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Criminal Law—Statute—Retroactive Effect

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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 cases[77] 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.

has been pronounced, a change in the law will not affect in any way the execution of the sentence.[84] To justify giving a statute a retroactive effect though, there must be a clear legislative intent that such new law should have that effect.[85]

In the case of *People v. Oliver*,[86] the defendant was indicted for murder when he was fourteen years of age. He was committed as insane to an institution until his release in 1954, when he was twenty-three years of age. At the time the defendant was indicted for murder, minor defendants were subject to most criminal sanctions, including the death penalty.[87] While the defendant was in the hospital, the law was changed to the effect that no child of fourteen or less could be charged with or prosecuted for any crime, even though it be punishable by death.[88] The Court held that the defendant was entitled to the benefits of the statutory change, even though his crime was committed prior to its enactment. The legislative intent to give the statute a retroactive effect was gleaned from the very change in the law, which disclosed the desire to treat juvenile offenders in a more humane fashion. Also the new amendment showed an intent to abrogate the old law.

In the opinion of the writer, the decision is a sound one and is a step forward in the administration of the criminal law. By this decision the change in the statute is now to be applied retroactively, but such application will not be often in view of the probable fact that there are few minor offenders who committed acts prior to 1948, that have not been tried as yet.

Appeal—Review of Deferred Sentence

People v. Cioffi[89] was an appeal from convictions on two counts of assault in the third degree. On the first count defendant was sentenced to an indeterminate term as provided for in the New York Correction Law, section 203,[90] sentence on the second count being deferred until his discharge from a correctional institution under the first sentence.

The Court held itself without jurisdiction to hear an appeal on the second count since judgment in a criminal case is only final upon the sentencing of the

84. *People ex rel. Paster v. Palmer*, 274 App. Div. 856, 82 N. Y. S. 2d 386 (3d Dep't 1948); *People ex rel. Guariglia v. Foster*, 275 App. Div. 893, 90 N. Y. S. 2d 238 (4th Dep't 1949).

85. *Shielcrawt v. Moffett*, 294 N. Y. 180, 61 N. E. 2d 435 (1945); *Garza v. Maid of the Mist Steamboat Co.*, 303 N. Y. 516, 104 N. E. 2d 882 (1952).

86. 1 N. Y. 2d 152, 134 2d 197 (1956).

87. *People v. Roper*, 259 N. Y. 170, 181 N. E. 88 (1932); N. Y. PENAL LAW §§ 486, 2186.

86. Laws 1948, c. 554, eff. March 29, 1948; now N. Y. PENAL LAW § 486.

89. 1 N. Y. 2d 70, 133 N. E. 2d 703 (1956).

90. N. Y. CORRECTION LAW §203(b): The court in imposing sentence shall not fix or limit the term of imprisonment of any person sentenced to any such penitentiary. The term of such imprisonment shall . . . not exceed three years.