

UNITED STATES PRISON LAW

SENTENCING TO PRISON, PRISON CONDITIONS,
AND RELEASE—THE COURT DECISIONS

Selected and with Comments

By

Sol Rubin

Counsel Emeritus,
National Council on Crime
and Delinquency

VOLUME I Sentencing to Prison

1975

OCEANA PUBLICATIONS, INC.
DOBBS FERRY, N.Y.

Library of Congress Cataloging in Publication Data

Rubin, Sol, comp.

United States prison law.

CONTENTS: v. 1. Sentencing to prison.

1. Correctional law--United States--Cases.

I. Title

KF9728.A7R8 345'.73'077 74-23142

ISBN 0-379-10050-9

ISBN 0-379-10051-7 (v. 1)

© Copyright 1975 by Sol Rubin

Manufactured in the United States of America

PREFACE TO THE SERIES

In the last decade numerous works on prison law have appeared. They devote themselves to analysis, digest, or compilation of court decisions. There is a certain distortion in the emphasis on decisions. The nature of prisons, of sentencing to prisons and release from them, the very existence of prisons, are all the products of legislation.

Why then are not the works on prison law devoted more to legislation? A few works do deal with legislation. The American Bar Association in 1972 published a compendium of Model Correctional Legislation and Standards, drawn from the publications of various organizations. But the legislative history has been so oriented to punishment and institutions, so resistant to the needs of reform, that by default the courts have become the principal avenue for ameliorating the harsh and brutal life of prisons.

This work, too, is devoted to the court decisions. Only occasionally do we point out that a decision, or a group of decisions, carry, either directly or by implication, the message that corrective legislation is needed. We shall discuss the common "hands-off" policy of most courts. The policy is one that allows full play to both administration and the legislatures. Yet there are important exceptions, where legislation is struck down because constitutionally infirm, and many more instances where administration is enjoined or held responsible for injury or abuse. Such instances occur throughout the first and other volumes.

But the true message, stated this once and hardly again, is that the basic reform of prisons must come through the legislatures. Or through administration itself. It is the administrators who, as the instruments of the statutory structure, can make the institutions, or parole, punitive or ameliorative, just as sentencing judges can make their sentences punitive or ameliorative. Numerous instances of appellate courts correcting sentencing judges appear in this volume.

Unfortunately, the almost uniform administrative policy that we see today, well reflected in the decisions, is a policy of imposing obedience on prisoners, uniformity of behavior and lassitude; and, as we shall see in volumes II and III, enforcing such aims by harsh punishments.

Therefore, again, the remedy in the courts predominates; and this, then, is another work on the decisions of the courts governing prisons. What makes this work different from others?

If there is one dominant characteristic in prison law it is that the law is evolving rapidly. Any work on the subject begins

to lose its currency the day it is published. A text, digest, or any analysis suffers this loss. There is one remedy, it seems to me, one way to keep the utility of a prison law work for a fair period of time, and it has governed both the selection of cases and the structure of each volume.

With the law in this field evolving as rapidly as it is, it is important, urgent, to select cases and so treat them that the probable issues for the future are clear. While enough material is included to reflect current law, with the leading cases, those most often cited or followed, included, the emphasis is on the trend toward change. In Trop v. Dulles, 356 U.S. 86, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958), the Supreme Court said that the Eighth Amendment prohibition of cruel and unusual punishment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." An excellent review of prison law published by the South Carolina Department of Corrections in 1972 is entitled The Emerging Rights of the Confined (our emphasis).

The statement from Trop v. Dulles is often quoted, especially by courts that undertake to implement change. It is these decisions that are brought into the volumes, in admitted disproportionate numbers. At least once we use both a lower and upper court opinion, making plain that in our view it is the lower court, that has been reversed, whose view anticipates the future. So also decisions are included for their dissents. It will be a while before those issues are well and uniformly resolved, although I hope--and expect--movement on them will be substantial.

