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## Legal Kidnapping: A Look at Recent Decisions Involving the Validity of Criminal Commitments to State Hospitals

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three times the amount he seeks as a recovery. Such safeguards appear no more than reasonable when considered in the context that a plaintiff may call on the penal machinery of the state in order to insure the satisfaction of a civil judgment.

#### CONCLUSION

A similar process to the common law debtor prison system exists in many states today, including North Carolina, despite a provision in many state constitutions that there will be no imprisonment for debt. Today in North Carolina statutory provisions for arrest and bail and body execution allow civil arrest and imprisonment where a judgment is returned wholly or partly dissatisfied in contract cases involving fraud, in cases of intentional or wilful torts, and in fiduciary cases where there is a breach of trust.

The statutory remedies may be secured by a creditor through the filing with the court a complaint or an affidavit alleging a statutory right to have a defendant civilly arrested or alleging the grounds for a belief that such right exists, along with the necessary bond set by the court. If the court issues the order, a defendant has the right to move that it be vacated, that the bail be reduced and that the issues be submitted to a jury.

Civil arrest and imprisonment statutes are penal in nature without criminal safeguards, structured for vengeance by a creditor, and represent an anachronism inconsistent with modern jurisprudence. An adequate reform of North Carolina statutes would require that they be restricted to cases in which the debtor is fraudulently attempting to abscond from the jurisdiction and that they permit a greater recovery of damages by the defendant in order to deter would-be vengeful plaintiffs.

ERNEST B. FULLWOOD

#### **LEGAL KIDNAPPING: A look at recent decisions involving the validity of criminal commitments to state hospitals**

In a recent Pennsylvania case, *Dixon v. Attorney General of the Commonwealth of Pennsylvania*, 313 F. Supp. 653 (1970), the proceeding was a class suit brought by seven plaintiffs, individually and on behalf of all inhabitants of Farview State Hospital situated like unto them. The complaint alleges the unconstitutionality of the confinement

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at Farview of the plaintiffs committed to and confined at Farview pursuant to Section 404 of the Pennsylvania Mental Health and Mental Retardation Act of 1966, 50 P.S., Section 4404<sup>1</sup> after the original authority for their confinements predicated on criminal convictions or charges had terminated.

The plaintiffs were committed to Farview pursuant to Section 404 in the following manner:

(a) The applications for these recommitments were not made by a relative or guardian or person standing in loco parentis to the plaintiffs.

(b) The applicant for recommitment was the Director of Social Services of Farview or another member of the Farview staff.

(c) The applications were supported by certificates of two physicians who were members of the staff at Farview.

(d) The applications were submitted to the Superintendent of Farview who "received" the plaintiffs.

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<sup>1</sup> Section 404 of the Pennsylvania Mental Health and Mental Retardation Act of 1966, 50 P.S., Section 4404, provides:

*Commitment on application by relative, etc.; physicians' certificates; review.*

(a) A written application for commitment to a facility may be made in the interest of any person who appears to be mentally disabled and in need of care. It may be made by a relative, guardian, friend, individual standing in loco parentis to the person to be committed, or by the executive office or an authorized agent of a governmental or recognized nonprofit health or welfare organization or agency or any responsible person.

(b) Such application shall be accompanied by the certificates of two physicians who have examined the person whose commitment is sought, within one week of the date of the certificates, and who have found that, in their opinion, such person is mentally disabled and in need of care. In the case of a mentally retarded person, the physicians' certification shall be accompanied by the report of a psychologist. No person shall be committed hereunder if any certificate is dated more than thirty days prior to the date of commitment, except that if the mental disability consists of mental retardation, the certificates may be dated not more than three months prior to the date of commitment. The application, certificates and the report, if any, shall be signed and sworn to or affirmed.

(c) The director may receive the person named in the application and detain him until discharge in accordance with the provisions of this act. When application is made by any person other than a relative or guardian, the director upon reception of the person named in the application shall notify the appropriate relative or guardian of such person of the commitment.

(d) Every commitment made under this section except those to the Veterans Administration or other agency of the United States Government, shall be reviewed at least annually by a committee appointed by the director from the professional staff of the facility wherein the person is detained, to determine whether continued care and commitment are necessary. Said committee shall make written recommendations to the director which shall be filed at the facility, and be open to inspection and review by the department, and such other persons as the secretary, by regulation, may permit.

