Buffalo Law Review

Volume 12 | Number 1 Article 32

10-1-1962

Criminal Law And Procedure—Extremely Long And Unreasonable Delay In Sentencing Convicted Criminal Divests Court Of Jurisdiction

James P. Manak

have been that the proffered evidence did not show what that standard was. Yet, if the real issue is faced a new constitutional right may be struck. The theme of Justice Harlan in the *Smith* case points the way by demonstrating that where constitutional freedoms of expression are at stake, one cannot in keeping with due process be condemned for dealing in forms of expression the community at large tolerates.

W. J. L.

EXTREMELY LONG AND UNREASONABLE DELAY IN SENTENCING CONVICTED CRIMINAL DIVESTS COURT OF JURISDICTION

Relator pleaded guilty in the Bronx County Court to second degree robbery in February 1953, and sentencing, scheduled for April 1953, was not imposed until November 1959.[1] Whether or not the delay was of such an unreasonable length of time as to divest the court of jurisdiction over the convicted criminal was the center of controversy in this habeas corpus proceeding. The events that occurred between the time of scheduled sentencing and actual sentencing were as follows: Before the April 1953 sentencing date, relator was tried in the same court for first degree robbery. This ended in a mistrial. He was then ordered to Westchester County to face a third charge of robbery pending against him. He pleaded guilty to this charge and was sentenced on May 27, 1953, to the Elmira Reception Center for a term not to exceed five years. He was paroled in October 1955, but prior to this time the Superintendent at the Center had sought to learn from the Bronx authorities the disposition to be made of five warrants lodged against relator as detainers, one of which pertained to the February 1953 conviction. Before relator's release, all of these warrants had been withdrawn. This supposedly led the relator to believe that the February 1953 proceedings against him had been abandoned. Out on parole for little over a year, the relator was returned to jail and released in April 1958. Within a few weeks he was arrested on two felony charges, pleaded guilty in Bronx County Court, and was sentenced to Riker's Island. At this time a motion was made by the District Attorney to have the relator sentenced upon the conviction of February 1953, and he received five years probation which he began to serve upon his release from the Island in May 1959. Within a few months he absconded, his probation was revoked, and he was sentenced to Sing Sing Prison for a maximum of three years. In his writ for habeas corpus, relator claimed that by virtue of the delay, the Bronx County Court lost jurisdiction over him, and the sentencing on the February 1953 conviction was void. The Supreme Court, Dutchess

1. Relator was 17 years old at the time. For a complete record of the charges and convictions lodged against him from March 1952 to November 1959 see the report of the State of New York Dept. of Correction, Div. of Identification, Albany, N.Y., dated November 11, 1961, in Respondent's Brief, People ex rel. Harty v. Fay, 10 N.Y.2d 374, 179 N.E.2d 483, 223 N.Y.S.2d 468 (1961).

County, dismissed the writ and the Appellate Division unanimously affirmed,[2] permitting an appeal. *Held*: reversed.[3] Where sentence is postponed by an extremely long and unreasonable delay, a court will lose jurisdiction over the convicted criminal. The circumstances which will determine the unreasonableness in each particular case, were sufficient here to be rendered unjustifiable. *People ex rel. Harty v. Fay*, 10 N.Y.2d 374, 179 N.E.2d 483, 223 N.Y.S.2d 468 (1961).

At common law a court lost its jurisdiction over a defendant by the expiration of its term. If the sentence had not been imposed before this expiration, it could not be imposed at all.[4] Many of the states have statutes in derogation of the common law pertaining to the procedure to be followed by the courts in sentencing convicted criminals, and New York is among them.[5] It was relator's contention,[6] and it seems to be substantiated by considerable case authority,[7] as well as the text writers,[8] that the general rule prevailing in the United States today is that a criminal court has the duty to impose a sentence upon the convicted criminal within a reasonable time, and that if an indefinite and unjustifiable length of time elapses after conviction the court will lose its jurisdiction over the prisoner. The opposite view does not recognize any loss of jurisdiction under circumstances similar to those presented by the instant case, unless the defendant has taken some action to challenge the delay.[9] This view has the effect of shifting what is usually considered the court's duty to the prisoner, and it has often been strongly criticized.[10] It was rejected by the Court in the instant case, and it is stated that no waiver of the claim of lack of jurisdiction exists merely because the defendant has not challenged the delay of the court before sentence is finally handed down.[11]

---

2. 13 A.D.2d 538, 214 N.Y.S.2d 294 (1st Dep't 1961).

3. Judge Fuld concurred in the result, but not the opinion of the Court written by Chief Judge Desmond.

4. See generally, Hogan v. Bohan, 305 N.Y. 110, 112, 111 N.E.2d 233, 234 (1953); Rudd v. Hazard, 266 N.Y. 302, 306, 194 N.E. 764, 765 (1935).

