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Criminal Law: Indefinite Postponement of Sentence

Tom E. Byrd

CASE COMMENTS

CRIMINAL LAW: INDEFINITE POSTPONEMENT OF SENTENCE

Helton v. State, Case No. 29,434, Fla. Sup. Ct., Oct. 29, 1958

Defendant was convicted in 1944. The maximum sentence that could have been imposed was five years. The trial judge withheld imposition of sentence "until further order of the court," and did not place defendant, then sixteen years of age, under the supervision of the Parole Commission. The maximum probationary period was seven years. Twelve years later the trial judge sentenced the defendant to four years' imprisonment. On petition for writ of habeas corpus, HELD, when a trial court attempts to suspend sentencing indefinitely the court has no jurisdiction to impose sentence after expiration of the hypothetical maximum probationary period. Defendant ordered discharged.

At common law the trial courts had no authority to delay indefinitely the sentencing of a convicted man for the purpose of securing future good behavior.[1] However, in early cases, when the trial courts could not grant a motion for a new trial, the plea of benefit of clergy arose. This enabled the court to delay imposition of sentence long enough to take mitigating testimony before punishment was assessed by the court.[2] Although benefit of clergy has no practical operation in the United States today,[3] most jurisdictions allow a delay in sentencing during the pendency of a motion for a new trial or to allow the defendant time in which to perfect an appeal.[4]

In states where no statute controls, it is generally held that a trial court cannot allow a conviction to stand and at the same time defeat its operation by delaying imposition of sentence indefinitely.[5] And

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[1]*Ex parte* Swain, 88 Okla. Crim. 235, 202 P.2d 223 (1949); Howe v. State, 170 Tenn. 571, 98 S.W.2d 93 (1936); Spencer v. State, 125 Tenn. 64, 140 S.W. 597 (1911).

[2]State v. Bilansky, 3 Minn. 246 (1895); Snodgrass v. Texas, 67 Tex. Crim. 615, 150 S.W. 162 (1912).

[3]DALZELL, BENEFIT OF CLERGY IN AMERICA 268 (1955).

[4]*E.g.*, Zwillman v. State, 9 N.J. Misc. 66, 152 Atl. 775 (Sup. Ct. 1931); Stone v. State, 55 Okla. Crim. 209, 27 P.2d 1057 (1933).

[5]Grundel v. People, 33 Colo. 191, 79 Pac. 1022 (1905); People *ex rel.* Boenert v. Barrett, 202 Ill. 287, 67 N.E. 23 (1903).

where the rule prevails that a trial court exceeds its jurisdiction by suspending the imposition of sentence indefinitely, it has been held that a court by so doing loses all power in the case and the pronouncement of a sentence at a future time is null and void.[6]

Before 1941 the trial courts of Florida apparently assumed the power to defer indefinitely pronouncement of a sentence. The Supreme Court acknowledged this procedure in several opinions even though there was no statute authorizing such procedure.[7]

The Florida Parole Commission was established as an agency of the executive branch in 1941, with qualified full time employees to supervise parolees and probationers.[8] The legislation establishing the Parole Commission provided that "in no case shall . . . the imposition of sentence be suspended . . . unless such defendant be placed under the custody of said parole commission . . . ."[9] Nevertheless, the Supreme Court seems not to have previously disapproved a procedure whereby trial courts suspend imposition of sentence indefinitely without placing the defendant under the Parole Commission's supervision.[10] However, those cases are specifically overruled by the instant case.

In *Bateh v. State*[11] the appellate court held that when a trial court indefinitely delays imposition of sentence and later sentences the defendant, it is a deprivation of due process and the sentence is deemed to run from the time of conviction. The instant case, however, holds that sentence may not be imposed after expiration of the maximum period of the sentence or probation. The *Bateh* case indicates that the court does not lose jurisdiction but rather that imposition of sentence is to relate back to the original time for sentencing. The subject case indicates that jurisdiction is lost once the maximum period expires.

Another alternative is suggested, perhaps unwittingly, by the Florida Supreme Court. The suspension of sentencing could be treated as placing the defendant under Parole Commission supervision

[6]*E.g., Ex parte* Grove, 43 Idaho 775, 254 Pac. 519 (1927); People *ex rel.* Fensky v. Leinecke, 290 Ill. 560, 125 N.E. 513 (1919); Warner v. State, 194 Ind. 426, 143 N.E. 288 (1924); Collins v. State, 24 Okla. Crim. 117, 217 Pac. 896 (1923).

[7]*E.g.*, Carnagio v. State, 106 Fla. 209, 143 So. 162 (1932); *Ex parte* Williams, 26 Fla. 310, 8 So. 425 (1890).

[8]FLA. STAT. §947.01 (1957).

[9]*Id.* §947.01 (4).

[10]See Collingsworth v. Mayo, 77 So.2d 843 (Fla. 1955); Pinkney v. State, 37 So.2d 157 (Fla. 1948).

[11]101 So.2d 869 (1st D.C.A. Fla. 1958).