University of Miami Law Review

Volume 3 | Number 2 | Article 10

2-1-1949

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Recommended Citation

Criminal Law -- Indefinite Suspension in Imposition of Sentence, 3 U. Miami L. Rev. 304 (1949)
Available at: https://repository.law.miami.edu/umlr/vol3/iss2/10

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augmented by the recent expressions in *Railway Mail Ass'n v. Corsi* [18] and *Oyama v. California,*[19] requiring that the constitutionality of state action be tested according to whether the rights of an *individual* are restricted *because of his race.* Such a construction makes it doubtful whether the "equal protection" clause would permit a statute involving a racial classification to be sustained, except under circumstances similar to those in *Hirabayashi v. United States.*[20]

While the decision will have no drastic repercussions on its facts, since few will avail themselves of the opportunity to enter into miscegenous marriages, its significance lies in the fact that if this interpretation of the "equal protection" clause be correct, the question is raised as to the future of other types of segregation recognized to date.[21] It would seem that the door is being opened to further application of this interpretation to public laws dealing with the more common and consequential segregational problems.[22]

CRIMINAL LAW—INDEFINITE SUSPENSION IN IMPOSITION OF SENTENCE

Petitioner entered a plea of guilty to the charge of possessing and selling lottery tickets. On December 7, 1945, he was adjudged guilty, and the court ordered "that the passing of sentence herein be continued from day to day and from term to term until disposed of." Petitioner was thereupon released. Subsequently, on July 13, 1948, two years and seven months after the imposition of sentence was suspended, he was rearrested and, six days later, was sentenced to three years at hard labor. The court, before passing sentence, denied a motion of the petitioner that he be allowed a hearing to show that he did not violate any agreement or understanding made at the time of suspension. *Held,* appeal dismissed, since no conditions were imposed at the original trial, the hearing was not required. *Pinkney v. State,* 37 So.2d 157 (Fla. 1948).

Suspension of sentence cases must be closely scrutinized, for the courts have indiscriminately used this phrase in two situations; suspension of

18. "A judicial determination that such legislation (N. Y. STATE LABOR RELATIONS ACT, N. Y. CONSOL. LAWS, c. 31, Art. 20) violated the Fourteenth Amendment would be a distortion of the policy manifested in that amendment, which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color." 326 U. S. 88, 94 (1945).

19. "There remains the question whether discrimination between citizens on the basis of their racial descent, . . . is justifiable. Here we start with the proposition that only the most exceptional circumstances can excuse discrimination on that basis in the face of the equal protection clause. . . ." 332 U. S. 633, 646 (1948).

20. 320 U. S. 81 (1943) (exigencies of war).

21. *See, e.g.,* McCabe v. Atchison, T. & S. F. Ry., *supra* (segregation on railroad trains); Missouri *ex rel.* Gaines v. Canada, *supra* (segregation in schools).

22. See note 21 *supra.*

imposition or pronouncement of sentence, and the suspension of execution of sentence.[1] It appears that its proper use refers to the first interpretation, and herein it will so be used.

It is submitted that the courts have used the power to suspend sentence so promiscuously as to lose sight of its derivation and the purposes for its origin in early English common law. The practice of suspending sentence derived its existence from the hardships resulting from peculiar rules of criminal procedure at a time when the court had no power to grant a new trial, either upon the same or additional evidence, and when the verdict was not reviewed on the facts by any higher court.[2] Blackstone stated that the court could suspend the sentence if the judge was not satisfied with the verdict, if the evidence was uncertain, if the indictment was not sufficient, when favorable or extenuating circumstances appeared, or when youths were convicted of their first offense; otherwise, the court was required to pronounce the judgment and punishment annexed to the crime.[3] Later, however, during the reign of Queen Mary, criminal procedure was changed so that witnesses might testify in behalf of the accused, thus eliminating much of the need for the suspension of sentence. Concerning suspension of sentence in the United States, one court has said, "The courts are trying to work out a theory to inherit power from English jurisprudence, although it was taken away from England nearly a century ago and arose under conditions wholly at variance with our system of jurisprudence." [4]

