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Illegal Judgments and Sentences in Florida Criminal Cases

Paul W. Danahy Jr.

ILLEGAL JUDGMENTS AND SENTENCES IN FLORIDA CRIMINAL CASES

The history of criminal procedure in Florida is replete with a surprising number of improper judgments and sentences imposed by trial courts. In most cases the error involved could have been avoided by careful adherence to unequivocal statutory directions. This note contains a discussion of the several causes and results of needless illegalities in judgment and sentencing processes, with a proposal for their elimination and the attendant improvement of the administration of justice in the area of criminal procedure.

ILLEGAL SENTENCE

A basic consideration, almost elementary in its meaning, is that a valid sentence must follow a valid judgment[1] and be based upon it.[2] The price of impropriety in the content or timeliness of a sentence is the remanding of the case for proper sentencing.[3] Although it is clear that a sentence is void if it is not based on a valid judgment, this is not the only reason for an erroneous sentence.

Sentence in Excess of Statutory Maximum

A trial judge commits clear error if he imposes a sentence of imprisonment for a period in excess of the statutory maximum penal provision.[4] The recent case of *Collins v. State*[5] illustrates the time-consuming procedural quagmire that can result from this type of illegal sentence. The defendant pleaded guilty to a charge of operating a gambling room and was sentenced in open court to a term of four years in the state prison. After adjournment of court, the trial judge discovered that he had imposed a sentence in excess of the statutory[6]

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[1] *Ex parte* Ferris, 111 Fla. 584, 149 So. 580 (1933).

[2] *E.g.*, Finch v. Mayo, 137 Fla. 762, 189 So. 27 (1939); State *ex rel.* Spitzer v. Mayo, 129 Fla. 426, 176 So. 434 (1937); State *ex rel.* House v. Mayo, 122 Fla. 23, 164 So. 673 (1935); Burns v. State, 97 Fla. 231, 120 So. 360 (1929).

[3] *E.g.*, Walden v. State, 83 So.2d 111 (Fla. 1955); *Ex parte* Wilson, 153 Fla. 459, 14 So.2d 846 (1943); Irvin v. State, 52 Fla. 51, 41 So. 785 (1906).

[4] *E.g.*, Anglin v. Mayo, 88 So.2d 918 (Fla. 1956); Bascelio v. Mayo, 81 So.2d 649 (Fla. 1955).

[5] 83 So.2d 6 (Fla. 1955).

[6] FLA. STAT. §849.01 (1955).

maximum of three years and directed the clerk to change the sentence accordingly. The defendant's motion for leave to withdraw his plea of guilty was denied, and he appealed from the final judgment and sentence. Pending the appeal, he successfully collaterally attacked the second sentence in a habeas corpus proceeding; the judge held the second sentence to be void because it was not entered in the defendant's presence and ordered his return to the trial court for proper sentencing. The defendant was brought before the trial court again and was sentenced to a term of three years. He then attacked the validity of the third sentence in a petition for a writ of coram nobis, and took appeal, his second in the case, from the order denying the writ. The two appeals were consolidated before the Supreme Court, which affirmed the original judgment and the third sentence, since the error was cured while the original appeal was pending. The Court declared, however, that if the third sentence had not been imposed during the pendency of the appeal, the case would have been reversed because the first sentence exceeded the statutory maximum and the second was imposed without the defendant's presence.[7]

Sentence Below the Statutory Minimum

A sentence of imprisonment for a term below the statutory minimum is no less illegal than one that exceeds the statutory maximum. In *Jones v. State*[8] the defendant was convicted of larceny and sentenced to serve a prison term for a period below the statutory minimum. When this fact was pointed out to the Court during argument on defendant's appeal on the merits, the Court remanded the case for imposition of a proper sentence.

Sentence Names Improper Place of Imprisonment or Execution

Occasionally a trial court imposes a sentence that names a place of imprisonment other than that provided by statute.[9] In *Franklin v. State*[10] the defendant was convicted of manslaughter and sentenced

[7] 83 So.2d 6, 8 (Fla. 1955) (dictum).

[8] 64 Fla. 92, 59 So. 892 (1912).

[9] *E.g.*, Brooke v. State, 99 Fla. 1275, 128 So. 814 (1930); Smith v. State, 74 Fla. 44, 76 So. 334 (1917); Hunter v. State, 64 Fla. 315, 60 So. 786 (1912) (defendant convicted of burglary, punishable under FLA. GEN. STAT. §3281 (1906) by imprisonment in the state prison for a period not exceeding twenty years, but sentenced to term of one year in county jail); Thompson v. State, 52 Fla. 113, 41 So. 899 (1906).

