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Constitutional Law--Due Process--Retention of Mental Defective Delinquent After Expiration of Sentence (People ex rel. Charles Morriale v. Vernon Branham, as Superintendent of Woodbourne Institution for Defective Delinquents, 291 N.Y. 312 (1943))

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RECENT DECISIONS

CONSTITUTIONAL LAW—DUE PROCESS—RETENTION OF MENTAL DEFECTIVE DELINQUENT AFTER EXPIRATION OF SENTENCE.—The relator, Charles Morriale, was sentenced on April 5, 1935 to Sing Sing prison for a term of six years, having pleaded guilty to a charge of attempted robbery, third degree. The court recommended that "he receive hospital treatment for his mental condition," but made no finding that he was a "mental defective." On May 24, 1935 the relator was transferred to the Institution for Male Defective Delinquents at Napanoch, New York, as a mental defective, in accordance with Section 439 of the Correction Law,[1] and thereafter, on March 15, 1938, he was transferred to a similar institution at Woodbourne, New York. A few days before the expiration of his six-year sentence, which expired on January 23, 1941, the respondent, as superintendent of Woodbourne Institution presented to the county judge a petition for an order authorizing the relator's retention after the expiration of his sentence, in accordance with Sections 440 and 460 of the Correction Law.[2] On January 18, 1941 the county judge issued an order adjudging the relator to be a mental defective and directing that he be committed to Woodbourne Institution, "there to be dealt with according to law." The relator was given no notice of this petition and was given no opportunity to challenge it. He seeks a writ of *habeas corpus* on the ground that such order for his retention after the expiration of his sentence deprives him of his liberty without due process of law. Respondent contends that the relator's constitutional rights are fully protected by Section 446 of the Correction Law.[3] *Held,* judgment reversed. The relator is entitled to an order sustaining writ of *habeas corpus* and directing his discharge from custody of the respondent, without prejudice to a new proceeding, providing notice and opportunity to be heard upon the question of relator's alleged mental defectiveness. *People* ex rel. *Charles Morriale v. Vernon Branham, as Superintendent of Woodbourne Institution for Defective Delinquents,* 291 N. Y. 312, 52 N. E. (2d) 881 (1943).[4]

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[1] N. Y. Laws 1909, c. 47, § 439.

[2] *Id.* § 440.

[3] *Id.* § 446. *See* N. Y. CIV. PRAC. ACT § 1230 *et seq.*

[4] A previous appeal to the Court of Appeals questioning the constitutionality of Section 440 of the Correction Law, was dismissed on the ground that the case was not one "where the only question involved on the appeal, is the validity of a statutory provision of the State or of the United States under the Constitution of the United States." *Per curiam,* 289 N. Y. 813, 47 N. E. (2d) 54 (1943).

On Jan. 13, 1944 a reargument was granted by the Court of Appeals, but the court found no reason to modify its decision, since the question whether a person detained as insane without a valid judicial determination of insanity

After the expiration of a prisoner's term his further confinement is no longer justified unless he be adjudged a mental defective by an order issued by the court in accordance with Section 440 of the Correction Law. It has been held that such an order imports a judicial consideration and inquiry.[5] The statute does not require in express terms that notice and opportunity to be heard be given to the prisoner, but it is reasonable to imply the legislature's intent that such an order be made only in accord with due process of law. The validity of a legislative act must be upheld unless it is void beyond reasonable doubt.[6] Section 439 of the Correction Law authorizes an administrative order transferring a prisoner during his term of imprisonment to an institution for defective delinquents, without a prior judicial finding of the fact of mental defectiveness. In such a case the prisoner's constitutional rights are protected by Section 446 of the Correction Law which authorizes the prisoner, after such transfer to "seek delivery from custody" by *habeas corpus* proceedings in which the fact of his mental defectiveness is made material to the inquiry.[7] Section 446, however, does not apply to a prisoner whose term of imprisonment has expired. Such a prisoner has the constitutional right to notice and opportunity to challenge the assertion that he is a mental defective before a judicial decision is had upon the question. An *ex parte* judicial decision that a prisoner, otherwise entitled to his liberty, shall be confined in an institution for the rest of his life unless discharged by his custodian, or until he secures his release by *habeas corpus* proceedings, is contrary to the tradition of the common law and a violation of rights guaranteed by the Constitution.[8]

The constitutions of almost all the states contain a guaranty of due process of law similar to that contained in the Fifth or Fourteenth Amendment of the Constitution of the United States. Such provisions are usually construed to be identical with those of the Federal Constitution.[9] It has been held that the right to restrain an insane person is not governed by the general law which states that no one shall be deprived of liberty without due process of law, since immediate action may be required for the protection of the insane person

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should be discharged without inquiry whether in fact he is insane, was not presented at Special Term, and could not be considered on appeal. Law Rep. News, Feb. 25, 1944, *decided*, Feb. 24, 1944.

