Michigan Law Review

Volume 54 | Issue 7

1956

Constitutional Law - Right to Counsel in Juvenile Court

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CONSTITUTIONAL LAW—RIGHT TO COUNSEL IN JUVENILE COURT—In April 1953 petitioner was found to have violated a law by the juvenile court. Being under the age of eighteen, he was committed to the National Training School for Boys of the District of Columbia. He was paroled about a year later but was re-arrested in March 1955 for violation of his parole and brought before the United States Parole Board. Before

the parole board could take action he petitioned the federal district court for a writ of habeas corpus on the gound that the action of the juvenile court in 1953 had been unconstitutional in that petitioner had not been advised of his right to counsel, a right guaranteed by the Sixth Amendment. *Held,* writ granted. Even though the juvenile court is not a criminal court, when a child commits an act which if committed by an adult would be a crime, then due process and the Sixth Amendment require that the child be advised of his right to counsel. *In re Poff,* (D.C. D.C. 1955) 135 F. Supp. 224.

Although the Juvenile Court Act of the District of Columbia provides that a child declared a juvenile delinquent is not to be deemed a criminal,[1] the court in the principal case held that when the basis of the delinquency proceeding is the alleged commission of a crime, then, in substance, the proceeding becomes criminal and the child is entitled to the same constitutional rights afforded an adult in a criminal trial, including the right to be advised of his right to counsel. Traditionally, however, these proceedings have not been considered criminal[2] but civil and equitable in nature,[3] and thus the usual constitutional guarantees afforded an accused are often held not to apply.[4] The courts, noting that the label of criminal is not to be attached to the adjudged juvenile delinquent, reason that the intent of the legislature was to protect and not to punish the child,[5] and that the proceedings are not adversary in nature[6] but are, rather, similar to guardianship proceedings wherein the state as *parens patriae* operates upon the status of the child.[7] Since there is, therefore, no punishment the child is said not to need the same constitutional guarantees afforded the criminally accused.[8] In addition, it is pointed out that the hearing should be informal and, thus, the formal procedures of the criminal trial should not be applicable.[9]

1 D.C. Code (1951) §11-915 (3).

2 In re Sharp, 15 Idaho 120, 96 P. 563 (1908); Thomas v. United States, (D.C. Cir. 1941) 121 F. (2d) 905. See FLEXNER AND OPPENHEIMER, THE LEGAL ASPECT OF THE JUVENILE COURT 22 (1922).

3 Bryant v. Brown, 151 Miss. 398, 118 S. 184 (1928); Cinque v. Boyd, 99 Conn. 70, 121 A. 678 (1923). See Mack, "The Juvenile Court," 23 HARV. L. REV. 104 (1909); 2 CATH. UNIV. L. REV. 90 (1952).

4 No right to trial by jury: Commonwealth v. Fisher, 213 Pa. 48, 62 A. 198 (1905); Ex parte Januszewski, (D.C. Ohio 1911) 196 F. 123. No right to appeal: Marlowe v. Commonwealth, 142 Ky. 106, 133 S.W. 1137 (1911); Wissenburg v. Bradley, 209 Iowa 813, 229 N.W. 205 (1929). No right to bail: Ex parte Louis Espinosa, 144 Tex. 121, 188 S.W. (2d) 576 (1945). See WHARTON, CRIMINAL LAW, 12th ed., §370 (1932).

5 Marlowe v. Commonwealth, note 4 supra; Thomas v. United States, note 2 supra.

6 SOUTHERLAND AND CRESSEY, PRINCIPLES OF CRIMINOLOGY, 5th ed., 400 (1955).

7 White v. Reid, (D.C. D.C. 1954) 125 F. Supp. 647; Shioutaken v. District of Columbia, (D.C. Mun. Ct. App. 1955) 114 A. (2d) 896.

8 See Bryant v. Brown, note 3 supra and cases cited in note 4 supra.

9 LOU, JUVENILE COURTS IN THE UNITED STATES 129 (1927); FLEXNER AND OPPENHEIMER, THE LEGAL ASPECT OF THE JUVENILE COURT 23 (1922).

Despite these considerations, there is scattered support for treating these proceedings as criminal.[10] This minority view seems to be based on a much more realistic analysis of the considerations involved. For example, the fact that the legislature has indicated that criminality should not be attached to an adjudgment of juvenile delinquency does not necessarily give rise to the conclusion that the constitutional guarantees afforded an accused are to be taken from the child. Instead, it would seem that the reverse would be true. By enacting this protective legislation it is likely that the legislature intended to add to the protections already afforded the child in the criminal court. Similarly, is it realistic to say that the child is not being punished? The fact that we may call commitment to the juvenile home "protection," does not change its appearance and meaning to the child. And it would be gross naivete to say that when the child returns to society his having spent time in the reformatory does not jeopardize his opportunity to become an accepted and responsible citizen.[11] It becomes quite apparent, then, that the determination of whether or not he has violated the law is of the utmost importance to the child. Realizing this, should the child be given less protection in a proceeding in which this determination is to be made than an adult would be given in a criminal proceeding?

