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Criminal Law—Rights of Defendant Under Section 472 or 480 of Code of Criminal Procedure

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for this position were that the relator's 1935 plea of guilty made any adjudication of guilt unnecessary, and secondly, his commitment to Naponch, a mental institution, postponed the sentencing until he was mentally capable of being sentenced.²¹

The Court of Appeals held that a commitment to Napanoch under Section 438 of the Correction Law constitutes both a conviction and a judgment. For Section 438 specifically provides that only upon conviction shall a male be committed, and therefore commitment is judgment. The Court went on to hold that the failure of the lower court to comply with those sections of the Code relating to the pronouncement of judgment, Section 473 in particular, entitled the relator to be remanded for commitment to Napanoch, but not to a complete vacatur of this conviction. If, upon this remand, he can show legal cause why he should not have been so committed, in accordance with Section 480 of the Code,²² only then will his conviction as a second offender be set aside.

RIGHTS OF DEFENDANT UNDER SECTIONS 472 OR 480 OF THE CODE OF CRIMINAL PROCEDURE

Does a violation of Section 472 or Section 480 of the Code of Criminal Procedure work a vacatur of both the sentence and the conviction of the defendant?

The Court of Appeals was faced with this question in the cases of *Peo. ex rel. La Shombe v. Jackson*²³ and *Peo. ex rel. Emanuel v. McMann*.²⁴

In the *La Shombe* case, the relator was convicted of second degree assault in 1947. Subsequently, in 1955, he pleaded guilty to four counts of an indictment and was sentenced as a second felony offender. In his habeas corpus application, the relator contended that he was improperly sentenced as a second offender because the court, in the prior conviction of 1947, had failed to accord him a two-day delay prior to pronouncing sentence as required by Section 472. Relator argued that such omission requires the vacatur of the original sentence and conviction of 1947, and that he should be resentenced as a first felony offender for the 1955 conviction. The Clinton County Court sustained the writ and the Appellate Division reversed on the law and facts.²⁵

In the *Emanuel* case, the relator was also sentenced as a second felony offender. He, too, sought resentencing as a first offender on the basis that the first sentence and conviction should be vacated since the trial court in the first conviction failed to comply with the requirements of Section 480, in that the clerk did not ask him if he had any legal cause as to why judgment should

21. See 7324 Cases In Points, Case 8, Respondents' Brief, pp. 6-8. Respondent relied on *People v. Eckert*, 179 Misc. 181, 39 N.Y.S.2d 79 (County Ct. 1942).

22. *Supra* note 20.

23. 7 N.Y.2d 345, 197 N.Y.S.2d 177 (1960).

24. 7 N.Y.2d 342, 197 N.Y.S.2d 174 (1960).

25. 8 A.D.2d 650, 184 N.Y.S.2d 949 (3d Dep't 1959).

not be pronounced against him. The Clinton County Court sustained his writ of habeas corpus but the Appellate Division reversed on the law and facts.²⁶

On appeal, the Court of Appeals affirmed the Appellate Division, holding that a violation of either Section 472 or Section 480 only entitles the defendant to be remanded to the sentencing court to be resentenced after compliance with Sections 472 and 480, but the validity of the prior judgment of conviction is in no way affected.²⁷

Section 472 states: Time for pronouncing judgment, to be appointed by the court:

The time appointed must be at least two days after the verdict, if the court intend to remain in session so long, or if not, as remote a time as can reasonably be allowed; but any delay may be waived by the defendant.

Section 480 states: Arraignment of defendant for judgment:

When the defendant appears for judgment, he must be asked by the clerk whether he have any legal cause to show why judgment should not be pronounced against him.

In a criminal case, the sentence of the court is the judgment.²⁸ Sections 472 and 480 are treated as interdependent parts of the statutory plan governing sentence. Previous compliance with the provisions of Section 472 is necessary in order to give affect to the purpose and intent of Section 480.²⁹ Failure of a trial court to comply with Section 472 is not a mere procedural irregularity not affecting the validity of the sentence, but constitutes a deprivation of a substantial legal right.³⁰ The requirement of Section 480 is mandatory and cannot be waived.³¹

However, when an improper sentence is the sole basis of the complaint, no vacatur of the judgment of conviction or adjudication is necessary, since justice may be done by correction of the sentence. The vacatur of sentence for non-compliance of either Section 472 or Section 480 does not vacate all the proceedings antedating the sentence. Rather, the defendant is only entitled to a remand for resentence. In short, he is returned to the status he possessed prior to the sentence.³²

Thus, when the defendant appears for resentencing, he may exercise his right under Section 480 to show why judgment should not be pronounced.

Nevertheless, the violations have no effect on the second convictions, which form the basis of the instant cases.

26. 8 A.D.2d 663, 187 N.Y.S.2d 336 (3d Dep't 1959).

27. *Supra* notes 23 and 24.

28. *People v. Cioffi*, 1 N.Y.2d 70, 150 N.Y.S.2d 192 (1956).

29. *People ex rel. Ingber v. Jackson*, 5 A.D.2d 1019, 172 N.Y.S.2d 358 (3d Dep't 1958).

30. *Ibid.*

31. *People ex rel. Miller v. Martin*, 1 N.Y.2d 406, 153 N.Y.S.2d 202 (1956).

32. *People v. Sullivan*, 3 N.Y.2d 196, 165 N.Y.S.2d 6 (1957).