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Criminal Law—Loss of Jurisdiction by Delay in Pronouncement of Sentence

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U. S. 596 (1944). If the relation between the earlier and later confession is so close that there can be no other inference than that the facts of one control the character of the other, the Court will reverse. Otherwise the question is for the triers of fact and their conclusion, in such an uncertain situation, that the confession is voluntary, cannot be a denial of due process. It must be pointed out that in the instant case the confessions took place in the same building during a short period of time while in the *Lyons* case the second confession took place in a different city more than twelve hours after the first. The majority in the present case found all of the confessions to be part of one continuous process, and therefore, involuntary as a matter of law. The dissent, relying heavily on the *Lyons* case, argued that the finding of the jury that the subsequent confessions were not coerced should have been upheld.

In Illinois it has been held that confessions following an original coerced confession are presumed to be involuntary. *People v. Sweetin,* 325 Ill. 245, 156 N. E. 354 (1927). This presumption can be overcome only by showing that from lapse of time, or otherwise, the party confessing was no longer dominated by the influence which had induced the original confession. Recent decisions in other jurisdictions have held the coercive effect of the first confession broken by a two week passage of time, *Cooper v. State,* ___ Md. ___, 106 A. 2d 129 (1954), and a warning to the accused of his rights before his subsequent confession a day later. *State v. Hamer,* 240 N. C. 85, 81 S. E. 2d 193 (1954).

The decision of this case seems sound where the confessions are so close that they can reasonably be found to be part of one continuous process. In borderline situations, however, the jury is in a better position to hear testimony and decide the mental state of the accused than an appellate court. Nevertheless, the Supreme Court, as the final protector of individual rights, has given notice here, as in the past, that it will not tolerate "third degree" methods of police investigation.

Richard C. Wagner

CRIMINAL LAW — LOSS OF JURISDICTION BY DELAY IN PRONOUNCEMENT OF SENTENCE

Judgment was entered in burglary prosecution continuing the matter under advisement so long as defendant remained in the State Epileptic Village and complied with its rules and regulations. After defendant's escape from the Village and recapture, judgment of guilty of burglary was entered and sentence was imposed.

Held (3-2): Reversed. Jurisdiction had been lost by the delay in the pronouncement of sentence. *Taylor v. State,* ___ Ind. ___, 120 N. E. 2d 165 (1954).

The unique fact in the instant case is that in a trial without jury the court made no findings and entered no verdict, a procedure outside the scope of any criminal code. *See Ellis v. State,* 100 Fla. 27, 129 So. 106 (1930). In cases involving a delay in the imposition of sentence the defendant either pleaded guilty or was convicted. See Notes, 3 A. L. R. 1003 (1919); 97 A. L. R. 802 (1935). It is generally recognized by statutory provision and case material that criminal courts have the power to suspend the imposition of sentence for a reasonable length of time. *State v. Everett,* 164 N. C. 399, 79 S. E. 274 (1913); *People* ex rel. *Forsyth v. Court of Sessions,* 141 N. Y. 288, 36 N. E. 386 (1894). Some jurisdictions recognize the inherent power of courts to delay the imposition of sentence indefinitely, *Miller v. Aderhold,* 288 U. S. 206 (1933), but the majority deny the power. *Warner v. State,* 194 Ind. 426, 143 N. E. 288 (1924); *Grundel v. People,* 33 Colo. 191, 79 Pac. 1022 (1905). Such action is said to place the defendant at the mercy of the judge, and infringe on the power of the executive to pardon. *People* ex rel. *Boenert v. Barrett,* 202 Ill. 287, 67 N. E. 23 (1903).

In many jurisdictions probation statutes provide for the suspension of imposition of sentence after a plea or verdict of guilty. NEW YORK PENAL LAW § 2188; IND. ANNOT. STAT. § 9-2209 (Burns 1942 Replacement). Under California's probation statute, CAL. PENAL CODE § 1203 (Deering 1949), it has been held that the court must suspend sentence in conformity with the statute. Ex parte *Slattery,* 163 Cal. 176, 124 Pac. 856 (1912). Probation statutes have been held to be constitutional, not to infringe on the executive's pardoning power, and to be regarded as a reforming discipline. *Cooper v. United States,* 91 F. 2d 195 (5th Cir. 1937). Persons previously convicted of a felony are ineligible for probation under some statutes. CAL. PENAL CODE § 1203 (Deering 1949); MASS. ANN. LAWS c. 276, § 87 (1933). In some probation statutes certain crimes are expressly excluded, (murder, arson, burglary, rape, treason, kidnapping, second conviction for robbery) IND. ANNOT. STAT. § 9-2209 (Burns 1942 Replacement); (murder, administering poison, kidnapping, incest, sodomy, buggery, rape, assault and battery with intent to ravish, arson, robbery and burglary) PA. ANNOT. STAT. tit. 19, § 1051 (Purdon 1930). An order placing a defendant convicted of burglary on probation was held in Pennsylvania to be a nullity. *Commonwealth* ex rel. *Paige v. Smith,* 130 Pa. Super. 536, 198 Atl. 812 (1938).

By acquiescence in the court's delay in the imposition of sentence the defendant may waive his right to a speedy trial. *Miller v. Aderhold, supra; McLaughlin v. State,* 207 Ind. 484, 192 N. E. 753 (1934). The two judges writing minority opinions felt that under Rule 1-13, RULES IND. SUP. CT. (1954 Ed.), the defendant had waived his right. This rule provides a time limit of ninety days during which a judge may hold a case under advisement, after which, upon its being called to his attention by any party, he is disqualified from further participation in the case. The minority felt that this rule should be applied to criminal as well as civil cases, that since it is the only rule or statute limiting the power of a judge's holding a case under advisement, the defendant should have invoked its provisions, and that since the defendant had not, "he cannot now complain that he was denied his rights."

The three judges of the majority felt that the delay in making a finding deprived the defendant of his constitutional right to a speedy trial, and that the rule of *Warner v. State, supra,* that a defendant is entitled to have sentence passed with reasonable promptness, should be followed.

It is submitted that a proper decision was reached, not only for the reasons of the majority, but also because the trial court, in acting for the defendant's benefit in attempting to mitigate the harshness of the requirements of the probation statute, exceeded its power under the criminal code, and should not be upheld in such arbitrary practice. It should be left to the legislature to make rules, and to the executive to exercise clemency.

David Abbott

CRIMINAL LAW — RIGHT TO PUBLIC TRIAL

Defendant, convicted of compulsory prostitution under Section 2460 of the New York Penal Law, objected that he was denied a public trial when the judge excluded the general public and the press, but permitted the presence of the defendant's friends and relatives. Held (3-2): Reversed. The requirements of a public trial under Section 8 of the Code of Criminal Procedure and Section 12 of the Civil Rights Law as modified by Section 4 of the Judiciary Law were lacking. *People v. Jelke,* 284 App. Div. 211, 130 N. Y. S. 2d 662 (1st Dep't 1954).

The qualities incident to a public trial have been the subject of much controversy resulting in a definite split of opinion. Note, 49 COL. L. REV. 110 (1949). It is agreed that the courts have the inherent power under the demands of sound judicial administration to exclude the public because of the limited capacity of the