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Juvenile Delinquency--Jurisdiction--Double Jeopardy

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Before a liability insurance company can be held liable in excess of policy limits, it must be guilty of either "negligence" or "bad faith" in refusing to settle within the policy limits. Although these are theoretically two separate tests, in practical application the results may be very similar. Since the Virginia court[33] and the District Court for the Southern District of West Virginia,[34] along with the West Virginia Legislature in the Safety Responsibility Law[35] have all endorsed the "good faith" rule, it is most likely that when the West Virginia Supreme Court of Appeals is confronted with the question they will follow the majority and require that refusal to settle be a "good faith" refusal.

Richard Edwin Rowe

Juvenile Delinquency—Jurisdiction—Double Jeopardy

A juvenile, properly confined by the Juvenile Court of Ohio County to the West Virginia Industrial School for Boys for automobile theft and breaking and entering, was placed in the Taylor County jail because of misconduct at the school. Juvenile Court of Ohio County ordered the youth returned to it whereupon he was transferred, apparently without hearing, to the Intermediate Court of Ohio County. Upon indictment and plea of guilty to auto theft, he was placed on probation. Later he violated probation and was sentenced to the penitentiary. Petitioner successfully sought a writ of habeas corpus from Marshall County Circuit Court alleging unlawful and illegal detention. The warden of the state penitentiary brought error. *Held,* reversed. The Intermediate Court of Ohio County had jurisdiction of the subject matter and the petitioner waived his right to object to the jurisdiction over his person by remaining silent. Validity of conviction is not dependent upon how one gets before the court and double jeopardy is inapplicable in juvenile court proceedings. *Brooks v. Boles,* 153 S.E.2d 526 (W. Va. 1967).

The West Virginia Code provides that the jurisdiction of a juvenile court over one adjudged to be a delinquent continues

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[33] Aetna Cas. & Sur. Co. v. Price, 206 Va. 749, 146 S.E.2d 220 (1966).
[34] Inland Mut. Ins. Co. v. Peerless Ins. Co., 152 F. Supp. 506 (S.D. W. Va. 1957), *aff'd on rehearing,* 251 F.2d 696 (4th Cir. 1958).
[35] W. VA. CODE ch. 17D, art. 4, § 12(f)(3) (Michie 1966).

"until he becomes twenty-one years of age unless discharged prior thereto *or is committed to a correctional or other institution.*"[1] There is a question as to whether the Ohio County Juvenile Court had the authority to order the petitioner returned to it after the original commitment to the industrial school. According to the code a person subject to the jurisdiction of a juvenile court may be brought before it by only one of two means: "(a) By petition praying that the person be adjudged neglected or delinquent (b) certification from any other court before which such person is brought, charged with the commission of the crime."[2] Considering this section of the code with that part of the same section above mentioned concerning termination of jurisdiction it appears that the Juvenile Court of Ohio County did not have jurisdiction over the person of the petitioner. The court made no note of these provisions of the code and relied solely upon the United States Supreme Court cases, *Frisbie v. Collins*[3] and *Ker v. Illinois.*[4] The *Frisbie* case approved the holding in *Ker* that due process of law is given no matter how a person is brought before a court, whether it be by force or illegality, so long as he is granted constitutional procedural safeguards while on trial.[5]

Only two cases have previously interpreted the West Virginia continuing jurisdiction statute cited above. *In Re Underwood*[6] concerns the custody of neglected and delinquent children and *Harloe v. Harloe*[7] the care, custody, education and maintenance of children of divorced parents. These two cases hold that the statute merely prevents a former decree or judgment from becoming final and gives the trial court the authority to reopen a case and, if evidence warrants, change the status of the child. These cases do not affect the principal case because they do not involve, as the latter does, commitment of a juvenile to an institution.

There is a procedure whereby a male juvenile confined to the industrial school for offenses that are punishable by penitentiary confinement may be returned to the court that committed him in order that he may be committed to the penitentiary.[8] However,

[1] W. VA. CODE ch. 49, art. 5, § 2 (Michie 1966).
[2] W. VA. CODE ch. 49, art. 5, § 2 (Michie 1966).
[3] 342 U.S. 519 (1952).
[4] 119 U.S. 436 (1886).
[5] *Id.* at 444.
[6] 144 W. Va. 312, 107 S.E.2d 608 (1959).
[7] 129 W. Va. 1, 38 S.E.2d 362 (1946).
[8] W. VA. CODE ch. 28, art. 1, § 7 (Michie 1966).

