Louisiana Law Review

Volume 24 | Number 2
The Work of the Louisiana Appellate Courts for the 1962-1963 Term: A Symposium
February 1964

Criminal Law - Constitutionality of Drug Addict Statute

James S. Holliday Jr.

fourth amendment, the decisions in *Mapp* and *Ker* help to attain this balance.

S. Patrick Phillips

CRIMINAL LAW — CONSTITUTIONALITY OF DRUG ADDICT STATUTE

Relators had pleaded guilty to a charge of drug addiction under Louisiana R.S. 40:962A.[1] They later instituted habeas corpus proceedings attacking this statute on grounds that any punishment for the status of addiction is cruel and unusual in violation of the eighth and fourteenth amendments of the United States Constitution since addiction may well be involuntary. The district judge dismissed the proceedings. On certiorari the Louisiana Supreme Court affirmed. *Held,* the Louisiana drug addict statute penalizes the intentional and habitual use of narcotics leading to addiction — not merely the resultant status or condition. *State* ex rel. *Blouin v. Walker,* 244 La. 699, 154 So. 2d 368 (1963).

It is now well settled that regulation of narcotics and drugs is a valid exercise of a state's police power.[2] The very serious nature of the biological and psychological consequences, the close relationship of crime and addiction, and the alarming increase of addiction since World War II have prompted the states to provide severe penalties to curb the narcotics problem.[3] Such statutes should be construed in light of their underlying purpose to protect public health from the insidious consequences of the unauthorized use of these drugs.[4]

In *Robinson v. State of California*[5] the United States Supreme Court held unconstitutional a California law making narcotic addiction a criminal offense with a mandatory imprison-

1. LA. R.S. 40:962A (1950): "It is unlawful for any person to manufacture, possess, have under his control, sell, give, deliver, transport, prescribe, administer, dispense, or compound any narcotic drug, except as provided in this Sub-part, *or to be or to become an addict as defined in R.S. 40:961.*" (Emphasis added.)

2. Minnesota *ex rel.* Whipple v. Martinson, 256 U.S. 41 (1921); 17A AM. JUR. *Drugs and Druggists* § 9 (1957). *Accord,* State v. Martin, 192 La. 704, 189 So. 109 (1939); State v. Kumpfert, 115 La. 950, 40 So. 365 (1905); Allopathic State Board of Medical Examiners v. Fowler, 50 La. Ann. 1358, 24 So. 809 (1898). See also State v. Thomas, 224 La. 431, 69 So. 2d 738 (1954).

3. See *Drug Addiction: Crime or Disease?,* 1961 A.B.A.—A.M.A. JOINT COMMITTEE ON NARCOTIC DRUGS REP.

4. Territory v. Hu Seong, 20 Hawaii 669 (1911).

5. 370 U.S. 660 (1962).

ment for a minimum of ninety days.[6] In holding the California statute inflicted a cruel and unusual punishment,[7] the majority emphasized that the statute, as construed by the California court,[8] punished a status of being ill[9] without regard to whether the illness was voluntary.[10]

Louisiana's narcotic law[11] is for the most part an enactment of the Uniform Drug Act.[12] The addiction provisions, however,

6. CALIF. HEALTH & SAFETY CODE § 11721: "No person shall use, or be under the influence of, or be addicted to the use of narcotics . . . . It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating any provision of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in the County jail. The court may place a person convicted hereunder on probation for a period not to exceed 5 years and shall in all cases in which probation is granted require as a condition thereof that such person be confined in the county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this section from the obligation of spending at least 90 days in confinement in the county jail."

7. 370 U.S. at 667: "We hold that a state law which imprisons a person thus afflicted as a criminal, even though he has never touched any narcotic drug within the State or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment in violation of the Fourteenth Amendment. To be sure, imprisonment for ninety days is not, in the abstract, a punishment which is either cruel or unusual. But the question cannot be considered in the abstract. Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold."

8. In the *Robinson* case the trial judge had instructed the jury that the California statute made it a misdemeanor for a person either (1) to commit the act of using narcotics or (2) to be addicted to the use of narcotics; and further that these offenses were different, the portion of the statute which deals with addiction being based upon the condition of status and not an act of using.

The court held these instructions binding on them and Mr. Justice Stewart, in closing his opinion, reiterated: "We deal in this case only with an individual provision of a particularized local law as it has so far been interpreted by the California Courts." *Id.* at 668.

