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Criminal Procedure - Commitment After Acquittal on Ground of Insanity - Release or Discharge

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NOTES

CRIMINAL PROCEDURE — COMMITMENT AFTER ACQUITTAL ON GROUND OF INSANITY — RELEASE OR DISCHARGE

Relator, who had been automatically committed to a state mental institution after his acquittal of a capital crime by reason of insanity, petitioned the district court which had ordered his commitment for a writ of habeas corpus on the ground that he was no longer insane.[1] On appeal from a dismissal of the petition the Third Circuit Court of Appeal refused to review. *Held*, since relator's commitment resulted from a criminal proceeding against him, a petition for habeas corpus was a criminal rather than a civil matter which the court of appeal, having no criminal appellate jurisdiction, could not review. Further, as no sentence had been imposed, the Louisiana Supreme Court also lacked criminal appellate jurisdiction, thereby requiring that the appeal be dismissed rather than transferred. *State* ex rel. *Ballett v. Gremillion*, 168 So. 2d 270 (La. App. 3d Cir. 1964), *writ refused*, 169 So. 2d 393 (La. 1965).[2]

The criminal appellate jurisdiction of the Louisiana Supreme Court is limited to cases in which the penalty of death or imprisonment at hard labor may be imposed or in which a fine exceeding three hundred dollars or a sentence exceeding six months imprisonment has actually been imposed.[3] The Supreme Court has original jurisdiction to issue writs of habeas corpus in criminal cases within its appellate jurisdiction, but it lacks appellate jurisdiction over habeas corpus proceedings in all criminal cases.[4] Consequently, a court's ruling in such a habeas corpus proceeding is reviewable by the Supreme Court only under

1. LA. R.S. 15:270 (1950): "Any person charged with an offense for which the penalty is or may be capital punishment who, upon trial, is found not guilty by reason of insanity or mental defect shall be committed by the judge to a state mental institution. No person so committed shall be released from the state mental institution except upon the order of the same court which ordered his commitment based upon a determination that such person no longer is criminally insane or a menace to society."

2. In denying writs, the Supreme Court said: "The showing made does not warrant the exercise of our supervisory jurisdiction." 169 So. 2d 392 (La. 1965) (two Justices dissenting).

3. LA. CONST. art. VII, § 10(7).

4. *Id.* art. VII, §§ 2, 10; State *ex rel.* Cox v. Clemmons, 243 La. 264, 142

its supervisory powers.[5] On the other hand, an appeal to the Supreme Court will lie from a habeas corpus proceeding involving a civil matter.[6] The courts of appeal lack criminal appellate jurisdiction in all cases except appeals from criminal prosecutions against juveniles.[7] Since courts of appeal have original jurisdiction to issue writs of habeas corpus only where they have appellate jurisdiction, they cannot issue writs of habeas corpus in criminal cases,[8] and, for the same reason, cannot entertain appeals from such habeas corpus proceedings.[9] Similarly, their supervisory jurisdiction is limited to cases in which an appeal would lie.[10] An appeal from a habeas corpus proceeding involving a civil matter, however, will lie to a court of appeal as well as to the Supreme Court.[11] The controlling factor in the availability of appeal, therefore, is whether the habeas corpus proceeding involved a criminal or a civil matter; if the former, no appeal will lie to either a court of appeal or to the Supreme Court.

Louisiana R.S. 15:270 provides for automatic commitment of a person acquitted of a capital crime by reason of insanity.[12] Louisiana R.S. 28:59, in turn, provides that a person acquitted of a non-capital crime by reason of insanity may be committed "in the same manner provided in R.S. 28:53" of the general mental health law.[13] Judicial commitment under R.S. 28:53 has been repeatedly held to be a civil exercise of the state's police power and not a criminal proceeding or a formal interdiction proceeding.[14] Consequently, a petition for discharge from such a civil

So. 2d 794 (1962); State *ex rel.* McIsaac v. Sigler, 236 La. 773, 109 So. 2d 89 (1959); State *ex rel.* Womack v. Walker, 236 La. 129, 107 So. 2d 417 (1958); State v. Lacrouts, 134 La. 900, 64 So. 824 (1914); *Ex parte* Mitchell, 1 La. Ann. 413 (1846).

