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THE NORTH CAROLINA PENAL SYSTEM: NEEDED REFORM

CHARLES E. VICKERY*

There is a consensus of opinion that the physical facilities of the North Carolina prisons are inadequate, out-of-date and outmoded. The North Carolina Department of Corrections has published figures revealing that at the end of 1974 it was housing 12,012 inmates in prison facilities with a total capacity of 10,075.¹ The Department projects that by the end of 1984, inmate population will probably exceed current capacities by more than 7,000.² One need merely visit Central Prison, or Caledonia, or any other medium-security unit, to see the intolerable result of this overpopulation.

David L. Jones, Secretary of the North Carolina Department of Corrections, has recommended a plan of construction which, if adopted now, would provide adequate facilities for the projected inmate population of 1983.³ The plan recommended by Secretary Jones provides new construction and conversion of outmoded units in an attempt to replace existing dormitory-style, medium-custody units with single cell, medium-custody units. The plan is well-conceived in that it takes into consideration cost of construction and upkeep, the factors of security and adaptability and its conduciveness to rehabilitary functions. Secretary Jones has compared prison costs across the country and has proposed the most economical type of architecture. A price-tag of at least \$58 million dollars⁴ is reasonable considering the magnitude of the undertaking.

However, as a citizen and State Senator of North Carolina, I must question the feasibility of committing so much state money to the building of more prison cells. I concede that it is our obligation to provide adequate prison space for those citizens who are incarcerated, and that adequate space is not now being provided. But there must be a better way.

Not until 1868 was the State faced with the problem of funding an adequate prison system. In colonial North Carolina, practically all seri-

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1. N.C. DEPT. OF CORRECTION, STATE CORRECTION STATISTICAL ABSTRACT 1974-1975 17 (1975) (hereinafter cited as STAT. ABSTRACT).

2. N.C. DEPT. OF CORRECTION, LONG RANGE CONSTRUCTION AND CONVERSION PLAN 1974-1983 1 (1974).

3. *Id.*

4. Raleigh News and Observer, January 26, 1975, at 1 col. 3.

ous crimes were punished by death or some form of corporal punishment.⁵ The early offender, if convicted of a serious crime, might be hung, whipped, branded or copped. For a less serious offense, he might be put in the pillory or stocks and exposed to scorn and ridicule. Sentences of imprisonment, rare and limited to minor offenses, were served in local jails, supported by the counties with help from the towns and cities.⁶

After the Revolutionary War, new concepts of treatment of convicted offenders began to gain support in America. In America and North Carolina, prison sentences came into favor, first as an alternative to, and later as a substitute for, various forms of corporal punishment and for the death penalty. The impetus for this change in sentencing was the idea that in order to prevent future crimes, offenders were not only to be punished, but also reformed.

With our puritan heritage it is not surprising that enlightened men of good will, truly believing in the therapy of confession and penance, decided to risk permitting the thief to keep his hand, and instead incarcerate him, to mediate upon and repent his sin against society.⁷

Culmination of this policy in North Carolina was the adoption of the North Carolina Constitution in 1868.⁸ The Constitution abolished corporal punishment in all forms, limited the death penalty to four crimes, and further limited all types of punishment to "imprisonment with or without hard labor, fines, removal of office and disqualification to hold any office of honor, trust or profit under the State."⁹ The Constitution also required the North Carolina General Assembly to erect and conduct a State prison or penitentiary.¹⁰ The first penitentiary was completed in 1884 on the site of the present Central Prison. In that year, the General Assembly directed that it receive transfers of prisoners who were then serving 12 months or more in county jails and that in the future, the State penitentiary receive all persons convicted of crimes (arson, rape, murder and burglary excepted) for which previously the death penalty, public whipping, or other corporal punishment had been imposed.¹¹

From 1868 to the present, the mainstay of our penal laws has been State prisons. The reformers of the early 1800's should be gratified that we no longer have corporal punishment. However, in the face of

5. INSTITUTE OF GOVERNMENT, PRISON PROFILES 5 (1965).

6. INSTITUTE OF GOVERNMENT, LOCK-UP, (1969), citing Coates, *Punishment For Crime In North Carolina*, 17 N.C. L. REV. 206 (1937). (Hereinafter cited as LOCK-UP).

