

10-1-1961

Criminal Procedure—Habeas Corpus: To Challenge Transfer to New Place of Confinement

Buffalo Law Review Board

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Criminal Procedure Commons](#)

Recommended Citation

Buffalo Law Review Board, *Criminal Procedure—Habeas Corpus: To Challenge Transfer to New Place of Confinement*, 11 Buff. L. Rev. 180 (1961).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol11/iss1/65>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

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 Law⁶³ 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).

to Dannemora.⁶⁹ No judicial hearing on the issue of sanity is required by the statute. On the other hand, if a physician of a county penitentiary reports to the warden that a prisoner serving a term of one year or less or convicted of a misdemeanor is insane, the warden may not on the basis of this one report transfer him to a hospital for the criminally insane. The warden must apply to a judge of a court of record for a further examination to be made by two other physicians.⁷⁰ Subsequent provisions of the statute provide for notice to the prisoner and to his relatives⁷¹ and for a hearing, which may be demanded by the relative, on the issue of sanity.⁷² If no hearing is demanded, the judge will proceed to determine the issue of sanity and either grant or dismiss the order for the transfer.⁷³

The failure of the Legislature to provide specifically for a hearing on the issue of sanity on behalf of a prisoner convicted of a felony and transferred to Dannemora should not preclude a hearing. A state prison and a state hospital for the criminally insane differ so radically that if a hearing on the issue of sanity is requested, it should be granted to prevent any possible injustice. The Court of Appeals, although ignoring any possible constitutional issues, wisely afforded the present defendant appropriate relief through the writ of habeas corpus.

Bd.

CORAM NOBIS: MORE CASES

Coram nobis is an extraordinary writ of error designed to afford a convicted defendant a remedy against substantial injustice when no other means of judicial relief is, or was ever, open to him. The application for the writ is generally always sustained, if the error committed affected a constitutionally guaranteed right.⁷⁴ During the past term, the Court of Appeals was required to determine whether coram nobis would lie in regard to alleged error not apparent on the record and committed in the information,⁷⁵ by the prosecution's failing to inform the jury of a promise of leniency extended to a witness,⁷⁶ by the defense counsel and the court interpreter's misconduct,⁷⁷ and by the prison authorities' preventing the taking and perfection of an appeal.⁷⁸

In *People v. Hamm*,⁷⁹ the defendant, a school teacher, was apprehended during a gambling raid and charged with disorderly conduct.⁸⁰ The arresting

69. N.Y. Correction Law § 383. (It is not clear from the opinion whether this procedure was used in the instant case, but it is reasonable to assume so.)

70. N.Y. Correction Law § 408(1).

71. N.Y. Correction Law § 408(2).

72. N.Y. Correction Law § 408(4).

73. N.Y. Correction Law § 408(3).

74. See Frank, *Coram Nobis* § 3.01 at 23 (1953); Paperno and Goldstein, *Criminal Procedure in New York*, Ch. 37 at 709 (1960).

75. *People v. Hamm*, 9 N.Y.2d 5, 210 N.Y.S.2d 508 (1961).

76. *People v. Mangi*, 10 N.Y.2d 86, 217 N.Y.S.2d 72 (1961).

77. *People v. Hernandez*, 8 N.Y.2d 345, 207 N.Y.S.2d 668 (1960).

78. *People v. Hairston*, 10 N.Y.2d 92, 217 N.Y.S.2d 77 (1961).

79. *Supra* note 75.

80. N.Y. Penal Law § 722(1).