5. State *ex rel.* Cox v. Clemmons, 243 La. 264, 142 So. 2d 794 (1962); State *ex rel.* Womack v. Walker, 236 La. 129, 107 So. 2d 417 (1958).

6. LA. CONST. art. VII, § 10; State *ex rel.* Womack v. Walker, 236 La. 129, 107 So. 2d 417 (1958).

7. LA. CONST. art. VII, § 29.

8. *In re* Ingram, 82 So. 2d 788 (La. App. 1st Cir. 1955).

9. *Ibid.*

10. LA. CONST. art. VII, § 29.

11. *Ibid.; In re* Ingram, 82 So.2d 788 (La. App. 1st Cir. 1955).

12. See note 1 *supra.*

13. LA. R.S. 28:53 (Supp. 1964): "A. Upon application by any responsible person, accompanied by a certificate as provided in R.S. 28:52, the judge of the civil district court may commit to an institution any patient within his jurisdiction when, in his opinion, commitment is in the best interest of the patient and the community. The court shall fix a date for a hearing to be held not less than five days from receipt of examiner's report."

14. See *In re* Ingram, 82 So. 2d 788, 790 (La. App. 1st Cir. 1955), and authorities cited therein.

commitment under R.S. 28:53 would be a civil proceeding and a refusal to order a discharge would be appealable to the proper court of appeal.[15]

In the instant case the court of appeal held in effect that automatic commitment of a person acquitted of a capital crime by reason of insanity was a criminal proceeding and that a proceeding seeking discharge from such commitment would not be appealable to the court of appeal because it lacked the requisite criminal appellate jurisdiction. Counsel for relator strongly argued that his commitment should be regarded as a civil matter, since he was found not guilty of any crime. The court rejected this contention relying largely on official comments to the Code of Civil Procedure to the effect that where a person "was confined as a result of a criminal proceeding against him," his confinement was a criminal matter.[16] This decision leads to the conclusion that the commitment of a person acquitted of a capital crime by reason of insanity is a criminal proceeding, whereas the commitment of a person acquitted of a non-capital crime is a civil proceeding. Such a distinction would seem supportable under the court's rationale only if the commitment of a person acquitted of a non-capital crime did not occur "as a result of a criminal proceeding against him." In both the capital and non-capital cases the commitment, whether automatic or after a hearing, arises out of the acquittal on the ground of insanity. Significantly, in the non-capital case the court of acquittal, rather than a civil district court, handles the commitment proceedings and the prosecuting attorney is the "responsible person" who files the application for commitment.[17] In addition, because the defendant has successfully claimed insanity to escape criminal responsibility he is presumed still insane and he

15. A person seeking discharge from a civil commitment may use the civil habeas corpus provisions of the Code of Civil Procedure. See LA. CODE OF CIVIL PROCEDURE bk. 7, tit. 3, ch. 2, *Preliminary Statement* 595 (1960): "After a careful study of the practices in other states, it was determined that this Code should include articles regulating the use of the writ of habeas corpus in civil proceedings, such as cases involving custody of children or *civil commitment.*" (Emphasis added.)

16. *Ibid.* "The articles in the Code of Criminal Procedure regulate the use of the writ [of habeas corpus] where the applicant is confined as a result of a criminal proceeding against him."

17. *Compare* LA. R.S. 28:59 (1950), quoted in this note, *with id.* 28:53 (Supp. 1964), quoted in note 13 *supra.* R.S. 28:59 provides: "Any person acquitted of a crime or misdemeanor by reason of insanity or mental defect may be committed to the proper institution in the manner provided in R.S. 28:53, 28:54, and 28:55, by the district court of acquittal and contradictorily with the district attorney."

must rebut this presumption to avoid commitment.[18] All of these factors seem to indicate that although the person acquitted of a non-capital crime by reason of insanity may be subject to subsequent civil commitment, such a commitment nonetheless follows "as a result of a criminal proceeding against him."

