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Criminal Law—Surrender of Prisoner Not Commutation of Sentence

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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.

terms were construed to insure that the prisoner received at least the equal of his New York sentence before the agreement was fulfilled. However, the Court agreed the prisoner was entitled to have the time spent in the Pennsylvania prison credited against his New York sentence.

Thus, New York has insured against another state's indiscriminate release preventing vindication of New York Law.

Per Curiam

Right To Appeal — In *People v. Kalan*,[81] the Court of Appeals held, per curiam, that when a defendant is penniless and unable to employ counsel or pay for a transcript of the trial minutes, and further when he is in prison and physically unable to inspect such trial minutes filed in Clerk's office, the refusal to assign counsel upon his request effectively deprives him of his use of the right to appeal.

Coram Nobis — In *People v. Farina*,[82] the Court set aside a conviction on grounds that not only had the defendant not received the sentence promised him by the trial court to induce a plea of guilt, but that he had actually been coerced by the judge into entering the plea.

DECEDENT'S ESTATES

Improper Delegation Of Judicial Authority—Waiver

The Court in, *In Re Nowakowski's Estate*,[1] determined that there was a basis for the Surrogate's finding that the appellant was not fraudulently induced into waiving and releasing his right of election against his wife's will.[2] Another problem with which the Court was faced was the properiety of the Surrogate's clerk taking and reporting testimony, that is, whether this was an improper delegation of judicial authority.[3] On this point the majority felt it was not necessary to reach a conclusion for it found that the appellant waived any right to a particular mode of trial by participating in the proceedings before the clerk without raising any objection. In fact there was no objection until rehearing before the Appellate Division. The dissenter was of the opinion that before you can find a waiver there must be a finding of a right subject to be waived. Accordingly he found that the clerk exceeded his powers which are limited by section 32 of the Surrogate Court Act.

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81. 2 N.Y.2d 278, 159 N.Y.S.2d 480 (1957).
82. 2 N.Y.2d 454, 161 N.Y.S.2d 88 (1957).

1. 2 N.Y.2d 618, 162 N.Y.S.2d 19, (1957).
2. N.Y. DECEDENT ESTATE LAW §18(1) provides for spouse's right of election against the will and §18(9) provides for waiver and release of this right.
3. N.Y. CONST. art. VI, §13; N.Y. SURROGATE'S COURT ACT §32(10).