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Criminal Law—Coram Nobis: Where Defendant Surprised By Punishment For Plea to Lower Felony

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CORAM NOBIS WHERE DEFENDANT SURPRISED BY PUNISHMENT FOR PLEA TO LOWER FELONY

Section 1944 of the New York Penal Law provides that, if a person while in the commission of a felony is armed with a dangerous weapon, the punishment elsewhere prescribed for that felony may be increased by imprisonment for not less than 5 nor more than 10 years. The statute is applicable to an attempted felony as well as a consummated felony. In *People v. Griffin*,[89] the Court of Appeals considered a case where the defendant, after pleading guilty to an attempt to commit assault in the second degree, was given the additional sentence provided under Section 1944 of the Penal Law. The facts show that the defendant was indicted on two counts of assault in the second degree; (1). infliction of grievous bodily harm, (2). assault with an instrument likely to produce grievous bodily harm. The defendant pleaded not guilty to both counts. The Assistant District Attorney recommended acceptance of a plea of guilty to the crime of attempted assault in the second degree to cover all counts in the indictment. The defendant was led to believe in interposing this plea that his punishment would be less severe than if he pleaded to either charge of assault contained in the indictment. After the plea was entered, the County Judge conducted a hearing to determine whether or not the defendant came within the purview of Section 1944 concerning increased punishment. The Judge found that he did and imposed the additional sentence, which resulted in a total sentence of slightly less than if the defendant had pleaded guilty to the crime of assault in the second degree. The defendant then applied for a writ of error *coram nobis* to vacate the judgment. The trial court denied the motion. The Appellate Division affirmed the denial,[90] but the Court of Appeals reversed. In reaching its conclusion the Court reasoned that if the defendant had pleaded guilty to the charge in the indictment, it would have been proper for the court to take testimony to determine whether the defendant was armed and consider the sanction of Section 1944. However, in this case the defendant did not plead guilty to any count in the indictment. His plea was to a lesser crime. Where this occurs, the defendant does not admit the facts charged against him in the indictment. He pleads guilty to something else. Such a plea does not presuppose the truth of the facts pleaded in the indictment. His plea only admits the facts stated in the indictment which refer to the time, place and victim of the crime and nothing else. The Court said that this is quite different from pleading guilty to the indictment and gave no warrant to the court to conduct an inquiry to ascertain whether the facts alleged in the indictment were true or whether, if the acts described in the indictment were committed, the person who did so was armed. The Court further stated to buttress this

89. 7 N.Y.2d 511, 199 N.Y.S.2d 674 (1960).
90. 8 A.D.2d 983, 191 N.Y.S.2d 149 (2d Dep't 1959).

holding that the practice of accepting pleas to lesser crimes is intended as a compromise when the crime charged is difficult or uncertain of proof. The judgment entered on the plea in such situations may be based on no objective state of facts as it is often a hypothetical crime. It could not be assumed, in this case, that the defendant was armed by the plea which he entered since his plea may be based on a hypothetical situation without objective basis in any actual situation. It was not permissible for the Trial Judge to conduct a Section 1944 inquiry on the facts of an indictment to which the defendant never pleaded guilty. Notwithstanding that being armed under Section 1944 is not a separate crime, but only an aggravation, and may be applicable to an attempt as well as to a completed crime, this Section cannot be applied where the defendant has been allowed to plead guilty to a different crime unless the fact of being armed is admitted by the plea.

In 1934, the Court of Appeals decided a case with similar procedural facts.[91] In that case, the defendant was indicted for the crime of robbery in the first degree. The defendant pleaded guilty to robbery in the third degree. After the plea, but before sentence, the court held an inquiry to determine whether during the robbery the defendant used a dangerous weapon, and, upon so finding, the court imposed the additional sentence under Section 1944. The Court of Appeals held that this was proper. There are many decisions which follow this rule.[92] It is difficult at first blush to reconcile the instant case with the previous cases. In the instant case, the appellant contends that he was misled respecting the sentence in pleading guilty to a lesser offense than was charged in the indictment. The Court states that, "the circumstances indicate that appellant was induced to plead guilty on the false assumption that the additional punishment would not be applied."[93] To what extent and of what nature this "misleading" and "inducement" is, it is difficult to adduce from the opinion. It has been many times held that inducements to plead guilty, even though not a trick, and whether caused by inadvertence or design, are contrary to due process and a resulting conviction will be reversed.[94] The procedural method by which the defendant attained review in those cases was by writ of error *coram nobis*. A writ of *coram nobis* is available whenever a plea of guilty has been induced by fraud or misrepresentation. It is available where there is involved the abrogation, without adequate remedy, of fundamental precepts either going to the jurisdiction of the court or resulting in the perpetration of a fraud upon the court but not where an error of law appears on the face of the record. In such a case the party is limited to an appeal, a motion in arrest of judgment or a motion to