In *State v. Hebert*[19] the defendant, charged with forgery, appealed from the judgment of the district court declaring him presently insane and unable to stand trial. Over objections by the state the Supreme Court held that it had appellate jurisdiction over this proceeding because it was a final and prejudicial judgment. The court also stated that "a proceeding of this kind is not a 'criminal case,' but is a proceeding which grows out of and is incidental to a criminal case."[20] Surely here is an instance where a person was "confined as a result of a criminal proceeding against him" and yet the Supreme Court clearly stated that such a proceeding was not a "criminal case." It seems necessary to conclude, therefore, that the court in the instant case was erroneous in holding that the "confinement of a person as a result of a criminal proceeding against him" is necessarily a criminal matter. It is submitted that relator's commitment was not a "criminal case" but rather a "proceeding which grows out of and is incidental to a criminal case," and that the court of appeal in the instant case therefore had civil appellate jurisdiction.[21]

Assuming, *arguendo*, that the court was correct in holding that the instant case was a criminal matter, appellate review seems unavailable in such a case. The court of appeal indicated that the Supreme Court could not entertain an appeal in the

18. For a proposed statutory recognition of this presumption see LOUISIANA STATE LAW INSTITUTE, CODE OF CRIMINAL PROCEDURE REVISION, EXPOSÉ DES MOTIFS no. 19, tit. XXI — *Insanity Proceedings* art. 14 (March 8, 1963): "When a defendant is found not guilty by reason of insanity in any other felony case, the court shall remand him to the parish jail and shall hold a prompt contradictory hearing, at which the *defendant shall have the burden of proof*, to determine whether the defendant may be discharged without danger to others or to himself." (Emphasis added.)

19. 187 La. 318, 174 So. 369 (1937).

20. *Id.* at 324, 174 So. at 371; see also State v. Yaun, 235 La. 105, 102 So. 2d 862 (1958), citing the *Hebert* opinion with approval.

21. Various other jurisdictions having statutes requiring commitment after acquittal by reason of insanity and similar discharge or release provisions hold that commitment and discharge proceedings are civil matters. See, *e.g.*, Bailey v. State, 210 Ga. 52, 77 S.E.2d 511 (1953) (automatic commitment following acquittal by reason of insanity is not a judgment or sentence but merely an act pursuant to police power); State *ex rel.* Boeldt v. Criminal Ct., 236 Ind. 290, 139 N.E.2d 891 (1957) (application for discharge from commitment following acquittal by reason of insanity is not ancillary to criminal proceedings in which applicant had been committed, but is a new and separate action).

instant case, because this type of case did not fall within the Supreme Court's criminal appellate jurisdiction, and, therefore, relator's only remedy was to seek supervisory writs from the Supreme Court. Although it seems evident that no appeal would lie from the denial of the writ of habeas corpus, this is not necessarily due to a lack of criminal appellate jurisdiction. The Supreme Court has said that a judgment denying a writ of habeas corpus in any criminal case is not appealable even though the Supreme Court might otherwise have criminal appellate jurisdiction.[22] If the Supreme Court had in fact criminal appellate jurisdiction in the instant case, relator could seemingly apply for a new writ of habeas corpus to the high court, even though he could not appeal from the denial of the former writ, under the reasoning of the *Hebert* case. If such a proceeding before the Supreme Court is regarded as criminal despite the clear language of the Supreme Court to the contrary, then here is a situation where the high court recognized its appellate jurisdiction in a criminal matter even though no sentence had been imposed. As the court said, the judgment finally disposed of the case and was prejudicial because it deprived the party of his liberty. The same factors exist in the instant case. Accordingly, should the proceedings against relator be regarded as criminal, the Supreme Court would still have appellate jurisdiction, and could thus issue a writ of habeas corpus.

In addition to the problem of appellate review, the instant case reflects the need for a more definite standard and procedure for the release or discharge of persons committed as a result of acquittal. The present law simply provides that no person shall be released except by order of the court which committed him and only "upon a determination that such person no longer is criminally insane or a menace to society."[23] The physicians in the instant case testified that relator was not criminally insane. The district court refused to order his release, however, because of evidence that he *may be potentially* a menace to society. One of the dissenting Justices stated that if "menace to society" were thus construed it was unconstitutional.[24] The practical effect of such a construction is to render discharge virtually impossible. State courts in certain common law jurisdictions, as well as some federal courts, when confronted with

22. See note 4 *supra*, and accompanying text.
23. LA. R.S. 15:270 (1950), quoted note 1 *supra*.
24. See 169 So. 2d 392 (La. 1964) (dissenting from refusal to grant writs).

