Buffalo Law Review

Volume 6 | Number 2 Article 34

1-1-1957

Criminal Law—Habeas Corpus—Running of Sentence

Robert Casey Jr.

terms.[3] Indeterminate sentences must run concurrently unless sentence or the operation of sentence be *suspended* on one court.[4] If the trial judge recommends an early release he can not remand the defendant for further corrective measures and be consistent; however, if the first term has run its maximum the judge can remand him to prison to commence serving a second sentence.[5]

Though the result is that the offender may still have to serve consecutive indeterminate sentences, the inconsistency is avoided by the procedural sleight of hand of suspending one sentence, thus protecting the offender's remedy of appeal.

Habeas Corpus—Running of Sentence

People ex rel. Rainone v. Murphy[6] held that once a Parole Board regains custody of a parole violator his sentence continues to run, notwithstanding what the Board does with the prisoner.

The relator in this habeas corpus proceeding was arrested upon a warrant issued by the New York Board of Parole alleging delinquency in conformity with that Board's belief that he had committed a Federal crime. Thereafter he was turned over to Federal authorities for trial and sentencing. After sentencing, he was returned to the Board which in a short period subsequent thereto returned him to Federal authorities for imprisonment. After service of his federal sentence, he was returned to the custody of the Board and imprisoned in a New York State prison. Relator then sued out the present writ of habeas corpus, claiming that his State sentence had expired.[7]

It is expedient to the rights of the defendant and society that a defendant in the custody of one jurisdiction be surrendered to another jurisdiction for the purpose of trial. A speedy trial is a right of the accused and a benefit to society.[8]

3. *People ex rel. Gordon v. Ashworth,* 290 N. Y. 285, 49 N. E. 2d 410 (1943); The premise underlying an indeterminate sentence is that rather than having the punishment fit the crime it should fit the rehabilitation needs of the offender. *People ex rel. Fusco v. Ryan,* —— Misc. ——, 124 N. Y. S. 2d 541 (Sup. Ct. 1953). A discharge from the penitentiary, upon completion of the sentence before the maximum term, would make recommitment for a second term an incongruity, the finding that he can no longer benefit from further commitment being a prerequisite to an early discharge. *People ex rel. Gordon v. Ashworth, supra.*

4. *People ex rel. Gordon v. Ashworth,* 290 N. Y. 285, 49 N. E. 2d 140 (1943).

5. See note 4 *supra.*

6. 1N. Y. 2d 367, 135 N. E. 2d 567 (1956).

7. In March 1944 realtor was sentenced to from 7 to 10 years imprisonment. He was released on parole in September 1949 and violated parole in April 1950. He was arrested on a warrant issued by the Parole Board in July 1950. In February 1951 he was convicted of a federal felony and imprisoned therefor. In March 1954 he completed his federal sentence and was returned to the Parole Board. In August 1954 he sued out the present writ of habeas corpus.

8. *Ponzi v. Fessenden,* 258 U. S. 254, 264 (1921); *Rigor v. State of Maryland,* 101 Md. 465, 471, 472, 61 A. 631, 634 (1905).

No rule of comity, however, requires surrender of a prisoner for the purpose of serving a foreign sentence. Such a rule would be meaningless and devoid of useful purpose.

The parole board did not have the power to stop the running of relator's sentence during his confinement in the federal prison. By statute, a court or judge is prohibited from interrupting a prisoner's sentence after such imprisonment has commenced.[9] The term of imprisonment begins "on the date of his actual incarceration in a state prison or penitentiary."[10]

There is no reason to believe that the legislature meant to accord the privilege of interrupting a prisoner's sentence to the Board of Parole. The function of the Parole Board is merely to ameliorate punishment and not interrupt the sentence. The prisoner by his own act of delinquency amounting to violation of parole may interrupt the running of his sentence just as an escape from prison interrupts the running of the sentence.

Relator is entitled to no credit for the time when he was at large as a parole violator.[11] Once he was returned to custody, however, the sentence began to run regardless of the disposition of the prisoner made by the Parole Board. Hence, the Court properly found that the relator had fully served his sentence.

---

9. N. Y. PENAL LAW §2188. The court, judge, justice or magistrate authorized to impose sentence upon conviction may . . . (1) suspend sentence, or (2) may impose sentence and suspend the execution of the judgment . . . Provided, however, that the imprisonment directed by the judgment shall not be suspended or interrupted after such imprisonment shall have commenced. N. Y. CODE CRIM. PROC. §470-a; *People ex rel. Paris v. Hunt*, 201 App. Div. 573, 194 N. Y. S. 699, *aff'd*, 234 N. Y. 558, 138 N. E. 445 (1922).

10. N. Y. CORRECTION LAW §231.

11. N. Y. CORRECTION LAW §218; *People ex rel. Dote v. Martin*, 294 N. Y. 330, 333, 62 N. E. 2d 217, 218 (1945).