It is exceedingly difficult to reconcile the confusion existing in the courts today or the wide differences of opinion as to the extent of the courts' power to suspend the imposition of sentence. Nearly all jurisdictions recognize the power to do so temporarily, or for a reasonable time,[5] but the courts differ in regard to their power to suspend the imposition of sentence indefinitely.[6] The majority view declares that the power to suspend may be exercised only to a limited degree while a minority view maintains that it is within the complete discretion of the court.[7] The courts delimiting themselves have assigned varying reasons for so doing: that the court loses jurisdiction when the sentence is suspended and the prisoner discharged;[8] the suspension of sentence operates as a condonation of the offense and is tantamount to an exercise of the pardoning power dehors the sphere of the courts, a

1. Neal v. State, 104 Ga. 509, 30 S.E. 859 (1898).
2. People *ex rel.* Forsyth v. Court of Sessions, 141 N.Y. 288, 36 N.E. 386 (1894).
3. 4 Bl. Comm. 721.
4. *In re* Hart, 29 N.D. 38, 149 N.W. 568 (1914).
5. 15 Am. Jur. 134.
6. 24 C.J.S. 47.
7. See note 5 *supra*.
8. Smith v. State, 188 Ind. 64, 121 N.E. 829 (1919).

prerogative of the governor;[9] and that the power to do so is not recognized in the state.[10] In a case where the pronouncement of sentence was suspended for three years, the Supreme Court of Illinois said that if a court had the power to suspend for that length of time, it could continue indefinitely at merely the whim of the judge, and, in effect, create an unjust situation.[11]

Those jurisdictions holding that courts do have the power to suspend indefinitely sentence assign diversified reasons for this result.[12] Florida has consistently adhered to this doctrine. In an early Florida case the defendant was convicted of larceny, and sentenced to pay costs and attorneys' fees; but further sentence was postponed until "the next term of court." The defendant was released, and during the ensuing term of court, nothing further was done on the case. One year later he was rearrested, and sentenced to two years at hard labor. It was held that the court did not lose jurisdiction of the case and it could pronounce sentence at a later date.[13] The court said, "that sentence may be suspended on conviction of an offender, because of mitigating circumstances . . . is . . . held permissible."[13a] The court did not state the mitigating circumstances present which were deemed necessarily incident to postponement or suspension. Succeeding cases, relying on this case, have definitely established in Florida the permissibility of indefinite suspension of the imposition of sentence.[14] It would seem from a perusal of the cases that the mitigating circumstances which are deemed a necessary element to such action are seldom heeded in actual practice. The Alabama court held in an early case that the power to suspend existed,[15] and the Massachusetts court stated it to be a long common practice in the interest of public justice.[16]

It may be readily discerned that more than one hundred years ago, the courts in the United States adopted a dead doctrine from England—indefinite suspension of the imposition of sentence—and one that was never sorely needed here. Even more so today, with well established rules of appeal and

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9. United States v. Wilson, 46 Fed. 748 (C.C. Idaho 1891); Montgomery v. State, 231 Ala. 22 163 So. 365 (1935) (statute giving this power to the court declared invalid). *See* People v. Morrissette, 20 How. Pr. 118, 119 (N.Y. 1860); 16 C.J. 1286.

10. Fuller v. State, 100 Miss. 811, 57 So. 806 (1921); Spencer v. State, 125 Tenn. 64, 140 S.W. 597 (1911).

11. People *ex rel.* Smith v. Allen, 155 Ill. 61, 39 N.E. 568 (1895).

12. Gehrmann v. Osborne, 79 N.J. Eq. 430, 82 Atl. 424 (1912) (It may be within the interest of public policy to stay the imposition); Clanton v. State, 96 Ala. 111, 11 So. 299 (1892) (". . . there has been no discontinuance of the cause. . . ."); People of the State of New York v. Roselle Graves, 31 Hun. 382 (N.Y. 1884).

