St. John's Law Review

Volume 25
Number 2 *Volume 25, May 1951, Number 2*

Article 15

Criminal Law--Insanity During Proceedings--Grounds for New Trial (People v. Wolfe, 102 N.Y.S.2d 12 (County Ct. 1950))

St. John's Law Review

action.[36] Loyalty and patriotism are sometimes as important qualifications for a teacher as knowledge, and it is within the province of the legislative branch to prescribe what evidence of qualification shall be furnished.[37] In *American Communications Assn., C.I.O. v. Douds* the Court stated ". . . they are subject to possible loss of position only because there is substantial ground for the congressional judgment that their beliefs and loyalties will be transformed into *future* conduct." [38] In a leading New York case it was held that "The presumption growing out of a *prima facie* case, however, remains only so long as there is no substantial evidence to the contrary. When that is offered the presumption disappears, and unless met by further proof there is nothing to justify a finding based solely upon it." [39] In the light of these authorities and the fact that there is provision in the law [40] for judicial review of any order of ineligibility for a teaching position, it cannot be said that there is any lack of procedural due process in the directive clauses of the law in question.[41]

The novelty of the Feinberg Law may not be used as a basis of constitutional objection.[42] In view of the legislative determination of facts and circumstances constituting a menace to society, and the nature and language of the provisions of the Feinberg Law, it is submitted that the conclusion reached by the court is in accord with the weight of authority and is a reassertion of the state's right to use the police power to protect itself from internal threat.

CRIMINAL LAW—INSANITY DURING PROCEEDINGS—GROUNDS FOR NEW TRIAL.—A defendant was convicted of murder in the first degree. There was nothing in his demeanor during trial to suggest to the court or to any layman that he was incapable of understanding the proceedings or making a rational defense. When the verdict of guilty was announced the defendant harangued the court claiming to be the "messiah". Upon motion, he was taken to a hospital for observation, and adjudged as presently insane. Defendant was then removed to a state institution for the criminal insane. Five years later, having regained his sanity,[1] he was sentenced to death. The following day, a motion was made for a new trial on the ground

[36] American Communications Assn., C.I.O. v. Douds, 339 U. S. 382 (1950).
[37] Hawker v. New York, 170 U. S. 189 (1898).
[38] American Communications Assn., C.I.O. v. Douds, 339 U. S. 382, 413 (1950).
[39] Potts v. Pardee, 220 N. Y. 431, 433, 116 N. E. 78, 79 (1917).
[40] N. Y. CIVIL SERVICE LAW § 12-a, subd. d.
[41] N. Y. EDUCATION LAW § 3022.
[42] People of New York v. Nebbia, 262 N. Y. 259, 186 N. E. 694 (1933).
[1] People v. Wolfe, 198 Misc. 695 (County Ct. 1950).

that the defendant was insane during the trial in 1944. This allegation was based upon the testimony of psychiatrists as to the nature of his illness after trial. *Held,* motion granted. It is for the court to determine whether the defendant is in such a state of insanity so as to be incapable of understanding the proceeding or making a rational defense. The court is governed by the legal test and not medical standards of insanity. *People v. Wolfe,* 102 N. Y. S. 2d 12 (County Ct. 1950).

Among the ancient Hebrews, the present insanity of an accused was recognized as a bar to criminal prosecution. The marked divergence of an individual's manifestations from ordinary behavior patterns would immunize him from trial *per se.*[2] Less radical indications of mental abnormality would preclude prosecution in the discretion of the presiding judge.[3]

The *early* common law did not relieve a person presently insane from prosecution. The defendant was convicted and the court bid him to hope for the king's mercy.[4] The court did not distinguish the mental capacity of the defendant required for trial and that upon which his answerability for criminal conduct is predicated.[5]

Later the common law established the principle that a person while in a state of mental disorder, so as to be incapable of making a rational defense could not be tried, sentenced, nor punishment executed. Thus, if the court had a reasonable doubt as to the mental competency of the defendant at any time, the proceedings were stayed and an inquiry held. If the defendant was declared insane, the proceedings were suspended and the defendant suitably confined until restoration of his sanity.[6]

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[2] TALMUD, HAGIGAH, 3B, 4A. "Who is abnormal—he who walks around at night by himself or sleeps on the cemetery or one who tears his garments or one who destroys all that is given to him."; MAIMONIDES, LAWS OF TESTIMONY, c. 9, § 9. "Not only one who walks naked, breaks or throws stones but also one whose words are unbalanced or incoherent, even though he sometimes answers coherently."

[3] MAIMONIDES, LAWS OF TESTIMONY, c. 9, § 10. "Who are especially the fools, are those who are not aware of what they are talking and contradict themselves and do not understand the problem involved as ordinary persons. They are nervous and hasty in their minds showing signs of abnormality. The judge must decide whether he is insane or not."

[4] 2 POLLOCK & MAITLAND, HISTORY OF ENGLISH LAW 479 (2d ed. 1899).

