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ADJUDICATION OF GUILT IN A CRIMINAL CASE IN FLORIDA

All jurisdictions within the United States agree that for a sentence to be lawfully imposed the records of a criminal trial must show that the court found the defendant guilty.[1] They differ, however, as to how this finding of guilt may be shown. In the majority of jurisdictions the only requirement is that it be apparent from the complete record of the trial.[2]

Florida has adopted the minority position. In this state it is clear that to support a sentence, an express adjudication of the defendant's guilt by the court is required.[3] A person is convicted when the jury returns a verdict of guilty and the judge clinches the finding by adjudicating him guilty, even though he may never be punished.[4] Thus a verdict of guilty returned by the jury or a plea of guilty entered by the defendant himself is not evidence of conviction of a crime until it has been made effective by an adjudication of the court adopting it.[5] No particular form is required for this adjudication, but it will not be implied from the mere fact that the court imposed sentence.[6]

Whether a formal adjudication of guilt is necessary if the trial judge suspends imposition of sentence and places the defendant on probation apparently has not been directly answered on the appellate level in Florida. Some circuit judges are of the opinion that an adjudication is not required.[7] They point out that the loss of civil rights provided by law upon conviction of certain crimes[8] may hamper rehabilitation of the defendant to the status of a responsible member of society. Since there cannot be a conviction without an adjudication of guilt, they suspend adjudication, suspend imposition of sentence, and place the defendant on probation. This procedure permits the defendant to retain his civil rights while assuring adequate supervision over him. If the probationer violates the terms of his probation,

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[1]See 15 AM. JUR., *Criminal Law* §445 (1938); Annot., 69 A.L.R. 792 (1930).

[2]See note 1 *supra*.

[3]Shargaa v. State, 102 So.2d 809 (Fla. 1958); Weathers v. State, *infra* note 4; Ellis v. State, *infra* note 5.

[4]Weathers v. State, 56 So.2d 536 (Fla. 1952).

[5]Ellis v. State, 100 Fla. 27, 129 So. 106 (1930).

[6]*Ibid.*

[7]See Letter, Judge John U. Bird, 32 FLA. B.J. 528 (1958).

[8]FLA. STAT. §§112.01, 97.041, 40.01 (1957).

he may be brought before the court, adjudged guilty, and sentenced.

The ends to be obtained from this procedure seem to be desirable. However, unless adjudication of guilt can be suspended indefinitely along with imposition of sentence, it must be made; and once it is rendered the defendant stands convicted and loses his civil rights regardless of the wishes of the trial judge.[9]

ADJUDICATION UNDER THE FLORIDA STATUTES

Section 948.01 of Florida Statutes 1957, which authorizes a trial judge to order probation, includes suspension of sentence in the procedure leading to probation. Since adjudication of guilt is necessary before sentence can be imposed, it would seem that suspension of sentence would equally require that the defendant be adjudged guilty. Otherwise the trial court would have no authority to consider the sentence in relation either to suspension or imposition.

Section 924.06 (1) grants a defendant who has been placed on probation the right of appeal from the "judgment of the court adjudging his guilt." It would seem, therefore, that a defendant who is placed on probation but not adjudged guilty could not appeal. Considering these statutes together, it appears that the legislature intends that every accused who is found guilty of the crime charged shall be adjudged guilty by the court.

Section 921.02 of Florida Statutes 1957 makes an adjudication of guilt mandatory if the defendant "has been convicted." This use of the word *convicted* seems to imply that there can be a conviction upon the rendering of a verdict or the entering of a plea of guilty, even though there has been no express adjudication. However, as has been indicated, it is clear that there must be an express adjudication of guilt for there to be a conviction.[10]

Even if this were not true and the use of *convicted* in section 921.02 is interpreted to mean that an express adjudication is not required, the necessary implication would be that a defendant would stand convicted and lose his civil rights at the time a verdict of guilty was rendered or a plea of guilty entered. Therefore, suspension of an adjudication of guilt by the trial judge would be immaterial as to the defendant's loss of civil rights.

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[9]See Letter, *supra* note 7.

[10]Shargaa v. State, 102 So.2d 809 (Fla. 1958); Weathers v. State, 56 So.2d 536 (Fla. 1952); Ellis v. State, 100 Fla. 27, 129 So. 106 (1930).

RECENT CASES

Two recent cases concerning the power of a trial court to suspend imposition of sentence support the conclusion that an adjudication of guilt is required for suspension of imposition of sentence. The District Court of Appeal for the First District, in *Bateh v. State,*[11] while discussing the history, at common law and under the Florida decisions, of the power of a judge to suspend the imposition of sentence, seemed to assume that to exercise the power to suspend sentence a court must have before it a *convicted* criminal.

The Florida Supreme Court, in *Helton v. State,* in adopting the reasoning of the *Bateh* case on this point, used the following language:[12]

> "Thus, regardless of whether the practice as it existed in this state prior to 1941 was lawful, it is clear that since that date the power to suspend the imposition of sentence upon a *convicted criminal can be exercised by a trial judge only as an incident to probation under the provisions of Ch. 948 . . .*" (Emphasis added.)