7. Craven, *Forward*, 45 MISS. L.J. 601 (1974).

8. N.C. CONST. art. XI, § 3 (1868).

9. N.C. PUB. LAWS 1868, Chap. 85, § 42, 43.

10. LOCK-UP.

11. *Supra*, Note 9.

this great demand for new capital expenditures for the prison system, and thereby a long term commitment to the continuing use of prisons, and in light of many studies that show that the penitentiary system is not working quite as well as our Puritan fathers might have hoped in the area of rehabilitation, we might re-examine the present-day function of the prison system to see if it may be time for new alternatives.

The function of any penal system is to impose sanctions upon those who have been found guilty of disobeying the laws of the society. Our early ancestors thought that corporal punishment was the most effective way to impose these sanctions and our later ancestors decided that imprisonment was better. Modern philosophy has adapted an abstract goal for deciding on the proper sanctions. The four usual elements are: 1) rehabilitation, 2) incapacitation by confinement, to prevent the offender from repeating other offenses, 3) deterrence, 4) retribution. To be effective, criminal sanctions must punish the offender and prevent further criminal acts. The sanctions must be meaningful in relation to a particular offender having committed a particular offense. The optimum sentence must punish the individual offender, prevent further criminal acts and be the most efficient, least expensive and most humane means of doing it.

Since 1868, North Carolina has based its criminal sanctions on the State prison system. Although it has developed and used alternate forms of punishment, they have been seen as secondary forms of punishment and never used to their utmost capacity. All of these sanctions are more efficient, less expensive and more humane than imprisonment. One of the most effective forms of criminal punishment is the fine. It has long been used as a criminal sanction, but has not been used to its fullest potential. The amount of the fine must be geared to the offender's ability to pay. It must be high enough to amount to a deprivation of property and discernable as punishment to the individual offender. Uniformity is to be sought less in the actual amount of the fine than in its impact on the offender. The current statutes allowing imposition of a fine could be revised so that the maximum amount would be high enough to inflict punishment on the average citizen and all minimums deleted so that no citizen would be in prison for his inability to pay the minimum. The decision of whether to impose a fine as punishment should be made on the basis of the effect of the fine on the particular offender and the type of the offense committed. The usual type of offense for which a fine would be appropriate is either offenses that are unlikely to be repeated and hence no corrective measures are indicated, or crimes involving economic gain, where some attempt is made to deprive the offender of any profits he may have received.

The traditional way of suspending an active sentence on condition that the offender pay the stated fine has many faults. Besides the obvious unfairness because of economic differences, the traditional method relies on the threat of an active sentence instead of making the fine punishment in itself. The fine should be the sentence, but if the offender willfully fails to pay when he is able, then the offender could be found guilty of contempt.

Our probation system in North Carolina began long before 1937 when it was first expressly recognized by statute.¹² It has been held that a court has inherent power to suspend a judgment or stay an execution of a sentence in a criminal case and that the statutory procedure is cumulative and concurrent rather than exclusive.¹³ North Carolina General Statutes § 15-197 and § 15-199 state that the court after conviction or plea of guilty or *nolo contendere* for any offense except a crime punishable by death or life imprisonment may suspend an imposition of the execution of a sentence and place the defendant on probation or may impose a fine and also put the defendant on probation. The conditions of this probation may be any or all of 14 listed conditions or any other.

