

Criminal Law--Forgery--Non Vult--Penal Law--2nd Offender (People v. Daiboch, 265 N.Y. 125 (1934))

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year and a day.¹⁵ The court here bases its conclusion on the fact that the statute¹⁶ contains no mention of the year and a day rule of common law, and therefore, the defendant is denied the presumption which was his right at common law.¹⁷

J. A. R., JR.

CRIMINAL LAW—FORGERY—NON VULT—PENAL LAW—2ND OFFENDER.—Defendant pleaded guilty to forgery in second degree. On a prior offense he had pleaded *non vult* to an action brought by the state of New Jersey. He was charged and convicted as a second offender. On motion by defendant, after sentence and beginning of prison term, to withdraw plea of guilty of felony because of alleged promise that court would permit defendant to plead to misdemeanor if certain prior offenses proved to be felonies, *held*, properly denied, where judge before imposing sentence on guilty plea stated that he had made no such promise. *People v. Daiboch*, 265 N. Y. 125, 191 N. E. 859 (1934).

The plea of *non vult* was a common law plea that had the same subsequent consequences in a criminal court as a plea of guilty.¹ When judgment has been entered on it, the record is competent evidence of the conviction.² Thus, the plea of *non vult* followed by a judgment is a previous conviction of crime.³ A prisoner in a criminal case is not entitled as a matter of right to withdraw a plea duly made in order that he may file another plea;⁴ the matter is within the sound discretion of the trial court.⁵ Where it is plain that substantial justice will not be promoted, or the substantial rights of the defendant prejudiced, the application for leave to withdraw the plea should be denied.⁶ In the absence of any controlling fact rendering it unjust to do so the court may refuse to withdraw a plea of guilty.⁷ However this discretion should be exercised liberally in favor of life

¹⁵ Instant case at 108; *People v. Legeri*, *supra* note 11.

¹⁶ *Supra* note 7.

¹⁷ Instant case.

¹ *State v. Herlihy*, 102 Me. 310, 66 Atl. 643 (1906); *State v. Sidell*, 103 Me. 144, 68 Atl. 643 (1907). It is pleaded to minimize the duration of the sentence. Instant case.

² *Commonwealth v. Jackson*, 248 Pa. 530, 94 Atl. 233 (1915).

³ Instant case.

⁴ *Farley v. State*, 23 Ga. App. 151, 97 S. E. 870 (1919); *State v. Branner*, 149 N. C. 559, 63 S. E. 169 (1908).

⁵ *State v. Olsen*, 115 Minn. 153, 131 N. W. 1084 (1911); *State v. Strum*, 115 Minn. 533, 131 N. W. 1086 (1911).

⁶ *State v. Gregg*, 123 La. 610, 49 So. 211 (1909); *State v. Stephenson*, 67 W. Va. 553, 68 S. E. 286 (1910).

⁷ *Supra* note 6.

and liberty.⁸ Therefore the court ordinarily will permit a plea of guilty to be withdrawn if it fairly appears that the prisoner was in ignorance of his rights or was influenced unduly or improperly either by hope or by fear in the making of it.⁹ Where the plea of guilty is entered under belief, induced by the judge, that sentence less severe than the maximum should be given, defendant should be allowed to withdraw the plea.¹⁰ The same is true where such belief is induced by the prosecuting attorney.¹¹ Where, however, no sufficient grounds for such a belief exists the court properly may deny its permission for withdrawal.¹² To make an act of the court in refusing leave to withdraw a plea of guilty an abuse of discretion it must appear that the plea was entered under some mistake, compulsion, or inducement working injustice.¹³ Such not appearing, defendant's motion was properly denied.

J. I. G.

MORTGAGES—DEFICIENCY JUDGMENT.—Plaintiff obtained judgment of foreclosure and sale just prior to the effective date of §1083-a¹ of the Civil Practice Act. Sale of premises under this judgment was effected subsequent to the date this section became operative. Defendant alleges that plaintiff should have reasonable value of property ascertained before a deficiency judgment is granted. Plaintiff contends that that section does not apply herein. *Held*, judgment of foreclosure and sale is final and the statute, having no retroactive effect, does not apply to the case at bar. *Feiber Realty Corp., et al. v. Abel*, 265 N. Y. 94, 191 N. E. 847 (1934).

A judgment of foreclosure and sale has been held to be final and an adjudication of all questions at issue.² Therefore, judgment

⁸ *Krolage v. People*, 224 Ill. 456, 79 N. E. 570 (1906); *State v. Cimini*, 53 Wash. 268, 101 Pac. 891 (1909).

⁹ *People v. Miller*, 114 Cal. 10, 45 Pac. 986 (1896); *Jenkins v. State*, 6 Okla. Cr. 516, 120 Pac. 298 (1912); *McDaryl v. State*, 7 Okla. Cr. 740, 120 Pac. 299 (1912).

¹⁰ *State v. Stephens*, 71 Mo. 535 (1880); *State v. Kring*, 71 Mo. 551 (1880).

¹¹ *Griffin v. State*, 12 Ga. App. 615, 77 S. E. 1080 (1913); *People v. Walker*, 250 Ill. 427, 95 N. E. 475 (1911); *Myers v. State*, 115 Ind. 554, 18 N. E. 42 (1888).

¹² *State v. Yates*, 52 Kan. 566, 35 Pac. 209 (1894); *State v. Pyle*, 52 Kan. 569, 35 Pac. 210 (1894); *State v. Pottenger*, 52 Kan. 569, 35 Pac. 210 (1894).

¹³ *Mastronada v. State*, 60 Miss. 86 (1882); *State v. Cimini*, *supra* note 8; *State v. Stephenson*, *supra* note 6.

¹ August 28th, 1933.

² *Morris v. Morange*, 38 N. Y. 172 (1868); *Bolles v. Duff*, 43 N. Y. 473 (1871); *Cambridge Valley Nat'l Bank v. Lynch*, 76 N. Y. 516 (1879); *Wadsworth v. Lyon*, *et al.*, 93 N. Y. 218 (1883); *Wager v. Link*, 134 N. Y. 122, 31 N. E. 213 (1892); *Read v. Patterson*, *et al.*, 134 N. Y. 128, 31 N. E. 445 (1892).