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Abstracts of Recent Cases

indicates that Congress intended to ban state prosecution and, as has been previously indicated, would seem to have the power to do so. It must be emphasized that final evaluation of the statute must await its further application. Although the forthcoming Supreme Court decision[49] on its constitutionality will look to the legal sufficiency, it is hoped that it may also provide some insight into an evaluation of the Act.

[49] United States v. Ullmann 221 F.2d 760 (2d Cir.), *cert. granted*, 349 U.S. 951 (1955).

ABSTRACTS OF RECENT CASES

Continuing Violation of New York Multiple Dwelling Law Held Sufficient to Sustain Conviction of First Degree Manslaughter—Two tenants were trapped and died because a fire cut off their only means of egress. The evidence showed that the defendant knew at the time of purchase five months earlier that the dwelling lacked the required secondary egress and adequate fire protection. However, the evidence also tended to show that the defendant did not know that violations had been filed against the former owner under the Multiple Dwelling Law and that the existence of these violations had been deliberately concealed from him in the real estate transaction. Indicted and convicted of first degree manslaughter under the New York Penal Law which provides in part that a 'person engaged in committing a misdemeanor affecting the person or property of the person killed' shall be guilty of first degree manslaughter, the defendant appealed to the Court of Appeals of New York. He contended that he had no knowledge or notice of the existing violations of the Multiple Dwelling Law and without a showing that he had created or had knowledge of the violation he could not be found guilty of first degree manslaughter. Therefore, the exclusion of his testimony directed to this proposition constituted reversible error. He argued that he should not have been deprived of the opportunity to have the jury determine whether his violation of the misdemeanor statute was a result of culpable negligence.

A majority of the Court of Appeals of New York was of the opinion that a mere showing of a violation of the Multiple Dwelling Law was sufficient to sustain the conviction and that a lack of knowledge that a violation has been filed or a disregard of the condition is no defense. In effect, the ruling of the majority was that the mere commission of a misdemeanor, where knowledge is imputable to the defendant, renders a person guilty of manslaughter in the first degree where death results. *People v. Nelson*, 128 N.E. 2d 391 (N. Y. 1955).

Two judges of the court filed a lengthy dissent. Stated briefly, their position was that where a misdemeanor is *malum prohibitum* there must be a showing of an awareness of the violation in order to sustain a conviction of misdemeanor manslaughter. If an act is merely prohibited because it is against public policy then there must be a further wrong—a reckless disregard for the safety of others. On the other hand, the dissent seemed to concede that if the misdemeanor is *malum in se* then there is a sufficient ground upon which to base a conviction of manslaughter where homicide results from the act. It was the view of the dissent that the Multiple Dwelling Law was merely *malum prohibitum* and in order to render a violation of its provisions *malum in se* there would have to be a showing of actual or imputable knowledge of the violation—passed upon by a jury. The dissent did acknowledge that an issue of fact was presented and that it could be found by a jury that there was sufficient knowledge to establish culpable negligence on the part of the defendant. However, since the trial judge had taken the issue of knowledge away from the jury and had charged that as a matter of law lack of knowledge of the misdemeanor and the condition of the building was not a good defense, the dissent was of the opinion that a new trial should have been ordered.

Amended Illinois Criminal Sexual Psychopathic Persons Act—Effective July 1, 1955 Illinois has taken an enlightened step forward in the treatment of sexually dangerous persons. The amended Act covers not only the definition of a sexually dangerous person, but also amends procedures for the commitment, detention and supervision of such an individual.

A sexually dangerous person is defined as any person suffering from a mental disorder for not less than one year which disorder is "coupled with criminal propensities to the commission of sex offenses," and "demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children." Commitment proceedings are to be initiated by a petition of the Attorney General or State's Attorney when it shall appear that any person charged with a criminal offense is a sexually dangerous person. This petition, filed with the clerk of the court in the same proceeding wherein such person stands charged with a criminal offense, must set forth facts which tend to show that the person named is sexually dangerous. However, all proceedings under this Act are civil in nature and are governed by the amended Illinois Civil Practice Act.

