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Criminal Law and Criminal Procedure

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court of appeals held that the sole purpose of the new corporation was liquidation.[10] The transfer of assets to the new corporation was treated as an assignment for the benefit of creditors. The court of appeals decision was commented on in detail in last year's survey.[11] The decision was reversed by the Ohio Supreme Court which held that after liquidation of the first corporation, the new corporation could continue as a going concern.

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CRIMINAL LAW AND CRIMINAL PROCEDURE

Jurisdiction

A number of recent cases dealt with the jurisdiction of trial courts in criminal matters.

Under the provisions of the Driver's License Law[1] any court of record having criminal jurisdiction has county-wide jurisdiction within the county in which it is located to hear cases arising under this statute. The court of appeals held[2] this jurisdiction had not been impliedly repealed by the subsequent enactment of the Municipal Court Act, and that the Municipal Court of Columbus has jurisdiction to hear and determine prosecutions arising under Section 4507.34. of the Revised Code. Furthermore the selection of a jury from residents of the city in which the court is situated to hear such a case does not violate Article I Section 10, of the Ohio Constitution, guaranteeing a jury trial. In another case the court held that the Mayor of Alger could hold court and pronounce judgment and sentence in the City of Kenton, both communities being located in Hardin County.

In re *Kell*[4] dealt with the county-wide criminal jurisdiction of a mayor's court in relation to the jurisdiction of a municipal court located in a city in the same county. The Mayor of Cedarville had jurisdiction to try and pass sentence on a plea of guilty to driving a motor vehicle while intoxicated within the city limits of Xenia where a municipal court existed. The effect of the decision is limited to offenses classed as misdemeanors under state law.[5]

While the Revised Code[6] vests final jurisdiction in the mayor's court to hear any prosecution for a misdemeanor where the accused is not entitled by right to trial by jury under the Ohio Constitution, the mayor also has county-wide jurisdiction to try misdemeanor cases where the accused waives a jury before trial.[7] It was held[8] that under the former provision a mayor's court has county-wide jurisdiction, but in this case it was also determined

[10] 65 Ohio L. Abs. 237, 114 N.E.2d 267 (Ohio App. 1952).

[11] 5 WEST. RES. L. REV. 255 (1954).

that the judgment of the mayor was not sustained by sufficient evidence. In accordance with the Revised Code,[9] the court of common pleas retained the cause for trial and final judgment. The court of appeals, however, in construing the other statute,[10] held that a mayor is without jurisdiction to act on a plea of guilty where the accused is not advised of his right to a jury trial and does not, by affirmative action waive a jury trial.[11]

In another case[12] the court of appeals sustained the jurisdiction of the court of common pleas to proceed under an indictment against the accused while a charge for the same offense was pending in a municipal court in which accused had requested a preliminary hearing but which had not been held at the time of the return of the indictment.

A related jurisdictional issue involved the legal capacity of the president of a city council to exercise judicial power when the mayor is unable to discharge his judicial duties. It was held that the president could exercise judicial power in a specific case wherein the mayor was disqualified because he was a material witness in the case.[13]

Another interesting decision upheld the power of the court of common pleas to transfer a preliminary hearing from a magistrate or a judge of an inferior court to the court of common pleas where the official concerned is disqualified.[14]

Substantive Crimes

1. Contributing to the Delinquency of a Minor

Three cases relative to this subject developed certain legal requirements of the offense. It was held that the affidavit charging the offense is fatally defective unless it either charges that the child is a delinquent or sets forth facts showing the child to be such.[15] It is not, however, necessary

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[1] OHIO REV. CODE § 4507.15.

[2] State v. Ferguson, 96 Ohio App. 297, 121 N.E.2d 684 (1954).

[3] State *ex rel.* Shaw v. Switzer, 117 N.E.2d 333 (Ohio App. 1952).

[4] 95 Ohio App. 425, 120 N.E.2d 609 (1953).

[5] See OHIO REV. CODE § 1905.02.

