

2-1-1953

Infants -- Age Determining Jurisdiction Over Acts of Juvenile Offenders -- Federal Juvenile Delinquency Act

Follow this and additional works at: <http://repository.law.miami.edu/umlr>

Recommended Citation

Infants -- Age Determining Jurisdiction Over Acts of Juvenile Offenders -- Federal Juvenile Delinquency Act, 7 U. Miami L. Rev. 258 (1953)
Available at: <http://repository.law.miami.edu/umlr/vol7/iss2/17>

This Case Note is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

the Court reasoned that the legislature had intended this crime to be included as an unlawful gain.²⁴

The exercise of certain legislative functions by the court is an inescapable product of the judicial process of determining congressional intent. But this must be clearly distinguished from the instances where the court changes its previous interpretation. There, the result is not merely a necessary consequence of the judicial process, but if proper weight is not given to congressional silence, becomes judicial legislation.²⁵ Because the court's original construction of this section of the Internal Revenue Code allowed the embezzler in some instances to set up his crime to defeat the tax,²⁶ national debate following²⁷ the decision stimulated discussion of the possibility of law enforcement through the tax power.²⁸ But in the six year period following this decision Congress did not act to establish such a policy.²⁹

It is submitted that the construction in the instant case is judicial legislation and has the effect of placing the federal government, through the use of the tax power, on the state level of criminal law enforcement.³⁰ Whether federal law enforcement through the use of the tax power would be a benefit to the federal system would be a policy decision of such major importance that it clearly rests with Congress.³¹ The present Court,³² by exercising a legislative function, continues to place upon Congress the affirmative duty to act explicitly on every judicial construction of its statutes.

INFANTS — AGE DETERMINING JURISDICTION OVER ACTS OF JUVENILE OFFENDERS — FEDERAL JUVENILE DELINQUENCY ACT

Defendant was charged with the unlawful possession of counterfeit currency.¹ He moved to dismiss the indictment on the ground that the court

24. Note that neither the Wilcox nor the Rutkin Case affect the taxation of funds from illegal ventures because in most states, the other party, being in *pari delicto*, has no legal right to recover the money. *Johnson v. United States*, 318 U.S. 189 (1943) (numbers syndicate); *United States v. Sullivan*, 274 U.S. 259 (1927) (illegal liquor traffic).

25. *Anderson v. Wilson*, 289 U.S. 20 (1933).

26. *McCue v. Comm'r*, March 4, 1946 Memo. Op., Dkts. 233, 315, 464, CCH Fed. Tax Rep. 7343 (m).

27. See Note, 25 TEX. L. REV. 693 (1947); Note, 46 COL. L. REV. 677 (1946).

28. Note, 48 COL. L. REV. 100 (1948).

29. *Stevenson-Chislett, Inc. v. United States*, 98 F. Supp. 252 (W.D. Pa. 1951) (Congress allowed deduction of loss by victim).

30. *McCray v. United States*, 195 U.S. 27 (1903).

31. See dissent of Stone, C. J. in *Girouard v. United States*, 328 U.S. 61, 70 (1946).

32. See Palmer, *Dissents and Overrulings*, 34 A.B.A.J. 554 (1948) (failure of consistent application of the extrinsic aid of congressional silence is one of the major factors splitting our presently divided court).

1. 62 STAT. 705 (1948), 18 U.S.C. § 472 (1951) (uttering counterfeit obligations or securities); 62 STAT. 701 (1948), 18 U.S.C. § 371 (1951) (conspiracy to commit offense

lacked jurisdiction to try him since he was under eighteen years of age at the time of committing the act. *Held*, the age at the time of the commission of the offense rather than the age at the time of indictment determines whether or not one is a juvenile.² *United States v. Fotto*, 103 F. Supp. 430 (S.D. N.Y. 1952).

The first juvenile court act³ was enacted in Illinois in 1899⁴ and now all states have similar acts, although modified and improved. Great Britain and Canada adopted juvenile court laws in 1908.⁵ The Federal Juvenile Delinquency Act was passed in 1938,⁶ following the first United States Federal Statute on Juvenile Offenders in 1932. The theory of these acts looks toward reclamation and reformation rather than punishment for juvenile offenders. In some states the juvenile court has exclusive jurisdiction on the theory that an infant committing an offense commits no crime but mere delinquency, thereby changing the common law.⁷ The New York statute actually provides this.⁸ Other states grant the juvenile courts concurrent or qualified jurisdiction on the theory that although the offense is a crime the procedure should aim at reformation rather than punishment.⁹ Crimes punishable by death or life imprisonment are, in some statutes, not under the juvenile court jurisdiction.¹⁰

Determination of the conflict on the question of which age is controlling rests mainly on the wording of the statutory provisions of the Act in the various jurisdictions. Among the states which have ruled on the question, there is a slight majority favoring the age at the time charged.¹¹ In line

or to defraud United States); 62 STAT. 705 (1948), 18 U.S.C. § 473 (1951) (dealing in counterfeit obligations or securities).

