

Criminal Procedure--Imprisonment Resulting in More Than One Year's Confinement for a Misdemeanor Due to Indigent Defendant's Failure to Pay a Fine Deemed Unconstitutional and Contrary to the Intent of the New York Statute (People v. Saffore, 18 N.Y.2d 101 (1966))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (1967) "Criminal Procedure--Imprisonment Resulting in More Than One Year's Confinement for a Misdemeanor Due to Indigent Defendant's Failure to Pay a Fine Deemed Unconstitutional and Contrary to the Intent of the New York Statute (People v. Saffore, 18 N.Y.2d 101 (1966))," *St. John's Law Review*: Vol. 41 : No. 4 , Article 9.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol41/iss4/9>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

Furthermore, the Court's broad acceptance of the "certainty of no influence" test regarding harmless error creates the probability that its rationale will be used outside the area of incriminating confessions, since the application of the harmless error statute is, thus, limited to *trivial* errors in the admission of evidence, without regard to the other evidence in the case.

Reversal in the instant case, of course, precludes review and there is no easy prognosis as to future Supreme Court declarations in this frequently appealed, factually distinguishable area. It would appear that the difficulty of proof of conspiracy counts puts a premium on the use of a legally obtained confession in a government case. This might influence the Court to retain the admissibility of codefendant's confessions in as many factual situations as possible, *e.g.*, where there is no prejudice to the non-confessing defendants because of the overwhelming substantial evidence against them and where the jury has shown no reliance on the confession. Because of the narrow majority margin in *Jackson*, wherein the *Delli Paoli* rationale was criticized, there is little concrete indicia as to the life expectancy of the *Delli Paoli* rule. It is suggested, nevertheless, that the instant decision shows a definite resolve on the part of the Second Circuit Court of Appeals to keep its own courts in order even without Supreme Court directive, and to use judicial initiative to give every defendant a completely fair trial.



CRIMINAL PROCEDURE — IMPRISONMENT RESULTING IN MORE THAN ONE YEAR'S CONFINEMENT FOR A MISDEMEANOR DUE TO INDIGENT DEFENDANT'S FAILURE TO PAY A FINE DEEMED UNCONSTITUTIONAL AND CONTRARY TO THE INTENT OF THE NEW YORK STATUTE. — Appellant, an indigent, pleaded guilty to a misdemeanor. The trial court, with full knowledge of appellant's financial condition, sentenced him to one year's imprisonment and fined him \$500 with a provision that the fine, if not paid, be served out at the rate of one day's imprisonment for each dollar unpaid. The New York Court of Appeals reversed and *held* that when the trial court is cognizant of an individual's inability to pay a fine, subsequent imprisonment in lieu of the fine resulting in imprisonment for more than the permissible maximum sentence, is contrary to the intent of the New York Code of Criminal Procedure. Such imprisonment violates the defendant's right to equal protection of the law, and is proscribed by the eighth amendment to the federal constitution as an excessive fine. *People v. Saffore*, 18 N.Y.2d 101, 218 N.E.2d 686, 271 N.Y.S.2d 972 (1966).

The imposition of a fine for criminal conduct had its genesis in the middle ages in England. Initially known as a tariff, the fine was developed as a compensatory substitute for the inter-familial feuds to which the social organization of medieval Britain lent itself.¹ At first, the injured party received the benefits of the fine, minus a small fee claimed by the king to cover the cost of the trial and the harm done to the public peace. Subsequently, the victim's share was successively decreased, until, finally, the king became the sole recipient.²

The use of fines as a criminal sanction is common in the United States today.³ Imprisonment for nonpayment has become a prominent sanction in the administration of our criminal laws,⁴ with the courts taking the position that such imprisonment is a method of compelling payment and not a form of punishment for the crime.⁵

In New York,⁶ imprisonment for nonpayment of a fine is authorized by Sections 484 and 718⁷ of the New York Code of Criminal Procedure. Such confinement has repeatedly been held to be a valid means of enforcing the sentence of the court, and not a part of that sentence. For example, in *McKinney v. Hamilton*,⁸ the defendant was convicted of a misdemeanor and fined \$10,000 by a justice of the peace acting as a court of special sessions. Upon defendant's refusal to pay the fine, he was committed for 10,000 days (over twenty-seven years) or until the fine was satisfied. The defendant appealed, arguing that due to the length of his confinement he had, *in fact*, been convicted of a felony, a crime over which the justice of the peace had no jurisdiction. Rejecting this contention, the New York Court of Appeals indicated that the commitment authorized by section 718 for failure to pay a fine does not operate to increase the penalty specified in the criminal statute. "It follows only upon a defendant's failure to

¹ 2 HOLDSWORTH, A HISTORY OF ENGLISH LAW 43-44, 46 (4th ed. 1936).