[6] OHIO REV. CODE § 1905.02.

[7] OHIO REV. CODE § 1905.03.

[8] State v. Smith, 116 N.E.2d 451 (Butler Com. Pl. 1953).

[9] OHIO REV. CODE § 2505.26.

[10] OHIO REV. CODE § 1905.03.

[11] *In re* Quatman, 96 Ohio App. 517, 122 N.E.2d 32 (1953).

[12] State v. Miller, 96 Ohio App. 216, 121 N.E.2d 660 (1953).

[13] State *ex rel.* Sheppard v. Barber, 121 N.E.2d 438 (Ohio App. 1954).

[14] State v. Sheppard, 121 N.E.2d 440 (Cuyahoga Com. Pl. 1954).

[15] State v. Holbrook, 95 Ohio App. 526, 121 N.E.2d 81 (1954).

that there be a separate proceeding which has resulted in a finding or adjudication that a minor is delinquent where the affidavit against the adult charges that the minor is delinquent and the evidence at the trial shows this to be true.[16] Knowledge on the part of the adult that the minor is under eighteen years of age is not required and ignorance of the fact is no defense.[17]

2. Operating a Motor Vehicle While Under the Influence of Alcohol

One court of appeals[18] opinion gives the definition of the words, "under the influence of alcohol," as:

> "While under the influence of alcohol," means that the accused must have consumed some intoxicating beverage in such quantity that its effect on him was to adversely affect his actions, reactions, conduct, movements or mental processes in such manner as to deprive him of that clearness of intellect and control of himself which he would otherwise have possessed under the circumstances then existing.

The question for consideration is, therefore, what effect did the liquor the accused consumed have on him at the time in question.

Another decision[19] sustained the constitutionality of the "driving under the influence" ordinance of the City of Columbus, and went on to point out that the material part of this offense is not the quantity of liquor drunk but rather the effect that it produced on the accused.

3. Issuing Checks With Intent to Defraud

The Revised Code generally prohibits any person, with intent to defraud, from drawing a check upon any bank or other depository if that person, at the time, has insufficient funds or credit with such drawee institution. The supreme court[20] applied the appropriate statute[21] against a person who was acting as an officer of a corporation at the time of the issuance of checks knowingly drawn against insufficient funds. The contention that such conduct did not create any personal criminal liability was rejected.

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[16] State *ex rel.* Meng v. Todaro, 161 Ohio St. 348, 119 N.E.2d 281 (1954).

[17] State v. Davis, 95 Ohio App. 23, 117 N.E.2d 55 (1953).

[18] State v. Steele, 95 Ohio App. 107, 117 N.E.2d 617 (1952).

[19] City of Columbus v. Mullins, 118 N.E.2d 178 (Ohio App. 1953), *rev'd on other grounds*, 162 Ohio St. 419, 123 N.E.2d 422 (1954).

[20] *In re* Hertz., 161 Ohio St. 70, 117 N.E.2d 925 (1954), *cert. denied*, 347 U.S. 957, 74 Sup. Ct. 685 (1954).

[21] OHIO GEN. CODE § 710-176 (OHIO REV. CODE § 1115.23).

4. Homicide

The supreme court[22] reaffirmed its position that malice is presumed from the fact of a killing and that intent to kill is likewise presumed where the natural and probable consequence of a wrongful act is to produce death. Thus where the fact of killing is proved and malice is presumed, circumstances of excuse, justification or mitigation must be established by the accused unless they can be implied from evidence of provocation and heat of blood.

5. Felonious Assault by Indecent Exposure

The Ohio Code[23] defines indecent exposure by a person over eighteen years of age in the presence of a child under the age of sixteen as a felonious assault. The court of appeals[24] ruled that an actual public overt act is not a necessary element of the offense. The elements are exposure by a person over the age limit in the presence of a child under the designated age.

