Buffalo Law Review

Volume 7 | Number 1 Article 61

10-1-1957

Criminal Law—Parole Violation

Robert Lane

involving coram nobis where both the nature of the writ and its emergency application are brought into dispute.

Parole Violation

The Correction Law, section 219, provides that if any prisoner, who has been paroled from a state prison commits and is convicted of a crime in another state, which if committed in this state would be a felony, he shall upon his return to this state be confined in prison to serve the remaining portion of the maximum sentence from which he had been paroled.[69] The Court held (4-3) in *People ex rel. Watkins v. Murphy*,[70] a habeas corpus proceeding, that section 218 of the Correction Law,[71] which provides that a parole board should declare a prisoner to be delinquent whenever there is reasonable cause to believe he has violated his parole, does not terminate the prisoner's parole so as to immunize him from the penalty imposed by section 219.

The defendant, a parolee from a New York prison, had been declared delinquent from such parole in accordance with section 218. A month later he was arrested, convicted and sentenced to a term in a Texas prison for the commission of a crime, which all of the Court agreed would be a felony if committed in this state. Upon being released from the Texas prison, he was returned to New York to serve the remainder of the maximum sentence from which he had originally been paroled.

When a prisoner is paroled, he is in fact being permitted to serve part of his sentence outside of prison.[72] As of the time he is declared delinquent from this parole however, his sentence stops and the "time owed shall date from such delinquency."[73]

The dissenting judges upheld the defendant's contention that he did not commit the crime while he was on parole for he had previously been declared delinquent thereby terminating his parole. As soon as the parole is declared delinquent, he assumes the status of an escaped convict.[74] Therefore, since he is no longer lawfully out of prison, he cannot be said to be a charge of the Board of Parole;[75] nor can he be said to be on parole within the meaning of section 219 if he is no longer on parole within the meaning of section 218.

The majority however views the parolee as a prisoner on parole and until

69. N.Y. CORRECTION LAW §219.
70. 3 N.Y.2d 163, 164 N.Y.S.2d 719 (1957).
71. N.Y. CORRECTION LAW §218.
72. People ex rel. Rainone v. Murphy, 1 N.Y.2d 367, 153 N.Y.S.2d 21 (1956).
73. N.Y. CORRECTION LAW §218.
74. Hutchings v. Mallon, 245 N.Y. 521, 157 N.E. 842 (1927).
75. Dote v. Martin, 294 N.Y. 330, 62 N.E.2d 217 (1945).

he is returned to prison, he is still subject to the jurisdiction of the Board of Parole[76] and therefore subject to the penalty imposed by section 219.

Although as the dissent points out, the defendant had even been arrested in Texas by virtue of a New York warrant for violation of his parole and subsequently released because no one from the New York Board of Parole appeared to take him into custody, prior to the commission of the crime in Texas, he should still be considered to be on parole within the meaning of section 219. A contrary holding would favor the parolee, who had previously violated his parole in addition to committing a felony, over the parolee, who had not violated his parole before committing the same crime.

Surrender Of Prisoner Not Commutation Of Sentence

Surrender by the Governor of the State of New York of a prisoner to be tried for a crime in another state does not amount to a commutation of the New York sentence although the time spent in the other state's prison is deducted from the New York sentence.

It was so held in *People ex rel. Reynolds v. Martin*[77] concerning a prisoner who was under sentence of from twenty years to life for second degree murder. Shortly thereafter, the State of Pennsylvania applied to the Governor of this state for surrender of the prisoner to be tried for first degree murder. (This surrender should be within a reasonable time after the commission of the crime and is based upon reciprocal comity.)[78] The Governor agreed, provided that if the prisoner was acquitted or received a lesser sentence than the New York sentence, he was to be returned to New York to finish his term here; but if convicted and sentenced to life imprisonment or execution he was to be left in the custody of the State of Pennsylvania.

The prisoner was convicted and sentenced to life imprisonment, fifteen years later the Governor of Pennsylvania commuted the sentence to fifteen years and one month, also providing for the prisoner's return to New York. Upon his return to Attica State Prison a writ of habeas corpus was sued out. The writ was dismissed and upon appeal the dismissal was affirmed by the Appellate Division.[79]

The Court of Appeals reasoned, in affirming, that the Governor of New York had not commuted the sentence since this power must be exercised formally according to the constitution and implementing statutes.[80] Also, the Governor's

76. See note 72 *supra*.
77. 3 N.Y.2d 217, 165 N.Y.S.2d 26 (1957).
78. People ex rel. Rainone v. Murphy, 1 N.Y.2d 367, 153 N.Y.S.2d 21 (1956).
79. 2 A.D.2d 646, 151 N.Y.S. 2d 626 (4th Dep't 1956).
80. N.Y. CONST. art. IV, §4; N.Y. CODE CRIM. PROC. §§692-697.