There is little doubt that the use of probation has been beneficial to both the offender and the community in many cases. But many times probation has been seen not as a distinct form of punishment, but as a form of leniency. Probation necessarily entails some curtailment of liberty and to that extent is probably to be regarded as some form of punishment. Only four of the fifty states allow credit for time spent on probation to an active sentence later imposed.¹⁴ In order that probation be seen as a viable sentence, the state must recognize that if credit for time spent on probation is not given, the prisoner upon completion of his sentence will have served more time on probation and in prison than he was originally sentenced to serve.¹⁵

The importance and effectiveness of the probation system in North Carolina and America can not be over-emphasized. There are presently more than 30,000¹⁶ convicted offenders on probation in North Carolina, instead of serving active sentences. The cost per day of supporting a person on probation is 45 cents, compared to the cost to house one inmate for one day at \$10.88.¹⁷ Studies have shown that not only

12. N.C. GEN. STAT. § 15-197 (1937); *State v. Cole*, 244 N.C. 76, 86 S.E.2d 203 (1955).

13. *State v. Simmington*, 235 N.C. 612, 705 S.E.2d 842 (1952).

14. A.B.A., SENTENCING LAWS AND PRACTICE, Hand and Singer, 1974. (Hereinafter cited as A.B.A.).

15. *Id.*

16. This estimate was furnished to the author by the N.C. Dept. of Correction on January 25, 1975.

17. *Id.*

is it vastly more expensive to keep offenders in a prison system, but that the rate of recidivism is higher when compared with an alternative program such as probation.¹⁸

The Georgia Department of Offender Rehabilitation, recognizing the need for reducing its inmate population, conducted a study to determine the percentage of offenders who might be retained in the community under the parole system.¹⁹ The study took a random sample of 500 male offenders who were committed to the Georgia prison system in 1971. The writers were all experienced probation supervisors with masters degrees. The cases were assigned to one of three categories:

1) *Probation Under Normal Services.* The offender is seen as having minimal to medium needs in such areas as counseling, job-placement, locational occupational training, family or other psychosocial areas.

2) *Probation Under Intensive Services.* The offender is seen as having medium to maximum needs as indicated above. These needs would require greater availability of counselors skilled in individual, group and family counseling, vocational training, half-way houses, and extensive use of community social services.

3) *Not Recommended for Probation.* These offenders' social or psychological assets were considered to be so inadequate as to render probation ineffective at the present time. Another consideration was that the state law excludes the offense from probation consideration or the severity of the offense precludes probation.

The conclusion reached by the survey was:

This study tends to support the hypothesis that there are a significant number of offenders committed to prison who could be retained in the community. Ten per cent of the 500 sample cases were rated as being able to function under normal probation services. Another 34% were rated as being able to function in the community with intensive services if adequately trained staff were available. Thus, 44% of the present sample could possibly have been placed on probation.²⁰

Other alternatives to prison sentences are traditional devices such as "prayer for judgment continued" and the discretion of the district attorney not to prosecute some cases. More controllable alternatives are new trends toward split or "quick-dip" sentences. North Carolina had this type of sentence for violations of its controlled substance act.²¹ The statute allows a judge upon conviction of an offense or offenses

18. A.B.A. at 24.

19. Neil, *Who Shall Go and Who Shall Stay*, 12 CRIMINOLOGY 108 (May, 1974).

20. *Id.* at 109.

21. N.C. GEN. STAT. §§ 90-95 (1971).

under that article to sentence the offender to less than the maximum sentence and in addition, put the offender on special probation for a period of not more than five years. The purpose of this statute is to give the judge the ability to subject the offender to prison, but for a short time, and put him on a special probation for the remainder. The theory seems to be that the prison time is punishment and the probation time is rehabilitatory. Expansion of this type of sentence is projected to be introduced in the 1975 General Assembly, giving the judge the power to use this device in other than drug related offenses.

The special probation and the "split-sentence" statutes seem to differ from parole only in the fact that it is in the control of the judge and that it is set before beginning the sentence rather than at the termination. Within the traditional sentencing structure, the options of the judge are limited to giving either an active or suspended sentence or probation. However, the "split-sentence" allows the judge to pronounce a minimal active sentence with the knowledge that he will at a set time be placed on special probation. This can be as strict or lenient as the judge sees fit considering the individual offender and offense.

