

1-1-1957

Criminal Law—Sentence—Plea of Guilty

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Recommended Citation

Robert Casey Jr., *Criminal Law—Sentence—Plea of Guilty*, 6 Buff. L. Rev. 177 (1957).

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Sentence—Plea of Guilty

In *People ex rel. Miller v. Martin*⁷⁵ the Court of Appeals held that at the time of sentence it is a substantial right of the defendant to be asked whether he has any legal cause to show why judgment should not be pronounced against him and further, that it may not be waived.

The defendant pleaded guilty to rape in the second degree. At the time of this plea the defendant was asked if he had any legal cause to show why judgment should not now be pronounced against him. He answered "No" and sentencing was deferred for two weeks. Two weeks thereafter he was sentenced without being asked the aforementioned question.

The right of a defendant to be asked if he has anything to say why judgment should not be pronounced against him has been long characterized as a substantial legal right.⁷⁶ It formerly applied only in capital cases⁷⁷ but in 1881 the Legislature extended it to all felonies.⁷⁸ The essential nature of the right precludes the ability of its waiver by a defendant.⁷⁹

In the instant case, a plea of guilty is the equivalent of a verdict of guilty.⁸⁰ There must be a delay of two days after the verdict before sentencing.⁸¹ The question must be asked at sentencing.⁸² Hence there was not conformity with the statute in the instant case.

The Court of Appeals reversed the lower court decision holding that there was not substantial compliance in the instant case and remanded the relator to the trial court to be resentenced on his plea of guilty.

Statute—Retroactive Effect

There is a constitutional prohibition against giving retroactive effect to a new statute which increases the punishment of a particular crime.⁸³ An ameliorative statute, however, where the form of punishment for a given crime is reduced, is under no such restriction. It seems that a statute of this kind should be applied retroactively to do full justice to the offender. Of course a person already sentenced cannot be affected, because it is a settled rule of law that once a final judgment

75. 1 N. Y. 2d 406, 135 N. E. 2d 711 (1956).

76. *Messner v. People*, 45 N. Y. 1 (1871).

77. *Id.* at 6, 7.

78. L. 1881, ch. 442, §480.

79. *People v. Craig*, 295 N. Y. 116, 120, 65 N. E. 2d 192, 194 (1946).

80. *People ex rel. Hubert v. Kaiser*, 206 N. Y. 46, 99 N. E. 195 (1912).

81. N. Y. CODE CRIM. PROC. §472.

82. N. Y. CODE CRIM. PROC. §480.

83. U. S. CONST. art. I, § 10, cl. 1. No state shall pass any ex post facto Law.