² SUTHERLAND & CRESSEY, PRINCIPLES OF CRIMINOLOGY 275-76 (5th ed. 1955).

³ *Id.* at 276.

⁴ RUBIN, CRIMINAL CORRECTIONS 230 (1963).

⁵ *In re Sullivan*, 3 Cal. App. 193, 84 Pac. 781 (Ct. App. 1906); *Mullin v. State*, 38 Del. 533, 194 Atl. 578 (Super. Ct. 1937).

⁶ For a general discussion of fines as a sentence in New York, see TEMPORARY STATE COMM'N ON REVISION OF THE PENAL LAW AND CRIMINAL CODE, PROPOSED NEW YORK PENAL CODE (1964) (Appendix A).

⁷ Section 484 reads in part: "A judgment that the defendant pay a fine may also direct that he be imprisoned, until the fine be satisfied, specifying the extent of the imprisonment which cannot exceed one day for every dollar of the fine." Section 718 reads in part: "A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied; specifying the extent of the imprisonment, which cannot exceed one day for every dollar of the fine. . . ."

⁸ 282 N.Y. 393, 26 N.E.2d 949 (1940).

pay the fine and is a means of bringing about collection of the same."⁹

The application of these statutes, authorizing imprisonment to enforce payment of a fine, most severely affects indigents. Since their poverty generally precludes payment of any fine, the alternative "pay or be imprisoned" is *illusory* and invariably has the effect of outright imprisonment. As a result of the Supreme Court's increasing reliance upon the equal protection clause¹⁰ to improve the plight of the indigent defendant, the argument could be made that such an incarceration of an indigent violates this clause. While the Supreme Court has never treated this issue, it focused its attention on an analogous problem in *Griffin v. Illinois*¹¹ when it concerned itself with the plight of an indigent in obtaining a fair trial. The Court considered whether an indigent was denied equal protection by an Illinois procedure which conditioned appeal upon the purchase of a trial transcript. On appeal in the state court, defendants' motion that a certified copy of the entire record of their trial be furnished them without cost, due to their indigence, had been denied. The Supreme Court reversed, stating:

our own constitutional guaranties of due process and equal protection both call for procedures in criminal trials which allow no invidious discriminations between persons and different groups of persons. Both equal protection and due process emphasize the *central aim* of our entire judicial system—*all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American court'. . . .* In criminal trials a State can no more discriminate on account of poverty than on account of religion, race, or color. Plainly the *ability to pay costs* in advance *bears no rational relationship to a defendant's guilt* or innocence and could not be used as an excuse to deprive a defendant of a fair trial.¹²

The question whether an indigent imprisoned for nonpayment of a fine is denied equal protection has been before the lower courts. In *United States ex rel. Privitera v. Kross*,¹³ an indigent defendant was convicted of illegal possession of policy slips and sentenced to thirty days and \$500 or sixty additional days. In his appeal, the defendant claimed that such a sentence violated the equal protection clause and was an excessive fine. He contended that the nonpayment of the fine, resulting in his imprisonment for an additional sixty days, was attributable solely to his lack of

⁹ *Id.* at 397-98, 26 N.E.2d at 951.

¹⁰ U.S. CONST. amend. XIV, § 1.

¹¹ 351 U.S. 12 (1956).

¹² *Id.* at 17-18. (Emphasis added.)

