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COURT OF APPEAL CRIMINAL DIVISION (ENGLAND)

R v PLIMMER

James and Ormrod LJJ and Cusack J

7 July 1975
(1975) 61 Cr App R 264; [1975] Crim L Rev 730; 40 J Crim L 153 (1976)

SENTENCING – PLEA BARGAINING – COUNSEL VISITED JUDGE IN CHAMBERS – JUDGE INDICATED THE PENALTY IN THE EVENT OF A PLEA OF GUILTY – DEFENDANT PLEADED NOT GUILTY – CHARGE FOUND PROVED – DEFENDANT SENTENCED TO A TERM OF IMPRISONMENT – WHETHER JUDGE SHOULD HAVE GIVEN SENTENCE INDICATION.

HELD: The practice of counsel going to see the judge privately is in general an undesirable one and should be reserved for exceptional cases. If the judge desires to indicate beforehand the sentence which he has in mind, he should make it clear that the sentence will be passed whether the defendant pleads guilty or not guilty and is later convicted.
***Turner* (1970) 54 Cr App R 352, (1970) 2 QB 321, followed.**

THE COURT: ... The other matter is this. Before the proceedings began, Mr Warburton-Jones, following a custom if not a practice, felt in the circumstances of this case in some difficulty as his client had previous convictions and his instructions were to make a direct attack on the police evidence in this case, thus of course exposing his client to having his own past record introduced into the evidence, and no doubt rightly he took the view that he ought to try to avoid this difficult situation. He spoke to Mr Haworth, and both counsel went to see the learned judge in his room before the case began.

It is right to say that this was not a 'plea bargaining' situation, but what Mr Warburton-Jones really wanted to know was what sort of sentence the learned judge had in mind. The learned judge saw counsel and gave an indication and the indication was that he was thinking in terms of a relatively modest fine. On that counsel left the room. The learned judge then sent a message to counsel to the effect that of course that statement as to sentence was made on the footing that there would be a plea of guilty, but when the learned judge came to sentence the defendant he said this: 'Carl Peter Plimmer, if you had accepted responsibility for what you had done, if you had pleaded guilty before this Court and shown that you accepted that responsibility and had saved accordingly a great deal of time and trouble, that would have been very powerful mitigation in your case. You chose not to do it. You mounted a brazen attack upon the officers in the case which was utterly undeserved and there is no mitigation in this case whatever'. He then went on to observe that it was the second conviction within a year and he imposed upon him an immediate prison sentence of nine months, which of course is a very long way indeed from the suggested fine which had been mentioned to counsel.

This Court, while not wishing in any way to depart from the case of *Turner* in (1970) 54 Cr App R 352 (1970) 2 QB 321, particularly at pp360 and 321, feels that this practice of counsel going to see judges is in general an undesirable one, that it should be reserved for exceptional cases and that it is apt to produce very embarrassing situations, of which this case is an admirable example. One of the main points that Lord Parker CJ made in the case of *Turner*, under the fourth heading on p360 and 321, was this:

> 'The judge should, subject to the one exception referred to hereafter, never indicate the sentence which he is minded to impose. A statement that on a plea of guilty he would impose one sentence but that on a conviction following a plea of not guilty he would impose a severer sentence is one which should never be made.'

In this particular case, unfortunately, the learned judge did almost exactly that; he certainly gave an indication of what sentence he would pass if there was a plea of guilty.

That in itself is a highly undesirable thing to do and is bound to lead to the sort of embarrassment which has been produced in this case. Lord Parker CJ went on to say that in any event the learned judge should make it clear, if he wanted to indicate the sentence he had in mind, that that sentence would be passed whether the accused pleaded guilty or not guilty and was later convicted. It seems to this Court that the learned judge has failed to observe that very important aspect of the case of *Turner* (*supra*).

We note with some anxiety the learned judge's note on the matter in which he refers to 'my general practice in this matter,' and, with great respect to the learned judge, this Court wishes to make it clear that there should be no practice, general or otherwise, of this kind because it is highly undesirable, as was made quite clear by Lord Parker CJ. In those circumstances the Court does not consider that this is a case in which it would be right to apply the proviso and accordingly the conviction is quashed.