The same endeavor--to prepare a work of enduring value in an evolving field--governs the total structure. Thus, volume I deals with a series of subjects not usually covered under the heading of prison law. Writers, the courts, and administrators, usually pay little heed that a person's basic right is to liberty.¹ Volume I substantiates that commitments to prison are often reexamined by appellate courts to test the commitment versus liberty, or the duration of the commitment.

Volumes II and III cover the usual content of "prison law"--discipline and due process, cruel and unusual punishment, imposed programs of work and therapy, and rights of prisoners. Most prison law books are guides, not to prisoners' rights, but to the cases that have been handed down dealing with what administrators can or cannot do, in the opinion of the courts. Prisoners' rights go far beyond that. The courts have not gone

1. Rubin, The Law of Criminal Correction, ch. 19§8, "The Law Favors Liberty" (1973).

very far, and therefore what is needed is thinking that goes further than most courts have gone. These volumes attempt to deal with the material to show the newer thinking, and how future law is likely to go.

The separation of cases and comment on them into two volumes that seemingly cover the same or intimately related subjects is a deliberate, almost artificial separation. Volume II covers the powers of administrators under the statutes, with the limited restraints required under statutes and constitutions. The emphasis in volume III is on rights, emerging, evolving, expanding. In general, I anticipate that much of the law in volume II will gradually be replaced by decisions on rights that fit into and fill out the picture of volume III.

Each volume in the series contains approximately fifty decisions--in each case, the full decision, including footnotes (but not headnotes). Few prison law books do this. But there is a special value in the full decisions not obtained in texts or digests. It is not so much the rule of law they state that we wish to convey, but the reasoning (or lack of it, in the hands-off cases) that the court expresses. Thus it is important to include contrasting cases, as is often done.

The grouping of cases in the chapters do not follow the weight and amount of cases handed down by the courts on the various subjects. Thus volume II includes only a sampling of cases on discipline, whereas in practice these cases far outweigh some of the other aspects of prison life. But such things as transfer of prisoners, or work assignments, are more important than is reflected in numbers of cases dealing with them, and the attempt is made to bring forward the importance of such incidents of prison life.

All of the foregoing criteria and trends are reflected in the contents of volume IV, on parole and other release procedures, and volume V, on the law of parolees and other former prisoners under supervision, or after it.

In the final analysis, the total work does convey, via the cases, the law as it is--a necessary base for research; but balanced by the presentation of cases that indicate the newer thinking and the trends toward reform. I trust the series of books, and supplements to follow after the publication of volume V, will be of value to prisoners and those who represent them or who are interested in them; to administrators, guards, and other who work in prisons and who are more concerned than ever with the rapid changes in law governing their powers and responsibilities; to the courts who feel they are saddled with the huge problem of correctional administration, at the center of which is prisons;

and to those whose objective or responsibility is continuing examination with a view to reform.

August, 1974

Sol Rubin

TABLE OF CASES

Chapter 2 IMPROPERLY BASED COMMITMENTS

(a) Bargained Pleas of Guilty	
Santobello v. New York, 404 U.S. 257,	
92 S. Ct. 495, 30 L. Ed. 2d 427	
(1971).	13
(b) Presentence Investigations	
Williams v. New York, 337 U.S. 241,	
69 S. Ct. 1079, rehearing denied	
337 U.S. 961, 69 S. Ct. 1529, 338	
U.S. 841, 70 S. Ct. 34, 93 L. Ed.	
1337 (1969)	28
State v. Leckis, 79 N.J. Super. 479,	
192 A. 2d 161 (1963)	40
People v. Fenton, 141 Cal. App. 357,	
296 P. 2d 829 (1956)	48
State v. Pohlabel, 61 N.J. Super. 242,	
160 A. 2d 647 (1960)	57
State v. Kunz, 55 N.J. 128, 259 A.	
2d 895 (1969)	66
Kuhl v. District Court, 139 Mont. 536,	
366 P. 2d 347 (1961)	97
State v. Grady, 89 Idaho 204, 404 P. 2d	
347 (1965).	133