this can occur only when the youth has been convicted in a court of record for a felony and has been confined, through judicial discretion, to the industrial school.[9] The transfer back to the court must be initiated by the State Commissioner of Public Institutions after he has found a boy to be a detriment or menace to the other youths or that the institution is unable to benefit him.[10] This procedure was apparently not followed in the petitioner's case nor was it discussed by the court. However, the court did eliminate as inapplicable *State ex rel. McGilton v. Adams*[11] and *State ex rel. Firestone v. Adams*[12] which interpret this section of the Code, stating that they stood only for the proposition that no one may be "tried, convicted, or sentenced" for a felony unless upon presentment or indictment of a grand jury.[13] Recognizing that the *McGilton* and *Firestone* cases do stand for such a proposition, they seem also to have another meaning. In both cases, juveniles guilty of auto theft were found by the West Virginia Board of Control[14] to be unsuitable for confinement in the Industrial School and were returned to the juvenile courts which then sentenced them to the penitentiary. The Supreme Court of Appeals granted writs of habeas corpus in both cases. In the *McGilton* case the court held that a juvenile, under the age of 18, who has been confined in the industrial school cannot be sentenced to the penitentiary for the same offense unless he was, in the first instance, committed to the school after having been properly indicated and convicted of a felony.[15] The court further stated that the pentitentiary sentence, because of the juvenile court statute, could only be imposed by a court having criminal jurisdiction.[16]

An analysis of the *McGilton* and *Firestone* cases along with that section of the Code concerning the transfer of juveniles from industrial school to the penitentiary would suggest that there may be only one way in which a male offender under the age of 18 can, for the same offense, be removed from industrial school and sentenced to the penitentiary. That way is for the offender to: first, be indicted and convicted for a felony; secondly, be committed to

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[9] W. VA. CODE ch. 28, art. 1, § 3 (Michie 1966).
[10] W. VA. CODE ch. 28, art. 1, § 7 (Michie 1966).
[11] 143 W. Va. 325, 102 S.E.2d 145 (1958).
[12] 145 W. Va. 194, 113 S.E.2d 830 (1960).
[13] Brooks v. Boles, 153 S.E.2d 526, 529 (W. Va. 1967).
[14] Now the State Commissioner of Public Institutions.
[15] 143 W. Va. 325, 102 S.E.2d 145 (1958).
[16] *Id.* at 329, 102 S.E.2d at 148.

the industrial school by a court exercising criminal jurisdiction; and thirdly, be ordered by the State Commissioner of Public Institutions, for just cause, returned to the court for sentencing.

Regardless of the fact that the intermediate court had the jurisdition to try the petitioner's case there is some room for doubt as to whether the petitioner was, in the process that led from industrial school to the penitentiary, afforded his full measure of due process of law as guaranteed by the 14th amendment. In considering the idea of due process of law in the instant case, an important element of it is double jeopardy. This is quite apparent from the fact that the petitioner was tried and convicted for the same offense for which he had previously been confined to industrial school. The West Virginia statute from which the juvenile courts derive their jurisdiction states that juvenile offenders "shall have the protection guaranteed by article III, section 5 of the Constitution of West Virginia."[17] The constitution states that no one, in any criminal case, shall be twice put in jeopardy of losing his life or liberty for the same offense. The court in the principal case held this protection to be inapplicable because he was first proceeded against in a juvenile court, which is legally not a criminal proceeding. Therefore, since the constitution by express language deals with criminal cases, the petitioner was placed in jeopardy only once, that being when he was indicted, arraigned and entered a plea in the intermediate court.[18] However, in some states the possibility is realized that a juvenile may be subjected to double jeopardy.[19] West Virginia has a statute stating that no evidence used in juvenile court is admissible as evidence against a juvenile in any other case in any other court except the juvenile court.[20]

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[17] W. VA. CODE ch. 49, art. 5, § 3 (Michie 1966).

[18] Brooks v. Boles, 153 S.E.2d 526, 530 (W. Va. 1967); *accord,* People v. Silverstein, 121 Cal. App. 2d 140, 262 P.2d 656 (1953); *In re* MacDonald, 153 A.2d 651 (Mun. Ct. App. D.C. 1959).

[19] 53 *A.B.A.J.* 257, 258 (1967):

> Specificity of the matters on which the complaint is founded also serves as the basis for res judicata of those particular matters heard and disposed of, thus avoiding the child's being subjected to those same charges at another time or place—, essentially accordance of "double jeopardy."
>
> A Missouri statute also prohibits evidence used in juvenile court to be used against the child in any other court except juvenile court.