2. 62 STAT. 857 (1948), 18 U.S.C. § 5031 (1951) (for the purposes of this chapter a "juvenile" is a person who has not attained his eighteenth birthday, and "juvenile delinquency" is the violation of a law of the United States committed by a juvenile and not punishable by death or life imprisonment).

3. At common law an infant under seven was conclusively presumed incapable of committing a crime; as to a child between the ages of seven and fourteen the presumption became rebuttable; for a child over the age of fourteen there was no presumption of incapacity. 4 BL. COMM. *24.

4. ILL. LAWS 1899, p. 131, § 1 *et seq.*; 2, ABBOTT, THE CHILD AND THE STATE 332 (1938).

5. The Children's Act, 1908, 8 EDW. 7, c. 67 (superseded later by other acts); Juvenile Delinquents Act, 1908, CAN. STATS., CAP. 40 (superseded by Juvenile Delinquency Act of 1929).

6. 52 STAT. 764, 765, 766 (1938); 18 U.S.C. § 5031 *et seq.* (1951).

7. *State v. Dubray*, 121 Kan. 886, 250 Pac. 316 (1926) (character of crime is determined by age of offender and does not change from delinquency to crime).

8. N.Y. DOM. REL. CT. ACT. § 61, subd. 1 (amended by L. 1940, c. 671 § 3, L. 1941, c. 943, § 3) (The Children's Court).

9. *Burrows v. State*, 38 Ariz. 99, 297 Pac. 1029 (1931) (decision based on *Arrendell v. State*); *Arrendell v. State*, 60 Tex. Cr. R. 350, 131 S.W. 1096, 1097 (1910) (juvenile statutes affect treatment of juveniles and not capacity for crime).

10. 62 STAT. 857 (1948); 18 U.S.C. § 5031 (1951); IND. ANN. STAT. § 9-2814 (*Burns* 1933); *Miller v. Superintendent of Indiana Boys' School*, 209 Ind. 115, 198 N.E. 66 (1935).

11. Ala., Ariz., Iowa, Mich., Miss., Mo., N.J., Ohio, R.I., Texas, Wash.

with this in *Scopillitti v. State*¹² the court opined that it was not the legislative intent to change the common law, and that the purpose of the Act was to reform the juvenile during his juvenility. In other opinions courts have expressed the fear that to allow the governing age to be that at the time of commission of the offense would bar prosecution in many cases.¹³ A number of statutes expressly state the offender must be a juvenile at the time the action is brought,¹⁴ and many statutes place it within the discretion of either court to decide whether the offender shall be tried as a criminal or a delinquent.¹⁵

The conflicting interpretations parallel each other from the earliest cases to the present.¹⁶ In some of the states which have held that the age at the time of commission of the act is determinative,¹⁷ the statutes clearly state that once the juvenile court has jurisdiction it retains jurisdiction although the offender no longer is within the age limit.¹⁸ In other states, the reasoning is that mere delinquency cannot become crime because of the passage of time.¹⁹ Numerous courts hold the purpose of the juvenile act to be reformation rather than creation of a separate tribunal for juveniles,²⁰ and a few decisions are based on the apprehension that to allow the action to be deferred until the child is beyond the statutory age and therefore liable to criminal prosecution would defeat the purpose of the Act.²¹

In the instant case great weight is placed by the court on the wording of the Federal Act²² as a strong indication of legislative intention that the Act should apply to one a juvenile at the time the offense was committed.

12. 41 Ohio App. 221, 180 N.E. 740 (1932); noted, 10 N.Y.U.L.Q. Rev. 397 (1933). Cf., *State ex rel. Heth v. Moloney, Sheriff*, 126 Ohio St. 526, 186 N.E. 362 (1933).

13. *People v. Ross*, 235 Mich. 433, 209 N.W. 663 (1926) (crime of murder), but many statutes except from juvenile court jurisdiction crimes punishable by life imprisonment or death.

14. *Ex parte Albiniano*, 62 R.I. 429, 6 A.2d 554 (1939).

15. *State ex rel. Boyd v. Rutledge*, 321 Mo. 1090, 13 S.W.2d 1061 (1929).

