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Criminal Law - Infants - Jurisdictional Determination of a Teenage Offender

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RECENT CASES

CRIMINAL LAW—INFANTS—JURISDICTIONAL DETERMINATION OF A TEENAGE OFFENDER—The defendant, a male age seventeen, was convicted and sentenced to life imprisonment for a murder committed when he was fifteen years old. He had been held, since the day following the incident, under juvenile custody for "theft from a person," specifically, stealing thirty dollars and the victim's automobile, until he reached the statutory age of seventeen. The Court of Criminal Appeals of Texas, with one dissent,[1] *held* the age of the offender at the time of prosecution would determine whether or not to try as a juvenile or an adult. *Foster v State*, 400 S.W.2d 552 (Texas 1966).

The holding of the instant case represents the majority of jurisdictions which employ the defendant's age at the time of prosecution criterion rather than when the offense was committed.[2] The minority view is found in nine American jurisdictions and Canada, which hold the defendant's age at the time of the offense to be the determining factor [3]

Analysis of the rationale of these theories requires an understanding of the statutes pertinent to the juvenile offender. Juvenile Court and Delinquency Acts are common to all states, following Illinois which instituted the initial juvenile delinquency act in 1899.[4]

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1. Morrison, J., believed there had been a denial of due process in that the defendant had been convicted on the same evidence and transaction that had resulted in committing him and holding him as a juvenile offender until he reached statutory age for trial as an adult.

2. Davis v. State, 259 Ala. 212, 66 So.2d 714 (1953) *But see* Bell v. State, 20 Ala. App. 101, 101 So. 68 (1924), State v. Dehler, 257 Minn. 549, 102 N.W.2d 696 (1960), Lee v. State, 214 Miss. 740, 59 So.2d 338 (1952), State *ex rel.* Heth v. Moloney, 126 Ohio St. 526, 186 N.E. 362 (1933), Wilson v. State, 65 Okla. Crim. 10, 82 P.2d 308 (1938), Hultin v. State, 171 Tex. Crim. 425, 351 S.W.2d. 248 (1961) Dearing v. State. 151 Tex. Crim. 6, 204 S.W.2d. 983 (1947), State v. Ring, 54 Wash. 2d. 250, 339 P.2d. 461 (1959).

3. United States v. Fotto, 103 F Supp. 430 (S.D.N.Y. 1952), United States v. Jones, 141 F Supp. 641 (E.D. Va. 1956), State v. Dubray, 121 Kan. 886, 250 Pac. 316 (1926), Childers v. Commonwealth, 239 S.W.2d. 255 (Ky. Ct. App. 1951), State *ex rel.* Clayton v. Jones, 192 La. 671, 188 So. 737 (1939) Metcalf v. Commonwealth, 338 Mass. 648, 156 N.E.2d. 649 (1959), State *ex rel.* Bresnahan v. District Court of Eighth Judicial Dist., 127 Mont. 609, 263 P.2d. 968 (1953), Johnson v. State, 18 N.J. 442, 114 A.2d. 1, *Cert. denied* 350 U.S. 942 (1955) *But see Ex parte* Williams, 117 N.J. Eq. 517, 177 Atl. 85 (1935), State v. Coble, 181 N.C. 554, 107 S.E. 132, (1921), State v. Musner, 110 Utah 543, 175 P.2d. 624, (1964), *vacated on other grounds,* 333 U.S. 95 (1948), *Ex parte* Cardarelli, 2 West Week 223, (Brit. Col. 1929), 1 D.L.R., 575 (1930).

4. Family Court Act. Ill. Laws 1899 § 1-26.

It is the intention of such acts to rehabilitate the errant youth instead of merely punishing him. Hence, the policy is one of reform and restoration of the "whole youth."[5] Specifically, juvenile delinquency legislation is based on the belief that the youthful offender needs rehabilitation. The juvenile delinquent, as such, is not charged with a criminal offense, but instead, is subjected to a procedure conducted by the state which will evaluate his behavior to determine if he has deviated from the norms of society If the juvenile authorities determine that the youth has so wandered, their duty is to decide what programs are necessary to protect, guide and educate him so that he will mature and become productive for himself and society

