

## Amendment to Section 510 of the Penal Law--Suspension of Civil Rights Upon Conviction for Felony

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AMENDMENT TO SECTION 510 OF THE PENAL LAW—SUSPENSION OF CIVIL RIGHTS UPON CONVICTION FOR FELONY.—Under the common law, conviction for a felony and subsequent sentence imposed the status of civil death upon the offender, one manifestation of which was complete loss of all civil rights.<sup>1</sup> In New York, this doctrine has been applied only to those sentenced to imprisonment for life.<sup>2</sup> The effect on civil rights of conviction, however, has been extended to apply to all persons sentenced to imprisonment for the commission of felonies. Section 510, New York Penal Law, before amendment stated:

A sentence of imprisonment in a state prison for any term less than for life, forfeits all the public offices, and suspends, during the term of the sentence, all the civil rights, and all private trusts, authority, or powers of, or held by, the person sentenced.

Inasmuch as only felonies are punishable by imprisonment in a state penitentiary, this section does not apply to misdemeanors.<sup>3</sup> Persons sentenced to imprisonment in county prisons<sup>4</sup> or federal prisons<sup>5</sup> are also excluded from the provisions of this section.

In interpreting this section, the courts have held that a person imprisoned in a state penitentiary cannot prosecute any action or institute special proceedings for the term of the sentence being served, as such action would be the exercise of a civil right. It has been held that even where state legislation has granted a general right to maintain action against the state,<sup>6</sup> the restrictions imposed by this section are not waived and the imprisoned felon is still under a statutory prohibition.<sup>7</sup> Only special legislation in the form of an enabling act by the legislature would enable an imprisoned felon to bring action in the courts while under the disability imposed by Section 510. In such a case, the right to sue would not be considered the exercise of a civil right, but the use of a special right conferred by special legislation.<sup>8</sup>

Where the sentence of imprisonment has been commuted, the civil rights of the prisoner are restored when he is freed.<sup>9</sup> Inasmuch as a commutation of sentence reduces the term of imprisonment, the effective date of commutation terminates the statutory disabilities of

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<sup>1</sup> 4 BL. COMM. \*336, \*383; 2 KENT COMM. \*386.

<sup>2</sup> N. Y. PENAL LAW § 511. A person sentenced to imprisonment for life is thereafter deemed civilly dead.

<sup>3</sup> N. Y. PENAL LAW § 2.

<sup>4</sup> *Bowles v. Habermann*, 95 N. Y. 246 (1884).

<sup>5</sup> *Matter of O'Connor*, 173 Misc. 419, 17 N. Y. S. (2d) 758 (Sup. Ct. 1940).

<sup>6</sup> COURT OF CLAIMS ACT § 8, Laws 1939, c. 860 (waiving the state's immunity from liability for torts of its officers and employees and conferring jurisdiction for such cases on a court of claims).

<sup>7</sup> *Green v. State*, 251 App. Div. 108, 295 N. Y. Supp. 672 (4th Dep't 1937), *aff'd*, 278 N. Y. 15, 14 N. E. (2d) 833 (1938).

<sup>8</sup> *Tomaselli v. State*, 168 Misc. 674, 6 N. Y. S. (2d) 435 (Ct. Cl. 1938).

<sup>9</sup> *Application of White*, 166 Misc. 481, 2 N. Y. S. (2d) 582 (Ct. Cl. 1938).

Section 510. But in *Lehrmann v. State*,<sup>10</sup> where the person attempting to bring action was a convict on *parole* from a state prison, the court held that a parole could not be treated in the same manner as a commutation of sentence. Statutory provisions dealing with parole<sup>11</sup> provide only for the physical liberation of the prisoner as long as he complies with the conditions of his parole. Parole does not, as in the case of a commutation, result in a termination of the sentence and the resulting restoration of civil rights. In rendering its decision, the court indicated that further legislation would be necessary in order for a parole to remove the restrictions imposed by Section 510. By amendment to Section 116 of the Executive Law, power is given the state board of parole to restore civil rights to a convicted felon on application by the felon five years after the legal termination of his sentence.<sup>12</sup>

A similar question arose in a case where sentence involving imprisonment in a state prison had been passed, but where execution of sentence had been suspended. In *People ex rel. Forsyth v. Court of Sessions*,<sup>13</sup> Mr. Justice O'Brien stated:

The power to suspend sentence and the power to grant reprieves and pardons . . . are totally distinct and different. . . . The suspension of sentence simply postpones the judgment of the court temporarily or indefinitely, but the conviction and liability following it, and all civil disabilities, remain and become operative when judgment is rendered.