Chapter 3 THE POWER TO SUSPEND SENTENCE, A RIGHT TO PROBATION

(a) The Power to Suspend Sentence	
People ex rel. Forsyth v. Court of	
Sessions, 141 N.Y. 288, 36 N.E.	
386 (1894).	143
Ex Parte United States, 242 U.S. 27,	
37 S. Ct. 72, 61 L. Ed. 129 (1916). .	149
State v. McCoy, 94 Idaho 236, 486 P.	
2d 247 (1971)	166
(b) A Right to Probation	
People v. Cooper, 123 Cal. App. 2d 353,	
266 P. 2d 566 (1954)	177
Osburn v. State, 224 A. 2d 52	
(Del. 1966)	182

	Wyatt v. Ropke, 407 S.W. 2d 410 (Ky. 1966).	184
	People v. Harpole, 97 Ill. App. 2d 28, 239 N.E. 2d 471 (1968).	186
	People v. McAndrew, 96 Ill. App. 2d 441, 239 N.E. 2d 314 (1968).	194
	N.J. v. Ward, 57 N.J. 75, 270 A. 2d 1 (1970).	207
	State v. Mitchell, 77 Idaho 115, 289 P 2d 315 (1955)	226
	United States v. Wiley, 267 F. 2d 453 (7th Cir. 1959).	230
	United States v. Wiley, 278 F. 2d 500 (7th Cir. 1960).	236
Chapter 4	IMPRISONMENT NOT A SANCTION FOR FINE	
	In re Antazo, 3 Cal. 2d 100, 89 Cal. Rptr. 255, 473 P. 2d 999 (1970) . . .	242
	Tate v. Short, 401 U.S. 395, 91 S. Ct. 668, 28 L. Ed. 2d 130 (1971)	257
Chapter 5	VALIDITY OR INVALIDITY OF MANDATORY SENTENCES	
	People v. McCabe, 49 Ill. 2d 338 (1971).	267
	United States v. Williams, 442 F. 2d 738 (D.C. Cir. 1970).	286
	People v. Clay, 96 Cal. Rptr. 213, 18 C.A. 3d 964 (1971)	290
Chapter 6	CORRECTING UNEQUAL SENTENCES	
	(a) Sentences Related to Others in Similar Circumstances	
	People v. Williams, 38 Misc. 2d 80, 237 N.Y.S. 2d 527 (1963)	297
	State v. Streeter, 308 A. 2d 535 (N.H. 1973)	305
	People v. Curtin, 44 Ill. 2d 507, 255 N.E. 2d 916 (1970).	308
	(b) Women, Youths, Blacks	
	United States ex rel. Robinson v. York, 281 F. Supp. 8 (U.S.D.C. Conn. 1968).	315

Harvin v. United States, 144 U.S. App. D.C. 199, 445 F. 2d 675, certiorari denied 404 U.S. 943, 92 S. Ct. 292, 30 L. Ed. 2d 257 (1971).	324
State v. Meyer, 228 Minn. 286, 37 N.W. 2d 3 (1949)	350
People ex rel. Vivona v. Conboy, 181 N.Y.S. 2d 68, 7 A.D. 2d 810 (1958), motion for leave to appeal denied, 6 N.Y. 2d 706, 159 N.E. 2d 706, certiorari denied 361 U.S. 847, 80 S. Ct. 102, 4 L. Ed. 2d 85 (1959).	370
People ex rel. Ward v. Jackson, 286 App. Div. 942, 143 N.Y.S. 2d 26 (1955), affd. 3 N.Y. 2d 1020, 170 N.Y.S. 2d 356, 147 N.E. 2d 743 (1958).	371
McLaughlin v. Florida, 379 U.S. 184, 85 S. Ct. 283 (1964)	372
(c) Resentence after Conviction Reversed	
North Carolina v. Pearce, 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969)	388