The functions of the juvenile court as an institution have been variously described: (1) to remove the child offenders from the ordinary criminal courts to the equity courts, which consider the doer rather than the deed; and (2) to have this juvenile court render protection and treatment to other children needing both.[6] The idealism of the legislation's purpose is truly commendable, but it has entered into criminal law's function of moral education and certain authorities caution that change is needed.[7]

The Texas Juvenile Delinquency Act, has been declared to be inherently a civil statute.[8] This act, by virtue of its civil nature, will have a great effect on the severity of the sentence if the offender is adjudged guilty The question has arisen in Texas concerning the denial of due process.[9] Decisions have held no such infringement of individual rights as the accused was not denied a speedy trial[10] because there was no undue delay.[11] The defendant was declared to be a juvenile delinquent since at the time of the murder he also "removed property from a person," and thereby was placed in the state's juvenile custody until he reached age

5. See *e.g.* FEDERAL YOUTH CORRECTIONS ACT, 18 U.S.C. 5005-5024, TEX. REV. CIVIL STATS. ANN. § ct. 2338-1 § 1 (1964).

6. VEDDER, JUVENILE OFFENDERS 146 (1963).

7. See *e.g.* Ludwig, *Conniderations Basic to Reform of Juvenile Offender Laws* 29 ST. JOHNS L. REV. 226 (1955). "Making treatment of all criminal behavior of young offenders, regardless of its seriousness or triviality, depend solely upon the individual need of the offender for rehabilitation may well level our impressionable young community to conclude that fracturing someone's skull is no more immoral than fraturing his bedroom window."

8. Hultin v. State, 171 Tex. Crim 425, 351 S.W.2d. 248 (1961) "The Juvenile Delinquency Act is, in its entirity, a civil statute aid proceedings thereunder including commitment provided are civil and not criminal in nature." See also Lazaros v. State, 228 S.W.2d. 972 (Tex. Civ. App. 1950).

9. Perry v. State, 171 Tex. Crim. 282, 350 S.W.2d. 21 (1961) (In the Perry case, the district attorney waited purposely until defendant, a juvenile delinquent, reached age 17 before presenting the matter).

10. TEX. STATS. ANN. art. 1 § 10 (1955).

11. *E.g.* Elliott v. State, 168 Tex. Crim. 140, 324 S.W.2d. 218 (1959), Wood v. State, 171 Tex Crim. 307, 349 S.W.2d. 605 (1961).

seventeen.[12] It is true that abuse of justice might result but, accordingly, the court in *Hultin v State* declared:

> [The Juvenile Delinquency Act] does not give the juvenile a vested right to be tried immediately following the commission of the offense. It merely provides that if he or she is proceeded against before reaching the age of seventeen or eighteen respectively, such proceedings shall be in Juvenile Court.[13]

Any connotation that the juvenile offender was punished for a specific crime has been expressly rejected, rather, his confinement was due to delinquent behavior per se.[14]

The decisions indicate that the juvenile delinquency acts have not provided immunity from prosecution until reaching majority for a crime which would be a felony[15] The fact that a youthful law breaker has been judged a juvenile delinquent has not barred further punishment.[16] Double jeopardy has been precluded by the rationale that a juvenile court does not acquire jurisdiction over the felony.[17] In the instant case, the juvenile court maintained its jurisdictional integrity, although the presiding judge was also the judge of the district court.[18]

The Minnesota case of *State v Dehler*[19] resulted in a decision worthy of notice in holding that a district court could try a thirty-four year old defendant for one of several murders committed at age sixteen. The salient facts needed to understand the logic of the decision are: due to procedural error the defendant did not appear before a juvenile court as required by law;[20] defendant petitioned

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12. TEX. REV. CIVIL STATS. ANN. art 2338-1 § 3 (Supp. 1966). "The term delinquent child means any female person over the age of ten (10) years and under the age of eighteen (18) years and any male person over the age of ten (10) years and under the age of seventeen (17) (a) who violates any penal law of this state of the grade of felony."

13. *Supra* note 8. (Furthermore, the court held that the power to prevent such occurances is a legislative and not judicial function).