6. Sunday Closing Law

In *State v. Haase,*[25] the court of appeals upheld the constitutionality of the state statute[26] forbidding the opening of a place of business and transacting business on Sunday. Under the statute the exception is work of necessity or charity, and the court found that opening a hardware store is not a work of necessity. The court also indicated that a showing of a necessity is an affirmative defense which the accused must establish by the greater weight of the evidence.

7. Riot

In *State v. Smith*[27] the appellants had been convicted of rioting. The record did not affirmatively disclose that the defendants had assembled with the intent and purpose of doing an unlawful act, or after being assembled, that they agreed to do any unlawful act with force or violence or make any preparation or movement for such use. This was not a riot and the proclamation of dispersal issued by peace officers did not alone warrant an arrest for riot because of their continued assemblage.

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[22] State v. Robinson, 161 Ohio St. 213, 118 N.E.2d 517 (1954).

[23] OHIO REV. CODE § 2903.01.

[24] State v. Theisen, 94 Ohio App. 461, 115 N.E.2d 863 (1953).

[25] 116 N.E.2d 224 (Ohio App. 1953).

[26] OHIO REV. CODE § 3773.24.

[27] 97 Ohio App. 86, 121 N.E.2d 199 (1954). The statutes involved were Ohio Revised Code Sections 3761.13 and .14.

8. Included Offenses

While murder in the first degree, abstractly considered, includes murder in the second degree and manslaughter, it does not necesarily follow that in a specific case these lesser degrees of homicide must be considered by the jury. In *State v. Dean*[28] the case for the prosecution was predicated entirely upon the charge that the defendant willfully administered poison to her husband with intent to kill and the defense was predicated upon a complete denial that poison was so administered. Under these circumstances the accused could only be guilty of the principal charge or not guilty of any crime.

State v. Ross[29] involved a more orthodox application of the included offense rule. The indictment charged rape of a female under sixteen years, and the accused was found guilty of an attempt to commit rape. The verdict was supported by the evidence and its form was justified under the statutory provision[30] which permits the jury to find the accused not guilty of the offense charged but guilty of an attempt to commit such offense whenever the attempt is an offense at law.

9. Scienter

Two court of appeals decisions present a seeming conflict of view concerning the necessity of guilty knowledge or scienter as a usual element of crime. There is a general statement in *State v. Buttery*[31] which seems to make the element of guilty knowledge entirely dependent upon the existence of such a specific requirement in the statutory definition of the crime. This statement, however, occurs in the review of a factual situation, the unwitting sale of beer to a minor, wherein the type of offense charged falls within the classes of offenses as to which it has been usual to eliminate the requirement of guilty knowledge. In *Toledo v. Kohlhofer*,[32] wherein it was held that a city ordinance which was silent on the requirement of scienter should be interpreted as requiring this element, the court of appeals stated that the doctrine of crime without intent is applicable to but a limited class of malum prohibitum offenses. The major problem is to determine whether the statutory definition of crime requires an accused to know a fact and obey the law at his peril; if it does not, the mere omission of any mention of intent in the law is not to be construed as eliminating that element from the offense defined.

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[28] 94 Ohio App. 540, 116 N.E.2d 767 (1953).
[29] 96 Ohio App. 157, 121 N.E.2d 289 (1954).
[30] OHIO REV. CODE § 2945.74.
[31] 95 Ohio App. 236, 118 N.E.2d 548 (1953).
[32] 96 Ohio App. 355, 122 N.E.2d 20 (1954). The Toledo ordinance prohibits the

Defenses

One decision reaffirms the established rule that the possible carelessness or fault of an injured party does not have any bearing on the question of the guilt or innocence of the defendant.[33] Also three decisions illustrate unsuccessful defenses of entrapment. It was held that a feigned illness on the part of a police officer for the purpose of obtaining evidence against a person suspected of the illegal practice of medicine was not an entrapment.[34] Also the fact that a police officer makes a purchase in order to obtain evidence of a law violation does not constitute entrapment is reaffirmed by two cases.[35]

Criminal Procedure — Arrest

A civil action against police officers for false arrest developed an interesting point on arrest without a warrant. An officer has a legal right to make an arrest where there is reasonable ground to believe that a felony has been committed and when he has reasonable grounds to believe that the person he arrests is guilty of such crime.[36] The court of appeals held that there was probable cause as a matter of law[37] where the facts showed that a warrant had been issued in another jurisdiction for a man with a very similar name to that of the plaintiff, that the arrest was made on the strength of such warrant after investigation and at the direction of the police of the other state and the officers' immediate superiors.