¹³ 239 F. Supp. 118 (S.D.N.Y.), *aff'd per curiam*, 345 F.2d 533 (2d Cir.), *cert. denied*, 382 U.S. 911 (1965).

funds. Another individual with the means to pay the fine would not be obliged to suffer the additional imprisonment. Rejecting this contention, the court said that in light of the defendant's prior criminal record and other relevant factors, any comparison between him and another defendant who can pay the fine and thus avoid confinement was not proper.¹⁴ The judge noted that this sentence was not imposed upon the petitioner because he was poor. Rather, it was imposed because he had committed a crime, and "once convicted, petitioner has no constitutional right that another defendant, no matter what his economic status, rich or poor, receive the same sentence for the same offense."¹⁵ It was observed that since sentences are individualized, no useful purpose would be served by a comparison between the sentence of this defendant and that of a hypothetical defendant.¹⁶

On similar facts, a New York County Court in *People v. Collins*¹⁷ reached the opposite conclusion. There, the indigent defendant had been convicted of assault in the third degree. He was sentenced to eleven months and twenty-nine days confinement and fined \$250 or one day for each dollar remaining unpaid. The court asserted that such a sentence violated the equal protection clause. It reasoned that while a rich man could limit his term of imprisonment by simply paying the fine, no such alternative is available to the indigent.¹⁸ The court concluded:

it is only if we equate the payment of the fine with the additional period of detention in prison that both men can be said to stand equal before the law. An equation of one day of a man's liberty in jail for every \$1 of the fine, in this enlightened era, should be examined very carefully before this form of equality of treatment is indorsed.¹⁹

However, the court stated that the fine could still be imposed, and the state could take such action to collect it as is otherwise available.²⁰

¹⁴ *Id.* at 120.

¹⁵ *Ibid.* See *United States ex rel. Weiss v. Fay*, 232 F. Supp. 912 (S.D.N.Y. 1964). Cf. *United States ex rel. Bryant v. Fay*, 211 F. Supp. 812, 814 (S.D.N.Y. 1962). See also, Kadish, *Legal Norm and Discretion in the Police and Sentencing Processes*, 75 HARV. L. REV. 904 (1962).

¹⁶ *United States ex rel. Privitera v. Kross*, 239 F. Supp. 118, 120 (S.D.N.Y.), *aff'd per curiam*, 345 F.2d 533 (2d Cir.), *cert. denied*, 382 U.S. 911 (1965).

¹⁷ 47 Misc. 2d 210, 261 N.Y.S.2d 970 (Orange County Ct. 1965). *Contra*, *People ex rel. Loos v. Redman*, 48 Misc. 2d 592, 265 N.Y.S.2d 453 (Sup. Ct. 1965).

¹⁸ *People v. Collins*, 47 Misc. 2d 210, 212, 261 N.Y.S.2d 970, 973 (Orange County Ct. 1965).

¹⁹ *Ibid.*

²⁰ *Id.* at 213, 261 N.Y.S.2d at 974.

In the instant case, the defendant pleaded guilty to the misdemeanor of assault in the third degree. Section 245 of the New York Penal Law limits the punishment for such a crime to imprisonment for not more than one year, or a fine of not more than \$500, or both. Defendant was given the *maximum* sentence allowable, with additional imprisonment of one day per dollar of the fine remaining unpaid. The defendant was unable to pay the assessment due to his indigency—a fact known to the trial court since it had assigned him counsel for this reason at the initiation of the criminal proceedings.

The New York Court of Appeals unanimously vacated the sentence. The Court declared that the issue was "whether a defendant who has no money or property can be made to serve out a fine a \$1 per day."²¹ It reasoned that since Sections 484 and 718 of the New York Code of Criminal Procedure were designed to compel the offender who refuses to pay a fine to obey the direction of the court, such imprisonment of an indigent defendant, who *cannot possibly* pay, is directly contrary to the meaning and intent of the Code of Criminal Procedure.²² The Court accepted the defendant's contention that, under *Griffin*²³ and other similar decisions, it is a denial of due process and equal protection to allow an individual's poverty to increase the length of his imprisonment. Consequently, "the man who can pay and the man who cannot are not treated equally."²⁴ The Court went further, however, and suggested another ground of unconstitutionality, *i.e.*, the prohibition against "excessive fines" found in both the state and federal constitutions. The Court noted that there were no controlling decisions on the question but stated:

a fine of \$500 for a common misdemeanor, levied on a man who has no money at all, is necessarily excessive when it means in reality that he must be jailed for a period far longer than the normal period for the crime, since it deprives the defendant of all ability to earn a livelihood . . . [b]y keeping him in the penitentiary far longer than would ordinarily be the case.²⁵

Since the instant case represents the first time the New York Court of Appeals has considered the relation of criminal fines to indigency, the Court was reluctant to issue an expansive holding.