After the petition has been filed, the court shall appoint two qualified psychiatrists, defined as those who have specialized in diagnosis and treatment of mental and nervous disorders for at least five years, to make a personal examination of the alleged sexual psychopath. The psychiatrists shall file with the court a written report of their conclusions, and, in addition, deliver a copy to the respondent.

Proceedings under the Act shall be tried to a jury, if so demanded, and the respondent has the right to counsel. It shall be competent to introduce evidence of any crimes comitted by the respondent together with evidence of any punishments inflicted thereupon. If the respondent is found to be a sexually dangerous person, the Director of Public Safety shall be appointed guardian of that person and the Director shall keep him committed until recovery and release.

At any time after commitment an application may be filed with the committing court showing that such sexually dangerous person has recovered. If the person has recovered, as determined by a hearing, his discharge shall be ordered. However, in those cases where the Director finds that the person appears to have recovered but that it is not possible to determine with certainty under conditions of institutional care that there has been a full recovery, conditional release may be authorized. If conditional release is authorized by the committing court upon the Director's petition, the Director shall continue to supervise the person under such conditions necessary to protect the public. If there is any violation of this conditional release, the court is required to recommit the person under the terms of the original commitment. ILL. REV. STAT. c.38, §§ 820–825c (Smith-Hurd 1955).

Interrelationship of "Indeterminate Sentence," "Good Behavior" and Parole Statutes in Determining Proper Time for Discharge—New Mexico has three statutes which bear on the question of the proper method of fixing a date for the final discharge of a prisoner. The "indeterminate sentence" statute requires the trial judge to impose a sentence within the maximum and minimum limits prescribed for the crime of which a person is convicted; but sentence may be suspended in the case of a first offender. Under this statute the release of the person "shall be as provided by law." A second statute provides for the computation of time for uniform good behavior which will entitle the prisoner to a reduction of the length of his sentence; this statute is supplemented by an allowance for additional reduction of the terms of "trustees." The third group of provisions relating to the problem of discharge are those which deal with parole, which vest the power in the prison board to release a prisoner on parole after he has served the minimum time on his sentence. Under a uniform practice which had been indulged in by trial judges, the general assumption had arisen that "good time" was to be subtracted from the minimum sentence in determining the appropriate date of discharge.

Within the above framework the petitioner here, who was serving a three to four year sen-

tence, sought a mandamus to the parole board ordering his release. His argument was that he was entitled as a matter of right to a final discharge when his minimum sentence, minus "good time," had been served. Petitioner placed strong reliance upon the alleged custom which had arisen and been applied in New Mexico for approximately forty years. The Attorney General could not, the court observed, successfully rebut this argument, and so he relied instead upon a construction of the wording of the three statutes in issue.

The court examined decisions of other states which have analogous statutes and concluded first that the three sets of statutes "can exist along together." Examining the language of the statutes in New Mexico it found that the clear meaning was that "good time" was to be deducted from the *maximum* term of the indeterminate sentence. It also held that no prisoner is entitled to parole at any time as a matter of right and that the discretion vested in the parole board cannot be controlled by mandamus. However, in view of the fact that the practice had arisen in the state to deduct "good time" from minimum sentences, the court was impelled to recommend that the record of all prisoners, incarcerated prior to 1955, be reexamined by the parole board "with a view of recommending executive clemency by way of a pardon or conditional pardon where warranted, so as to achieve as nearly as possible the former policy of deducting good time off the minimum sentence." The petitioner was then remanded to the custody of the Superintendent of the penitentiary and the alternative writ of mandamus which had issued against the state parole board in the lower court was discharged. *Owens v. Swope*, 287 P.2d 605 (N.M. 1955).