Some language in the court's opinion seems to suggest that a child who is not advised of his right to counsel is also deprived of his liberty without due process of law.[12] There appears to be merit in this suggestion.[13] Although due process does not guarantee an accused the right to be advised of counsel, it does require that the hearing be fair.[14] It

[10] Santillian v. State, 147 Tex. Crim. App. 554, 182 S.W. (2d) 812 (1944); People v. Fowler, (N.Y. Co. Ct. 1914) 148 N.Y.S. 741, revd. on other grounds 166 App. Div. 605, 152 N.Y.S. 261 (1915); In re Contreras, 109 Cal. App. (2d) 787, 241 P. (2d) 631 (1952). See Rubin, "Protecting the Child in the Juvenile Court," 43 J. CRIM. L. C. & P. S. 425 (1952); dissenting opinion in In re Holmes, 379 Pa. 599 at 610, 109 A. (2d) 523 (1954), cert. den. 348 U.S. 973, 75 S.Ct. 535 (1955).

[11] See In re Contreras, note 10 supra; Santillian v. State, note 10 supra; Lindsey, "The Juvenile Court Movement from a Lawyer's Standpoint," 52 AM. ACADEMY OF POLITICAL & SOCIAL SCIENCE 140 (1914); TAPPAN, JUVENILE DELINQUENCY 205 (1949).

[12] Principal case at 227. Because of the express guarantee in the Sixth Amendment the federal courts have not had to consider whether the right to be advised of one's right to counsel is a necessary element in the concept of a fair hearing under the Fifth Amendment's due process clause. However, this question has been considered under the Fourteenth Amendment's due process clause and it has been held that the defendant is so entitled if, under the circumstances, such advice is necessary to a fair hearing. See the cases cited in note 14 infra. It may be assumed that this concept of a fair hearing has the same meaning under both amendments.

[13] While in order to invoke the Sixth Amendment it must be shown that the proceedings are criminal, it is to be noted that when a due process theory is used such a showing is not required because that guarantee is not limited to criminal proceedings. Zakonaite v. Wolf, 226 U.S. 272, 33 S.Ct. 31 (1912).

[14] Palmer v. Ashe, 342 U.S. 134, 72 S.Ct. 191 (1951); De Meerleer v. Michigan, 329 U.S. 663, 67 S.Ct. 596 (1947). These cases held that, under the circumstances, the failure to advise the defendant of his right to counsel deprived him of a fair hearing in violation of the due process clause of the Fourteenth Amendment.

is now generally accepted that when the juvenile court commits a child to a training home there is a deprivation of his liberty.[15] The crux of the problem, then, is whether the requisite fairness is present when a child is not advised of his right to counsel. It has been held that the child can invoke the privilege against self-incrimination[16] and, in some jurisdictions, he has a right to elect a jury trial.[17] Also, the findings of the juvenile court must be based on competent evidence.[18] It is questionable whether a child can have a fair hearing if he does not have a person trained in the law to advise him of the existence of these rights and to see that they are not violated.

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[15] White v. Reid, note 7 supra; People v. Fitzgerald, 244 N.Y. 307, 155 N.E. 584 (1927); In re Contreras, note 10 supra. Those courts holding that there is no deprivation of liberty rest their conclusion on the rather flimsy ground that the state is merely exercising the same control over the child that the parent was entitled to exercise and, consequently, the child has not lost his liberty. See In re Sharp, note 2 supra; Bryant v. Brown, note 3 supra.

[16] Ex parte Tahbel, 46 Cal. App. 755, 189 P. 804 (1920); Dendy v. Wilson, 142 Tex. 460, 179 S.W. (2d) 269 (1944). *Contra,* People v. Lewis, 260 N.Y. 171, 183 N.E. 353 (1932), app. dismissed 289 U.S. 709, 53 S.Ct. 786 (1933).

[17] D.C. Code (1951) §11-915; Okla. Stat. (1951) tit. 10, §102; Tex. Civ. Stat. (Vernon, 1950) art. 2334.

[18] Krell v. Mantell, 157 Neb. 900, 62 N.W. (2d) 308 (1954); People v. Fitzgerald, note 15 supra.