This difference in the application of Section 510 to convicts who had been pardoned or had had their sentence commuted, and those on parole or awaiting execution of sentence was recognized by the New York Law Revision Commission, with the result that it recommended to the state legislature an amendment to Section 510<sup>14</sup> that would modify the loss of civil rights by felons on parole or awaiting execution of sentence. The recommended amendment was adopted on March 30, 1946<sup>15</sup> and provides:

A sentence of imprisonment in a state prison for any term less than for life, forfeits all the public offices, and suspends, during the term of the sentence, all the civil rights, and all private trusts, authority, or powers of, or held by, the person sentenced; *but nothing herein contained shall be deemed to suspend the right or capacity of any of the following persons to institute an action or proceeding in a court or before a body or officer exercising judicial, quasi-judicial or administrative functions, with respect to matters other than those arising out of his arrest or detention.*

a. *A person sentenced to state prison for any term less than for life,*

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<sup>10</sup> 176 Misc. 1022, 29 N. Y. S. (2d) 635 (Ct. Cl. 1941); *accord*, *Hayes v. State*, 50 N. Y. S. (2d) 492 (Ct. Cl. 1944).

<sup>11</sup> N. Y. CORRECTION LAW § 210 *et seq.*

<sup>12</sup> N. Y. Laws 1945, c. 96, effective March 6, 1945.

<sup>13</sup> 141 N. Y. 288, 294, 36 N. E. 386, 388 (1894).

<sup>14</sup> N. Y. LAW REVISION COMMISSION REPORT, LEGIS. DOC. NO. 65(F) (1946).

*on whom sentence was imposed and the execution of the judgment suspended, while the execution of the judgment remains suspended.*

*b. A person sentenced to state prison for any term less than for life, while he is released on parole.* (Italicized portion added by the 1946 amendment.)

Three important distinctions still remain with regard to felons on parole or awaiting execution of judgment. First, as opposed to convicts who have been pardoned or had their sentences commuted, the relief granted by this amendment is temporary and will apply only as long as the person remains on parole or awaits execution of judgment. Second, not all civil rights are restored, but only the right to maintain action in the courts. Third, even as to the right to maintain action, a restriction is imposed limiting such action to those not arising from the arrest or detention resulting in the original sentence.

As Section 510 now reads, the right to maintain action is denied to all those actually imprisoned in state prisons. This disability is personal to the prisoner and does not bar the maintenance of an action by the assignee of the prisoner where the assignee's title to the cause of action is the result of an involuntary assignment by operation of law (*i.e.*, a receiver in bankruptcy),<sup>16</sup> or where the prisoner retains no beneficial interest in the cause of action.<sup>17</sup> Although the imprisoned felon may not maintain an action, an action may nevertheless be brought against him, process may be served on him in prison,<sup>18</sup> and the convict has the right of court process to the extent necessary to defend himself.<sup>19</sup> Once action is brought against him, the convict may enter counterclaims and any defense necessary to the action.

For the period of the disability under Section 510, the Civil Practice Act<sup>20</sup> extends the permissible period within which to bring an action by providing that the Statute of Limitations shall be tolled during the period of such legal disability. This extension, however, is for not more than *five* years, and beyond such period, the Statute of Limitations will not be suspended.

It should be noted that forfeiture of civil rights imposed by Section 510 does not affect the convict's property rights. Forfeiture of property upon conviction is specifically prohibited by law,<sup>21</sup> and the

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<sup>15</sup> Laws 1946, c. 260, effective March 30, 1946.

<sup>16</sup> *Kugel v. Kalik*, 176 Misc. 49, 25 N. Y. S. (2d) 327 (Sup. Ct. 1941), *aff'd*, 262 App. Div. 823, 28 N. Y. S. (2d) 734 (1st Dep't 1941).

<sup>17</sup> *Bamman v. Erickson*, 259 App. Div. 1041, 21 N. Y. S. (2d) 40 (2d Dep't 1940).

<sup>18</sup> N. Y. CIV. PRAC. ACT § 165.

<sup>19</sup> *Matter of Weber's Estate*, 165 Misc. 815, 819, 1 N. Y. S. (2d) 809, 812 (Surr. Ct. 1938). "For reasons of practical convenience and on the basis that objectant is here brought into the controversy without initiative on his part, the court holds that objectant is not required to proceed through a trustee but may personally appear in the proceeding through counsel."

<sup>20</sup> N. Y. CIV. PRAC. ACT § 60.

<sup>21</sup> N. Y. PENAL LAW § 512.

convict is free to receive or transfer property, both real and personal.<sup>22</sup>

With regard to civil rights other than the right to maintain action and the right to hold property, there has been little litigation under Section 510. In one case,<sup>23</sup> in construing the portion of the section which provides for forfeiture of public office, the ruling was made that the section also prohibits the holding of a public office after conviction and sentence and prior to final release.

With the adoption of the 1946 amendment to Section 510 of the New York Penal Law, the one questionable application of the section has been clarified. There remains no doubt, as far as the questions raised in reported cases so far, as to its future interpretation.

PHILIP J. HIRSCH.

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<sup>22</sup> *Kugel v. Kalik*, 176 Misc. 79, 25 N. Y. S. (2d) 327 (Sup. Ct. 1941), *aff'd*, 262 App. Div. 823, 28 N. Y. S. (2d) 734 (1st Dep't 1941).

<sup>23</sup> *Matter of Lindgren*, 198 App. Div. 319, 190 N. Y. Supp. 321 (1st Dep't 1921), *aff'd*, 232 N. Y. 59, 133 N. E. 353 (1921).