Bail

One court of appeals decision[38] ruled on the interesting question of the admission to bail of an infant detained in a county detention home as the result of the filing of a delinquency affidavit. Through a writ of habeas corpus the infant was urging a denial of his constitutional rights by the

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selling, offering for sale or exhibiting an article or thing intended for the prevention of conception. This ordinance seems to have been copied verbatim from Ohio General Code Section 13035 which at the time did not include knowledge as an element of the offense. Ohio Revised Code Section 2905.34, the present form of the statute, now sets forth the following requirement: "whoever knowingly sells, . . ." The Toledo ordinance had not, however, been amended to conform to this change in the state statute.

[33] City of Cleveland v. Kaufman, 116 N.E.2d 446 (Ohio App. 1952).

[34] State v. Gutilla, 94 Ohio App. 469, 116 N.E.2d 208 (1952).

[35] State v. Solomon, 117 N.E.2d 714 (Ohio App. 1952); State v. Ross, 122 N.E.2d 188 (Ohio App. 1953).

[36] OHIO REV. CODE § 2935.04.

[37] Johnson v. Reddy, 120 N.E.2d 459 (Ohio App. 1954).

[38] State *ex rel.* Peaks v. Allaman, 115 N.E.2d 849 (Ohio App. 1952).

refusal of the court to admit him to bail pending the date of his hearing. In affirming the denial of the writ by the court of common pleas, the court of appeals held that the infant was lawfully detained, and also that he was not entitled to release on bail under the provisions of Article I, Section 9 of the Ohio Constitution because the appellant was not charged with an "offense." The court pointed out that a child committed under the Juvenile Court Act is not committed for an offense against a law of the State of Ohio and that conviction of the child does not adjudicate him to be a criminal.

A case from Cuyahoga County[39] considered the matter of the court of appeals' granting bail after a denial of such by the trial court. An appeal had been taken from a manslaughter conviction in the trial court, and under the Code,[40] since 1949, the court of appeals has the same power to suspend execution and admit to bail pending appeal as has the trial court. Accordingly, the court of appeals, considering the fact that the appellant had been on bail all during the pendency of the action in the common pleas court and further that he had no previous criminal records, determined that the best interests of the community did not demand that he be held in custody pending his hearing on the appeal, stayed execution and allowed bail.

Two decisions considered the amount of bail fixed by the trial court, and in both cases agreed with the decisions of that court. In Ex parte *Cremati*,[41] the court determined that a sum of $53,500 bail was not excessive where the petitioner was charged with six felonies and four misdemeanors and continued confinement in jail was not detrimental to his health. The other case involved the trial court's fixing bail at $2,000 on a charge of petit larceny for the petitioner who had made a demand for jury trial only when his case was called for trial and who had a prior police record charging him with two felonies. The trial judge doubled the bail upon petitioner's demand for a jury trial at that late date and no application was made for reduction of this increased bail. The court held that under all the circumstances the fixing of bail at $2,000 was reasonable and denied petitioner's original writ of habeas corpus.[42]

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[39] State v. Barger, 117 N.E.2d 190 (Ohio App. 1954).

[40] OHIO REV. CODE § 2953.10.

[41] 117 N.E.2d 440 (Ohio App. 1954).