5. N.Y. Code Crim. Proc. §§ 471, 472, 482.

6. Relator's Brief, People ex rel. Harty v. Fay, supra note 1.

7. See, e.g., People v. Cahill, 300 Ill. 279, 133 N.E. 228 (1921); Willard v. State, 67 Okl. Cr. 291, 94 P.2d 13 (1939); Grundel v. People, 33 Colo. 191, 79 P. 1022 (1905); Commonwealth v. Maloney, 145 Mass. 205, 13 N.E. 482 (1887).

8. 5 Wharton's Criminal Law and Procedure 372 (1957).

9. This is the view that obtains in the Federal Courts. See Miller v. Alderhold, 288 U.S. 206, 211 (1933), where the Court held that "in a criminal case, where verdict has been duly returned, the jurisdiction of the trial court . . . is not exhausted until sentence is pronounced, either at the same or a succeeding term." It was further stated that in case of a delay the defendant had no cause to complain unless he had moved for a timely sentencing and that a failure to do so was a waiver.

10. See Smith v. State, 188 Ind. 64, 67, 121 N.E. 829, 830 (1919), where the Court stated: "There is no reason or authority for saying that an accused must not only do what the law requires of him, but that he must go farther and compel the Court to perform a plain statutory duty, if he would protect himself from the motives of the Court's failure to act."

11. People ex rel. Harty v. Fay, supra note 1, at 337, 179 N.E.2d at 484, 223 N.Y.S.2d at 470: "Our state nowhere imposes on a defendant any duty to demand sentence and the question of retention or loss of jurisdiction should not depend on the activity or non-activity of the defendant."

The policy of the courts in New York State has been to look with strong disfavor upon unreasonable delays in criminal cases,[12] and it has been stated that the courts lack the power to defer sentence indefinitely.[13] This can be seen from a study of three sections of the Code of Criminal Procedure. Section 471 provides that the court "must appoint a time for pronouncing judgment"; section 472 provides that the "time appointed must be at least two days after the verdict, if the court intends to remain in session so long, or if not, as remote a time as can reasonably be allowed"; section 482 provides that "if no sufficient cause appear to the court why judgment should not be pronounced, it must thereupon be rendered."[14]

As these sections illustrate, the court need not set a date for sentencing a convicted criminal within the term of the convicting court; but jurisdiction over the criminal can survive the expiration of the court's term. Since the court can establish the date of sentencing within a "reasonable" time it can be assumed in the instant case, that the time between the relator's conviction (February 10, 1953) and the date set for sentencing (April 9, 1953) was a "reasonable" time. But relator was not sentenced on this date because of his removal to Westchester County to face another charge. Since section 482 clearly provides that judgment "must" be rendered on the date so fixed, a vigorous argument was made by the relator that even if the court did not lose jurisdiction by virtue of the inordinate delay, still the sentence imposed was void because it did not conform to the specific procedure stipulated by the three pertinent sections. That is to say, judgment *was not rendered* on the specified date, as it "must" be, and therefore any further attempt to sentence the relator would be void. Conceivably, the Court might never have reached the question of what constitutes an unreasonable delay sufficient to divest a court of jurisdiction, if it had based its decision on the lack of conformity with this specific procedure. It may be that Judge Fuld, who concurred in the result, but not the opinion, believed that the decision would more wisely have been grounded upon this argument of the relator.

---

12. See People v. Wilson, 8 N.Y.2d 391, 171 N.E.2d 310, 208 N.Y.S.2d 963 (1960).

13. Accord, Hogan v. Bohan, 305 N.Y. 110, 111 N.E.2d 233 (1953); People ex rel. Prosser v. Martin, 306 N.Y. 710, 117 N.E.2d 902 (1954); People v. Cioffi, 1 N.Y.2d 70, 133 N.E.2d 703, 150 N.Y.S.2d 192 (1956).

14. In Hogan v. Bohan, supra note 13 at 112, 111 N.E.2d at 234, the Court considered these sections of the code and stated: "the plan is unmistakable; the Court is afforded time to reach a decision and pronounce judgment, without running the risk of losing jurisdiction of the defendant by the expiration of its term—as was the case at common law. . . . But pronounce judgment, impose sentence it must." It must be noted at this point that there exists a possibility of confusion in construing sections 471, 472, and 482 with respect to the difference, if there is to be considered any, between "judgment" and "sentencing." Sections 471 and 472 speak only of "judgment," whereas section 482 speaks of "rendering judgment or pronouncing sentence." The opinion in the instant case states that "[s]entencing is the entry of judgment in a criminal cause." It thus appears that the Court has used the terms in such a way as to make any distinction between them of no significance to the instant case. It further appears that the applicable sections of the Code have also used the terms synonymously, and it is to be noted, finally, that no distinction is made by either relator or respondent.

