Buffalo Law Review

Volume 11 | Number 1 Article 64

10-1-1961

Criminal Procedure—Defendant's Conviction Reversed in Absence of Any Statute Authorizing Punishment for Offense Charged

Buffalo Law Review Board

less than that which he would receive had he been indicted only for selling narcotics.

W. L.

DEFENDANT'S CONVICTION REVERSED IN ABSENCE OF ANY STATUTE AUTHORIZING PUNISHMENT FOR OFFENSE CHARGED

In *People v. Chopak*,[58] defendant had pleaded guilty to an information charging her with maintaining substandard temperatures in two rooms of each of two apartments owned by a corporation of which she was president. The offense to which she had pleaded guilty was created by Section 131.03 of the Health Code of New York City.[59]

Defendant does not, on this appeal, question her guilt of the offense charged, but rather the power of the court, in the absence of an authorizing statute, to sentence or punish her for such offense. Although punishment for a violation of Section 131.03 is *presently* authorized by Section 102-c of the New York Criminal Courts Act,[60] defendant is correct in her contention that no such authorization expressly existed at the time the offense was committed. Former Section 102-C, in force on the date of the offense charged, merely provided punishment for violations of Section 225 of the New York City Sanitary Code[61] but made no mention of Section 131.03 of the Health Code. The State contends that Section 131.03 of the Health Code, which had prior to this offense been substituted by the New York City Board of Health for Section 225 of the Sanitary Code, was merely a re-enactment of the latter, and that, therefore, the reference in former Section 102-c to the Sanitary Code (Section 225) must, of necessity, be considered as a reference to its successor (Section 131.03 of the Health Code).

There is no question that Section 131.03 of the Health Code was intended as a substitute for Section 225 of the Sanitary Code. The more difficult question is whether it (Section 131.03 of Health Code) was a re-enactment of Section 225 of the Sanitary Code. If so, it appears clear that the State must prevail, for, as stated in Section 80 of the General Construction Law: "If any provision of a law be repealed and, in substance, re-enacted, a reference in any law to such repealed provision shall be deemed a reference to such re-enacted provision."[62]

The Court of Appeals, however, rejected the State's argument and reversed the conviction against defendant. The Court held that Section 131.03 of the Health Code, which raised the lowest permissible temperature three degrees Fahrenheit, was not a re-enactment of Section 225 of the Sanitary Code and, therefore, the lower court lacked the power to punish defendant for the offense committed. The Court's conclusion is given weight by their observance of the

58. 9 N.Y.2d 184, 213 N.Y.S.2d 33 (1961).
59. Hereafter referred to as the Health Code.
60. N.Y. Crim. Cts. Act § 102-c.
61. Hereafter referred to as the Sanitary Code.
62. N.Y. Gen. Construction Law § 80.

fact that of the four rooms where the information charges that the temperatures were too low, three would have complied with the lower requirement of Section 225 of the Sanitary Code but not of Section 131.03 of the Health Code. The fourth and only room which did not comply with Section 225 of the Sanitary Code was but one degree below the temperature permitted by that Section.

The case appears to add nothing to the substantive law of New York. If of any importance, other than to the immediate parties concerned, it bears out the fact that a statutory provision may be a substitute for another without of necessity being a re-enactment of the former. The case also illustrates the difficulties of enforcement that may follow when local laws must look to State legislation for implementation.

It is also to be observed that were defendant to have violated a statute rather than a city ordinance, her defense would not have been available, for Section 29 of the Penal Law[63] provides that a violation of any *statute* for which no penalty is imposed shall be treated as a misdemeanor and punished in accordance with Section 1937.[64]

Bd.

HABEAS CORPUS: TO CHALLENGE TRANSFER TO NEW PLACE OF CONFINEMENT

The defendant, convicted of rape in the first degree, was sentenced subsequent to a psychiatric examination to a term at Attica State Prison. He was thereafter transferred to Dannemora State Hospital, an institution for the criminally insane.[65] In *People ex rel. Brown v. Johnston*,[66] the defendant sought a writ of habeas corpus to challenge the validity of the transfer on the ground that being sane, he was illegally transferred. The Appellate Division upheld the denial of the writ, as the place of confinement is an administrative matter not subject to judicial review and cannot be challenged by habeas corpus.[67] The issue, therefore, presented to the Court of Appeals was whether the court may refuse to inquire into the mental condition of the applicant for a writ of habeas corpus to determine if the transfer was illegal. The Court reversed the denial of the writ and directed a hearing on the issue of the prisoner's sanity.

If the prisoner had been transferred to another correctional institution, habeas corpus would not lie to test the validity of the transfer.[68] However, if a physician of a state prison certifies to the warden of the state prison that the prisoner, convicted of a felony, is insane, the warden may then transfer him

63. N.Y. Penal Law § 29:
Where the performance of any act is prohibited by a statute, and no penalty for the violation of such statute is imposed in any statute, the doing such act is a misdemeanor.
64. N.Y. Penal Law § 1937.
65. See N.Y. Correction Law § 375.
66. 9 N.Y.2d 482, 215 N.Y.S.2d 44 (1961).
67. 11 A.D.2d 819, 203 N.Y.S.2d 353 (3d Dep't 1960).
68. People ex rel. Villani v. Murphy, 257 App. Div. 1020, 12 N.Y.S.2d 870 (3d Dep't 1939). See also People ex rel. Sacconanno v. Shaw, 4 A.D.2d 817, 164 N.Y.S.2d 750 (3d Dep't 1957).