[5] See WEIHOFEN, INSANITY AS A DEFENSE IN CRIMINAL LAW 18, n. 15 (1933), for mention of an early legal test of insanity " 'That if he bee able to begeat eyther soone or daughter, hee is no foole.' Kings Prerog. (1567) . . . ."

[6] "If a man, in his sound memory commits a capital offense, and before arraignment for it, he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried: for how can he make his defense? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if, after judgment, he becomes of nonsane memory, execution shall be stayed." 4 BL. COMM. *24; Youtsey v. United States, 97 Fed. 937 (6th Cir. 1899); Freeman v. People, 4 Denio 2 (N. Y. 1847).

The test as it finally evolved, in the determination of whether a defendant's mental condition permitted prosecution on criminal charges, may generally be stated: "Has the defendant capacity to understand the nature and object of the proceedings against him, to comprehend his own condition in reference to such proceedings, and to aid his attorney rationally in the preparation and prosecution of his defense?" [7]

The common law bar to prosecution and punishment of a mentally ill person and the test for the determination of his mental condition has been codified by statute.[8] The court, *in its discretion,*[9] *at any time before final judgment,*[10] may order an examination [11] to determine the question of the defendant's sanity, where there are reasonable doubts [12] as to the defendant's mental competency.[13] This may be ordered on the court's motion, or that of the district attorney, or of the defendant. If a defendant under sentence of death appears insane, the Governor may order a mental examination and upon an affirmative finding, commit the defendant to a state hospital until his sanity is regained.[14]

It may be stated generally that no court had inherent power to grant a new trial under common law and such power could only

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[7] Pollak, *Insanity as a Bar to Prosecution in the Federal Courts*, 7 FED. B. J. 55, 56 (1945); United States v. Chisolm, 149 Fed. 284 (C. C. S. D. Ala. 1906).

[8] N. Y. PENAL LAW § 1120; N. Y. CODE CRIM. PROC. §§ 481, 495a, 498, 499, 658-662f, 870-876; see People v. Pershaec, 172 Misc. 324, 15 N. Y. S. 2d 215 (Gen. Sess. 1939), wherein the court interprets statutes pertaining to insane persons exhaustively.

[9] People v. McElvaine, 125 N. Y. 596, 26 N. E. 929, *aff'd sub nom.*, McElvaine v. Brush, 142 U. S. 155 (1891); People *ex rel.* Pickell v. Onondaga County Court, 190 Misc. 466, 73 N. Y. S. 2d 917 (Sup. Ct. 1947).

[10] N. Y. CODE CRIM. PROC. § 658.

[11] N. Y. CODE CRIM. PROC. §§ 659, 662, 662a, 662b. Two qualified psychiatrists examine the defendant to determine whether he is capable of understanding the proceedings or of making a defense. Their findings may be controverted by the district attorney or the defendant. The examination is an aid to the court which must make the final determination.

[12] People v. Esposito, 287 N. Y. 389, 39 N. E. 2d 925 (1942); People v. Tobin, 176 N. Y. 278, 68 N. E. 359 (1903); People *ex rel.* Apicella v. Sup't of Kings County Hospital, 173 Misc. 642, 18 N. Y. S 2d 553 (Sup. Ct. 1926).

[13] People *ex rel.* Vallaro v. Travis, 72 N. Y. S. 2d 804 (Sup. Ct. 1947); People v. Irwin, 166 Misc. 751, 4 N. Y. S. 2d 548 (Gen. Sess. 1938); People v. Nyhan, 37 N. Y. Cr. R. 74, 171 N. Y. Supp. 466 (Sup. Ct. 1918). The court must apply the "legal test" as distinguished from a "medical test."

[14] N. Y. CODE CRIM. PROC. §§ 495a, 499. The Governor may appoint a commission to examine the defendant's mental state. If the defendant is insane as determined by the "legal test", the Governor may order his removal to a state hospital for the criminal insane until the defendant's sanity is regained. A supreme court justice must determine when the defendant is presently sane. The Governor, upon receipt of a certificate from the supreme court justice that the defendant is sane, must then issue a warrant for a new time of execution; 2 OP. ATTY. GEN. 294 (1914). The inquiry to be made by the justice of the supreme court is an informal investigation controlled in its extent entirely by what the justice deems adequate and essential.

be conferred by statute.[15] Courts do, however, possess certain inherent prerogatives among which are the right to correct their records so as to make them speak the truth, and to prevent oppression and the abuse of authority.[16]

In the instant case, the defendant moved in part for a new trial, on the ground that upon another trial, the defendant could produce evidence, which if it had been received, would probably have changed the verdict.[17] It was intended to prove at the new trial that the defendant was insane at the time of the commission of the crime. The district attorney opposed the motion on the grounds that the defendant is not permitted to have separate trials of his several defenses, and the law permits a defense of insanity to the responsibility for the commission of a crime, if the defendant was laboring under such defect of reason as not to know the nature and quality of the act; or, that it was wrong, which is concluded by the trial, whether it is interposed or not.