16. *Holding that age at time of charge controls*: *Arrendell v. State*, 60 Tex. Cr. R. 350, 131 S.W. 1096, 1097 (1910); *Stracner v. State*, 86 Tex. Cr. R. 89, 215 S.W. 305 (1919); *Peterson v. State*, 235 S.W.2d 138 (Tex. Ct. Crim. App. 1950). *Holding that age at time of offense controls*: *Sams v. State*, 133 Tenn. 188, 180 S.W. 173 (1915); *Mattingly v. Commonwealth*, 171 Ky. 222, 188 S.W. 370 (1916); *State v. Musser*, 110 Utah 534, 175 P.2d 724 (1946).

17. Ind., Kan., Ky., La., N.C., Ohio, Tenn., Utah.

18. FLA. STAT. § 39.02(3) (1951); FLA. STAT. § 39.01(11) (1951); UTAH CODE ANN. §§ 14-7-4, 14-7-6 (1943); *State v. Musser*, 110 Utah 534, 175 P.2d 724 (1946); *State ex rel. Heth v. Moloney, Sheriff*, 126 Ohio St. 526, 186 N.E. 362 (1933); *Waybright, Florida's New Juvenile Court Act*, 6 MIAMI L.Q. 3 (1951) (statute provides for juvenile jurisdiction of one a child at the time the offense was committed and makes it discretionary with the juvenile court to transfer to the criminal court a child over 13 years old if he is charged with the commission of what would be a felony if committed by an adult, and transfer of a child over 15 who commits a capital offense) (*These ages are actually 14 and 16 in the statute*).

19. *State v. Dubray*, 121 Kan. 886, 250 Pac. 316 (1926).

20. *State v. Malone*, 156 La. 617, 100 So. 788 (1924), *overruling State v. Ebarbo*, 143 La. 591, 78 So. 793 (1918).

21. *Mattingly v. Commonwealth*, 171 Ky. 222, 188 S.W. 370 (1916).

22. 62 STAT. 857 (1948), 18 U.S.C. § 5031 (1951), *United States v. Fotto*, 103 F. Supp. 430, 431 (S.D. N.Y. 1952) (. . . 'juvenile delinquency' is the violation of a law * * * committed by a juvenile).

Had the intention been otherwise Congress would not have failed to state the determinative date. The court finds little to fear from the results of non-apprehension of an offender until many years after the violation since by the Federal Act crimes involving capital punishment or life imprisonment are excluded,²³ and a large portion of other offenses would be barred by the three year Statute of Limitations.²⁴ In addition, the Act clearly places it within the discretion of the Attorney-General as to whether the offender should be proceeded against as a juvenile.²⁵ The reasonable assumption is that he would do so in a proper case. To construe the statute otherwise, the court finds, might allow the indictment or trial to be delayed to the prejudice of the offender thereby nullifying the purpose of the Act; that is, the recognition that one under eighteen years of age does not have mature judgment and should not be compelled to bear the criminal stigma all his life due to a youthful violation.

The analysis of the problem presented in the instant case follows closely the basic purpose of the Juvenile Delinquency Act, a purpose of reform rather than punishment, and the recognition that a juvenile offense remains just that regardless of the passage of time. Revision of the Juvenile Acts in conformity with those statutes which change the common law,²⁶ making a juvenile offense delinquency and not a crime, would enlighten and further the true purpose of the Acts.

INSURANCE — CONSTRUCTION OF WAR EXCLUSION CLAUSE — KOREAN ACTION

Action to recover on a life insurance policy which provided for the payment of double indemnity for accidental death except if insured was engaged in military, air or naval services in time of war. *Held*, the Korean action is at most an *undeclared* war. Since the term "war" is ambiguous, the policy must be construed in favor of the insured. *Harding v. Pennsylvania Mutual Life Ins. Co.*, 90 A.2d 589 (Pa. 1952).¹

The exemption clause used in this policy depends not only upon the status of the individual, but also upon the status of the country when death occurred. Where such a clause is used, merely "entering into" military service in time of war is sufficient to terminate the double indemnity provi-

23. 62 STAT. 857 (1948), 18 U.S.C. § 5031 (1951).

24. 62 STAT. 828 (1948), 18 U.S.C. § 3282 (1951) (does not run on capital offenses).

25. 62 STAT. 857 (1948), 18 U.S.C. § 5032 (1951), *Barnes v. Pescor*, 68 F. Supp. 127 (W.D. Mo. 1946), *appeal dismissed* 158 F.2d 800 (8th Cir. 1946).

26. N.Y. DOM. REL. CT. ACT. § 61.

1. See also *Beley v. Pennsylvania Mut. Life Ins. Co.*, 90 A.2d 597 (Pa. 1952) (decided on the same day).