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CRIMINAL LAW

I. INVOLUNTARY MANSLAUGHTER

In *Faunteroy v. United States*,[1] the District of Columbia Court of Appeals held that a jury instruction containing an improper definition of the standard of negligence, necessary to sustain an involuntary manslaughter conviction, was not prejudicial error where the record reflected that the defendants were, in fact, guilty of culpable negligence.[2]

After it was established that their child's death was caused by pneumonia and malnutrition, the defendants were convicted of involuntary manslaughter. The jury was instructed that the proper standard of negligence required to sustain a conviction of negligence was "culpable negligence." However, the judge instructed in terms amounting only to simple or civil negligence. Although the judge's instruction was incorrect, the record showed that the defendants were guilty of reckless omission in not sufficiently caring for their child.[3] Since the test for culpable negligence, of which the defendants were guilty, is more strict than for simple negligence,[4] the court held that the improper jury instructions were not prejudicial error. By specifying malnutrition and pneumonia as examples of unreasonable care by the parents, the court clarified the type of conduct that would sustain a conviction of involuntary manslaughter under the *Bradford* test.[5]

II. CRIMINAL COMMITMENT

In *Jones v. United States*,[6] the District of Columbia Court of Appeals held that an individual committed to a mental institution for a crime must be released after being held for a time equal to the maximum possible term for which he could have been incarcerated.[7] The defendant had been found not guilty of petit larceny by reason of insanity. Thereafter, pursuant to section 24-301(d) of the D.C. Code,[8] a "release hearing" was held

1. 413 A.2d 1294 (D.C. 1980).
2. *Id.* at 1299.
3. *Id. See* United States v. Bradford, 344 A.2d 208 (D.C. 1975).
4. 413 A.2d at 1299.
5. *Id. See* 344 A.2d at 215-16.
6. 411 A.2d 624 (D.C. 1980).
7. *Id.* at 630. *See* United States v. Brown, 478 F.2d 606 (D.C. Cir. 1973).
8. D.C. CODE § 24-301(d) (1973).

and Jones was committed to St. Elizabeth's Hospital indefinitely. The court followed *United States v. Brown*[9] and agreed that there was no basis for confining an acquitee under section 24-301(d) beyond the length of the hypothetical prison term, since that term marked the end of society's claim to punishment of that individual. A longer confinement term would have to be preceded by a *de novo* civil commitment procedure.[10]

III. SENTENCING

In *Christopher v. United States*,[11] the District of Columbia Court of Appeals declared that the substitution of a greater sentence for an illegal lesser sentence is not prohibited by the double jeopardy clause of the federal constitution. Petitioner appealed the trial court's imposition of a greater sentence by *sua sponte* correction of an illegal earlier sentence that petitioner had already begun to serve.

The court stated that the constitution allows a court to mitigate a sentence but not increase punishment.[12] However, an established exception to the rule has arisen where the original sentence was illegal, because an illegal sentence is a nullity.[13] Hence, a longer term of imprisonment upon resentencing is not a violation of the double jeopardy clause of the federal constitution.[14]

In *Jones v. United States*,[15] the District of Columbia Court of Appeals upheld the use of a defendant's one prior felony conviction for the purpose of enhancing both his sentence for robbery and his sentence for carrying a pistol without a license. The defendant's conviction for armed robbery was disclosed to the court before his arraignment on charges of armed robbery and carrying a pistol without a license. The defendant entered pleas of guilty to both charges. *Henson v. United States*,[16] a District of Columbia case decided the day after Jones entered his guilty pleas, held that in the

9. 478 F.2d 606 (D.C. Cir. 1973).

10. 411 A.2d at 630. *See* Humphrey v. Cady, 405 U.S. 504, 510-11 (1972); Baxstrom v. Herold, 383 U.S. 107, 110-11 (1966); United States v. Brown, 478 F.2d at 611-12.

11. 415 A.2d 803 (D.C. 1980).

12. United States v. Benz, 282 U.S. 304, 307 (1931); *accord, Ex parte* Lange, 85 U.S. (18 Wall.) 163, 175 (1873).

13. *See, e.g.*, Bozza v. United States, 330 U.S. 160, 166-67 (1947); Burns v. United States, 552 F.2d 828, 831 (8th Cir. 1977); James v. United States, 348 F.2d 430, 432-33 (10th Cir. 1965).

14. *See* Burns v. United States, 552 F.2d at 831; James v. United States, 348 F.2d at 432-33; Hayes v. United States, 249 F.2d 516, 517-18 (D.C. Cir. 1957).

15. 416 A.2d 1236 (D.C. 1980).

16. 399 A.2d 16 (D.C.), *cert. denied*, 444 U.S. 848 (1979).

same proceeding a single prior felony conviction could not be used both to transform a violation into a felony offense and serve as one of the two prior felonies required to impose a greater sentence. In the present case, Jones' prior felony conviction was used first to expose him to the express provisions for recidivism in the District of Columbia Code,[17] which provide that if the violation of the Code occurs after conviction of a felony, "he shall be sentenced to imprisonment for not more than ten years."[18] The second use of the prior felony conviction—to enhance the maximum sentence for the robbery—was permitted by the provisions of section 22-104 of the District of Columbia Code[19] and by case law interpreting congressional intent concerning recidivism.[20] As distinguished from *Henson*, Jones' prior felony conviction was not used both to convert his pistol-carrying offense into a felony and serve as one of the two prior felony convictions necessary for enhanced sentencing. The court found that such "bootstrapping," prohibited by *Henson*, was not present in *Jones*.

In *Daniel v. United States*,[21] the District of Columbia Court of Appeals employed a "rational basis" test and upheld the constitutionality of section 23-1328 of the District of Columbia Code,[22] which imposes a harsher sentence on defendants who commit crimes while released on bail pending trial. The defendant was charged with three misdemeanors and released on bond pursuant to section 23-1328 of the District of Columbia Code.[23] While out on bond, he was arrested on felony charges and notified that he would be subject to additional penalties under the release offender statute.[24]

Historically, courts have employed the less rigorous rational basis test to examine such statutory sentencing classifications as section 23-1328.[25] As the legislative history of the section reveals, Congress was concerned about the large number of crimes committed by people on pretrial release. The

17. D.C. CODE § 22-3204 (1973).
18. *Id.*
19. D.C. CODE § 22-104 (1973).
20. 416 A.2d at 1238; Smith v. United States, 304 A.2d 28 (D.C.), *cert. denied*, 414 U.S. 1114 (1973).
21. 408 A.2d 1231 (D.C. 1980).
22. D.C. CODE § 23-1328 (1973).
23. *Id.*
24. D.C. CODE § 23-1321 (1973).
25. *See* Marshall v. United States, 414 U.S. 417 (1974); McGinnis v. Royster, 410 U.S. 263 (1973); United States v. Thomas, 485 F.2d 1012 (D.C. Cir. 1973).

Daniel court therefore held that Congress's attempt to deter "bail recidivism" was a permissible governmental objective on which to base the criminal sanctions of section 23-1328.[26]

William Ward

26. 408 A.2d at 1233.