The court was of the opinion that a reading of the moving papers and oral arguments advanced at the hearing for the motion, clearly indicated that ". . . the defendant's more articulate contention is that the court was without authority to permit the trial to commence." [18] The court, acknowledging that its authority is delimited by Section 1120 of the Penal Law, rested its determination of the application on a sound interpretation of that statute which was first enunciated in *Freeman v. People* [19] where the court said, "The statute . . . is emphatic that 'no insane person can be tried.' The common law, equally with this statute, forbids the trial of any person in a state of insanity."

It is to be noted that the instant case, one of first impression but soundly decided, places the obligation for the determination of the defendant's mental competency upon the court,[20] whether or not a motion is made to hold an inquiry and whether or not his demeanor during trial raises doubts as to his sanity according to legal standards.[21] The burden of justice is great, to distinguish the mentally ill from one feigning madness.

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[15] Quimbo Appo v. People, 20 N. Y. 531 (1860); People v. Lamboray, 152 Misc. 206, 273 N. Y. Supp. 69 (Sp. Sess. 1934); People v. Becker, 91 Misc. 329, 155 N. Y. Supp. 107 (Sup. Ct. 1915).

[16] People v Gersewitz, 294 N. Y. 163, 61 N. E. 2d 427 (1945); People *ex rel.* Hirschberg v. Orange County Court, 271 N. Y. 151, 2 N. E. 2d 521 (1936); People v. Glen, 173 N. Y. 395, 66 N. E. 112 (1903); Sanders v. State, 85 Ind. 318 (1882). The mere fact that pardon power exists in the governor does not mean that the courts cannot grant a new trial.

[17] N. Y. CODE CRIM. PROC. § 465.

[18] People v. Wolfe, 102 N. Y. S. 2d 12 (County Ct. 1950).

[19] 4 Denio 2, 24 (N. Y. 1847).

[20] 145 A. M. A. J. No. 1, p. 37 (1950).

[21] "That cannot be a fact in law, which is not a fact in science; that cannot be health in law, which is disease in fact." Doe, J., in Boardman v. Woodman, 47 N. H. 120, 150 (1866).

It is submitted that the problem raised in the instant case is more satisfactorily answered, in accordance with advanced social concepts, by the "Briggs Law" [22] in Massachusetts. By statute, a routine mental examination is made of all persons indicted by a grand jury for a capital offense, and persons who have been convicted of a felony or are known to have been previously indicted for any other offense more than once.[23]

CRIMINAL LAW—MATERIAL WITNESS—AMOUNT OF BAIL—HOLDING AS A WITNESS A PERSON CHARGED WITH A CRIME.—Application for writ of habeas corpus. Relator was a material witness for the People in a grand jury investigation of gambling and corruption in Kings County. The County Court directed him to furnish a 250,000 dollar bond and upon his failure to do so he was committed to jail. Thereafter, on the basis of the above-mentioned grand jury investigation an information was filed charging relator with conspiracy and bookmaking. A plea of not guilty was entered and relator was paroled in his own custody in view of his detention in the grand jury investigation. Relator contends that inasmuch as he is now a defendant named in the information, the order detaining him as a witness should be vacated and he should be released. *Held,* writ dismissed. An order requiring bail in a high amount may be justified by the facts of the particular situation. The fact that an information has been filed in which a person is charged with crimes does not preclude his being held as a witness in an investigation embracing matters other than the crimes charged in the information. *People* ex rel. *Gross v. Sheriff of City of New York,* 277 App. Div. 546, 101 N. Y. S. 2d 271 (2d Dep't 1950).

Section 618-b of the Code of Criminal Procedure provides that a witness for the People may be ordered to enter into an undertaking to insure appearance or be committed for failure to comply.[1] This section of the Code was enacted to guarantee attendance of key witnesses at a criminal trial or a grand jury investigation.[2] The req-

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[22] See WEIHOFEN, INSANITY AS A DEFENSE IN CRIMINAL LAW 351, 401-407 (1933).

[23] MASS. ANN. LAWS c. 123, § 100A (1949).

[1] Section 618-b provides: "Whenever a judge of a court of record in this state is satisfied, by proof on oath, that a person residing or being in this state is a necessary and material witness for the People in a criminal action or proceeding . . . he may, after an opportunity has been given to such person to . . . be heard in opposition thereto, order such person to enter into a written undertaking . . . and upon his neglect or refusal to comply . . . the judge must commit him. . . ."

[2] People *ex rel.* Ditchik v. Sheriff of Kings County, 171 Misc. 248, 12 N. Y. S. 2d 341 (Sup. Ct.), *aff'd,* 256 App. Div. 1081, 12 N. Y. S. 2d 232 (2d Dep't 1939).