[42] *Ex parte* Campbell, 118 N.E.2d 550 (Ohio App. 1954). One ground of decision was that the petitioner had not exhausted all remedies available to him in the trial court, including the application for reduction of excessive bail, relying upon In re *Polizzi*, 61 Ohio App. 354, 22 N.E.2d 569 (1939) wherein it was said that "an application, made to an appellate court, for a writ of habeas corpus will be denied, in the absence of a record and a showing that all remedies available in the trial court have been exhausted."

Extradition

Two cases involved questions growing out of the application of the extradition statutes. The first,[43] in denying release on habeas corpus pending extradition, reaffirmed the rule that the trial judge's function upon the hearing of a person detained for extradition is to ascertain only whether or not the sister state has shown prima facie evidence of the crime and has supported its requisition with proper formalities. The other decision[44] applied the extradition statute[45] which provides for the extradition of one who has committed some act in the State of Ohio which has resulted in the commission of a crime in the demanding state, even though the accused was not in the demanding state at the time of the commission of the crime and had not "fled" therefrom. Thus, although the evidence showed petitioner was not in Pennsylvania at the time of the burglary, it did indicate that the petitioner had received stolen property in Ohio and this was held sufficient to justify extradition in accordance with the extradition warrant of the Governor of Ohio.

Indictment, Information, Affidavit

Two decisions in this area are worthy of comment. In *City of Toledo v. Kohlholfer,*[46] the court considered the form of the affidavit which is essential where intent is a necessary element of the offense. The court held the affidavit demurrable, despite the liberal provisions of the Code of Criminal Procedure because the affidavit did not apprise the accused of a vital and material element of the offense charged under the municipal ordinance. The other decision[47] dealt with an indictment which purported to charge burglary and which was amended following a motion to quash by the substitution of the word "larceny" for "burglary" in that part of the charge which described the purpose of entry. The court held that the original indictment sufficiently charged burglary and that the amendment served only to make the charge more specific.

Pleas

In *State* ex rel *Moore v. Alvis*[48] the court denied a writ of habeas corpus

[43] Millovich v. Langley, 122 N.E.2d 188 (Ohio App. 1953).
[44] Nagie v. Langley, 121 N.E.2d 201 (Ohio App. 1953).
[45] OHIO REV. CODE § 2963.06.
[46] 96 Ohio App. 355, 122 N.E.2d 20 (1954).
[47] Herman v. Alvis, 116 N.E.2d 311 (Ohio App. 1951). The indictment charged the appellant as follows: "unlawfully, maliciously and forcibly broke and entered the cigar store of Frank Reed and Darwin Frost in the night season, with the intent to commit burglary therein." The motion granted by the court was to strike out the word "burglary" in the last clause and insert by interlineation the word "larceny" in its place.
[48] 116 N.E.2d 39 (Ohio App. 1953).

brought by a petitioner who had originally filed a plea of "not guilty" and "not guilty by reason of insanity" to a charge of first degree murder. Petitioner was committed to the Lima State Hospital for observation. Several months later petitioner and counsel appeared in open court and requested the privilege of withdrawing both former pleas and instead entering a plea of guilty to second degree murder on condition that the first degree charge be nolled. This requested action was recommended by the prosecutor and approved by the court. It was held that the court in its sound discretion would permit the withdrawal or substitution of pleas by the accused, and that upon the acceptance of the new plea the trial court had jurisdiction to sentence. It was also held that the journal entry could be modified nunc pro tunc to conform to actual events occurring at the trial.

Presumed Regularity of Criminal Proceedings

An interesting case[49] involving the trial of an adult for the misdemeanor of contributing to the delinquency of a minor raised questions concerning the necessity of a demand for jury trial, the presumption of the regularity of criminal proceedings and the meaning of the Ohio constitutional right of adequate time properly to prepare a defense. Since the record did not show a demand for a trial by jury and showed affirmatively that the defendant submitted himself to a trial on the merits without requesting a continuance, it was not held error to proceed to trial without a jury on the day following the arrest, inasmuch as the regularity of the proceedings was confirmed by the presumption of regularity and the constitutional right to further time was waived by a failure to ask for it.

