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Constitutional Law - Civil Rights Statute - Failure to Release Prisoner Promptly Not a Violation of Section 242

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CONSTITUTIONAL LAW—CIVIL RIGHTS STATUTE—FAILURE TO RELEASE PRISONER PROMPTLY NOT A VIOLATION OF SECTION 242—A Florida state attorney was charged with violation of the Federal Civil Rights Statute[1] for failure to apply for release of a Negro prisoner held nineteen months without charge. The prisoner had been held on request of the state attorney for further prosecution or use as a witness after a verdict had been directed in the prisoner's favor in a prior murder trial. Neither the prisoner nor defense counsel petitioned for release. The United States District Court dismissed the indictment. On appeal, *held*, affirmed. No duty existed on the part of the Florida state attorney to make application for release of the prisoner; thus the failure to procure release did not subject defendant to prosecution under the civil rights statute. *United States v. Hunter*, (5th Cir. 1954) 214 F. (2d) 356, cert. den. 348 U.S. 888, 75 S. Ct. 208 (1954).

Section 242 is one of the two federal civil rights statutes, imposing criminal sanctions, which have survived post-Civil War legislation.[2] It was declared constitutional in the landmark case of *Screws v. United States*.[3] The majority in that case, inter alia, declared the act not void for vagueness by interpreting the words "willfully to deprive," to mean an intentional deprivation of a specific federal right made definite by prior decision or rule of law.[4] Failure to instruct the jury properly on this explicit meaning of "willfully to deprive" will invalidate a conviction.[5] This interpretation has been followed in cases primarily involving affirmative acts of police brutality.[6] In the principal case, however, the question is whether the statute may be extended to cover acts of official omission while nevertheless remaining within the narrow confines of the *Screws* case interpretation. That a deprivation of equal protection can result from state omissions has been long recognized.[7] Failure of police officials to protect prisoners[8] or to protect religious minority members from mob action[9] has resulted in convictions

[1] 62 Stat. L. 696 (1948), 18 U.S.C. (1952) §242: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

[2] The other is 62 Stat. L. 696 (1948), 18 U.S.C. (1952) §241.

[3] 325 U.S. 91, 65 S.Ct. 1031 (1945). Defendant Screws, a Georgia sheriff, with other officers, beat a handcuffed Negro prisoner to death after his arrest on a spurious charge. Section 242 was then 35 Stat. L. 1092, §20 (1909), 18 U.S.C. (1940) §52.

[4] Screws v. United States, note 3 supra, at 104.

[5] Pullen v. United States, (5th Cir. 1947) 164 F. (2d) 756.

[6] Williams v. United States, 341 U.S. 97, 71 S.Ct. 576 (1951); Crews v. United States, (5th Cir. 1947) 160 F. (2d) 746.

[7] See McCabe v. Atchison, T. & S. F. Ry. Co., 235 U.S. 151, 35 S.Ct. 69 (1914); Missouri ex rel. Gaines v. Canada, 305 U.S. 337, 59 S.Ct. 232 (1938).

[8] Lynch v. United States, (5th Cir. 1951) 189 F. (2d) 476 (two Negroes were turned over to a Ku Klux Klan mob).

[9] Catlette v. United States, (4th Cir. 1943) 132 F. (2d) 902 (Jehovah's Witnesses were subjected to mob indignities while defendant deputy sheriff looked on).

under this law.[10] These cases were distinguished in the principal case primarily on the ground that the state attorney was under no duty to act. This defect is said to void the indictment under the *Screws* case doctrine since the jury, having no definite guide to determine defendant's duty, would subject him to punishment without prior warning.[11] This is a shift in approach. The guide of certainty for state officials in the *Screws* case related to *rights* held inviolate.[12] Official *duty* is made the standard here. A federal civil right, formerly made definite, i.e., not to be imprisoned without a fair hearing, was denied the victim in this case.[13] Following the *Screws* doctrine, the crucial question is whether a state official "willfully" deprived the prisoner of this right. In determining whether the required intent to violate the act is present, a jury[14] can consider all the facts and circumstances of the alleged deprivation.[15] There is no explicit Florida law requiring a state attorney to petition for a prisoner's release after he has committed him. However, in view of the circumstances of this case,[16] and in view of provisions of the Florida constitution,[17] statutes,[18] and case holdings,[19] a jury would not be without legal guide in determining whether a duty existed, the omission of which caused a willful deprivation of a federally protected right. In a case such as this, the determination of duty will be the essential element in proving the requisite willful intent. While criminal statutes must be narrowly construed to protect the accused, the reasoning in this case could well eliminate protection of the innocent in areas most needed, i.e., where officials are under no express state duty to act.[20]

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[10] See "Civil Rights During War: The Role of the Federal Government," 29 IOWA L. REV. 409 at 410 (1944). The then Chief, Civil Rights Section, U.S. Dept. of Justice, stated that these cases stand as precedent for use of this law to convict state officers for willful omissions as well as affirmative acts. But see REPPY, CIVIL RIGHTS IN THE UNITED STATES 30 (1951) for the opposite view.

[11] Principal case at 359.

[12] "It is said, however, that this construction of the Act will not save it from the infirmity of vagueness since neither a law enforcement official nor a trial judge can know with sufficient definiteness the range of rights that are constitutional. But that criticism is wide of the mark." Screws v. United States, note 3 supra, at 104. The dissenters were also concerned with the vagueness of "rights" protected. Id. at 150.

[13] Culp v. United States, (8th Cir. 1942) 131 F. (2d) 93 (victims imprisoned for purpose of extortion).

[14] This is a jury question. Screws v. United States, note 3 supra, at 107. See also Pullen v. United States, note 5 supra.

[15] Crews v. United States, note 6 supra.

[16] The detention without charge continued for nineteen months. Racial tensions existed locally. The state attorney and defense counsel discussed the detention several times leaving it to the sole discretion of the state attorney as to whether the detention would continue.

[17] FLA. CONST., Declaration of Rights, §§3, 8, 11.

[18] Fla. Stat. (1953) §§915.01, 27.02.

[19] The prosecuting attorney occupies a semi-judicial position. Washington v. State, 86 Fla. 533 at 542, 98 S. 605 (1923). See also Deeb v. State, 131 Fla. 362, 179 S. 894 (1937).

[20] See REPORT OF THE PRESIDENT'S COMMITTEE ON CIVIL RIGHTS: TO SECURE THESE RIGHTS (1947).