(e) The plaintiffs thus committed were not consulted concerning their wishes about continued confinement or given notice of the filing of the applications by the Director of Social Services or others on the staff at Farview.

(f) No relative, guardian or friend was consulted by the Director of Social Services or others on the staff at Farview concerning the continued confinement of the plaintiffs.

(g) The plaintiffs thus committed were not represented by counsel in the proceedings leading to their recommitments.

(h) The plaintiffs had no independent psychiatric diagnosis or psychological evaluation in connection with either the decision of the Director of Social Services to apply for commitment or the certifications by physicians that they were mentally disabled and in need of care.

(i) No court made a finding that the recommitted plaintiffs required inpatient care.

(j) There is no period fixed by the statute after which persons committed under Section 404 must be released.

The plaintiffs contended that Section 404 was unconstitutional on its face and also as applied to the plaintiffs. The courts agreed, utilizing the decisions in *Specht v. Patterson*, 386 U.S. 605 (1967), and *Application of Gault*, 387 U.S. 1 (1967).

In *Specht*, the petitioner-defendant had been convicted of "indecent liberties" under a Colorado statute that carried a maximum sentence of ten years<sup>2</sup> but had not been sentenced under it. Later he was sentenced under the Colorado Sex Offenders Act<sup>3</sup> to an indeterminate term of from one day to life without notice and full hearing. Mr. Justice Douglas, 386 U.S. 609-610 quoted an opinion in *United States ex. rel. Gerchmon v. Maroney*, 355 F.2d 302, 312 (1966), analogizing the proceedings based on the two comparable sections of the Pennsylvania Burr-Walker Act<sup>4</sup> dealing with sex offenses, as follows:

It (the Pennsylvania Burr-Walker Act proceeding permitted incarceration from one day to life) is a separate criminal proceeding which may be invoked after conviction of one of the specified crimes. Petitioner therefore was entitled to a full judicial hearing before the magnified sentence was imposed. At such a hearing the requirements of due process cannot be satisfied by partial or niggardly procedural protec-

<sup>2</sup> Colo. Rev. Stat. Ann., Section 40-2-32 (1963).

<sup>3</sup> Colo. Rev. Stat., Sections 39-19-1 to -10 (1963).

<sup>4</sup> Pa. Stat. Tit. 19, Sections 1166 and 1170 (1964).

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tions. A defendant in such a proceeding is entitled to the full panoply of the relevant protections which due process guarantees in State criminal proceedings. He must be afforded all these safeguards which are fundamental rights and essential to a fair trial, including the right to confront and cross-examine the witnesses against him.

The courts found Section 404 to be almost completely devoid of the due process of law required by the Fourteenth Amendment. It also leaned toward a decision rendered in *Denton v. Commonwealth*, 383 S.W.2d 681 (1964) where the court took the position that committing procedures and rules of commitment should be the same in either a civil proceeding or criminal/quasi criminal proceeding.

The courts held in *Dixon* that Section 404 was unconstitutional on its face and in violation of the "due process clause" of the Fourteenth Amendment.

In an earlier New York case, *Baxstrom v. Herald*, 383 U.S. 107 (1966), it was held that equal protection of the laws required that when a male prisoner in the New York Department of Corrections hospital for mentally ill male prisoners, neared the end of his criminal sentence, he should be given a jury review of the determination as to his sanity in conformity with proceedings granted all others civilly committed under New York Mental Hygiene Law; the petitioner was also entitled to a hearing under the procedure granted to all others to determine whether he was so dangerously mentally ill that he must remain in a Department of Corrections hospital.

In 1969 in *Mills v. State of Delaware*, 256 A.2d 752, the appellants raised the question of the constitutional validity of the statutory procedures under which the appellant was committed to, and was being held at, the Delaware State Hospital upon a verdict of not guilty by reason of mental illness. The courts held that a patient who is committed to a state hospital under the statute authorizing commitment upon rendition of an insanity verdict would be deprived of substantial safeguards as to release from the hospital that are provided to persons civilly committed and therefore would be denied equal protection.

The court saved the statute from constitutional attack by "straining the construction" of the statute and held the commitment valid and construed the statute as to the legality of continued detention of such patients as requiring a jury trial on issue of present mental condition.