Chapter 7 CORRECTING EXCESSIVE SENTENCES

McCleary v. State, 49 Wis. 2d 263, 182 N.W. 2d 512 (1971).	431
Adams v. State, 314 P. 2d 371 (Okla. 1957).	465
Commonwealth v. Cater, 396 Pa 172, 152 A. 2d 259 (1959)	470
People v. Lorentzen, 387 Mich. 167, 194 N.W. 2d 827 (1972).	479
Gullett v. State, 299 N.E. 2d 190 (Ind. App. 1973)	493
Woosley v. United States, 478 F. 2d 139 (8th Cir. 1973).	496

Chapter 8 EXTENDED COMMITMENTS FOR TREATMENT OR DANGEROUSNESS

(a) Civil Commitments

State of Minnesota ex rel. Pearson v. Probate Court, 309 U.S. 270, 60 S. Ct. 523, 84 L. Ed. 744 (1939). . .	513
Millard v. Cameron, 125 U.S. App. D.C. 383, 373 F. 2d 468 (1968) . . .	520
In re Maddox, 351 Mich. 358, 88 N.W. 2d 470 (1957).	525
People v. Warden, 30 A.D. 2d 649, 291 N.Y.S. 2d 200 (1968)	540
(b) Sentences Under "Habitual Criminal" Acts	
Oyler v. Boles, 368 U.S. 448, 82 S. Ct. 501, 7 L. Ed. 2d 446 (1962)	544
In re Lynch, 8 Cal. 3d 410, 105 Cal. Rptr. 217, 503 P. 2d 921 (1972) . . .	560
(c) Extended Commitments by the California Adult Authority	
Ellhamer v. Wilson, 312 F. Supp. 1245 (U.S.D.C. Cal. 1969).	582
Ellhamer v. Wilson, 445 F. 2d 856 (9th Cir. 1971), certiorari denied 403 U.S. 997, 92 S. Ct. 1258, 31 L. Ed. 466 .	594

Chapter 9 CORRECTING MINIMUM TERMS OF PAROLE ELIGIBILITY, EXCLUSION OF PAROLE

People v. Tanner, 387 Mich. 683, 199 N.W. 2d 202 (1972).	598
People v. Westbrook, 411, Ill. 301, 103 N.E. 2d 494, 29 A.L.R. 2d 1341 (1952).	610
People ex rel. Mason v. Brophy, 235 A.D. 432, 257 N.Y.S. 165 (1932)	614
People v. Rendleman, 130 Ill. App. 2d 912, 266 N.E. 2d 115 (1971).	616
Workman and Pipes v. Kentucky, 429 S.W. 2d 374 (1968).	620

ACKNOWLEDGMENTS

The cooperation of West Publishing Company is appreciated for permission to reproduce the following cases:

State v. Leckis, reproduced from New Jersey Superior Court Reports, Vol. 79, © Copyright 1963 by West Publishing Company, with permission.

State v. Pohlabel, reproduced from New Jersey Superior Court Reports, Vol. 61, © Copyright 1960 by West Publishing Company, with permission.

State v. Kuntz, reproduced from New Jersey Reports, Vol. 55, © Copyright 1970 by West Publishing Company, with permission.

State v. Grady, reproduced from Idaho Reports, Vol. 89, © Copyright 1965 by West Publishing Company, with permission.

State v. McCoy, reproduced from Idaho Reports, Vol. 94, © Copyright 1973 by West Publishing Company, with permission.

Osburn v. State, reproduced from Atlantic Reporter, 2d Series, Vol. 224, © Copyright 1967 by West Publishing Company, with permission.

Wyatt v. Ropke, reproduced from South Western Reporter, 2d Series, Vol. 407, © Copyright 1967 by West Publishing Company, with permission.

New Jersey v. Ward, reproduced from New Jersey Reports, Vol. 57, © Copyright 1971 by West Publishing Company, with permission.

State v. Mitchell, reproduced from Idaho Reports, Vol. 77, © Copyright 1956 by West Publishing Company, with permission.

