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CONSTITUTIONAL LAW-DUE PROCESS-RIGHT OF PRISONER CONDEMNED TO DEATH TO HEARING ON HIS SANITY

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CONSTITUTIONAL LAW—DUE PROCESS—RIGHT OF PRISONER CONDEMNED TO DEATH TO HEARING ON HIS SANITY—Petitioner, sentenced to death in California for murder, obtained a judicial stay of execution on the ground that he had become insane since sentence had been passed. Eighteen days later he was certified as sane by the medical superintendent of the state hospital, who made this determination by an *ex parte* examination without giving petitioner notice or opportunity of hearing. A new date for execution was then set. The applicable statute¹ provided a procedure, enforceable by mandamus, whereby a sentenced prisoner could obtain a hearing on his sanity. The petitioner, without seeking mandamus to compel the warden to act, applied for habeas corpus to obtain judicial sanity hearing. This being denied,² he was granted a writ of certiorari from the United States Supreme Court to determine whether the California procedure, by its substitution of mandamus for habeas corpus, amounted to a deprivation of due process under the Fourteenth Amendment. *Held*, dismissed. Since it did not appear that the California method of hearing by mandamus was substantially less adequate than habeas corpus, the petitioner was not deprived of due process. *Phyle v. Duffy*, 334 U.S. 437, 68 S.Ct. 1131 (1948).

A necessary inference from the decision is that one under sentence of death is entitled by due process to a judicial hearing on his sanity on a showing of facts sufficient to demonstrate doubt as to his present sanity, and that he can enforce this right by appeal. The common law has long prescribed that no insane person shall be executed, even in pursuance of proper sentence.³ The Supreme Court in

¹ Cal. Penal Code (Deering, 1941) §§ 3701-3703.

² *Ex parte Phyle*, 30 Cal. (2d) 838, 186 P. (2d) 134 (1947).

³ CHITTY, CRIMINAL LAW, Earle ed., 525 (1819); 4 Bl. 1st ed., 396 (1765); In re Smith, 25 N.M. 48, 176 P. 819 (1918).

*Nobles v. Georgia*⁴ confirmed this common law view, declaring that a sanity hearing would be held as a matter of judicial discretion, on a fair showing of doubt as to the prisoner's sanity. The Court denied, however, that the prisoner has an absolute legal right to such a hearing, whether on mere suggestion or on fair showing of insanity.⁵ Among state courts the prevailing view is that a post-sentence sanity hearing will be granted if there is good reason to doubt the prisoner's sanity, but it is within the lower court's discretion to grant such a hearing as a matter of humanity and not of right.⁶ In some states, the action of the trial court in denying a hearing has been held conclusive of the prisoner's sanity.⁷ While some courts hold that a stay of execution of death sentence on the ground that the prisoner has become insane since sentence may be obtained only by appeal to the governor,⁸ most have held that the court has discretion to grant a stay.⁹ Thus, it is the general view in the state courts that due process does not require a sanity hearing, nor is the procedure in holding such a hearing circumscribed by the due process clause. On the other hand, some courts hold that the prisoner, on a properly presented petition showing facts casting doubt on his sanity, has an absolute right to a sanity hearing and may enforce this right by appeal.¹⁰ Thus there is some support in judicial opinion for the view implicit in the principal case. However, the dearth of cases on the subject makes it doubtful whether such a right will be exercised with sufficient frequency to impair seriously the expeditious execution of death sentences. Nevertheless, it would seem that the prisoner, on due conviction of the crime charged,

⁴ 168 U.S. 398, 18 S.Ct. 87 (1897). Other federal courts have followed this view. See also, *Lee v. United States*, (C.C.A. 5th, 1937) 91 F. (2d) 326; *Neely v. United States*, (App. D.C. 1945) 150 F. (2d) 977; *Bennett v. Hunter*, (C.C.A. 10th, 1946) 155 F. (2d) 223.

⁵ The "right," if any, of a prisoner condemned to death to a post-sentence sanity hearing should be distinguished from his right to interpose the defense of insanity, at the time of the trial, to the offense charged. See 10 L.R.A. (n.s.) 1129 (1907).

⁶ *Davidson v. Commonwealth*, 174 Ky. 789, 192 S.W. 846 (1917); *Barrett v. Commonwealth*, 202 Ky. 153, 259 S.W. 25 (1923); *In re Smith*, 25 N.M. 48, 176 P. 819 (1918); *Baughn v. State*, 100 Ga. 554, 28 S.E. 68 (1897), *affd.* *Nobles v. Georgia*, 168 U.S. 398, 18 S.Ct. 87 (1897); *State v. Nordstrom*, 21 Wash. 403, 58 P. 248 (1899); *Ex parte Phyle*, 30 Cal. (2d) 838, 186 P. (2d) 134 (1947); *Bingham v. State*, 82 Okla. Cr. 305, 169 P. (2d) 311 (1946). The hearing, if granted, need not be of any special type (e.g., jury trial), it being sufficient that the court satisfy itself that the prisoner is presently sane. See *Ferguson v. Martineau*, 115 Ark. 317, 171 S.W. 472 (1914); *Barrett v. Commonwealth*, 202 Ky. 153, 259 S.W. 255 (1923).

⁷ *State v. Nordstrom*, 21 Wash. 403, 58 P. 248 (1899); *State v. Chretien*, 114 La. 81, 38 S. 27 (1905).

⁸ *Ex parte Wilson*, (Oyer & Terminer, Montgomery Co., Pa. 1887) 19 W.N. Cas. (Pa.) 37; *Ex parte McGinnis*, (Pa. Supreme Ct., 1884) 14 W.N. Cas. (Pa.) 221.

⁹ *Duncan v. State*, 110 Ark. 523, 162 S.W. 573 (1913); *Ex parte Chesser*, 93 Fla. 291, 111 S. 720 (1927); *Davidson v. Commonwealth*, 174 Ky. 789, 192 S.W. 846 (1917); *Nobles v. Georgia*, 168 U.S. 398, 18 S.Ct. 87 (1897); *State v. Barker*, 79 Neb. 361, 112 N.W. 1143, 113 N.W. 197 (1907).

¹⁰ *Barker v. State*, 75 Neb. 289, 103 N.W. 1134, 106 N.W. 450 (1905); *Lee v. State*, 118 Ga. 5, 43 S.E. 994 (1903). See also *Ince v. State*, 77 Ark. 419, 88 S.W. 818 (1905); *United States ex rel Mazy v. Ragen*, (C.C.A. 7th 1945) 149 F. (2d) 948. One court has held that on mere suggestion of present insanity, sentence must be suspended until sanity can be determined: *State v. Vann*, 84 N.C. 722 (1881).

has had all to which he is entitled in the way of due process, and his life is forfeit.¹¹ The question of granting him a stay of execution on the ground of his present insanity might better be left to the discretion of the trial court.¹²

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¹¹ *Baughn v. State*, 100 Ga. 554, 28 S.E. 68 (1897).

¹² See generally, 49 A.L.R. 804 (1927); 14 AM. JUR. 804 (1938).