Problems of Trial Practice

The following decisions on trial matters are worthy of mention. The trial court in a criminal case may permit either side, after it has rested its case, to reopen the case in chief and introduce evidence which may have been omitted and which is necessary to prove its case.[50] A defendant waives his right to rely on error of the trial judge in overruling a motion for a directed verdict when he accepted the ruling of the court and proceeded with his defense and introduced evidence in his own behalf, when the verdict was clearly justified by the evidence.[51] In a trial before a three-judge court, the court could, after the taking of testimony, have the reporter read portions of the testimony in chambers in the absence of the accused with-

[49] State v. Edwards, 117 N.E.2d 444 (Ohio App. 1952).

[50] General Electric Co. v. International Union, 118 N.E.2d 708 (Hamilton Com. Pl. 1953).

[51] State v. Eyer, 121 N.E.2d 322 (Ohio App. 1953).

out violating the constitutional right of the accused to be present at the trial, the incident occurring during the deliberations of the court and being analogized to the situation where the jury is deliberating its verdict.[52] A deliberate disobedience of an order not to make photographs at an arraignment was held to constitute a contempt of court punishable under the statues of Ohio.[53]

Evidence

There were few novel evidence problems presented during the reporting period. One case, relative to a bribery prosecution, reaffirmed the established Ohio rule that a guilty verdict may rest on the uncorroborated evidence of an accomplice, the credit to be given such testimony resting exclusively with the jury.[54] Another decision was based on the rule that unfavorable inferences may be drawn from the failure of the accused to take the stand.[55]

One reported trial court opinion[56] considered the problem of the use of admissions against interest in a criminal trial. Some preliminary proof of the voluntary character of the declaration is necessary to establish admissibility at the actual trial, but the mere showing of the admission without objection is sufficient. The instant case[57] also was concerned with the matter of admitting a confession of a person made while under the influence of alcohol, holding that such a condition does not render the confession inadmissible and that the weight and sufficiency thereof may be considered by the jury in the light of the circumstances.

Another case concerned the proper function of the trial court in acting upon a defense request to examine and make copies of a report of the results of a voluntary blood test to determine percentage of alcohol content. The court,[58] after determining that a trial court must exercise its discretion as to whether the request should be granted, held that under the circumstances the defense had other methods available for obtaining the information desired and denied the request.

Instructions

Decisions on three questions concerning instructions in criminal trials are worthy of comment. It is necessary that the jury be told that they "must"

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[52] State v. Demma, 161 Ohio St. 54, 117 N.E.2d 425 (1954).

[53] State v. Clifford, 97 Ohio App. 1, 118 N.E.2d 853 (1954), *aff'd.*, 162 Ohio St. 370, 123 N.E.2d 8 (1954).

[54] State v. Neal, 117 N.E.2d 622 (Ohio App. 1954).

[55] City of Akron v. Stouffis, 96 Ohio App. 105, 121 N.E.2d 307 (1953).

[56] Middletown v. Dennis, 120 N.E.2d 903 (Middletown Mun. Ct. 1954).

[57] *Ibid.*

[58] State v. Regedanz, 120 N.E.2d 480 (Mercer Com. Pl. 1953).

find that an accused had the right of self-defense when the evidence favorable to a plea of self-defense preponderates.[59] When "lesser included offenses" are in fact injected into the trial by testimony sufficient to make them issues in the case, there is a positive duty on the court to charge as to these lesser included offenses.[60] Where an instruction is correct but incomplete in some details it is the duty of defense counsel to request the court to charge further, and in the absence of such a request, the omission of the court to supply the deficiency does not justify a reversal.[61]

Sentence

A variety of problems arose under this title, including an adjudication of the validity of the statute[62] relative to sex offenders, mentally ill and psychopathic personalities providing for the mandatory commitment of anyone, except first degree murderers without recommendation of mercy, for observation and examination prior to sentence.[63] The statute was upheld as a reasonable regulation not violative of the prisoner's rights under the United States and Ohio constitutions. When the prisoner has been convicted of a felony, even after a plea of guilty, the trial court must sentence generally, and if a specific sentence is given, it will be treated as a general one subject to the statutes, and the sentence to a specific term is not void.[64] It is an abuse of discretion for a trial court to order indeterminate sentences of not less than six months and not more than five years on each of two counts to be served consecutively.[65] Upon revocation of an order of probation and re-sentencing, no time is to be allowed for the period the prisoner was free on probation.[66]

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[59] State v. Collins, 94 Ohio App. 401, 115 N.E.2d 844 (1952).

