.'' (Internal quotation marks omitted.) *Ramos* v. *Commissioner of Correction*, supra, 67 Conn. App. 662.

The majority decision carves out an exception to the general rule that a court must instruct a defendant only on the direct consequences of a guilty plea. Direct consequences are enumerated in Practice Book § 39-19, the characteristics of which have been defined as having definite, immediate and automatic effect on the defendant's punishment. The rule of treatment that the defendant must admit culpability or acknowledge that he has a problem with the type of behavior underlying the crime to which he pleaded guilty, is a collateral consequence of the defendant's plea. The court was not obligated to inform the defendant of the rule of treatment at the plea hearing. Moreover, the defendant had fair notice to satisfy due process. The majority, however, reasons that there is a fundamental inconsistency between an *Alford* plea and a probation condition that requires an admission of guilt or acknowledgement of a problem with the type of behavior underlying the crime to which the defendant pleaded guilty. I conclude that there is no inconsistency. An *Alford* plea operates as a plea of nolo contendere and does not contain an inherent promise that a defendant can maintain his innocence in fulfilling his probation. I would not create an exception to the general rule and require the trial court to inform a defendant at the plea hearing of a collateral consequence, specifically that in the course of treatment necessary to fulfill the probation condition, the defendant might be required to admit culpability or to acknowledge that he has a problem with the type of behavior underlying the crime to which he pleaded guilty. Accordingly, I would affirm the judgment of the trial court.

For the foregoing reasons, I respectfully dissent.

[1] *North Carolina* v. *Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 162 (1970).

[2] Special services contracts with the state's office of adult probation to provide sex offender treatment to those probationers referred for assessment and treatment. It conducts group therapy sessions in the office of adult probation.

[3] The majority agrees with the defendant that the trial court improperly applied General Statutes § 53a-32a *retroactively* to him. Although I do not agree with the majority that the trial court improperly applied § 53a-32a retroactively, I do not need to reach that issue. I focus my dissent on the majority's conclusion that the defendant did not receive fair warning that during treatment he might have to admit culpability or acknowledge a problem with the type of behavior underlying the crime to which he pleaded guilty to fulfill his probation requirement to receive sexual offender treatment.

[4] I disagree that the special services treatment program required the defendant to admit his guilt to the underlying crime. The record reflects that what was sought of the defendant during treatment was that he acknowledge that he had a problem with the type of behavior underlying the crime to which he pleaded guilty, as detailed in provision 12 (a) of the contract with special services.

[5] ''The only practical difference [between a plea of nolo contendere and a guilty plea] is that the plea of nolo contendere may not be used against

the defendant as an admission in a subsequent criminal or civil case." (Internal quotation marks omitted.) *State* v. *Rish*, 17 Conn. App. 447, 456, 553 A.2d 1145, cert. denied, 211 Conn. 802, 559 A.2d 1137, cert. denied, 493 U.S. 818, 110 S. Ct. 72, 107 L. Ed. 2d 38 (1989). That is not the situation before us. There is no subsequent criminal or civil case of which this court is aware. The defendant has not shown, nor has the majority commented on, how the defendant's admission during treatment of culpability or acknowledgement of a problem with the type of behavior underlying the crime to which he pleaded guilty might be used against the defendant.