13. *Ex parte* Williams, 26 Fla. 310, 8 So. 425 (1890).

13a. *Ex parte* Williams, 26 Fla. 310, 317, 8 So. 425, 426 (1890).

14. See Ragland v. State, 55 Fla. 157, 46 So. 724 (1908); Carnagio v. State, 106 Fla. 209, 143 So. 162 (1932) (Judgment held incomplete until sentence pronounced); Bronson v. State, 148 Fla. 188, 3 So.2d 873 (1941) (No conditions were imposed at the time of the suspension, and therefore revocation could be had at the discretion of the court); Coleman v. State, 49 Fla. 447, 6 So.2d 2 (1942).

15. Charles, a Slave, v. The State, 4 Port. 107 (Ala. 1836). *But see* Montgomery v. State, *supra*.

16. Commonwealth v. John Dowdican's Bail, 115 Mass. 133 (1874).

procedure, parole and probation statutes,[17] juvenile courts, and general rules of equitable relief, suspension of sentence seems to be out-of-date. The United States Supreme Court has said that this procedure virtually evinces a refusal of the judiciary to perform a duty resting upon it.[18] In fact, this practice seems to be at variance with a Florida statute.[19] The state has a right to demand and society requires that one who has been convicted of a violation of the law or one who has entered a plea of guilty should be punished as the law sets forth.[20] If a defendant may remain under a suspension of sentence for three years, there would seem to be nothing to prevent that sentence from continuing for fifteen years.[21]

EVIDENCE—ADMISSIBILITY IN FEDERAL COURTS OF CONFESSIONS OBTAINED DURING ILLEGAL DETENTION

Defendant was arrested and detained beyond the time allowed prior to being taken before a committing magistrate for the filing of a complaint against him.[1] During this period of illegal detention, a confession was obtained from defendant without the use of protracted questioning. *Held,* that since the confession was made during a period of illegal detention, it was inadmissible. *Upshaw v. United States,* 69 Sup. Ct. 170 (1948).

The principal case resolves the conflict between the *McNabb*[2] case and the *Mitchell*[3] case regarding the admissibility of confessions obtained during an illegal detention in the absence of additional coercive factors. In the *McNabb* case, federal officers arrested the defendant and detained him beyond the time legally allowed prior to presenting him before a committing magistrate.[4] A confession obtained from him during this illegal detention was held

17. Fla. Laws 1941, c. 20519, § 1, F. S. A. 947 (parole) (1941); Fla. Laws 1941, c. 20519, § 35, F. S. A. 948 (probation) (1941).
18. *Ex parte* United States, 242 U.S. 27 (1916).
19. Fla. Laws, 1941, c. 20519, § 20, F. S. A. 948.01-4 (1941): "In no case shall the imposition of sentence be suspended and the defendant thereupon placed on probation unless such defendant be placed under the custody of said parole officer."
20. People *ex rel.* Smith v. Allen, *supra.*
21. *See* people v. Reilly, 53 Mich. 260, 18 N.W. 849, 850 (1884) (dissenting opinion).

1. FED. R. CRIM. P., 5(a) (Requires an arresting officer to take one charged with offenses against the laws of the United States before the nearest committing officer without unreasonable delay).
2. McNabb v. United States, 318 U.S. 332 (1943) [This case also clearly points out that the basis of the exclusion or admission of confessions in federal courts is not any constitutional issue but rather the ability of the Supreme Court to establish standards of evidence. The admissibility of allegedly coerced confessions in state courts on appeal to the Supreme Court, on the other hand, is always dependent upon the absence or presence of due process. Haley v. Ohio, 332 U.S. 596 (1948); Malinski v. New York, 324 U.S. 401 (1945)].
3. Mitchell v. United States, 322 U.S. 65 (1944).
4. The rule upon which the illegal detention in the *McNabb* case was founded was the predecessor of the rule involved in the instant case. See note 1 *supra.*