APPEALABILITY OF A PRE-TRIAL INSANITY COMMITMENT

There is a common-law rule that no person is to be tried, adjudged to punishment, or punished for a public offense while he is insane.[1] This rule was codified in the California Penal Code §§1367–72. Under these sections the court must provide for a proceeding to determine sanity if it has doubt concerning the defendant's competence to stand trial. Section 1370 directs that if the defendant is determined to be presently insane, he is then committed to a state hospital[2] until the superintendent of the hospital feels the defendant has regained sanity and is capable of being brought to trial.[3]

In the 1965 case of *People v. Fields*[4] the defendant was charged with receiving stolen property, but prior to trial was adjudged insane and committed to a state hospital. He appealed the commitment to the District Court of Appeals, but the People moved to dismiss, contending that the commitment was a non-appealable interlocutory order. The motion was granted, however, the California Supreme Court held that the commitment pursuant to §1370 was appealable as a final order in a special proceeding.

Prior to *Fields*, §1370 commitments had their sole recourse to the courts in the extraordinary remedy of habeas corpus. Such petitions, however, are not handled on an appellate basis, except to examine the authority under which the commitment occurred.[5] If the petitioner alleges a return to sanity, the petition is returned to the Superior Court (usually in the county in which the hospital is located), since this is a matter of fact over which the appellate court does not customarily assume jurisdiction.[6] There the Superior Court will entertain the petition and order to show cause, with the court's decision turning upon an appraisal of the patient's present sanity. This hearing by the court will include testimony by officials of the hospital in which the petitioner is confined. The effect of the decision in *Fields* is that the defendant may now inquire into judicial error at the commitment proceeding as well as alleging a return to sanity in a petition for writ of habeas corpus.

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[1] "Also, 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." 4 Blackstone, Commentaries §24, at p. 33 (1890).

[2] ". . . If the jury finds the defendant insane, the trial or judgment must be suspended until he becomes sane, and the court must order that he be in the meantime committed by the sheriff to a state hospital for the care and treatment of the insane, and that upon his becoming sane he be redelivered to the sheriff. . . ." Cal. Pen. Code §1370.

[3] "If the defendant is received into the state hospital he must be delivered there until he becomes sane. When he becomes sane, the superintendent must certify that fact to the sheriff and the district attorney of the county. The sheriff, must thereupon, without delay, bring the defendant from the state hospital, and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged." Cal. Pen. Code §1372.

[4] People v. Fields, 62 Cal.2d 538, 42 Cal.Rptr. 833 (1965).

The state's argument for non-appealability referred directly to California Code of Civil Procedure §963 which states that an appeal must be from a final judgment.[7] The state contended that the commitment was a mere interim measure which preceded a determination of the pending criminal charges, and thus did not possess the finality required for appeal. The People urged that the hospital superintendent has the duty of returning the defendant to trial when sanity has been restored,[8] and if this duty is not fulfilled, the superintendent can be compelled to perform it.[9] Thus, since after commitment the defendant's sanity is always an open matter, the state reasoned that a right to appeal would be superfluous.

However, in finding finality present in the §1370 commitment, the California Supreme Court recognized the importance of a right to appeal for two reasons: first, because of the commitment's unpredictable duration; and second, because of the absence of appellate review otherwise.

The fundamental reasoning of the court was drawn from a federal case, *Higgins v. United States*.[10] There the defendant attempted to appeal a commitment resulting from a determination of insanity at the time of trial. The procedure by which this was effected is, in its essentials, the same as that employed in California.[11] In absolving any conceptual difficulties concerning finality the court stated:

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[5] "The recital that the hearing was 'duly had' implies that due and lawful notice was given thereof to the alleged insane person, and that such giving of notice was proven to the satisfaction of the court, and is equivalent to a finding to that effect. It was not necessary that the record should, on its face, expressly state the particular statutes under which the tribunal assumed to act. It is sufficient if there was legal authority under any sttaute in force at the time, for the proceeding actually had, and no reference to the statute was necessary."

Matter of Clary, 149 Cal. 732, 735, 87 Pac. 580, 581 (1906).