Privilege against Self-Incrimination under Fifth Amendment Held Applicable in Proceeding before State Grand Jury—The defendant was called as a witness by a state grand jury investigating a charge of public bribery. After he had refused to answer several questions propounded to him, the grand jury granted him immunity under an applicable provision of the state constitution. At the time of these proceedings the defendant was charged in the federal district court with a failure to collect, account for and pay wagering excise taxes to the United States. Upon his continued refusal to testify after the proffered grant of state immunity from prosecution, the defendant was cited for contempt, found guilty, fined and imprisoned. After his release he was again called before the state grand jury and the entire process was repeated. The matter came before the Supreme Court of Louisiana upon an application for writs of certiorari, mandamus and prohibition to review the ruling below adjudging the defendant guilty of contempt a second time.

The majority of the court first held that a person may be twice sentenced for contempt in separate criminal proceedings arising out of the same circumstances and that the defendant could not claim his privilege against self-incrimination under the state constitution since there had been an effective offer of immunity. Addressing itself to the problem of whether the defendant could invoke the Fifth Amendment on the ground that the pending indictment in the federal court conclusively established that he would be subjected to the dangers of prosecution if required to testify, the court concluded after a review of several cases: ". . . [A] person may refuse to divulge information or to testify under the constitutional privilege granted him by the Fifth Amendment on the ground that his disclosures would subject him to the danger of prosecution in a Federal court, or be used in the proof of charges pending before the Federal jurisdiction. . . . Where it appears that the danger is remote or unlikely, the privilege against self-incrimination should not be extended. Nevertheless, where the danger is imminent, such as in cases which involve then pending charges awaiting prosecution, the privilege of immunity [sic] should be extended to a witness." *State v. Dominguez*, 82 S.2d 12 (La. 1955).

Three separate dissenting opinions all agreed that the Fifth Amendment privilege does not extend to criminal proceedings in state courts. Noting that the defendant's privilege under the

state constitution had been effectively removed by the grant of immunity, one of the opinions attacked the cases upon which the majority opinion had relied. The gist of this analysis was that in each instance the defendant who was permitted to invoke a privilege against self-incrimination in state criminal proceeding on the ground of imminent danger of prosecution in another jurisdiction, was permitted to do so under the *state* privilege against self-incrimination and *not* the *federal*. See *People v. DenUyl*, 318 Nich. 645, 29 N.W. 2d 284 (1947); *State ex rel. Mitchell v. Kelly*, 71 S. 2d 887 (Fla. 1954).

In Abortion Prosecution Corroborating Evidence Must Tend to Connect Defendant with the Crime without Reference to Abortee's Testimony—The abortee in this case testified convincingly as to the identity and guilt of the defendants. However, corroborating evidence was almost entirely circumstantial and the defendants did not take the stand. In charging the jury, the trial judge stated the test of legal corroboration as being "whether the evidence other than the [testimony of the abortee] by reasonable inference, connects the defendant with the crime *or* whether it satisfies the jury that the woman is telling the truth." [emphasis by the court] At another point the trial judge told the jury that "corroborating evidence may take interpretation and direction from the testimony" of the abortee in order to give it meaning and value. The applicable California statute states that a person cannot be convicted of abortion unless the testimony of the abortee is corroborated by other evidence. CAL. PEN. CODE. §1108 (1954). These instructions, in addition to the improper admission of certain testimony given at a preliminary hearing by an absent witness, were held by the Supreme Court of California to be reversible error and to justify a new trial. *People v. MacEwing*, 288 P.2d 257 (Cal. 1955). The court stated that the rule regarding sufficiency of corroborating evidence is as follows: "The corroborating evidence is sufficient if it tends to connect the defendant with the commission of the crime in such a way as may reasonably satisfy the jury that the witness who must be corroborated is telling the truth." As to the assertion that corroborating evidence may be considered in the light of the abortee's testimony in order to take on meaning and value the court held that corroboration is inadequate where it requires aid from the testimony of the person to be corroborated. Such evidence must be considered without reference to the testimony which it must support.