

WITHDRAWAL OF GUILTY PLEA TO DEFECTIVE INDICTMENTS

People v. Englese

7 N.Y.2d 83, 163 N.E.2d 869, 195 N.Y.S.2d 641 (1959)

A felony indictment charged the defendant with the offense of carrying a dangerous weapon in violation of section 1897, subdivision 5, of the New York Penal Code. The indictment was defective in that it failed to allege that the defendant had been previously convicted of any crime as required by that section of the Penal Code in order to obtain a felony conviction. The defendant pleaded guilty to the indictment and was sentenced thereon. After serving five years in prison the defendant moved to vacate the conviction on the grounds that his acts, if proved, would only constitute a misdemeanor. The trial court granted the motion to vacate the judgment but refused to allow the defendant to withdraw his plea of guilty. The defendant was then sentenced on a misdemeanor and the Appellate Division affirmed. The New York Court of Appeals reversed the conviction and allowed the defendant to withdraw his plea of guilty to the misdemeanor.¹

The problem posed by this case (but not discussed in the opinion), is whether a plea of guilty is simply an admission of fact, that is, a confession in open court, or whether it is an admission of fact in light of a specific charge. Under English common law when the defendant was confronted with an indictment, he was forced to either admit the alleged acts or deny the allegations.² Thus Blackstone says: "When a criminal is arraigned, he either stands mute or confesses the fact, which circumstances we may call incidents to arraignment."³ Therefore, when the defendant "confessed to the facts," his answer was considered as a confession such as to admit all material facts specified in the indictment.⁴

In this area of criminal procedure most courts seem to be uncertain as to the effect of admissions contained in a guilty plea.⁵ English courts are not confronted with this uncertainty because the defendant is allowed to withdraw his plea any time before sentencing.⁶ Thus, the question as to

¹ *People v. Englese*, 7 N.Y.2d 83, 163 N.E.2d 869, 195 N.Y.S.2d 641 (1959). In respect to matters reviewable on appeal, the general rule is that a plea of guilty is the same or has the same effect as a finding of guilty by a jury verdict. *Spirow v. United States*, 24 F.2d 796 (2d Cir. 1928). Thus, it is not mere evidence of guilt as is an extra-judicial confession, but it is a conclusive admission of guilt. *People v. Brown*, 140 Cal. App. 616, 36 P.2d 194 (Ct. App. 1934).

However, a plea of guilty does not confer jurisdiction or authorize a conviction in the absence of a valid indictment, but constitutes an admission of what is well alleged or charged. *People v. Brummett*, 22 Ill. App. 2d 46, 159 N.E.2d 511 (1959).

² Blackstone's Commentaries IV, § 323 (1876).

³ *Id.*, § 324.

⁴ *Langston v. United States*, 153 F.2d 840 (8th Cir. 1946). Also, see *Littlejohn v. Hiatt*, 197 F.2d 334 (5th Cir. 1952).

⁵ *People v. Englese*, *supra* note 1.

⁶ *Rex v. Plummer*, 2 K.B. 339 (1902); *Rex v. Sell*, 9 C. & P. 346, 173 Eng. Rep. 863 (1840).

when a defendant may withdraw his plea to a defective indictment never arises. This rule has also been followed by a minority of courts in the United States.⁷

In general, however, American courts hold that leave to withdraw a plea of guilty is within the discretion of the trial court.⁸ It is here that the question as to the effect of a plea of guilty becomes crucial, since only by deciding this question can it be determined if there is an abuse of discretion in refusing to allow one to withdraw his plea. This means that if the indictment was defective in that it failed to inform the defendant of the exact crime with which he is charged, it would be within the discretion of the trial court, subject only to review of abuse of discretion, to determine whether the defendant was prejudiced by the defect, and thus justifying a withdrawal of his plea.

An analysis of the few cases discussing the point indicates that a plea of guilty is not merely an admission of the acts of the defendant, but an admission of certain facts in light of the charges indicated in the indictment.⁹ There are holdings which indicate that a plea of guilty entered to one charge will not result in conviction of a greater charge, even though the admitted facts may so warrant.¹⁰ Moreover, a plea of guilty to one charge is not grounds for conviction on a completely different charge.¹¹

It would seem, then, that the defendant admits only those facts connected with a specific indictment.¹² What then are the rights of the defendant concerning a defective indictment? Is it enough that he not be subjected to a longer sentence? Although the court in the principle case did not discuss this problem and, indeed, talked in terms of "abuse of discretion of the trial court" it correctly saw the problem when it said, "But was he not deprived of his fundamental right to plead to the misdemeanor charge? And could it not be that he pleaded guilty because he was charged with a felony?"¹³

⁷ *People v. Hollingsworth*, 338 Mich. 161, 61 N.W.2d 22 (1953). This rule may have been modified in *People v. Case*, 340 Mich. 526, 65 N.W.2d 803 (1954) when the court said that this was a privilege and not an absolute right. As to the matter of a right, see *Higgins v. State*, 92 Ga. App. 739, 90 S.E.2d 40 (1955).