[6] "The petition alleges that the prisoner is not insane. Upon that allegation he is entitled to a preliminary writ, in order to inquire into its truth and discharge him if he is found to be sane. This court does not usually issue writs to try and determine questions of fact. Under the present law (Pen. Code sec. 1475, as amended in 1905, [Stats. 1905, p. 706],) the supreme court has the power to make a writ returnable before any superior judge for determination by him. . . ."

Id. at 738, 87 Pac. 580, 582.

[7] "An appeal may be taken from a superior court in the following cases: 1. From a final judgment entered in an action, or special proceeding, commenced in a superior court, or brought into superior court from another court. . . ." Cal. Code Civ. Pro. §963.

[8] Cal. Pen. Code §1372.

[9] "Once hospitalized the determination of when sanity is restored is placed on the superintendent. . . . If the superintendent refuses to perform his duty doubtlessly he can be compelled to do so." People v. Ashley, 59 Cal.2d 339, 359, 29 Cal.Rptr. 16, 28 (1963).

[10] 205 F.2d 650 (9th Cir. 1953).

[11] "Whenever after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, he shall file a motion for a judicial determination of

> In as much as the defendant's mental disturbance may be of long duration, perhaps for life, and his trial may therefore be delayed over a very long time, and perhaps forever, the order adjudging him incompetent for trial has a phase of finality in it.
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> The order does not purport to merely refuse trial from day to day at the convenience of the court or for a short period of time to enable the defendant to recover from a temporary upset. It is, in nature, the kind of order which would never be reviewed on direct appeal after trial.[12]

In other words without a right to appeal the defendant may be unnecessarily subjected to lengthy hospitalization. An appeal after trial on the charges cannot review the validity of the commitment since by then the right to stand trial has been accorded to the defendant.

An additional basis for a right to appeal stated by the State Supreme Court is an analogy drawn between the §1370 commitment and the commitment to state rehabilitative institutions of mentally disordered sex offenders[13] and narcotic addicts. Both of the latter commitments have been previously held appealable final judgments in special proceedings.[14] The court reasoned that since §1370 provides for a commitment to a rehabilitative institution through a special proceeding, it should also be appealable. There is a weakness in the analogy, however, in that it skirts the question of finality. In this respect the District Court opinion seems to offer a superior handling of the problem. It points out that the mentally disordered sex offender and narcotic addict commitments are final because they follow conviction on the charges, while the §1370 commitment is distinguishable since it precedes any disposition on the merits.[15] That the commitment is a special proceeding[16] does not confer appealability; finality must also be present.[17]

The lower court stated an additional reason for finding the order in

such mental competency of the accused, setting forth the ground for such belief with the trial court in which the proceedings are pending." 18 U.S.C. §4244.

[12] Higgins v. United States, 205 F.2d 650, 652 (9th Cir. 1953).

[13] Formerly termed "sexual psychopaths." "Where the term 'sexual psychopath' is used in any code such term shall be construed to refer to and mean a 'mentally disordered sex offender'." Cal. Welf. and Inst. Code §5500. Former §5500 was repealed by Stats. 1963 c. 1913 p. 3907, sec. 2.

[14] People v. Gross, 44 Cal.2d 859, 860, 285 P.2d 630, 631 (1955) (Mentally disordered sex offender). In re De la O, 59 Cal.2d 128, 156, 28 Cal.Rptr. 489, 507, 98 A.L.R.2d 705, 725 (1963) (Narcotic addict).

[15] People v. Fields, 40 Cal.Rptr. 823 (District Court of Appeal 1964).

[16] "The proceeding under section 1368 is not a criminal action, for the defendant is charged with no criminal act, nor would he be subject to any punishment if he is found to be insane. . . . Clearly it is not a civil action for it is not prosecuted by one party against another for the declaration, enforcement or protection of a right, or the redress or prevention of a wrong. . . . The action here under consideration is a special proceeding. . . ."

People v. Loomis, 27 Cal.App.2d 236, 239–40, 80 P.2d 1012, 1014 (1938).

