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publication in the New York Reports.

No. 29
In the Matter of David W. Howard,
Respondent,
v.
Stature Electric, Inc., et al.,
Appellants.
Workers' Compensation Board,
Respondent.

Susan B. Marris, for appellants.
Christine A. Scofield, for respondent Howard.

PIGOTT, J.:

The question presented on this appeal is whether claimant's Alford¹ plea should be given preclusive effect in a subsequent workers' compensation proceeding. Because it cannot be said that the guilty plea necessarily resolved the issue

¹ North Carolina v Alford, 400 US 25 (1970).

raised in the workers' compensation proceeding, preclusive effect should not be given.

In March 2003, claimant, David Howard, sustained a back injury while employed by respondent Stature Electric, Inc. He applied for and received workers' compensation benefits. At a workers' compensation hearing, when asked, claimant testified that he had no employment outside of his job with Stature Electric.

In November 2005, claimant was arrested and faced four charges: insurance fraud in the third degree (Penal Law § 176.20), grand larceny (Penal Law § 155.35), offering a false instrument for filing in the first degree (Penal Law § 175.35), and a violation of Workers' Compensation Law § 114, entitled "Penalties For Fraudulent Practices," which defines various fraudulent acts under the Workers' Compensation Law and classifies them as E felonies. Ultimately, claimant entered a plea of guilty to only one charge, insurance fraud in the fourth degree (Penal Law § 176.15), in satisfaction of all charges. He did so, according to the record, by entering an "Alford plea", i.e., he was pleading guilty as defense counsel said, because of the "risks involved in going to trial" and "without an admission of any wrongdoing." The court accepted his plea without any allocution as to the facts underlying it, and sentenced him to an agreed-upon conditional discharge, restitution of an unknown amount, and a certificate of relief from disabilities.

At a subsequent Workers' Compensation hearing, the State Insurance Fund (SIF), Stature Electric's workers' compensation carrier, sought to preclude claimant from further benefits based upon the guilty plea. The Workers' Compensation Law Judge denied the application on the ground that the plea "did not contain a factual allocution such that it could be determined that the plea matched the carrier's claim of a violation of the Workers' Compensation Law." The Workers' Compensation Board modified, by giving preclusive effect to Howard's guilty plea and finding that Howard violated section 114-a. The Appellate Division reversed and remitted for further proceedings, reasoning that "the requirement of identity was not met and collateral estoppel does not apply" because, when claimant entered his Alford plea, he made no factual admissions and the transcript of the plea proceedings lacked any discussion of the factual basis for the charge (Matter of Howard v Stature Electric, Inc., 72 AD3d 1167, 1170 [3rd Dept 2010]). We agree and therefore affirm the final Workers' Compensation Board decision and the Appellate Division order brought up for review.

In New York, "Alford pleas are, and should be, rare" (Silmon v Travis, 95 NY2d 470, 474 [2000]). Such a plea is allowed only when, as in Alford itself, "it is the product of a voluntary and rational choice, and the record before the court contains strong evidence of actual guilt" (id. at 475). And we have said that "from the State's perspective [Alford pleas] are

no different from other guilty pleas; it would otherwise be unconscionable for a court to sentence an individual to a term of imprisonment" (id.). Indeed, we have made clear that an Alford plea may generally be used for the same purposes as any other conviction and that, like any other guilty plea, it may be used as a predicate for civil and criminal penalties (id.).

Thus, as we would with any plea, we consider two factors when determining whether preclusive effect should be given: First, whether the identical issue was necessarily decided in the prior action or proceeding and is decisive of the present action, and second, whether the party who is attempting to relitigate the issue had a full and fair opportunity to contest it in the prior action or proceeding (see Kaufman v Eli Lilly & Co., 65 NY2d 449, 455 [1985]). Importantly, "[t]he party seeking the benefit of collateral estoppel has the burden of demonstrating the identity of the issues in the present litigation and the prior determination, whereas the party attempting to defeat its application has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action" (id. at 456).

Here, the plea colloquy preceding claimant's insurance fraud conviction included no reference to the facts underlying the conviction, so it is impossible to conclude that the conviction was based upon the same circumstances alleged to be fraudulent in the workers' compensation proceeding. SIF

therefore failed to meet its burden of proving identity of issue. As a result, the plea did not prohibit claimant from challenging the workers' compensation violation alleged.

Accordingly, the decision of the Workers' Compensation Board appealed from and the order of the Appellate Division brought up for review should be affirmed, with costs.

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Decision of the Workers' Compensation Board appealed from and order of the Appellate Division brought up for review affirmed, with costs. Opinion by Judge Pigott. Chief Judge Lippman and Judges Graffeo, Read and Smith concur. Judge Rivera took no part.

Decided March 21, 2013