91. People v. Krennan, 264 N.Y. 108, 190 N.E. 167 (1934).

92. People ex rel. Romano v. Brophy, 280 N.Y. 181, 20 N.E.2d 385 (1939); People v. Chu, 193 Misc. 1043, 85 N.Y.S.2d 436 (Sup. Ct. 1949).

93. Supra note 89 at 517, 199 N.Y.S.2d 678 (1960).

94. People v. Farina, 2 N.Y.2d 454, 161 N.Y.S.2d 88 (1957); People v. Chichester, 262 App. Div. 567, 31 N.Y.S.2d 158 (3d Dep't 1941); People ex rel. Farina v. Kline, 203 Misc. 792, 145 N.Y.S.2d 515 (Sup. Ct. 1955).

withdraw a plea.[95] The Court of Appeals in accepting the appeal in the instant case based on a writ of error *coram nobis,* and by deciding that such a writ was proper, indicates that it places weight on the proposition that defendant was misled and induced into his plea of guilty and that the imposition of the additional punishment under Section 1944 was a genuine surprise to him. In this light, this case can be distinguished from the long standing rule allowing the judge to conduct an inquiry after a plea of guilty to determine if additional punishment is appropriate under Section 1944 of the Penal Code.[96] It cannot be concluded that the Court is reversing the rule. However, in light of the maxim that Section 1944 must be strictly construed,[97] and in light of the extenuating circumstances of this case, it might be found that the Court is merely saying that, with these particular facts and these particular circumstances the imposition of the additional punishment deprives the defendant of a fundamental right, to wit, the right to be aware of the consequences of a plea of guilty.

HABEAS CORPUS PROPER WHILE APPEAL PENDING

Defendant Schildhaus was convicted in Magistrates' Court of violations of state and municipal dwelling laws. He subsequently sued out a writ of *habeas corpus* in the Supreme Court in which he challenged the jurisdiction of the Magistrates' Court. The Supreme Court sustained the writ on the ground that the information was jurisdictionally defective.[98] Prior to defendant's initiation of the *habeas corpus* proceeding, he appealed from the judgment of conviction to the Court of Special Sessions. That Appellate Court affirmed the judgment of conviction but such affirmance occurred after the Supreme Court had sustained the writ of *habeas corpus.* In *People v. Schildhaus*[99] the defendant appealed to the Court of Appeals from the Court of Special Sessions' affirmance of the judgment of conviction.

The Court of Appeals reversed the judgment of conviction and held that the Supreme Court's determination sustaining the writ of *habeas corpus* was controlling. The Court stated that

> Although the challenge to the jurisdiction of the Magistrates' Court could have been raised by the defendant on appeal from the judgment of conviction and although that might have been a more orderly and regular method of procedure, the right to invoke *habeas corpus* . . . is so primary and fundamental that it must take precedence over considerations of procedural orderliness and conformity.[1]

95. People v. Sadness, 300 N.Y. 69, 89 N.E.2d 188 (1949).
96. Supra notes 91 and 92.
97. People ex rel. Griffin v. Hunt, 267 N.Y. 597, 196 N.E. 598 (1935).
98. People v. Dros, 17 Misc. 2d 398, 185 N.Y.S.2d 21 (Sup. Ct. 1959).
99. 8 N.Y.2d 33, 201 N.Y.S.2d 97 (1960).

1. Id. at 36, 201 N.Y.S.2d 99 (1960).