In a recent report to the North Carolina General Assembly by a penal study commission, it was urged that no individual be imprisoned unless such incarceration is deemed essential for the protection of others and that no person be submitted to more control than he requires. The study recommended many enlightened alternatives to incarceration that they felt should be adopted by the General Assembly.²² Some of the measures recommended are as follows:

1) *Pre-Trial Diversion*: The study recommends that the legislature grant the local District Attorneys the authority to decide whether or not a first offender or juvenile shall be brought to trial. If he judges that an accused and the public would be better served by the person being placed in custody or on an informal probation then he could offer this to the accused. If the accused accepted, he would be diverted from the criminal process at that point.

2) *Mandatory Parole*: This would be used for those inmates who currently serve all of their sentence to the day in prison, and then are suddenly thrust back into society. The recommendation is that all inmates who have not been granted parole be released automatically on parole for the last 90 days of their sentence. This would reduce the time the inmate spends in prison and give him some support and help while he attempts to readjust to society.

3) *Parole at One-Third*: This provision would apply only to

22. S.J.R. No. 1268, 1973 Gen. Ass., 2d Sess. (1974). Commission on Sentencing, Criminal Punishment and Rehabilitation.

misdemeanants. Misdemeanants serving sentences of 12 months or less would be automatically paroled after serving one-third of their sentences. Presently those serving sentences of 12 months or less are never considered for parole. A person sentenced for a period of over a year but less than four years has in the past been able to serve less prison time than the person sentenced for less than one year.

4) *Classification of Felons*: The commission found that judges have too much discretion in giving out sentences for various crimes and that some crimes not as serious as others carry stiffer penalties. A good example of the latter is that a person could receive a stiffer penalty in North Carolina for attempting to burn down his dwelling than for actually burning it. The commission recommended a complete revision of our criminal laws with the intent to decriminalize many acts and to revamp the sentencing structure so that the possible sentence will correspond to the severity of the offense, with emphasis on reducing the length of most of the sentences.

From the previous discussion, we have seen that there are presently a number of alternatives to a sentence of imprisonment and more are being developed. There are many reasons why these alternatives, while they have been used, have not been used more often. One of the biggest obstacles is tradition. A philosophy prevails that deprivation of liberty behind walls or other enclosure is the major and sometimes sole disposition to a judge. I believe we should break away from this tradition and look at imprisonment as the last alternative to be adopted and only if there are affirmative justifications. Studies have shown that it is the most expensive and least efficient in rehabilitation.²³

If we are to adopt the approach that we should consider and use other alternatives before relying on traditional prison sentences, there will be a need for the sentencing judge to have much more information about the defendant than he has had in the past. This will require a large number of new supportive personnel trained in sociology and psychology. More personnel will be needed in the parole system and other social service areas to handle the increased volume of offenders who will be diverted from the prison system to the probation system. The probation system will also need better trained individuals, as suggested by the Georgia study, in order to handle the higher-risk offenders who will need more help in adapting to society. The money saved by diverting offenders from the prison system should easily pay the in-

23. See generally Smith, *A QUIET REVOLUTION*, (1972); PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT—CORRECTIONS, 28 (1967).

creased personnel cost. North Carolina can not only save the proposed cost of construction, but the State can support a person on parole at 1/20th of the cost of keeping him in prison.

The time for commitment is here; we either have to use our available funds to increase the prison capacity or commit our available funds to changing the system. Even a total commitment to alternate sentencing will not relieve us of the necessity to upgrade our state prisons. But it should relieve us of the need to expand it. If we properly use the alternatives, especially probation, and assuming that North Carolina does not differ from Georgia substantially, our prison population should be reduced by approximately fifty per cent. This figure could be reduced further by increased use of post-incarceration remedies such as parole and work-release. Once we have adopted a philosophy which relegates incarceration to a secondary position in a choice of sentencing, reform in our penal system may come as rapidly as it did in 1868 when we made the improvement from corporal punishment to incarceration.