Attempt and Conspiracy Separate Inchoate Offenses - Relief by Habeas Corpus

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in the faith of the people. If that faith should be lost, five or nine
men in Washington could not long supply its want.”—with the
reminder that the converse of that last sentence is also true.

JAMES P. NORRIS, JR.

CRIMINAL LAW AND PROCEDURE—ATTEMPT AND CONSPIRACY
SEPARATE INCHOATE OFFENSES—RELIEF BY HABEAS CORPUS—Duhon
was convicted of an “attempt to conspire to commit simple burg-
lary.” He claimed that attempted conspiracy is not a crime and
that the sentence and imprisonment were illegal. Without filing
a motion in arrest of judgment or taking an appeal, relator sought
extraordinary relief by a writ of habeas corpus. Held, the sen-
tencing court was without jurisdiction ratione materiae and the
relief prayed for was properly granted by the district court. State
of Louisiana ex rel. Clarence Duhon v. General Manager, Louisi-
ana State Penitentiary, La. Sup. Ct. Docket No. 39,091 (July 20,
1948).1

In holding that the criminal code does not contemplate an
offense of attempted conspiracy, Judge Holcombe, whose opinion
was approved without discussion by the supreme court, stressed
the fact that both criminal conspiracy2 and attempt3 are found
in Chapter V of the criminal code which sets out “inchoate off-
fenses.” In these offenses the offender has not completed the basic
crime intended, but is punished because he had a specific intent
to commit the crime and progressed far enough along the road
toward its commission that liability should attach.4

By virtue of the attempt and conspiracy articles being simi-
larly treated as general inchoate offenses, it must naturally fol-
low that they were intended to be applied separately and must
relate to a specific basic crime. Stressing the language of Article
3, which provides that “The articles of this code cannot be ex-

1. Decided by Division A of the Nineteenth Judicial District Court and
affirmed with the comment that the opinion was correct by the Louisiana
Supreme Court. No record of the affirmation has yet been published.
4. “An attempt is committed where the offender had a specific intent to
commit the crime and went beyond the zone of preparation. A conspiracy is
committed where the offender had a specific intent to commit the crime,
combined with others for that purpose, and committed some act in the
furtherance of that object which might or might not be enough to constitute
an attempt.... both of these general criminal concepts were intended to
cover a party who specifically intended to commit one of the basic crimes
listed in the Criminal Code, or elsewhere, but might have been apprehended
before he was able to carry out that criminal purpose.” Opinion of Holcombe,
J., p. 2.
tended by analogy so as to create crimes not provided for herein," the court concluded, "it would definitely appear that the Criminal Code does not provide for a combination of inchoate offenses resulting in such a crime as an attempt to conspire to commit simple burglary."

While recognizing the general rule that one who has been tried in a court of competent jurisdiction cannot, without having appealed from the judgment of the lower court, be released from custody by habeas corpus, the court held that such relief is available where the sentence imposed is for a non-existent crime. "Such a sentence obviously deprives the accused of his liberty without any basis or color of authority and without due process of law. . . . no court has jurisdiction to commit a person for the doing of an act which is not an offense under the law and for which the law does not direct that he be committed. In doing so the court acts without Jurisdiction Ratione Materiae and its action is wholly void. . . . the remedy of one committed under such a sentence is by habeas corpus." (Italics supplied.)

The Duhon case has thus settled our jurisprudence on two novel, important issues. First, the inchoate offenses in Chapter V of the criminal code are to be applied separately to the various basic offenses of that code and other criminal statutes; second, the remedy of habeas corpus will lie for one convicted of a non-existent crime, even if there is a failure to exhaust the usual remedies in the trial court.

LEROY H. SCOTT, JR.

CRIMINAL LAW AND PROCEDURE—CONSTITUTIONAL LAW—UNCONSTITUTIONALITY OF STATUTES—Defendant was prosecuted under Article 106 (2) of the Louisiana Criminal Code of 1942 "for having in his possession with intent to display an indecent print and movie film." Held, the obscenity article was so vague that it vio-

8. Harlan v. McGourin, 218 U. S. 442, 31 S.Ct. 44, 54 L.Ed. 1101 (1910), holding that the remedy of habeas corpus was available for one who was convicted at an unauthorized term of court; State v. Bush, 12 Ala. App. 309, 68 So. 492 (1915), holding that one held under a void warrant of arrest should be released by habeas corpus; Commonwealth v. Frances, 61 Pa. Super. 445 (1915), where such a remedy was held available to one sentenced to the penitentiary for an offense not punishable by confinement therein; Manning v. Biddle, 14 F. (2d) 518 (C.C.A. 8th, 1926), where the accused was discharged for the reason that he had been convicted and sentenced for an offense which the court held did not exist.