²¹ *People v. Saffore*, 18 N.Y.2d 101, 103, 218 N.E.2d 686, 687, 271 N.Y.S.2d 972, 974 (1966).

²² *Ibid.*

²³ *Griffin v. Illinois*, 351 U.S. 12 (1956).

²⁴ *People v. Saffore*, 18 N.Y.2d 101, 104, 218 N.E.2d 686, 688, 271 N.Y.S.2d 972, 975 (1966).

²⁵ *Ibid.* The Court compared the absurdly low rate of one dollar per day to the New York State minimum wage now set at \$1.50 per hour.

It, therefore, limited its holding to situations where the fine resulted in imprisonment for more than one year, the maximum prison term for a misdemeanor. The meaning and intent of the New York Code of Criminal Procedure is in no way similarly limited.

The purpose of Sections 484 and 718 of the Code of Criminal Procedure is to provide a means to enforce the sentence of the court. Once a judge knows that it will be virtually impossible for a defendant to pay a fine, his alternative pronouncement of one day for every one dollar of the fine remaining unpaid becomes purely vindictive. Consequently, it would seem that imprisonment so imposed would be equally subject to attack regardless of the fact that the total duration of confinement does not exceed one year for a misdemeanor. As applied to an indigent, a sentence of six months and a fine of one hundred dollars or an additional one hundred days, is as contrary to the meaning and intent of the Code of Criminal Procedure as a sentence of one year and a fine of \$500 or an additional 500 days.

Although the holding of the principal case does not make fines imposed on indigents invalid in themselves, it does impose a severe limitation on their effectiveness as punishment for crimes. It seems doubtful that there exists any means in New York for the enforcement of fines imposed as a criminal penalty other than commitment of defendant to prison until the fine is paid.²⁶ Although some jurisdictions regard a fine as in the nature of a debt to the state which may be enforced by execution against defendant's property,²⁷ in New York it is questionable whether any inherent²⁸ or statutory power²⁹ of this type exists. It is submitted that the legislature must formulate a statutory scheme which would render the state able to collect such a fine.³⁰ One possible method is to require an

²⁶ *People ex rel. Gately v. Sage*, 13 App. Div. 135, 43 N.Y. Supp. 372 (2d Dep't 1897).

²⁷ See *Dickson v. Officers of the Court*, 36 Ga. App. 341, 136 S.E. 537 (1927); *Gill v. State*, 39 W. Va. 479, 20 S.E. 568 (1894).

²⁸ Compare *Kane v. People*, 8 Wend. 203 (N.Y. Ct. Err. 1831), with *People ex rel. Gately v. Sage*, *supra* note 26, and *Conlon v. Lisk*, 13 App. Div. 195, 43 N.Y. Supp. 364 (2d Dep't 1897).

²⁹ At present, although a fine imposed upon a corporation may be collected in the same manner as a civil action, N.Y. CODE CRIM. PROC. § 682, no similar provision appears to be applicable to an individual. N.Y. JUDICIARY LAW §§ 790-96 provide for a procedure for execution to collect a fine imposed upon "a grand or trial juror, or upon any officer or other person," N.Y. JUDICIARY LAW § 790, but the legislative history indicates this was not intended to be applied to a fine imposed in a judgment of conviction. TEMPORARY STATE COMM'N ON REVISION OF THE PENAL LAW AND CRIMINAL CODE, PROPOSED NEW YORK PENAL LAW A-62 n.73 (1964) (Appendix A).

³⁰ Examples of such schemes include: CAL. PEN. CODE § 1205; MASS. ANN. LAWS ch. 279, §§ 1, 1A (1956); PA. STAT. ANN. tit. 19, § 953 (1964); S.C. CODE ANN. § 55-593 (1962); UTAH CODE ANN. § 77-35-17 (1953); WIS. STAT. § 57.04 (Supp. 1965).

indigent to pay his fine in installments. Another feasible procedure would be to establish a fine enforcement system similar to the civil remedy of docketing a judgment, with a view towards executing on defendant's future property.