In Delaware the statute authorizing the recommitment to a state

hospital of persons found not guilty by reason of mental illness, is 11 *Del. C.* § 4702(a)(b) which provides:

(a) Whenever a determination is made that a person is 'not guilty by reason of mental illness,' the court shall order that the person so acquitted be committed to the Delaware State Hospital.

(b) Whenever a person is committed pursuant to subsection (a) of this section, the courts shall review at least twice per year the status of such person, and at such time as the court is informed by the Delaware State Hospital that the defendant no longer represents a danger to the public he shall:

- (1) be released from custody; or
- (2) be temporarily released from custody under such conditions of treatment and for such period of time as the court may prescribe.<sup>5</sup>

The *Mills* case held that in satisfying the "equal protection" clause of the Fourteenth Amendment, a patient committed under Section 4702 and a civilly committed patient under 16 *Del. C.* § 5125 have the same status in the State Hospital as patients to be treated and cured. The court stated that the fact the Section 4702 patient had been charged with crime is not a reasonable basis for distinguishing him from the Section 5125 patient in the procedures for determining the cessation of his mental abnormality and his qualification for release from the hospital.<sup>6</sup>

<sup>5</sup> The Delaware statute does not permit a special hearing after the jury has reached the verdict of mental illness. 11 *Del. C.* § 4701 requires that mental illness, as a defense in a criminal case, be "established to the satisfaction of the jury impaneled on its trial." Upon the plea of mental illness, the defendant has the burden of proving his mental illness by a preponderance of the evidence.

<sup>6</sup> 16 *Del. C.* § 5125 is a civil commitment, the applicable statute for release, once civilly committed, is 16 *Del. C.* § 5126, which in pertinent part states:

*Application to Court of Chancery by committed person for determination of sanity; procedure*

(a) Upon the commitment of any person to the Hospital, the person committed, or any one person related to the person committed within the third degree of consanguinity, or any other three persons may present a sworn petition to the Court of Chancery at any time setting forth the time and manner of the commitment and that he or they verily believes or believe the person committed to be a sane person, and praying that a writ issue to the sheriff of the county to determine whether the person committed to be a sane or an insane person.

(b) The Court shall thereupon forthwith make an order directing the Register of Chancery to forthwith issue a writ de lunatico inquirendo to the sheriff of the county, commanding him within five days after the service of the writ to summon a jury, and have determined by the jury whether the person committed be a sane or an insane person, and make return of the same to the court within two days after the finding thereof by the jury.

The court in interpreting and defining the statute Section 4702 held that there should be a jury trial conducted to ascertain whether or not the patient should be released. The jury should be (1) before a regular Superior Court judge; (2) to try the issue of whether the patient is a dangerously mentally ill person; and (3) with the burden of proof upon the patient to prove by a preponderance of the evidence freedom from such mental illness and dangerous propensities.

Thus, under the committing statutes implemented by the holding in the *Mills* case, the patient's rights are protected as to the due process and equal protection clause of the Fourteenth Amendment.

#### CONCLUSION

The "modern trend" by the courts seems to be the upholding of the individual's rights by full protection under the law.

It appears that the basic fundamental constitutional rights have been violated and "legal kidnapping" has been substituted. The courts, as evidenced by the recent decision, have apparently recognized this fact and appear to be saying that commitments to mental institutions *do* deprive the individual of his fundamental rights; therefore, the committing authorities *must* be sure the commitment is valid, and the individual afforded due process and equal protection under the law.

BERNARD J. GARTLAND

### No Fault Automotive Insurance

Four states to date have passed No Fault Insurance legislation: Massachusetts, Illinois, Florida and Delaware. Many states will probably pass similar legislation in the not too distant future. This automotive insurance represents a change in the law of torts and eliminates the fault concept of negligence to a limited degree. No Fault Insurance represents the beginning of a sociological change as well as a legal change where we are more concerned with total relationship of making one whole again who was injured in an automobile accident rather than who was at fault in causing the accident. Whether or not No Fault Insurance is good or bad

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(c) If the finding of the jury be that the person committed is a sane person, the sheriff shall forthwith make an order upon the Superintendent of the Hospital, and, if he be absent, upon any official of the Hospital, commanding that the person therein committed be immediately released from the Hospital.