Whether or not the instant case furnishes the most desirable opportunity to pass on the issue of unreasonable delay in sentencing, the holding of the Court has brought New York State in line with what is asserted by the Court to be the better reasoned view on the subject.[15] The reasons that recommend such a holding are persuasive: the orderly administration of the courts; the fact that until judgment is rendered the defendant cannot be eligible for pardon or commutation of sentence, nor can he appeal; and of course, the deferment of the term of punishment merely extends the length of time after which the defendant will be able to return to society or be eligible for parole. There is little doubt that in many ways a delay can work hardship and injustice upon the defendant. But there may be other considerations of at least equal importance. It is to be noted that the Court has not really defined what is to be an "unreasonable" delay—this is understandable since the term "unreasonable" is susceptible of numerous interpretations. Also, there is the question of what circumstances will "justify" a long delay. The Court does not list in advance what these might be; this would, of course, be impossible. But it is not difficult to predict that prosecuting attorneys will have no more difficulty in construing "justifiable circumstances" than will defense counsels in discovering "unreasonable delays." If the decision of the Court in the instant case had been based upon noncompliance with the applicable sections of the statute, and the delayed sentencing of the relator declared void on that certain ground, rather than on the basis of "unreasonable delay," justice might yet have been achieved for this particular defendant without opening the door to what may well prove to be a flood of writs of habeas corpus from convicted criminals who are suddenly aware of the possibility that their sentence may have been pronounced after an "unreasonable delay" from the time of conviction. There may be more desirable cases where it will be necessary to consider what would be an "unreasonable delay." Such a case could arise under section 472 which deals with the appointment of the time for pronouncing judgment. Under this section it must be appointed at least two days after the verdict, or if not, "as remote a time as can reasonably be allowed." A case where the appointment of the sentencing or judgment date was delayed for an unusual length of time would call for a determination of what would be an "unreasonable delay." But where, as here, the date has been set for judgment, and, according to section 482 "must thereupon be rendered," but is not, is it really necessary for the Court to go further than this obvious noncompliance with the statute to void any subsequent sentencing? In spite of the Court's rationale and the admittedly persuasive reasons given to support it, it seems undesirable to allow convicted felons a cancellation of their debt to society on grounds that may indeed work for a more orderly administration of the Courts, but which leave the question of the public interest in some doubt.[16] Submitted—that the public has an

15. Supra note 7.
16. It may be hoped that the relator will not furnish the typical example of the con-

interest in the preservation of the deterrent effect of the sure and certain, as well as expeditious and orderly, administration of criminal justice. It has been said that "Justice is not a one-way street—that law-abiding citizens and law-abiding communities are entitled, at least equally with criminals, to the protection of the law."[17]

J. P. M.

MANSLAUGHTER THE SAME IN NEW YORK AND NORTH CAROLINA FOR PURPOSE OF HABITUAL CRIMINAL STATUTE

After defendant was convicted of manslaughter in the first degree, the State filed an information at the time of sentencing which charged him as a second felony offender. Previously, the defendant had been convicted of common law manslaughter in North Carolina. On the basis of these convictions, defendant was sentenced under Penal Law section 1941 and received an indeterminate term of twenty to forty years. After serving six years of that term, defendant commenced this coram nobis proceeding on the ground that the North Carolina conviction was not one which could form the basis of a conviction under the New York habitual criminal statute.[1] Special Term denied the application, and this decision was unanimously affirmed by the Appellate Division.[2] *Held,* affirmed, two justices dissenting. Though manslaughter in North Carolina is a common law rather than a statutory crime, it is defined as "the unlawful killing of a human being without malice and without premeditation,"[3] which amounts to the same prohibition as under section 1049 of the Penal Law, and therefore, the North Carolina crime is a valid predicate for second felony sentencing in this state. *People v. Perkins,* 11 N.Y.2d 195, 182 N.E.2d 274, 227 N.Y.S.2d 663 (1962).

Section 1941 subdivision 1 of the Penal Law states:

> . . . a person, who, after having been once or twice convicted within this state, of a felony, of an attempt to commit a felony, or, under the laws of any other state, . . . of a crime which, if committed within this state, would be a felony, commits any felony, within this state, is punishable upon a second or third offense, as follows:
>
> If the second or third felony is such that, upon a first conviction, the offender would be punishable by imprisonment for any term less than

victed criminal who escapes sentencing on the basis of the rule laid down in the instant case. The record shows (supra note 1) that since April 9, 1953, when the Bronx County Court failed to sentence him he has been incarcerated almost continuously. His career in crime includes charges of assault, rape, robbery, felonious assault upon a police officer, possession of burglary tools, as well as parole and probation violations. If the delayed sentencing of the relator in the instant case has worked an injustice, it does not readily present itself upon a close reading of the record.

17. Commonwealth v. Redline, 391 Pa. 486, 514, 137 A.2d 472, 483 (1958) (dissenting opinion).

1. N.Y. Penal Law § 1941.
2. People v. Perkins, 13 A.D.2d 998, 216 N.Y.S.2d 762 (2d Dep't 1961).
3. State v. Benson, 183 N.C. 795, 799, 11 S.E. 869, 871 (1922).