The 1957 Florida Legislature apparently reached this conclusion when it enacted a statute placing a time limitation of five years on the trial court's power to impose sentence upon a *convicted* criminal whose sentence was suspended at the time of his conviction.[13] Evidently the Legislature was of the opinion that a trial judge could exercise his power to suspend the imposition of sentence only if the defendant was convicted.

Shargaa v. State[14] has been cited as supporting the practice of not adjudging defendants guilty if they are to be placed on probation. The defendant was seeking reversal of a judgment finding him guilty of being a second offender under section 775.09 of Florida Statutes 1957, on the ground that he was not adjudged guilty of the first offense and was therefore not convicted. For the first offense, com-

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

[12]106 So.2d 79, 80 (Fla. 1958).

[13]FLA. STAT. §775.14 (1957). The apparent reason for the enactment of this statute was to limit the time within which a trial judge could sentence a defendant who had been placed on probation *from day to day or term to term. Helton v. State* has eliminated the necessity for this statute, and it should be repealed.

[14]102 So.2d 809 (Fla. 1958).

mitted in 1942, the defendant had been placed on probation for one year. In 1954 he was sentenced to serve three months in the county jail for the second offense. Following his conviction for the second offense, he was tried and adjudged guilty as a second offender and sentenced to serve eight years in the state prison. To establish sufficient evidence of conviction of the first offense, the state produced the original records of the trial, but they were found not to contain an adjudication of the defendant's guilt. The state maintained that the fact that the defendant was placed on probation was sufficient to show a prior conviction. As an alternative argument the state presented the order of probation, properly signed by the judge, containing a formal adjudication of the defendant's guilt.

On appeal the Supreme Court accepted the order of probation as a part of the original record of the trial and upheld the defendant's conviction as a second offender. However, the Court rejected the argument that the mere fact that the defendant was placed on probation was sufficient to show a prior conviction. Concerning this contention, the Court said: "It is the responsibility of the prosecution in a second offender proceeding to prove the prior conviction by competent evidence. This includes a proper showing that the accused was previously adjudged guilty of a felony by a Court of competent jurisdiction."[15]

There was a statement in the advance sheets of this opinion to the effect that a formal adjudication of a defendant's guilt is essential to support a subsequent suspension of imposition of sentence accompanied by probation. However, this was deleted by the Court from the official reports. The proponents of the practice of suspending adjudication of guilt feel that this deletion supports them in their contention. It is important to note, however, that the Supreme Court was looking for "competent evidence" of the defendant's prior conviction, instead of deciding whether it was proper not to have adjudged him guilty. The Court has held in the past that an adjudication of guilt will not, on direct attack, even be implied from the imposition of sentence.[16] To have held that probation is evidence of this adjudication would certainly have been inconsistent. An assumption that the Court, by holding that probation was not evidence of an adjudication of guilt, impliedly sanctioned the practice of placing a defendant on probation without adjudication seems unwarranted.

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[15]*Id.* at 812.

[16]Ellis v. State, 100 Fla. 27, 129 So. 106 (1930).

Another important point in this case is that if the Supreme Court had not found a proper adjudication of the defendant's guilt for the first offense in the order of probation, it would apparently have had no choice but to reverse his conviction as a second offender. Thus it follows that if a defendant is found guilty by the jury of committing a felony and the judge intends to suspend imposition of sentence and place him on probation but fails to adjudge him guilty, he cannot be tried and convicted under the second-offender statute[17] upon conviction for a second offense. However, if he is adjudged guilty for the first offense, he is subject to trial and conviction as a second offender. The same analysis would apply to a charge under the fourth-offender statute.[18]

THE NATURE OF PROBATION

The nature and character of probation as viewed by the Florida Supreme Court and various other authorities should be considered. The Florida Court in *Cason v. State* said:[19]

> "The power of the court to suspend the imposition of sentence and the power to place on probation are part of the penalty fixed by law for those *convicted of crime* because they modify the language of the statutes fixing penalties which would otherwise be imposed.
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> "A period of probation in one case may be just as appropriate a penalty as the imposition of the maximum period of imprisonment provided by law would be in another." (Emphasis added.)

The United States Circuit Court of Appeals for the Fifth Circuit, in *Cooper v. United States*,[20] had this to say concerning probation: "It is an authorized mode of mild and ambulatory punishment, the probation being intended as a reforming discipline. The probationer is not a free man, but is subject to surveillance, and to such restrictions as the Court may impose."

Thus it is apparent that even though sentence is suspended, pro-

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[17] FLA. STAT. §775.09 (1957).
[18] *Id.* §775.10.
[19] 159 Fla. 294, 295, 31 So.2d 274, 275 (1947).
[20] 91 F.2d 195, 199 (5th Cir. 1937).