[20] W. VA. CODE ch. 49, art. 7, § 3 (Michie 1966):

> Any evidence given in any case or proceeding under this chapter, or any order, judgment or finding therein, or any adjudication upon the status of juvenile delinquents heretofore made or rendered, shall

A similar Ohio statute has been interpreted by one writer to be a guard against double jeopardy.[21]

Other cases such as *Garza v. State*[22] and *Sawyer v. Hauck*,[23] though not reaching the issue of double jeopardy, have held that it is a violation of the fundamental principles of fairness and constitutes a denial of due process of law to convict and sentence a juvenile for the same offense for which he had been previously confined in an industrial school.

Among the courts of the United States there seems to be no unanimity of opinion as to whether juvenile offenders should be afforded constitutional guarantees in the legal process as are adult offenders.[24] The prevailing philosophy among juvenile tribunals has been that a minor's rights are determined not from the application of clauses in the Constitution having to do with criminal cases, but rather from the requirements of fair treatment and due process.[25] What might be called the denial of constitutional guaranties to juvenile offenders is based upon the theoretical idea that the state is not punishing juveniles but serving in the capacity of *parens patriae* in a reformation process.[26]

A possible new trend may develop as a result of the United States Supreme Court's decisions in *Kent v. United States*[27] and *In Re Gault*.[28] The *Kent* case, though ignored by the West Virginia Court in the principal case, deals specifically with the matter of placing juveniles before courts having criminal jurisdiction. In remanding the case because of procedural error the Court specifically stated that a hearing and a statement of reasons are necessary,

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not in any civil, criminal or other cause or proceeding whatever in any court, be lawful or proper evidence against such child for any purpose whatsoever except in subsequent cases under this chapter involving the same child. . . .

[21] Rubin, *Constitutional Rights in Juvenile Court*, 16 CLEV.-MAR. L. REV. 477, 482 (1967).

[22] 369 S.W.2d 36 (Tex. Crim. App. 1963).

[23] 245 F. Supp. 55 (W.D. Tex. 1965) at 57 the court said that while the juvenile court processes are civil in nature—not criminal—the constitutional guaranty of fairness and due process are applicable to all proceedings, irrespective of whether they are denominated criminal or civil, if the outcome may be deprivation of one's liberty.

[24] *In re* Poff, 135 F. Supp. 224 (D.D.C. 1955).

[25] Rubin, *Constitutional Rights in Juvenile Court*, 16 CLEV.-MAR. L. REV. 477, 481 (1967).

[26] State *ex rel.* Matacta v. Buckner, 300 Mo. 359, 254 S.W. 179 (1923).

[27] 383 U.S. 541 (1966).

[28] 387 U.S. 1 (1967).

in order to assure constitutional safeguards, before a juvenile court can waive its exclusive jurisdiction over a juvenile.[29]

In May 1967 the Supreme Court of the United States established the principle that juvenile offenders should be afforded constitutional protection even though they are dealt with in courts not exercising criminal jurisdiction.[30] Generally, the case stands for the proposition that the juvenile offender is to be afforded due process of law guaranteed by the fourteenth amendment. Specifically, the case deals with the confidentiality of records, rights of the accused, notice of hearing, waiver of jurisdiction, right to counsel in the juvenile court and protection against self-incrimination.

That area of law dealing with juvenile offenders is one of utmost importance in today's society and should be one free, as far as possible, of uncertainty. Unfortunately in West Virginia the state of the law in this important area is rather uncertain as evidenced by the principal case. An early legislative or judicial clarification as to a juvenile court's jurisdiction over a committed juvenile, the proper procedure for transferring confinees of industrial school to the penitentiary, permissible disciplinary actions concerning industrial school confinees[31] and the extent to which juvenile offenders may be tried criminally for the same offense for which they are committed to industrial school would seem imperative. There is need for improvement and with the possibility of a new trend of wider constitutional protection for juvenile offenders in the United States, the West Virginia law may be in line for a change. Hopefully, the idea announced in the *Gault* case will be remembered, that is, the fourteenth amendment and the Bill of Rights are for children as well as adults.

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[29] Kent v. United States, 383 U.S. 541 (1966) at 554: "There is no place in our system of law for reaching a result of such tremendous consequences without effective assistance of counsel, without a statement of reasons." *Id* at 555:" [T]he admonition to function in a parental relationship is not an invitation to procedural arbitrainess."

[30] In re Gault, 387 U.S. 1 (1967).

[31] As the law now stands it is not clear as to who has control over an unmanageable industrial school confinee. The principal case seems to set forth a view that each juvenile court can discipline their own respective confinees. By analogy with the provision (62-8-3) of the West Virginia Code which provides that the prison inmates are to be dealt with in Marshall County for wrongful acts at the penitentiary, it would seem that the juvenile court of Taylor County should have jurisdiction over disobedient confinees of the industrial school.