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## Criminal Law--Plea of Not Guilty--Coercion by Judge

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conviction and resentence the defendant, as right and justice may seem to require and discharge the defendant from custody on bail pending such resentence. No such judgment shall be opened or vacated if a writ of error is pending to review the judgment." N.J. REV. STAT. § 2:190-15 (1937).

While a solution would be desirable, the absence of cases in which the suggested problem has arisen suggests the possibility that such a solution is less essential in practice than in theory.

J. S. T.

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CRIMINAL LAW—PLEA OF NOT GUILTY—COERCION BY JUDGE.—Defendant entered a plea of not guilty upon arraignment before the United States District Court of Western Oklahoma. The plea was entered without benefit of an attorney which the court had offered but the defendant had refused. Immediately thereafter the court stated to the defendant that if he was found guilty upon trial he would get the maximum punishment provided by law for putting the government to the expense of a trial by not entering a plea of guilty. At the trial the defendant withdrew his plea of not guilty and entered a plea of guilty and sentence was imposed. *Held*, reversing the lower court, that the fundamental standards of procedure in criminal cases require that a plea of guilty be entered freely, voluntarily and without semblance of coercion. The trial court's statements were reasonably calculated to coerce the defendant into a guilty plea. *Euziere v. United States*, 249 F.2d 293 (10th Cir. 1957).

A plea of guilty entered other than voluntarily by the defendant has consistently been held incapable of supporting a sentence imposed thereon for the obvious reason that it deprives the defendant of a trial by jury and violates his rights guaranteed under the due process clause of the Constitution. *United States v. Swaggerty*, 349 U.S. 959 (1952); *O'Hara v. People*, 41 Mich. 623, 3 N.W. 161 (1878); *Flowers v. State*, 90 Okl. Cr. 390, 214 P.2d 728 (1950). It would appear under proper circumstances that there is no reason why such a plea should not be accepted by the court. *Brown v. State*, 92 Fla. 592, 109 So. 627 (1926); *People v. Merhige*, 212 Mich. 601, 180 N.W. 418 (1920). It would in fact, as stated in the principal case, save the expense and time required by a jury trial. Recognizing this our judicial tribunals have laid down stringent rules to insure the protection of the defendant's constitutional rights

when such a plea has been entered. It is universally required that the court inform the prisoner of the results of such a plea and that it be satisfied that he has acted freely and deliberately and with full knowledge, appreciating and understanding the nature and consequences of his plea before it be accepted by the court. *State v. Hill*, 81 W. Va. 676, 95 S.E. 21 (1918); *Clay v. State*, 82 Fla. 83, 89 So. 353 (1921).

The rule thus soundly established must still be applied to the facts of each case to determine whether or not the plea was voluntarily entered. *Helms v. Humphrey*, 63 F. Supp. 4 (D. Minn. 1945). One yardstick used to determine this was whether or not an innocent man would have been induced to enter a plea of guilty under similar inducements. If he would have been, the defendant's constitutional rights have been abridged. *Palmer v. Croner*, 45 Wn. 2d 278, 273 P.2d 985 (1954).

This measure clearly eliminates those cases in which the defendant's motive is to obtain a lesser sentence by, in effect, throwing himself upon the mercy of the court even though the thought may have been planted by counsel. *Mooney v. Holohon*, 294 U.S. 103 (1935); *People v. Gilbert*, 25 Cal. 2d 422, 54 P.2d 657 (1944); *Helms v. Humphrey*, *supra*.

It is also a good basis for justifying the many decisions which have held that a plea of guilty obtained by actual physical or mental coercion or duress unduly placed upon the defendant by state and federal officers after his arrest must be rejected. *Waley v. Johnston*, 316 U.S. 101 (1942); *Flowers v. State*, *supra*. However, the effects are not so clear in cases where the defendant pleads guilty to a lesser charge to avoid trial on a greater one and the circumstances are such that the plea was encouraged by counsel as the reasonable thing to do. *Broccoli v. Kindelan*, 80 R.I. 436, 98 A.2d 67 (1952); *State v. LaMarr*, 231 Ind. 500, 109 N.E.2d 457 (1952). This is not because the defendant is not guilty of some crime, but because he has been induced to enter into a bargain to plead guilty to a crime of which he is in fact not guilty. Cf. *Broccoli v. Kindelan*, *supra*; *State v. LaMarr*, *supra*. It seems reasonable to believe that many such instances have occurred and consequently the defendant's constitutional rights have been violated.

Bargaining though not generally considered to be a violation of the due process clause may be if unqualified factual represen-

tations are made to the defendant by responsible officers of the state that a reward in the form of immunity or a lesser punishment than might be expected will be given in return for a plea of guilty and the defendant, in good faith, relies on these promises, and pleads guilty. The effect has been to preclude the exercise of free will and judgment by the defendant and his plea is not voluntary. *People v. Gilbert*, 25 Cal. 2d 422, 145 P.2d 657 (1944).

Because constitutional rights are involved here it is necessary that the defendant's plea be made voluntarily and with full knowledge and understanding on his part and that the rules for accepting such a plea be strictly adhered to by the courts. Even though the principal case may be distinguished from the majority of cases on this point, because the coercion was done in open court by a trial judge, its ruling inevitably follows these well established criminal law principles ordained to protect the constitutional rights of defendants.

G. D. G.

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EVIDENCE—WEIGHT OF EVIDENCE AND CREDIBILITY OF WITNESSES—JUROR'S COMMON KNOWLEDGE AND EXPERIENCE.—*P*'s decedent was fatally injured when an automobile driven by *D* at an excessive speed left the road and went into a creek. *D* testified that at the time of the accident he felt the effects of beer which he had consumed during the course of the evening and that he had driven at excessive speed earlier on the evening of the accident. Judgment for *P*. *Held*, reversing lower court, that *P*'s decedent was guilty of contributory negligence as a matter of law when he knew or should have known of the great danger incident to the journey and, though having reasonable opportunity to leave the automobile, voluntarily continued therein as a passenger. *Hutchinson v. Mitchell*, 101 S.E.2d 73 (W. Va. 1957).

The subject of this comment is a question raised in the dissenting opinion of Browning, J., in the principal case, of the propriety of a juror's use of his common general knowledge and experience in determining the weight and credibility to be given to the evidence presented before him.

In general a juror may act only upon evidence that is properly presented before him during the course of the trial; but this does not preclude him from acting upon and taking notice of facts that