14. Dearing v. State, 151 Tex. Crim. 6, 204 S.W.2d. 983 (1947) "[W]hile the appellant is confirmed and punished by reason of his delinquency, he is not being confined for the crime of burglary. True it is because he had committed an offense denounced as penal, that such was the reason of his delinquency having been determined and his confinement is caused by the fact of his being a delinquent child, and although in his absence of such burglarious acts, his delinquency could not be established, nevertheless his confinement and therefore punishment, is for being a delinquent child and not for being a convicted burglar."

15. Roberts v. State, 153 Tex. Crim., 308, 219 S.W.2d. 1016 (1949) [citing Arrendell v. State, 60 Tex. Crim. 350, 131 S.W 1096 (1910)] A clear statement of public policy is indicated in that. trying the defendant as a juvenile would find him committed to the state school only until he reached twenty-one. "Yet, he has long since passed such a mile post in age."

16. *E.g.* Roberts v. State, *supra,* note 15, Dearing v. State, *supra* note 14.

17. *E.g.* Martinez v. State, 171 Tex. Crim. 443, 350 S.W.2d. 929 (1961).

18. TEX. REV. CIVIL STATS. ANN. art. 2338-1 § 4 (1964).

19. 257 Minn. 549, 102 N.W.2d. 696 (1960).

20. MINN. STAT. ANN. 260.22 (1959).

for a writ of habeas corpus and was discharged for lack of jurisdiction of the district court due to the earlier failure to comply with the Juvenile Court Act.[21] Following immediate re-arrest and conviction, the court held

> that where an offense was committed before accused reached eighteen, but his arraignment before a judge was not held until after he became eighteen, it was not necessary to transfer the case to juvenile court, but that offense could be tried by criminal court without reference to juvenile court proceeding.[22]

The crux of Minnesota's holding seems to be that the earlier trial and imprisonment were void, the defendant being discharged subject to right of the state to retry him for the offense with which he was charged, since upon his discharge he no longer had the status of a juvenile.[23]

Holding contrary to the age criterion discussed above, are those courts which state that the age of the offender at the time of the offense determines the jurisdiction which will prosecute.[24] The theory in these jurisdictions differs from the common law principle, which treated child offenders over the age of seven as adult criminals, only in extending the age limit by statute. They indicate that the purpose of the juvenile legislation is to reform the offender while he is still a juvenile. Moreover, the commission of an offense, misdemeanor or felony, does not automatically become a crime because of a time lapse.[25] Under this view, a delay in obtaining jurisdiction over the offender until after he has reached the statutory age, has not prevented the juvenile court from obtaining jurisdiction over him.[26]

New Jersey has demonstrated clearly the operation of the "age at the time of the offense theory "[27] By statute,[28] if the defendant was a child when the illegal act was committed he could not be charged or tried specifically with that crime, but must be held for "juvenile delinquency "[29]

The doctrine of Parens Patria has been invoked in juvenile

21. *Ibid.*
22. State v. Dehler, *supra* note 19.
23. See State *ex rel* Pett v. Jackson, 252 Minn. 418, 90 N.W.2d 219 (1958).
24. *E.g.* United States v. Fotto, 103 F Supp. 430 (S.D.N.Y. 1952) United States v. Jones, 141 F Supp. 641 (E.D. Va. 1956) , Johnson v. State, 18 N.J. 442, 114 A.2d. 1, *Cert. denied* 350 U.S. 942 (1955).
25. See *e.g.* State v. Dubray, 121 Kan. 886, 250 Pac. 316 (1926).
26. *Id.* at 319.
27. Johnson v. State, *supra* note 24, State v. Monahan, 15 N.J. 34, 104 A.2d. 21 (1954).
28. Juvenile and Domestic Relations Court, N.J. STAT. ANN. 2 A 4-14 (Supp. 1966).
29. Johnson v. State, *supra* note 24.

delinquency actions as the duty of the state to protect the public interest from people who are dangerous to the public if not under custody[30] The end result, one can readily see, is much the same as that held in those jurisdictions such as Texas, yet the means differ considerably

There is a notable modification to the results obtained in New Jersey, Minnesota, Texas and similar jurisdictions which is illustrated by the federal government's treatment of delinquents. Offenses involving non-capital or life imprisonment penalties are covered by the Federal Juvenile Delinquency Act.[31] The provisions include a three year statute of limitations from the date of the violation of law This eliminates any extreme result which might occur if the violator remained at large for an extended period of years.