9. *Id.* at 666: "This statute, therefore, is not one which punishes a person for the use of narcotics, for their purchase, sale or possession, or for antisocial or disorderly behavior resulting from their administration. It is not a law which even purports to provide or require medical treatment. Rather we deal with a statute which makes the 'status' of narcotics addiction a criminal offense, for which the offender may be prosecuted 'at any time before he reforms.' California has said that a person can be continuously guilty of this offense, whether or not he has ever used or possessed any narcotics within the state, and whether or not he has been guilty of any antisocial behavior there." See also Utah v. Zeimer, 10 Utah 2d 45, 347 P.2d 1111, 79 A.L.R.2d 821 (1960) ("habitual criminal" is a status, not a crime; reversible error to charge as a crime). In People v. Belcastro, 356 Ill. 144, 190 N.E. 301, 92 A.L.R. 1228 (1934) a statute subjecting all persons reputed to be habitual violators to conviction as vagabonds was held unconstitutional — the court defining repute as reputation or opinion. *But cf.* cases where vagrancy as a status may be punished criminally. See, *e.g.*, District of Columbia v. Hunt, 163 F.2d 833 (1947); People v. Arlington, 103 Cal. App. 2d 911, 229 P.2d 495 (1951); Handler v. Denver, 102 Colo. 53, 77 P.2d 132 (1938); Commonwealth v. Diamond, 248 Mass. 511, 143 N.E. 503 (1924); State v. Susnan, 216 Minn. 293, 12 N.W.2d 620 (1943).

10. 370 U.S. at 667 n. 9.

11. LA. R.S. 40:961-984 (Supp. 1962).

12. 9B UNIFORM LAWS ANNOTATED, *Uniform Drug Act.*

were added later.[13] In recognizing this state's right to deal with the use of narcotics and drugs, Louisiana courts have held denial of parole to a person convicted under the narcotics statute is not cruel and unusual punishment[14] under the United States Constitution[15] nor the Louisiana Constitution.[16] On the other hand, the court has been cognizant of the requirement of reasonableness and has held unconstitutional a statute making any possession of a hypodermic syringe a crime,[17] finding that it placed an unreasonable presumption of intended illegal use on the mere possession of an instrument having many meritorious uses.[18]

R.S. 40:962A, the section drawn in question in the instant case, provides *inter alia* that it is unlawful for a person "to be or become" an addict.[19] An addict is defined as a person who "habitually uses" narcotics to such an extent as to create a tolerance for them.[20] For purposes of rehabilitation the statute further provides that the court may suspend the sentence of first offenders in favor of probation conditioned upon voluntary entrance into a public health hospital.[21]

In the instant case the Louisiana Supreme Court rejected relators' argument that R.S. 40:962A could be analogized[22] to

13. La. Acts 1948, No. 14, § 2, now LA. R.S. 40:961(1) (Supp. 1962).

14. State v. Bellam, 225 La. 445, 73 So. 2d 311 (1954); State v. Thomas, 224 La. 431, 69 So. 2d 738 (1954).

15. U.S. CONST. amend. VIII and XIV, § 1.

16. LA. CONST. art. I, § 12, provides in part: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

17. LA. R.S. 40:962B (1950).

18. State v. Birdsell, 235 La. 396, 104 So. 2d 148 (1958), noted 19 LA. L. REV. 519 (1959), 33 TUL. L. REV. 216 (1958).

19. LA. R.S. 40:962A (1950). See note 1 *supra*.

20. LA. R.S. 40:961(1) (1950), as amended (Supp. 1962): "'Addict' means a person who habitually uses one or more of the narcotic drugs defined in this Section to such an extent as to create a tolerance for such drug, or drugs, and who does not have a medical need for the use of such drug, or drugs."

21. LA. R.S. 40:981 (Supp. 1962) provides in part: "In cases of conviction for the offense of being an addict as defined in R.S. 40:961 the court may, in its discretion, if such conviction be the first had by the offender for violating any of the provisions of this Sub-part, suspend the execution of the sentence and place such offender on probation, . . . conditioned upon such person voluntarily entering within 30 days, one of the United States Public Health Service Hospitals and remaining in such hospital until certified by the medical officer in charge as being cured, and conditioned upon such person's good behaviour for the remainder of his sentence. Any such addict placed upon probation shall pay all costs incident to gaining admission to such hospital and shall by proper affidavit authorize the medical officer in charge of such hospital to furnish . . . complete information concerning his admission, discharge and treatment."

22. The *Robinson* case inspired numerous attacks on the narcotics statutes of other states. See, *e.g.*, People v. Davis, 27 Ill. 2d 57, 188 N.E.2d 225 (1963) (provision making it a criminal offense to be under the influence of or be addicted to unlawful use of narcotics invalid as inflicting a cruel and unusual punishment); Salas v. State, 365 S.W.2d 174 (1963) (conviction under Texas statute

the California law stricken in *Robinson v. State of California* because it punished the mere status of addiction.[23] The court said it was the habitual use of drugs — not solely the status — that was offensive,[24] construing the criminal provision as requiring "intentional use" or "use with guilty knowledge"[25] — a requirement that has been read into other provisions of the narcotics law.[26] Since *Robinson* was predicated on imprisonment without either use of drugs or irregular behavior in the imprisoning state,[27] the instant case does not appear inconsistent with it. It is clear, however, that there can be no conviction under the Louisiana addict provision without evidence of intentional use of the proscribed drugs in Louisiana. A conviction without showing such use would be punishment for the status of addiction itself and invalid under *Robinson*.