Assuming that there is no other valid or workable means available in New York to enforce fines imposed on indigents, it may be anticipated that courts will increase the period of confinement of the indigent, and avoid imposing any fine at all. For example, when a judge could impose a sentence for *up to* one year and/or a fine *up to* \$500 for a misdemeanor, he would possibly pronounce sentence at six months and \$300. Henceforth, for the same offense, confronted with defendant's inability to pay a fine, rather than forego the additional punishment, the tendency may be to pronounce a sentence at eleven months and, of course, no fine. The punitive effect of the combination of fine and imprisonment can be seen to be relatively equal when one is decreased as the other is correspondingly increased. While such an increase of time to be served would clearly be a valid exercise of the criminal court's broad discretion to punish a defendant within the statutory limits set for his crime, nevertheless, the criminal court judge must continually refer back to the rationale of sections 484 and 718, and of the instant case, to be certain that he does not disproportionately increase the time an indigent defendant must serve because the fine is not available.

Since the decision in *Saffore* was justified on the rationale underlying the Code of Criminal Procedure, the Court's reliance on the equal protection clause and the constitutional prohibition against excessive fines seems to be designed merely to give added authoritativeness to its holding. Each of these constitutional grounds is subject to counterarguments of varying strength. The Court's equal protection argument, while persuasive, is subject to attack on the ground that the penalty imposed for a crime is, in and of itself, objective, and, although it will affect each defendant differently, it cannot be said to deny equal protection of the laws. The government has not yet been compelled "to eradicate from the administration of criminal justice every disadvantage caused by indigence."³¹ The Court's conclusion that the fine imposed is invalid as constitutionally excessive seems open to even more serious criticism, since this provision has traditionally not been applied unless the fine is so wholly disproportionate to the nature of the offense as to shock the moral sense of the community.³² Using this approach, a fine of \$500 or imprisonment for less than two years for criminal assault would seem to be sufficiently proportionate to the crime to be valid.

³¹ United States *ex rel.* Privitera v. Kross, *supra* note 16.

³² People v. Gonzales, 25 Ill. 2d 235, 184 N.E.2d 833 (1962).

Another unresolved issue implicit in the holding of the instant case concerns the standard to be applied in determining who is sufficiently indigent to warrant this immunity from imprisonment. In *Saffore*, the defendant was apparently completely without funds and property. The Court, presented with such a clear case of indigency, was not required to devise any more explicit standard than the word "indigent." In closer cases, where varying degrees of poverty are presented to the courts, some more specific test will have to be developed. Certainly, this definition of indigency will have to be reconciled with the "indigency" that gives a criminal defendant the right to state-provided counsel. Even persons with a limited amount of money, who are deemed sufficiently solvent to afford competent counsel, but who exhaust their financial resources to secure one, appear to be entitled to the immunity from imprisonment for failure to pay fines under the holding of the instant case.

As an immediate consequence of the instant case, the attention of the criminal courts will be refocused on the proper purpose of any confinement they impose in attempting to enforce a fine. Imprisonment in lieu of payment can only be justified when the criminal can afford to pay the fine. This procedure was designed to punish those with ample means by exacting of them a legislatively determined sacrifice in money proportionate to the seriousness of their crime. Knowingly transforming this monetary obligation into an unavoidable additional incarceration cannot be justified. Clearly the Court was correct in determining that the criminal must be capable of paying the fine before he can be imprisoned for his "refusal" to pay it.



TAXATION — INTEREST DEDUCTION — TRANSACTION MUST BE ECONOMICALLY PURPOSIVE TO QUALIFY FOR INTEREST DEDUCTION. — Petitioner, a sweepstakes winner, attempted to reduce her tax liability by creating a large prepaid interest deduction. Borrowing almost one million dollars, she purchased treasury notes which, in turn, were pledged to secure the loans. The Court of Appeals for the Second Circuit held that, even though the transaction was not a sham, the interest deduction was not allowable under Section 163 of the Internal Revenue Code of 1954 since the sole purpose of petitioner's acts was tax avoidance. *Goldstein v. Commissioner*, 364 F.2d 734 (2d Cir. 1966).

With certain exceptions, Section 163 of the Internal Revenue Code provides that the deduction of interest must be supported by (1) an indebtedness, (2) interest on the indebtedness, and (3)