A recent decision by the United States Supreme Court, *Kent v United States*,[32] has manifested the difficulty centering around the latitude given the juvenile court to determine whether it should retain or waive jurisdiction. The issue arose because the hearing given the offender was not deemed to meet the requirement of full investigation. The statute required a judgment based on inquiry not only into facts of the alleged offense, but also into the applicability of the Parens Patria doctrine.[33] The substance of this decision is found to be the nature of the hearing, particularly the extent to which it is conducted. The hearing in *Kent* fell short of the statutory requisites because the decision to prosecute was rendered merely on a superficial hearing by the District of Columbia juvenile authorities.

The impact of the decision in *Kent* upon the treatment of juvenile offenders in North Dakota has not yet been determined. Chapter 27-16 of the North Dakota Century Code contains the applicable statutory provisions regarding juvenile delinquency Evidently North Dakota employs the theory of the age at the time of the offense to determine which court will assume jurisdiction.[34] To date there have been no successful challenges to the provisions of the code.[35] The provision is a sound one in that it emphasizes rehabilitating the youth rather than punishing him.

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30. Johnson v. State, *supra* note 24. Application for a writ of habeas corpus dismissed. Defendant age twenty-five, sought release from murder committed at age fourteen.

31. 18 U.S.C. § 5031-37 (1951). It is the federal government's intention not to prejudice the defendant by postponing trial until the statutory age is reached See United States v. Fotto, *supra* note 24.

32. 86 Sup. Ct. 1045 (1966). Note that this decision was reached two days before the instant case.

33. D.C. CODE ANN. § 11-1553 (Supp. IV, 1965).

34. N.D. CENT. CODE § 27-16-08 (2). "Concering any person under twenty-one years of age residing winthin the county charged with having violated any city or village ordinance or law of this state or of the United States prior to having become eighteen years of age;"

Skeptics might criticize the statute for being too liberal, claiming the offender can use the provision as a shield. This, however, is not necessarily true. With the exception of an atrocious offense such as murder, the average youthful offender commits a relatively minor infraction that would warrant only a nominal fine if committed by an adult. In all too many circumstances, a parent pays the fine and the child learns little, if anything, from the experience in court. On the other hand, if the same child must face the juvenile authorities, the Juvenile Commissioner, in the presence of the parents, has the necessary power[36] to make the meaning of responsibility better known to the child, the one needing it the most.

Idealistically a law should provide for all possible circumstances, but reality shows that none do. Both methods discussed for treating youthful offenders have merit, but the one employing the age at the time of the offense is preferable. Specifically, the approach provides a greater guarantee of justice by devaluating a delay in proceedings until the accused reaches the statutory age at which he can be tried as an adult criminal. If the alleged offense is so grave that juvenile law would be inappropriate, a hearing to determine whether or not to waive the authority of the juvenile court, can be resorted to. In the main, such an action will not be required. It is unrealistic to wait until a youth reaches a certain age and then bring charges against him as an adult for an offense which was committed as a juvenile.

JOHN C. GOLDEN

AUTOMOBILES—WHAT LAW GOVERNS—AN ABROGATION OF LEX LOCI DELECTI IN CONFLICT OF LAWS—While the plaintiff and defendant were on a temporary pleasure trip to South Dakota they were involved in an automobile accident which resulted in plaintiff sustaining serious and permanent injuries, incurred when the defendant negligently drove his vehicle off the road. At the time of the accident both young men were residents of the state of Minnesota. A motion by the defendant to obtain a summary judgment based apparently on the doctrine of *lex loci delecti*,[1] had been denied and on appeal the Minnesota Supreme Court, affirming the dismissal,

35. See State v. Jackman, 93 N.W.2d. 425 (N.D. 1958).
36. N.D. CENT. CODE § 27-16-02 (1960).
1. RESTATEMENT, CONFLICT OF LAWS, § 384 (1934) "(1) If a cause of action in tort is created at the place of the wrong, a cause of action will be recognized in other states. (2) If no cause of action is created at the place of the wrong, no recovery in tort can be had in any other state."