[10] 120 Fla. 686, 163 So. 55 (1935).

to pay a fine or, in default of payment, to serve five years at hard labor in the state prison. This sentence was held to be erroneous because the statute prescribed imprisonment only in the county jail in default of payment of the fine. The converse of this situation is also true; a sentence of imprisonment in the county jail is void when the applicable statute directs that imprisonment be made in the state prison.[11] A death sentence is void if it is directed to be executed at an improper place[12] or by an improper method.[13]

Miscellaneous Incidents of Illegality

A sentence will be declared void if it is too vague or indefinite,[14] if it directs, in the alternative, the payment of a fine and imprisonment,[15] if an indefinite term of imprisonment is imposed in default of the payment of a fine,[16] or if no allocution precedes the imposition of a death sentence.[17]

ILLEGAL JUDGMENT

In Florida the adjudication of guilt and the imposition of sentence are separate parts of the same process.[18] The causes of illegality in judgment are nearly as numerous as the varied causes of illegality in the sentence proper. Because a valid sentence can never rest on an unlawful judgment, it is desirable to examine the form of unlawful judgments.

A conviction is invalid and the case is subject to a remand for proper adjudication if the record does not expressly contain the entry of judgment, for its existence can not be implied.[19] The judgment is invalid if the judge neglects to adjudge the defendant guilty in open court[20] or fails to state the offense for which he was convicted.[21]

[11]Op. Att'y Gen. Fla. 056-18 (Jan. 19, 1956).

[12]Webster v. State, 47 Fla. 108, 36 So. 584 (1904).

[13]*Ex parte* Browne, 93 Fla. 332, 111 So. 518 (1927).

[14]Wallace v. State, 41 Fla. 547, 26 So. 713 (1899).

[15]*Ex parte* Martini, 23 Fla. 343, 2 So. 689 (1887).

[16]Roberts v. State, 30 Fla. 82, 11 So. 536 (1892).

[17]Keech v. State, 15 Fla. 591 (1876). *But cf.* Blount v. State, 30 Fla. 287, 11 So. 547 (1892); Hodge v. State, 29 Fla. 500, 10 So. 556 (1892) (no allocution necessary if conviction not of capital crime).

[18]See FLA. STAT. §§921.01,.02,.05 (1955).

[19]Ellis v. State, 100 Fla. 27, 129 So. 106 (1930).

[20]See FLA. STAT. §921.02 (1955).

[21]House v. State, 127 Fla. 145, 172 So. 734 (1937); Anderson v. Chapman, 109

The judgment is unlawful when the defendant is adjudged guilty of a crime greater[22] than or entirely different[23] from the statutory offense of which he was convicted. The former type of illegal judgment is demonstrated in *Lewis v. State*,[24] in which the Court held the judgment erroneous when the defendant was adjudged guilty of burglary upon a verdict of guilt of breaking and entering with intent to commit a misdemeanor. In the recent case of *Walden v. State*[25] the Court reversed a similar judgment. The jury found Walden guilty of breaking and entering with intent to commit a misdemeanor, but he was sentenced to ten years in prison after being adjudged guilty of burglary. The offense of which the defendant was found guilty by the jury carries a maximum imprisonment of five years.[26] The Florida Court emphasized that the evil in allowing this type of erroneous judgment to stand is too plain to require further comment.[27]

METHODS AND EFFECTS OF ATTACK ON ILLEGALITY

Appeal

A person convicted of a crime in Florida enjoys a statutory right to appeal from a final judgment of conviction.[28] The state[29] as well as the defendant[30] may appeal from a sentence on the ground that it is illegal.

At common law the result of an illegal sentence was the reversal of the conviction and the discharge of the prisoner;[31] today the usual consequence is the remanding of the case for proper sentencing[32] unless the error complained of by the defendant was favorable to him and the state has not appealed.[33] The error may be cured by the trial judge if he

Fla. 54, 146 So. 675 (1933).

22Shuler v. State, 57 So.2d 336 (Fla. 1952); Holloman v. State, 140 Fla. 59, 191 So. 36 (1939).

23*Ex parte* Wilson, 153 Fla. 459, 14 So.2d 846 (1943).

24154 Fla. 825, 19 So.2d 199 (1944).

2583 So.2d 111 (Fla. 1955).

26FLA. STAT. §810.05 (1955).

