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Criminal Law - Delay in Imposition of Sentence as Destroying Jurisdiction of Trial Court

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CRIMINAL LAW—DELAY IN IMPOSITION OF SENTENCE AS DESTROYING JURISDICTION OF TRIAL COURT—Defendant was tried for burglary in April 1952. Before judgment was rendered, a petition for his commitment to the Indiana Village for Epileptics was granted, and the trial court entered judgment in July 1952 that it continue the matter under advisement so long as defendant remained in the Epileptic Village and complied with the rules and regulations. In September 1952 defendant escaped from the Epileptic Village and was later apprehended. He was brought to trial in April 1953. The court found that he had not complied with the judgment of July 1952, found him guilty as charged, and sentenced him to ten to twenty years. On appeal, defendant asserted that

the trial court had lost its jurisdiction of his person by the long delay in passing sentence. *Held*, judgment reversed. On the basis of the Indiana Constitution's guaranty of a speedy trial, and established precedent, defendant was entitled to have sentence pronounced with reasonable promptness, and unusual delay, not for some recognized purpose, deprives the court of jurisdiction of the defendant's person. *Taylor v. State*, (Ind. 1954) 120 N.E. (2d) 165.

The recent trend is away from the requirement that sentence promptly follow the verdict.¹ However, there is authority that requires a convicted criminal to be sentenced within the term in which he is convicted. The same authority also implies that, even within the term, too long a delay will deprive the court of jurisdiction.² Although the majority of the courts allow delay in sentencing to a limited degree, they vary widely in their positions as to just what constitutes permissible delay.³ Some base the period of delay on terms of court, allowing sentence to be entered either in the term following conviction, or at a later term.⁴ Other courts hold that it is necessary to pronounce sentence within a judicially determined reasonable time after conviction.⁵ In some states, statutes have placed limits on the period during which sentence can be withheld, but most courts have treated these statutes as procedural rather than jurisdictional and have honored them more in the breach than in the observance.⁶ Other states require a definite time to be set for pronouncement of sentence if there is to be a delay.⁷ Under any of the above theories, a court order authorizing delay may be necessary,⁸ but this procedure can be, and has been, abused.⁹ A few courts allow an indefinite suspension either by court order or through oversight.¹⁰ The reasoning behind this doctrine is based on implied consent of the convicted criminal. If at any time he requests sentencing and the court refuses to comply, or disregards the request, it loses jurisdiction, but in the absence of this request, the convicted criminal is deemed to have consented to the delay.

Although consideration of the interests of accused persons may lead to a conclusion that delay should not generally be allowed, there may be factors in a

¹ *Miller v. Aderhold*, 288 U.S. 206, 53 S.Ct. 325 (1933); *Zerbst v. Nahas*, (10th Cir. 1933) 67 F. (2d) 742; 37 VA. L. REV. 1151 (1951). For a discussion of the early cases, see 25 TEMPLE L.Q. 217 (1951).

² *Franks v. State*, 28 Ala. App. 132, 179 S. 649 (1938).

³ 37 VA. L. REV. 1151 (1951).

⁴ *Davis v. State*, 192 Ga. 648, 16 S.E. (2d) 428 (1941); *State v. Graham*, 225 N.C. 217, 34 S.E. (2d) 146 (1945).

⁵ *People v. Cordell*, 309 Mich. 585, 16 N.W. (2d) 78 (1944); *Ex parte Medley*, 73 Idaho 474, 253 P. (2d) 794 (1953); *Lovelace v. Commonwealth*, 285 Ky. 326, 147 S.W. (2d) 1029 (1941).

⁶ *People v. Mitman*, (Cal. 1954) 265 P. (2d) 105; *State v. Dooly*, 14 Wash. (2d) 459, 128 P. (2d) 486 (1942); *State v. Anderson*, 12 N.J. 461, 97 A. (2d) 404 (1953).

⁷ *Warner v. State*, 194 Ind. 426, 143 N.E. 288 (1924); *People ex rel. Kelly v. Ragen*, 392 Ill. 423, 64 N.E. (2d) 872 (1946).

⁸ *Commonwealth ex rel. Holly v. Ashe*, 166 Pa. Super. 599, 74 A. (2d) 182 (1950).

⁹ *Moutos v. State*, (Fla. 1950) 49 S. (2d) 841. The court entered orders deferring sentence from day to day, and term to term, for ten years and its jurisdiction was upheld when it finally passed sentence.

¹⁰ *Miller v. Aderhold*, note 1 supra; *People v. Gorney*, 203 Misc. 512, 103 N.Y.S. (2d) 75 (1951).

particular case which could make delay useful, and possibly even necessary.¹¹ The middle ground of allowing a reasonable period of delay before the court loses jurisdiction would seem to be a sound policy even if it does tend to be somewhat indefinite.

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¹¹Delay will give time for an appeal or any motion that defendant's counsel deems properly expedient. Special cases, such as the principal case, may arise where the physical or mental condition of the criminal makes it advisable to allow time for treatment before any decision on sentence is reached. The trial court should have reasonable discretion in this matter. Any attempt to establish fixed rules for the time of sentencing would be unduly restrictive of that discretion.