[17] Cf. People v. Riley, 37 Cal.2d 510, 235 P.2d 381 (1951).

question non-appealable: the appellant has no adverse judgment against him.[18] The court said, ". . . since defendant's commitment was brought after a hearing instituted on the motion of his own attorney . . . . [i]t would seem anomalous to allow a defendant to appeal an order which his own counsel requested the court to make."[19] This disregards the fact that prior to commitment, Fields, acting on his own, attempted to withdraw the motion. This was denied by the court in recognition of its duty to suspend the trial until sanity has been determined when a doubt as to the defendant's sanity arises prior to or during trial.[20] The duty exists whether or not the defendant makes a motion to suspend the trial.[21] Hence, since the primary obligation lies with the court, a commitment order may well be adverse, justifying an appeal. In passing it should be noted that the defendant facing an undesired commitment is in an awkward position since §1369 commands that "the counsel for the defense must open the case and offer evidence in support of the allegation of insanity . . ."[22] and compliance with an obligation statutorily imposed should not logically constitute a waiver of right to future appeal.

A final question met in this area is what would be the result of a successful appeal? A reversal on the merits should give the defendant the right to stand trial; a remand would give the court another opportunity to commit without error. These possibilities exist where the charges are still outstanding against the defendant. Where the charges have been dismissed, however, difficulty is encountered. By virtue of §1370 a dismissal of the charges before certification of sanity results in an automatic recommitment of the defendant as a mentally-ill person under the Welfare and Institutions Code.[23] What would be the benefit of even a successful appeal in such a situation? Might not the commitment as a mentally-ill person remain in effect? Though the courts have not dealt with this question, it would appear that the later commitment would also be nullified, since an invalid §1370 commitment was its source. At this juncture, inasmuch as no commitment would be in force and no charges pending, there could be no basis for holding the defendant any longer.

There are also several practical results of the *Fields* decision which differentiate the right to appeal from the former single remedy of habeas corpus. First, the defendant will appeal to the committing jurisdiction

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[18] People v. Fields, 40 Cal.Rptr. 823 (District Court of Appeal 1964).

[19] *Id.* at 825.

[20] People v. Merkouris, 52 Cal.2d 672, 678, 344 P.2d 1, 4 (1959).

[21] People v. Aparicio, 38 Cal.2d 565, 568, 241 P.2d 221, 223 (1952).

[22] Cal. Pen. Code §1369.

[23] ". . . In event of dismissal of the criminal charges before the defendant becomes sane the commitment shall remain in effect with the same force and effect as a commitment of the defendant as a mentally ill person under the provisions of the Welfare and Institutions Code." Cal. Pen. Code §1370.

rather than petition for habeas corpus in the county of the hospital. And second, the validity of the commitment will depend on the trial record and not the testimony of hospital officials as has been true in habeas corpus hearings.

The increasing tendency of the courts to utilize §1370 for pre-trial commitments[24] demands that counsel familiarize himself thoroughly with this area of the Penal Code. The right to appeal granted Fields now serves to supply the customary eventual alternatives with which counsel is faced when beginning a proceeding. And where there is judicial error in commitment proceeding, this right to appeal is essential; without it the error would not receive the appropriate correction.[25]

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[24] Since 1959 the number of admissions to California State Hospitals under §1370 has increased 124%—from 143 admissions in 1959 to 320 during the fiscal year ending June 30, 1965. The resident population of §1370 commitments in 1959 was 322. While the exact figure for the fiscal year ending June 30, 1965 is not available at this writing, it may be assumed, judging from the continuing rise in admissions, that the number is well over 500. Department of Mental Hygiene, Bureau of Bio-statistics.

[25] The attitude of the Department of Mental Hygiene toward the developments surrounding the Fields decision is probably accurately indicated in a communication received from Dr. S. M. Morgan, Acting Superintendent and Medical Director of Atascadero State Hospital, where §1370 commitments in California are hospitalized: "Our feelings concerning the appealability of 1370 commitments is in line with our other relationships to the Courts. We are here to serve patients, the Courts and the community. Whenever we are called to answer a local Superior Court on a writ of habeas corpus we supply the necessary case summary and expert testimony as required. The same services are simply repeated when we respond to the Attorney General's office." Letter from Dr. S. M. Morgan, Acting Superintendent and Medical Director of Atascadero State Hospital, to Howard De Nike (September 7, 1965), on file at the office of the USF Law Review, University of San Francisco.