2783 So.2d 111, 112 (Fla. 1955) (dictum).

28FLA. STAT. §§924.05,.09 (1955), Wells v. State, 38 So.2d 464 (Fla. 1949), State *ex rel.* Cheney v. Rowe, 152 Fla. 316, 11 So.2d 585 (1943).

29FLA. STAT. §924.07 (5) (1955).

30FLA. STAT. §924.06 (5) (1955).

3119 HARV. L. REV. 220 (1895).

32See note 3 *supra*.

33See Tilghman v. State, 64 So.2d 555 (Fla. 1953).

modifies the sentence during the term in which it was imposed and before the defendant begins to satisfy it.[34] After the expiration of the term, the court has no further power to do so.[35]

Habeas Corpus

The habeas corpus proceeding has been used to attack a sentence directing imprisonment for a period in excess of the lawful maximum period[36] and when the sentence was of a different character from that allowed by law.[37] Similarly, habeas corpus has been used to collaterally attack a judgment rendered by a court that exceeded its power or otherwise had no jurisdiction.[38] The Florida Court ordered a defendant discharged from custody when he was sentenced to an excessive term and had served it for a period nearly equal to the maximum period provided by the statute under which he should have been sentenced.[39] Although discharge is the common result of the entry of judgments by courts that have no power to do so,[40] a successful habeas corpus attack on formal irregularities results in the remanding of the prisoner for proper adjudication or sentence.[41]

CONCLUSION

In light of the recurring violations of the numerous statutory penal provisions of the criminal law, there is need for reappraisal of the effectiveness of present sentencing procedures. Not every convicted person enjoys the benefit of counsel; it is reasonable to assume that many violations remain undiscovered. The extent to which violations

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[34]Collins v. State, 83 So.2d 6 (Fla. 1955); Scroggins v. State, 125 Fla. 49, 169 So. 547 (1936); Tillman v. State, 58 Fla. 113, 50 So. 675 (1909).

[35]Tucker v. State, 100 Fla. 1440, 1444, 131 So. 327, 328 (1930) (dictum); Tanner v. Wiggins, 54 Fla. 203, 212, 45 So. 459, 462 (1907) (dictum).

[36]*E.g.*, Bascelio v. Mayo, 81 So.2d 649 (Fla. 1955); Collingsworth v. Mayo, 77 So.2d 843 (Fla. 1955); *In re* Camp, 92 Fla. 185, 109 So. 445 (1926).

[37]*E.g.*, State *ex rel.* Grebstein v. Lehman, 100 Fla. 481, 129 So. 818 (1930); *Ex parte* Browne, 93 Fla. 332, 111 So. 518 (1927).

[38]*E.g.*, *Ex parte* Livingston, 116 Fla. 640, 156 So. 612 (1934); *Ex parte* Davidson, 76 Fla. 272, 79 So. 727 (1918).

[39]Hepburn v. Chapman, 109 Fla. 133, 149 So. 196 (1933); see also Devoe v. Tucker, 113 Fla. 805, 152 So. 624 (1934).

[40]See Skipper v. Schumacher, 124 Fla. 384, 169 So. 58 (1936); Anderson v. Chapman, 109 Fla. 54, 58, 146 So. 675, 677 (1933) (dictum).

[41]Cases cited note 39 *supra*.

do occur can be determined only by examination of the judgments and sentences imposed upon convicted persons in each of the judicial circuits. The Florida Bar is the only logical agency to sponsor such a survey.

The most expedient elimination of these violations can be effected by remedial legislation requiring a written verification by the prosecuting attorney of every judgment and sentence. The Florida Bar's Committee on Criminal Law and Procedure recently made a less stringent recommendation in the form of a "request" to prosecutors to become better acquainted with the penal provisions of the criminal statutes.[42] Whether such a request will effect the desired check of each judgment and sentence is questionable.

The additional responsibility of requiring verification is not inconsistent with the prosecutor's established high obligation to assure the defendant a fair trial[43] and to deal with him in a manner that will "bless rather than damn him."[44] If the legislature reposes in the office of the prosecutor the responsibility of verifying the legality of each judgment and sentence, the administration of justice will be improved procedurally and, more important, a long step will have been taken toward elimination of the bitter injustice inherent in the satisfaction of an illegal sentence that occurs not because of mistaken judgment but because of carelessness.

PAUL W. DANAHY, JR.

[42] *Annual Committee Reports of The Florida Bar*, 30 FLA. B.J. 259, 271 (1956).
[43] See Oglesby v. State, 156 Fla. 481, 23 So.2d 558 (1945).
[44] Daugherty v. State, 154 Fla. 308, 310, 17 So.2d 290, 291 (1944) (per Terrell, J.).