This constitutional interpretation given the statute by the Louisiana Supreme Court restricts its intended use. Furthermore, since an addict who abstains from use in Louisiana may not now be coerced into rehabilitative treatment,[28] the instant

affirmed as defendant was charged with the "act" of being under the influence of narcotics).

23. It is significant that the majority of the United States Supreme Court in the *Robinson* case viewed the California statute as interpreted by the lower California court. The majority in the instant case took this same approach and interpreted the Louisiana statute to avoid the California pitfall, while Justice McCaleb in his dissent viewed the statute as written and concluded that the statute as written was unconstitutional.

24. "[T]he habitual use of a narcotic as denounced by the Louisiana statute necessarily comprises a series of acts committed intentionally or voluntarily . . . ." 154 So. 2d at 371.

25. *Ibid.*: "[It is] clear that the Louisiana statute, unlike the California law as interpreted by the courts of that state, penalizes not the status or condition of addiction but rather the habitual use of narcotics leading to such a status. Moreover, the *intentional use* of such drugs (or their *use with guilty knowledge*) is, under our law, a necessary element of the crime of becoming an addict which must be proved by the state just as criminal intent is required to be shown in most other prosecutions."

26. The court followed a rule in Louisiana jurisprudence that "guilty knowledge" is an essential element in the crime of possession of narcotics. State v. Johnson, 228 La. 317, 82 So. 2d 24 (1955); State v. Howard, 162 La. 719, 111 So. 72 (1926). See also State v. Peltier, 229 La. 745, 86 So. 2d 693 (1946); State v. Nicolosi, 228 La. 65, 81 So. 2d 771 (1955). *Accord*, State v. Birdsell, 232 La. 725, 95 So. 2d 290 (1957) (guilty knowledge necessary to constitute the crime of possessing a hypodermic syringe). *But cf.* State v. Birdsell, 235 La. 396, 104 So. 2d 148 (1958), in which the court, apparently ignoring the holding in the 1957 *Birdsell* case, held that LA. R.S. 40:962B (1950), which prohibits possession of a hypodermic syringe was unconstitutional as placing an unreasonable presumption of illegal use in the unauthorized possession of a hypodermic syringe. It was implicit in the reasoning that the statute was construed as punishing the mere possession of the prohibited articles regardless of their intended use. See generally Notes, 19 LA. L. REV. 519 (1959), 33 TUL. L. REV. 216 (1958).

27. See note 7 *supra*.

28. If a person habitually used narcotics in another state and then came into Louisiana as an addict, it would appear that no conviction could now be sustained

case clearly indicates a void in the present Louisiana narcotics law. It is submitted that, since rehabilitation should be the state's primary motive in confining addicts, this void should be filled by a statute utilizing the state's police power to confine addicts for rehabilitative treatment.[29] Louisiana would then possess a modern and constitutionally tested narcotics law imposing criminal sanctions for unauthorized use and providing compulsory treatment without criminal conviction for those afflicted with addiction.

James S. Holliday, Jr.

FAMILY LAW — ALIMONY — EFFECT OF FAULT WHEN WIFE OBTAINS DIVORCE UNDER LA. R.S. 9:301

Plaintiff wife instituted suit in 1958 for separation from bed and board on the grounds of abandonment and cruelty.[1] The trial court rejected, on the ground of mutual fault, the demand of the wife; she appealed. While the cause was pending, both parties filed for judicial separation on the ground of living separate and apart for one year.[2] Separation was granted in the husband's suit which was served first.[3] In 1960 both parties filed suit for absolute divorce on the ground they had remained

under the addict provision without a clear showing that he committed some act in Louisiana contributing to his addiction. Without conviction as an addict, there could be no compulsory confinement for treatment under LA. R.S. 40:981 (1950), as amended (Supp. 1962).

29. In the *Robinson* case the court affirmed the states' power to impose compulsory treatment and involuntary confinement for those addicted to the use of narcotics with criminal sanctions attached for noncompliance. In a footnote it was mentioned that California had a civil program for treatment in sections 5350-5361 of its Welfare and Institutions Code. See *In re* DeLa O, 28 Cal. Reptr. 489, 378 P.2d 793 (1963) (upheld compulsory treatment and rehabilitation procedures for narcotics addicts).

1. LA. CIVIL CODE art. 138 (1870): "Separation from bed and board may be claimed reciprocally for the following causes: . . .

"(3) On account of habitual intemperances of one of the married persons, or excesses, cruel treatment, or outrages of one of them toward the other, if such habitual intemperance, or such ill treatment is of such a nature as to render their living together insupportable . . .

"(5) Of the abandonment of the husband by his wife or the wife by her husband . . . ."

2. LA. CIVIL CODE art. 138 (1870): "Separation from bed and board may be claimed reciprocally for the following causes: . . .

"(9) When the husband and wife have voluntarily lived separate and apart for one year and no reconciliation has taken place during that time."

3. This case has a very interesting custody issue that is beyond the scope of this Note.