Buffalo Law Review

Volume 8 | Number 1 Article 57

10-1-1958

Criminal Law—Coram Nobis

Buffalo Law Review

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Recommended Citation

Buffalo Law Review, *Criminal Law—Coram Nobis*, 8 Buff. L. Rev. 111 (1958).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol8/iss1/57

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Coram Nobis

In *People v. Sullivan*,[32] the Court affirmed a denial of defendant's second motion for a writ of error coram nobis to vacate a judgment of conviction. A court will hear new evidence but the sufficiency of that evidence to merit a new hearing is a matter of discretion and, absent an abuse of discretion, a determination will not be reversed. In this instance, the second motion contained substantially the same basis for relief as the first. The court had heard and denied defendant's first motion and hence there was no reason for a new hearing.

In *People v. Picciotti*,[33] the Court granted a writ of error coram nobis. The Court affirmed the doctrine that a convicted defendant moving by way of coram nobis to set aside his conviction on the ground that it was secured by coercion will not be denied a trial if the allegations are not conclusively shown to be false by opposing papers.[34] Defendant alleged that a plea of guilty was procured by threats of a prosecuting official to revive five-year-old indictments and to see to it that the punishment inflicted would be especially severe if he did not plead guilty. The affidavit of the official and the transcript of the proceedings in court submitted in opposition to defendant's application were not considered by the Court to be conclusive evidence of the falsity of defendant's allegations. The Court realistically stated that the coercive conversation, if it did take place at all, would not be made in open court. The Court also said that the fact that defendant's attorney advised him to plead guilty in no way rendered defendant's claim less effective.

The dissent, citing *People v. White*,[35] took the view that the defendant's allegation must be confirmed by the record to warrant the granting of a hearing. Since the court in the *White* case repeatedly stressed that defendant's allegations were refuted by the record, the language relied upon by the dissent constitutes but slight authority for its position. The majority advocate a hearing unless refuted by the record, whereas the dissent requires support in the record before a hearing will be granted. The position of the majority seems more in accord with the fundamental concepts of constitutional due process in that coercion such as the defendant here alleges would not appear in the record, and coram nobis was developed to cover this type of situation.[36] Under the dissent's theory, since the record is silent concerning coercion, the defendant is left without a remedy and stands convicted without due process of law.

32. 4 N.Y.2d 472, 176 N.Y.S.2d 316 (1958).
33. 4 N.Y.2d 340, 175 N.Y.S.2d 32 (1958).
34. People v. Richetti, 302 N.Y. 290, 97 N.E.2d 105 (1951); People v. Lain, 309 N.Y. 291, 130 N.E.2d 105 (1955); 7 BUFFALO L. REV. 130 (1957).
35. 309 N.Y. 636, 132 N.E.2d 880 (1956).
36. See People v. Sullivan, 3 N.Y.2d 196, 165 N.Y.S.2d 6 (1957); People v. Sadness, 300 N.Y. 69, 89 N.E.2d 188 (1949).