[60] State v. Quatman, 122 N.E.2d 670 (Ohio App. 1954). The defendant was charged with assault with intent to kill but was convicted of the lesser offense of assault with menacing threats. There was also evidence of a simple assault as to which the court omitted to charge.

[61] State v. Elfrink, 161 Ohio St. 549, 120 N.E.2d 83 (1954).

[62] Ohio Revised Code Section 2947.25, providing that after conviction and before sentence, the trial court must refer for examination all persons convicted under Sections 2903.01, 2905.02, 2905.03, .04, .07, .44 of the Revised Code, to the department of public welfare or to a state facility designated by the department, or to a psychopathic clinic approved by the department, or to three psychiatrists.

[63] State v. Ross, 96 Ohio App. 157, 121 N.E.2d 289 (1954).

[64] *In re* Smith, 162 Ohio St. 58, 120 N.E.2d 736 (1954).

[65] State v. Hashmall, 160 Ohio St. 565, 117 N.E.2d 606 (1954). The court's opinion states that the record disclosed that the trial court probably ordered the sentences to run consecutively because he was advised that defendant was a Communist. The court comments that even a communist is entitled to even-handed justice.

[66] Schimpf v. Alvis, 94 Ohio App. 427, 115 N.E.2d 856 (1952).

Probation and Parole

The effect of granting probation is to suspend the sentence the prisoner is serving.[67] The running of the sentence is interrupted for the entire length of the probation.

An interesting parole violation case presented a dual question: (1) What are adequate charges of violation of parole; and (2) what is the liability of a public official for contempt in disobeying an order releasing the alleged parole violator on bond pending an appeal. In Ex parte *Karnes*[68] it was determined that the refusal to obey the arbitrary orders of a field counselor of the Girls' Industrial School could not be the basis for a revocation of parole. In a companion case,[69] the Superintendent of the Industrial School who actively participated in the preceding habeas corpus case and who knew of the appellate court's order granting release on bond pending appeal of the trial court's order, was held in contempt.

Criminal Appeals

The refusal to issue a write of habeas corpus on behalf of a petitioner charged with parole violation is reviewable on appeal by statute;[70] such refusal is also an order affecting a substantial right within the contemplation of Article IV Section 6, of the Ohio Constitution. The court of appeals therefore has ample jurisdiction to consider the appeal.[71]

In *State v. Robinson*[72] the supreme court determined that the court of appeals' reducing a conviction of second degree murder to manslaughter is not a reversal on the weight of the evidence, and therefore the supreme court has jurisdiction to determine whether the court of appeals was warranted in substituting its judgment as to the facts shown by the evidence for that of the trial court. Also the state, if it chose, could appeal from the final order of the court of appeals imposing sentence.

An interesting question of possible abandonment of an appeal was presented in *Village of Avon v. Popa.*[73] Defendant had been convicted in the mayor's court and had appealed to the court of common pleas. Before hearing in common pleas court but not before filing a motion for new

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[67] *Ibid.*

[68] *Ex parte* Karnes, 121 N.E.2d 156 (Ohio App. 1953).

[69] *Ibid.*

[70] OHIO REV. CODE § 2725.26.

[71] *Ex parte* Karnes, 121 N.E.2d 159 (Ohio App. 1953).

[72] 161 Ohio St. 213, 118 N.E.2d 517 (1954).

[73] 96 Ohio App. 147, 121 N.E.2d 254 (1953).