1929

Matter of Joseph Chapman

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MATTER OF JOSEPH CHAPMAN

In the stirring days of the late world war one Joseph Chapman pleaded guilty to a charge of murder in the criminal court of Cook County. For that day—May 1, 1918—the clerk's journal contains the following:

"13666—*People* v. *Joseph Chapman.*

"Parties and four jurors heretofore accepted and sworn present and on motion of each defendant and their counsel juror Harry T. Smith withdrawn, jury discharged, plea of not guilty (H. E.) withdrawn as to each defendant, plea of guilty entered to the indictment as to each, defendants warned, testimony heard, sentenced on plea to the penitentiary for the term of life as to each defendant."[1]

In due course, it may be assumed, Chapman was incarcerated in the Joliet Penitentiary. Years pass by until the 13th day of December, 1927, is at hand. On that day, Harry W. Chapman, brother of Joseph, filed in the Superior Court of Cook County, before Judge Charles A. Williams a petition for habeas corpus. He alleged that while brother Joseph pleaded guilty he failed to persist in his plea, at least that the record failed to show affirmatively that Joseph persisted. Wherefore it was concluded that the criminal court "was wholly without jurisdiction to accept" the plea of guilty "and without such jurisdiction the judgment under which said relator is held in custody is void."

On the 21st of December, 1927, Judge Williams decided that Joseph Chapman was unlawfully held in custody and he ordered his release. He agreed with the position stated in the petition for habeas corpus. Also he advanced the sentimental notion that since the time had passed for Chapman to review his case by writ of error, he should have relief by habeas corpus.[2]

A statute in Illinois provides as follows:

"In cases where the party pleads 'guilty' such plea shall not be entered until the court shall have fully explained to the accused the

1. This is taken from a petition for habeas corpus as shown by the records of the Superior Court of Cook County. This record was printed in a brief submitted on behalf of the People of Illinois to support a petition for mandamus against Judge Charles A. Williams. The writer has been informed that the letters "H. E." stand for the phrase "heretofore entered." He has also been informed that Martin Clark was the other defendant. After about three years in the penitentiary, he escaped and he is still at large.

2. For Judge Williams' point of view the writer is indebted to the brief on behalf of the People; and also to the verified petition for mandamus against Judge Williams. These statements are not denied in the brief filed on behalf of respondent Williams even though there is a complaint that the statements violated the rules of the game. See also the statement by Mr. Justice DeYoung in (1928) 330 Ill. 150, 161 N. E. 312.

consequences of entering such plea; after which, if the party persist in pleading 'guilty,' such plea shall be received and recorded, and the court shall proceed to render judgment and execution thereon, as if he had been found guilty by a jury. In all cases where the court possesses any discretion as to the extent of the punishment, it shall be the duty of the court to examine witnesses as to the aggravation and mitigation of the offense."[3]

It seems to be clear that Judge Williams in his decision was justified by no precedent which fairly can be said to be in point. At any rate the unanimous decision of the Supreme Court of Illinois wasted few, if any, words before it ordered him to expunge his void order.[4] The statute has been before the appellate courts in Illinois a number of times. So far as has been discovered, objections to judgments rendered under this statute have been presented by means of a writ of error. Furthermore there have been utterances of the Supreme Court of Illinois which should have made Judge Williams cautious about interfering with a judgment of a court of "concurrent" jurisdiction rather than bold to make free a self-confessed murderer.[5]

Making allowance for temporary absences and vacancies there are twenty circuit judges and twenty-eight superior judges in Cook County. No emphasis need be placed upon the fact that judges from other counties are brought to Cook County from time to time. They tend to equalize the local judges used in the trial of criminal cases. It is an undesirable system that will permit one of these judges to grant a habeas corpus writ in favor of a person held by virtue of a judgment rendered in the criminal court of Cook County. However, this seems to be possible under the habeas corpus law. Apparently there is nothing to prevent a person seeking a writ from privately interviewing judges until he finds a favorable one. Then he can be chosen as the one before whom the application will be filed and presented in a formal way. In the criminal court there is a rule of court which requires all applications for writs of habeas corpus, to be passed upon by a judge of that court, to be filed with the chief justice of the criminal court. He then assigns them in rotation to judges in the criminal court. (All of this seems to show that Cook County, at least, needs court-made rather than legislative rules of procedure. More important, possibly, is the need for a re-

3. Sec. 4, div. 13 of Crim. Code; *Cahill* "Statutes" (1927) p. 952; *Smith* "Statutes" (1927) p. 1019.

4. *People* v. *Williams* (1928) 330 Ill. 150, 161 N. E. 312.

5. *People* v. *Murphy* (1904) 212 Ill. 584, 589; *People* v. *Superior Court* (1908) 234 Ill. 186, 204.

organization of the courts which will provide a system which has a chief justice with power to organize a modern system of courts, with appointive instead of elective clerks, and with responsibility upon the chief justice to make the system work. But American judges, as a rule, are highly individualistic and a subordination of the individual to an efficient system is likely to come about slowly and painfully.)

It is fascinating to speculate on the sort of a judicial mind that without precedent and against the customary way of handling the matter would turn loose upon society a murderer by his own confession upon what Kipling perhaps would call a "filthy" technicality. It seems to be the sort of action that one hardly could imagine in England or Canada today. Yet it is feared that in the United States too many judges would delight in such action and with a heave of the chest would think that they were true followers of all the noble documents of freedom from Magna Charta down to date. There is something wrong with the mental training of many lawyers. We confuse that which is merely clever with true wisdom. Not infrequently we exalt lawyers who have a devilish ingenuity for thwarting the social consequences of our law. It is only necessary to recall that Mr. Chief Justice Taft once delivered himself upon the disgraceful way in which the criminal law is administered in this country and that Mr. Justice Clarke once wrote in warning that lawyers were in danger of becoming a group of casuists.

