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## Criminal Law—Habeas Corpus Proper While Appeal Pending

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withdraw a plea.<sup>95</sup> 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.<sup>96</sup> It cannot be concluded that the Court is reversing the rule. However, in light of the maxim that Section 1944 must be strictly construed,<sup>97</sup> 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.<sup>98</sup> 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*<sup>99</sup> 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.<sup>1</sup>

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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).

This case points up the strength of the Constitutional right of *habeas corpus*. Though the procedurally proper method of raising the question of a court's jurisdiction, after the court has already rendered a judgment, is by appeal, still the right of *habeas corpus* can be brought even while the appeal is pending. Thus, procedural orderliness gave way to a firmly embedded Constitutional right.

#### COMPENSATION OF CONVICTS THROUGH REDUCED TIME

Compensation, to a convict laborer in prison, takes the form not of money but of a reduced sentence.<sup>2</sup> Similar to compensation is commutation which is a reduced sentence because of good behavior.<sup>3</sup> In *People v. Denno*,<sup>4</sup> convict Antonio Vanilla successfully argued that he was entitled to compensation, already granted to him, as a matter of right and that the Prison Board could not take such compensation from him merely in the exercise of its discretion. Vanilla had committed the crime of robbery in 1920 and in 1924 was sentenced to imprisonment for a definite term of 40 years. He was released on parole in 1940 with credit for commutation and compensation. At that time he signed an instrument wherein he agreed to be subject, while on parole, to the "jurisdiction and control" of the Parole Board. In 1957 he was retaken into custody for violation of parole. The issue was whether, by virtue of the compensation previously granted him, he had fully served his term so that prison authorities could no longer confine him. The resolution of such issue depended, in turn, on whether compensation once granted is a matter of right or only of grace.

Section 230(3) of the Prison Law enacted in 1916 stated that, "Compensation credited to a convict in the first instance, in his account, by the agent and warden . . . shall stand as the compensation allowed, unless withheld wholly or partly by the board as punishment, as above provided." (emphasis supplied.) The statute contained no corresponding provision as to commutation. In *People v. Denno* the court stated that, "From these provisions and from the others in force from 1916 to 1926, it seems clear that compensation once earned and credited in the convict's account was irrevocable and automatically reduced the convict's sentence—except in cases (1) where he violated prison rules (Prison Law, Section 236), (2) where he escaped from prison (Section 238), and (3) where he was convicted of a felony later committed (Section 243)."

The distinction between compensation and commutation, whereby compensation was a matter of right and commutation a matter of grace, continued at least until 1926. An amendment to Section 230 of the Prison Law preserved compensation as a matter of right to convicts whose crimes were

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2. N.Y. Correction Law § 230(2).

3. *Ibid.*

4. 7 N.Y.2d 29, 194 N.Y.S.2d 486 (1959).