[5] *See* In matter of Naylor, 284 N. Y. 188, 30 N. E. (2d) 468 (1940). Finch, J., in discussing Section 440 of the Correction Law, said: "The expression, 'such judge, if satisfied', imports a judicial hearing on this issue."

[6] People *ex rel.* Henderson v. Board of Supervisors of Westchester County, 147 N. Y. 1, 41 N. E. 563, 30 L. R. A. 74 (1895).

[7] People *ex rel.* Romano v. Thayer, 229 App. Div. 687, 242 N. Y. Supp. 289 (1930); People *ex rel.* Gaudino v. Superintendent of Institution for Defective Delinquents, Napanoch, 263 App. Div. 1942, 33 N. Y. S. (2d) 787 (1942).

[8] U. S. CONST. AMEND. XIV; N. Y. CONST. Art. I, § 6. *Accord,* Hovey v. Elliot, 167 U. S. 409, 17 Sup. Ct. 841, 42 L. ed. 215 (1897); People v. George Henriques & Co., 267 N. Y. 398, 196 N. E. 304 (1935); People *ex rel.* Barone v. Fox, 202 N. Y. 616, 96 N. E. 1126 (1911).

[9] *See* 16 C. J. S. § 568, subd. c.

and others.[10] All authorities agree that a statute is void which authorizes a final adjudication of insanity and commitment, without making some provision by which the person himself be given notice and an opportunity to be heard.[11]

J. E. P.

CONSTITUTIONAL LAW—FULL FAITH AND CREDIT DOCTRINE—EXTRA-TERRITORIAL VALIDITY OF DIVORCES.—The respondent, Ernest Davis, and his first wife were married and domiciled in New York. Several years afterwards, he obtained a divorce in Nevada upon grounds of extreme cruelty, without having personally served his spouse. The very day that the decree was granted, he married the deceased, Anna Holmes, and returned with her to New York. His first wife then sued for and subsequently obtained in New York, a divorce on the ground of Davis' adultery with the deceased, New York not recognizing the Nevada divorce because its court lacked personal jurisdiction.[1] The appellant relied upon the New York decree to prove that the respondent had never been legally married to her sister, the deceased, because they never remarried after the New York decree was granted, and therefore were not husband and wife, but merely two persons living together. As such, Davis would not be entitled to the letters of administration of the Holmes estate. The lower court reversed the order of the Niagara County Surrogate, denying the letters of administration to the respondent. *Held,* affirmed. In view of the most recent decision of the United States Supreme Court in *Williams and Hendrix v. North Carolina,*[2] the court gave full faith and credit to the Nevada divorce,[3] declaring that the finding of the New York court was not binding in this proceeding, and stating broadly that the decree of a sister state is not open to collateral attack by a third party. In re *Holmes Estate,* 291 N. Y. 261, 52 N. E. (2d) 424 (1943).

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[10] State of Minn. *ex rel.* Pearson v. Probate Court of Ramsey County, 309 U. S. 270, 60 Sup. Ct. 523, 84 L. ed. 744 (1940); Maxwell v. Maxwell, 189 Iowa 7, 177 N. W. 541 (1920).

[11] Barry v. Hall, 98 F. (2d) 222, 68 App. D. C. 350 (App. D. C. 1938); Ussery v. Haynes, 344 Mo. 530, 127 S. W. (2d) 410 (1939); *Ex parte* Allen, 82 Vt. 365, 73 Atl. 1078, 26 L. R. A. (N.S.) 232 (1909).

[1] Hubbard v. Hubbard, 228 N. Y. 81, 226 N. E. 508 (1920); McGown v. McGown, 164 N. Y. 558, 58 N. E. 1089 (1900); Matter of Kimball, 155 N. Y. 62 (1898); Hoffman v. Hoffman, 46 N. Y. 30 (1871); Kerr v. Kerr, 41 N. Y. 272 (1869); Jackson v. Jackson, 1 Johns. 424 (N. Y. 1806). In these cases, judgments of divorce procured by constructive service were held invalid.

[2] 317 U. S. 287, 87 L. ed. 279 (1942). Petitioners were married to, and domiciled with, their respective spouses in North Carolina. Together they left for Nevada, where, after fulfilling the forty-two day residence requirement, they obtained divorces on the ground of cruelty, having served their spouses by publication and substituted service only. They were then married, returned to North Carolina, and proceeded to set up housekeeping. The authorities of