similar discharge provisions, have construed them to require a more definite standard.[25] In Louisiana under the earlier commitment and release provisions, now repealed,[26] any person acquitted of a crime by reason of insanity was automatically committed to the ward for the criminally insane. Whenever such a person alleged he had regained his reason, however, a rule to show cause why he should not be released would be taken and tried contradictorily with the district attorney of the parish from which he had been committed with a jury verdict deciding the issue. Under the present general mental health law a person committed by court order may be discharged "if by reason of his cure and in the best interest of the patient and the public, discharge is proper."[27] This discharge can come only after the superintendent or the director of the department has been given notice of the application and an opportunity to be heard. Recent legislation has been enacted to require annual examination of persons committed to a mental institution because of incapacity to stand trial.[28] Although this legislation is inapplicable to a person committed after acquittal by reason of insanity, it is a step in the right direction towards helping the "forgotten man" of the mental hospital.

The proposed revision to the Code of Criminal Procedure contains needed provisions for the discharge or release on probation of a person committed to a mental institution after his acquittal by reason of insanity.[29] Under this revision either the superintendent of the institution or the committed person himself may apply for discharge or release on probation to the court which committed him.[30] Additional examining physicians may be used by this court as well as by the committed person and the district attorney,[31] and the committed person may be discharged or released on probation if, after considering all the reports, the

25. See, *e.g.*, Olverholder v. O'Beirne, 302 F.2d 852 (D.C. Cir. 1961) (mere fact that committed person has some dangerous propensity does not alone warrant his continued confinement); State *ex rel.* Barnes v. Behan, 124 N.W.2d 179 (S.D. 1963) (must be reasonable probability that because of unsound mind committed person is dangerous to himself or society).

26. La. Acts 1928, No. 2, § 1, repealed by La. Acts 1932, No. 136, § 2.

27. La. R.S. 28:98 (1950).

28. *Id.* 15:271 (Supp. 1964); see *The Work of the Louisiana Legislature of 1964 — Criminal Procedure*, 25 La. L. Rev. 43, 46 (1964).

29. See Louisiana State Law Institute, Code of Criminal Procedure Revision, Exposé des Motifs No. 19, tit. XXI — *Insanity Proceedings* arts. 14-17 (March 8, 1963).

30. *Id.* art. 15.

31. *Id.* art. 16.

court is satisfied that his discharge or release will be "without danger to others or to himself."[32] If the court is not so satisfied it may hold a contradictory hearing on the matter.[33] This proposed legislation seems at least to furnish the committed person a better opportunity for discharge or release on probation, by allowing adequate cognizance to be taken of medical opinion. However, the suggested standard, "danger to others or to himself," may easily be open to the same criticism voiced against "menace to society," if it is construed to mean a mere potential danger. Whether this proposed legislation would be construed as a criminal rather than a civil matter remains to be seen.[34] It is submitted that additional legislation might be advisable to insure appellate review. In any event, it is hoped that if the result of the instant case is followed, the Supreme Court's supervisory powers will be construed more liberally to insure that such a committed person is afforded a fair opportunity to be heard and is not incarcerated for life because of a mere possibility that he will be a menace to society.

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FEDERAL COURTS — CHANGE OF VENUE UNDER SECTION 1404(a) — CONSIDERATION OF APPLICABLE SUBSTANTIVE LAW "IN THE INTEREST OF JUSTICE"

Section 1404(a) of the Judicial Code[1] authorizes a federal district court to transfer a civil action to any other district where it might have been brought[2] upon the showing that the

32. *Id.* art. 17.

33. *Ibid.*

34. Note that article 17 of the proposed revision on Insanity Proceedings, although based on section 4.08(3) of the ALI Model Penal Code, deleted the provision that "any such hearing shall be deemed a civil proceding." See note 29 *supra*.

1. 28 U.S.C. § 1404(a) (1958): "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." See generally Kaufman, *Observations on Transfers under Section 1404(a) of the New Judicial Code*, 10 F.R.D. 595 (1950).

2. The Court in Hoffman v. Blaski, 363 U.S. 335 (1960) construed the words "where it might have been brought" to mean that the plaintiff must have had an unqualified right to bring the action in the proposed transferee court independent of the consent of the defendant. See generally 1 MOORE, FEDERAL PRACTICE ¶ 0.145[6] (2d ed. 1964). The Court seems to have retreated somewhat from this position. See Van Dusen v. Barrack, 376 U.S. 612 (1964) noted 42 TEXAS L. REV. 1085, 1086 (1964).