

Opinion No. 105**Writ of Coram Nobis — Orders —
Orders — Criminal Appeals
by State — Statutes**

HELD: The Order of the District Court granting a petition for a writ of Coram Nobis, which annulled the judgment of conviction and dismissed the information charging the felony, become final and the petitioner obtaining the relief would not be deemed to have been convicted of a felony under the laws of the State of Montana.

January 5, 1957

Mr. Harold G. Stanton
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Stanton:

In your recent letter of request for an official Attorney General's opinion, you have put forth the following statement of facts:

"X, entered a plea of guilty to the crime of Burglary, a felony, in the District Court of the 4th

Judicial District of the State of Montana in and for the County of Missoula in the Spring of 1948. X was sentenced to serve one year in the state penitentiary, said sentence being suspended. In 1953, X, represented by an attorney, filed in the said Court a Petition for a Writ of Coram Nobis, praying that the Information be dismissed and the Judgment of conviction be annulled, set aside and cancelled on the grounds and for the reason that the District Court did not have jurisdiction of X who was alleged by said petition to have been a juvenile of the age of 18 at the time of the alleged conviction. A copy of said Petition for Writ of Coram Nobis was duly served on the County Attorney of Missoula County. The County Attorney acting by and through the Deputy County Attorney, filed an Answer to said Petition for Writ of Coram Nobis, in which answer it was admitted that the Court did not have jurisdiction and that X was a juvenile under the laws of the State of Montana at the time of said conviction.

The Deputy County Attorney, X, and X's attorney appeared in open court together on the hearing of said petition, whereupon the District Court, the same Judge presiding who presided in the original proceeding, ordered "that said petition be granted, the Judgment annulled, set aside and cancelled, and the Information dismissed." Said order was duly and regularly entered in the minutes of the Court by the Clerk and certified by the Judge.

Several weeks later the Montana Supreme Court, in the case of State ex rel. Bresnahan, Realtor, vs. District Court of Cascade County, et al, Respondent, 127 Mont. 310, interpreted the applicable juvenile laws in such a way that X would not have been deemed to be a juvenile at the time of conviction."

Upon the above state of facts, and the enclosure of a certified copy of an Order made in open court, en-

tered in the minutes of the court, which annulled, cancelled and set aside the judgment of conviction and dismissed the information against X, you have predicated the following question:

Is X now deemed to have been convicted of a felony under the Laws of the State of Montana?

In reply to your query, the answer is in the negative for X's conviction by the very terms of the District Court in granting his petition for writ of Coram Nobis, annulled, set aside and cancelled the judgment of conviction and dismissed the information which charged X with a felony. Thus, even though our Supreme Court, in another case, at a subsequent date, interpreted the applicable juvenile statute differently than the District Court, it had no bearing or effect on the previous District Court order.

The order of the District Court in annulling the judgment and dismissing the information against X was an appealable order from which the State of Montana could have appealed under Section 94-8104, R.C.M., 1947, which provides in part:

"An appeal may be taken by the state—

* * *

3. From an order arresting judgment;

4. From an order made after judgment, affecting the substantial rights of the state;

* * *"

Since the state did not exercise its right of appeal under Section 94-8104, supra, the order of the District Court annulling the judgment of conviction and dismissing the information against X became final.

It is therefore my opinion that the order of the District Court granting a Petition for a writ of Coram Nobis, which annulled the judgment of conviction and dismissed the Information charging the felony, became final and the petitioner obtaining the relief would

not be deemed to have been convicted of a felony under the laws of the State of Montana.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.