It will be recalled that Judge Williams added sentiment to his logic. He fortified his action by stating that Chapman was too late for a writ of error and that this was an additional reason for granting habeas corpus. To this there seem to be two answers as stated in the People's brief. In the first place, even if the matter were controlled by the practice act Chapman had three years in which to prosecute his writ of error. Three years should be enough for any man and under the circumstances the sentiment expressed by Judge Williams becomes mawkish. In the second place, the Supreme Court of Illinois in 1921 held[6] that the three year limitation in the practice act did not apply to criminal trials. In that decision the court approved a writ of error sued out more than five years after the plaintiff in error had been sentenced. The only suggested limitation on a writ of error in a criminal trial was the common law limitation of twenty years.

6. *People* v. *Murphy* (1921) 296 Ill. 532.

Therein lies another sad aspect of the *Chapman* case. Recently, according to newspaper items, Chapman has been captured under circumstances indicating that he is a truly desperate character, and he has been returned to the penitentiary in Joliet. Apparently, under the decision above specified there will be nothing to prevent Joseph from applying for a writ of error at any time before May 1, 1938. If he does, it seems likely that the judgment against him will be reversed and his cause remanded. The appellate courts in this state have been strict in exacting compliance with the statute above set forth.[7] This prospect makes the situation somewhat ridiculous. What possible reason is there to permit a convicted person to sue out a writ of error at any time within twenty years? Three months should be sufficient. At least one's general reading has brought forth the belief that in England as a rule there is a *final disposition* of criminal appeals within that time. What is done there is possible here. It is submitted that criminal procedure in Illinois needs to be renovated

7. *Krolage* v. *People* (1906) 224 Ill. 457; *People* v. *Fulimon* (1923) 308 Ill. 235; *People* v. *Petrie* (1920) 294 Ill. 366; *People* v. *Benner* (1922) 224 Ill. App. 515; *People* v. *Glick* (1916) 200 Ill. App. 46; cf. *People* v. *Pennington* (1915) 267 Ill. 45; *People* v. *Ellsworth* (1913) 261 Ill. 275; *People* v. *Conrad* (1921) 299 Ill. 473; *People* v. *Harney* (1916) 276 Ill. 236; *People* v. *Siracusa* (1916) 275 Ill. 457; *Marx* v. *People* (1903) 204 Ill. 248.

It should be noticed that according to the record Chapman was merely "warned." There is no recitation that the court "fully explained to the accused the consequences of entering such plea," to use the language of the Illinois statute. Then, to repeat, the record does not show that Chapman persisted in pleading guilty after being warned.

What would happen if Chapman should bring these defects before the Supreme Court on a writ of error, and if that court should determine that the writ was properly sued out? The practice as set forth in the above cases has been to reverse the judgment and remand the cause for further action not inconsistent with the opinion. Where would this leave the People? Apparently Chapman would be in a position to ask leave to withdraw his plea of guilty with a view to requesting a jury trial. While this request has been said to be a matter for the discretion of the judge hearing the motion still it is fairly clear that the Supreme Court favors such a request unless the circumstances are unusual. See *Gardner* v. *People* (1883) 106 Ill. 76; *Krolage* v. *People* (1906) 224 Ill. 456; *People* v. *Walker* (1911) 250 Ill. 427. In this connection, in *People* v. *Kolb* (1925) 238 Ill. App. 173, the court reversed and remanded the judgment with directions to set aside the plea of guilty and then specified that the plaintiff in error might move to quash the information if he so desired.

If Chapman should ever obtain a jury trial through this process it is not necessary to do more than mention the disadvantage to the People with reference to lost witnesses, lapsed memories, and sympathy.

and placed in shape to meet the conditions of the present day.[8]

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CORRESPONDENCE

CHOOSING AN EXECUTOR

To the Editors of ILLINOIS LAW REVIEW:

Mr. Cutter's article on the choice of an executor, in your February issue, is very interesting and he has analyzed the viewpoint of the testator with much thoroughness. There can be no question but that honesty, loyalty and first class business ability are absolutely essential qualities in an executor. These must come first. Assuming then, that these qualities are present and that our executors are men of good business judgment, we may feel confident that they will secure expert advice wherever needed on questions of law, real estate, taxes, investments, and accounting. In such a case there is every likelihood that the estate will be efficiently handled.

If an estate be of large proportions, usually four or five executors, including a lawyer of high standing and a trust company, are appointed, and the formation of such a group tends towards a most capable management of the estate. Under such circumstances each executor is on his mettle and gives of his best. Self interest seldom intrudes, as might be the case, were a single executor exercising sole control.

Mr. Cutter stresses the value of continuity in an executorship. He also brings out with great force the importance of the personal element—of a friendly interest on the part of the executors towards the testator's family. These points cannot be too strongly emphasized. The testator when choosing his executors wants them upon his death to manage his property and business as he would manage that of a valued friend were he acting as that friend's executor. He also desires his executors in their policy towards his wife, children, and other beneficiaries to maintain the same spirit and interest as he himself would, if living. This policy and this attitude on the part of his executors may be confidently expected where those in control of his estate are business friends who for many years have been interested in him and his family. With such men acting as executors and a proper provision for substitutes, the testator has gained assurance not merely of a permanent policy for handling his estate, but also of a friendly and sympathetic relationship between his executors and those for whose benefit his will is made.

Where a bank or trust company is acting as sole executor, a different situation is presented. While, as executor a bank pro-

8. The author wishes to acknowledge his indebtedness to Judge Q. J. Chott, Assistant State's Attorney, and Giles H. Penstone, student in the University of Chicago Law School, for valuable assistance in the preparation of these comments.