⁸ *LaBarbera v. State*, 63 So. 2d 654 (Fla. 1953); *Reed v. Comm. of Ky.*, 261 S.W.2d 630 (Ky. 1953); *State v. Frohner*, 150 Ohio St. 53, 80 N.E.2d 868 (1948); *State v. Rose*, 256 P.2d 493 (Wash. 1953).

⁹ A guilty plea admits only the facts charged in the information, and confesses no crime, if none is charged therein. *People v. LaFace*, 148 Misc. 238, 266 N.Y.S. 458 (Westchester County Ct. 1933). The defendant cannot plead guilty except to a specific indictment, *People ex rel. Glass v. Murphy*, 284 N.Y.S. 882, 246 App. Div. 885 (1936).

¹⁰ *Commonwealth v. Roby*, 29 Mass. (12 Pick.) 496 (1832); *State v. Dickson*, 200 Iowa 17, 202 N.W. 225 (1925).

¹¹ A plea of guilty to the offense of permitting gambling on the premises is not an admission of guilt of setting up and operating a game. *Gilley v. Commonwealth*, 312 Ky. 585, 229 S.W.2d 60 (1950).

¹² *People ex rel. Glass v. Murphy*, *supra* note 9.

¹³ *People v. Englese*, *supra* note 1 at 86, 163 N.E.2d at 878, 195 N.Y.S.2d at 643.

Under the prevailing rule, Ohio included,¹⁴ leave to withdraw a plea of guilty is granted or refused at the discretion of the trial court, subject to review by the appellate court for an abuse of discretion. The justification for this rule is that the trial judge ordinarily has the better opportunity to view the circumstances of the case and the conduct of the defendant before the court. Thus the defendant should not be allowed to trifle with the court by deliberately entering a plea of guilty one day and then withdrawing it the next.¹⁵ Moreover, from an administrative point of view it is undesirable to allow a defendant to speculate on his punishment and then withdraw his plea if he is disappointed. Under this view, it seems that the ruling of the trial court should be sustained unless it can be shown that a manifest injustice will result in a particular case.

Such injustice does result where one is refused his request to withdraw his plea to an erroneous indictment, especially when the error is a material one as in the instant case. Appellate courts should, and have considered a denial of a motion to withdraw a plea of guilty as an abuse of discretion when there has been, (1) ignorance and inadvertance,¹⁶ (2) a plea not voluntarily and freely made,¹⁷ or (3) duress in obtaining the confession.¹⁸

In the instant case the *prosecution*, the *accused*, and the *trial court* were operating under the assumption that the indictment was for a felony. Where all parties are acting under such a mistake of law, it is only fair that the defendant be given an opportunity to plead to the correct charge. Denial of such an opportunity should certainly be considered an abuse of discretion. In order to guarantee just results, it is essential that courts discuss the exact effect of admissions incorporated in a guilty plea, that is whether the defendant pleads merely to the facts or to the entire indictment. Such a determination is necessary to guide the trial court in the exercise of its discretion in this area.

On application by the defendant to change his plea of guilty to a plea of not guilty, all doubt should be resolved in favor of a trial on the merits.¹⁹ Perhaps by adopting this view, the courts will be forced to discuss and decide the crucial problem of whether the defendant pleads to facts or to a specific indictment.

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¹⁴ In Ohio, the granting of permission to withdraw a plea of guilty rests in the sound discretion of the trial court, *State v. Frohner*, 150 Ohio St. 53, 80 N.E.2d 868 (1948). Moreover, a party should not be permitted to trifle with the court in deliberately entering a plea of guilty one day and capriciously withdrawing it the next day, *In re Spensky*, 133 N.E.2d 195 (Ohio Ct. App., 1955).

¹⁵ *In re Spensky*, supra note 14.

¹⁶ *Mahoney v. State*, 197 Ind. 335, 149 N.E. 444 (1925).

¹⁷ *State v. Peterson*, 42 Idaho 785, 248 Pac. 12 (1926).

¹⁸ *People v. Schwarz*, 201 Cal. 309, 257 Pac. 71 (1927).

¹⁹ *State v. McBane*, 128 Mont. 369, 275 P.2d 218 (1954).