United States v. Wiley (7th Cir. 1959), reproduced from Federal Reporter, 2d Series, Vol. 267, © Copyright 1959 by West Publishing Company, with permission.

United States v. Wiley (7th Cir. 1960), reproduced from Federal Reporter, 2d Series, Vol. 278, © Copyright 1960 by West Publishing Company, with permission.

United States v. Williams, reproduced from Federal Reporter, 2d Series, Vol. 442, © Copyright 1971 by West Publishing Company, with permission.

People v. Clay, reproduced from California Reporter, Vol. 96, © Copyright 1971 by West Publishing Company, with permission.

People v. Streeter, reproduced from Atlantic Reporter, 2d Series, Vol. 308, © Copyright 1974 by West Publishing Company, with permission.

United States ex rel. Robinson v. York, reproduced from Federal Supplement, Vol. 281, © Copyright 1968 by West Publishing Company, with permission.

Harvin v. United States, reproduced from Federal Reporter, 2d Series, Vol. 445, © Copyright 1972 by West Publishing Company, with permission.

Adams v. State, reproduced from Pacific Reporter, 2d Series, Vol. 314, © Copyright 1957 by West Publishing Company, with permission.

Gullett v. State, reproduced from North Eastern Reporter, 2d Series, Vol. 299, © Copyright 1973 by West Publishing Company, with permission.

Woosley v. United States, reproduced from Federal Reporter, 2d Series, Vol. 478, © Copyright 1973 by West Publishing Company, with permission.

Millard v. Cameron, reproduced from Federal Reporter, 2d Series, Vol. 373, © Copyright 1967 by West Publishing Company, with permission.

In re Lynch, reproduced from California Reporter, Vol. 105, © Copyright 1973 by West Publishing Company, with permission.

Ellhamer v. Wilson (U.S.D.C. Cal. 1969), reproduced from Federal Supplement, Vol. 312, © Copyright 1970 by West Publishing Company, with permission.

Ellhamer v. Wilson (9th Cir. 1971), reproduced from Federal Reporter, 2d Series, Vol. 445, © Copyright 1972 by West Publishing Company, with permission.

Workman and Pipes v. Kentucky, reproduced from South Western

Reporter, 2d Series, Vol. 429, © Copyright 1968 by West Publishing Company, with permission.

CONTENTS

Preface to the Series.	iii
Table of Cases	ix
Acknowledgments	xiii
Chapter 1 INTRODUCTION: WHEN COMMITMENTS MAY BE QUESTIONED	1
Chapter 2 IMPROPERLY BASED COMMITMENTS.	11
(a) Bargained Pleas of Guilty	11
(b) Presentence Investigations.	26
Chapter 3 THE POWER TO SUSPEND SENTENCE, A RIGHT TO PROBATION	141
(a) The Power to Suspend Sentence.	141
(b) A Right to Probation	176
Chapter 4 IMPRISONMENT NOT A SANCTION FOR FINE .	241
Chapter 5 VALIDITY OR INVALIDITY OF MANDATORY SENTENCES	265
Chapter 6 CORRECTING UNEQUAL SENTENCES.	295
(a) Sentences Related to Others in Similar Circumstances	295
(b) Women, Youths, Blacks	312
(c) Resentence After Conviction Reversed . . .	387
Chapter 7 CORRECTING EXCESSIVE SENTENCES	429
Chapter 8 EXTENDED COMMITMENTS FOR TREATMENT OR DANGEROUSNESS	511
(a) Civil Commitments	511
(b) Sentences Under Habitual Criminal Acts . .	541
(c) Extended Commitments by the California Adult Authority.	580

Chapter 9	CORRECTING MINIMUM TERMS OF PAROLE ELIGIBILITY, EXCLUSION OF PAROLE. . . .	595
-----------	---	-----

EDITOR'S NOTE

At the top of each odd-numbered page at which a case is reproduced, the page number in parentheses following the name of the case is the page number of the case in the report.

A cumulative index will appear at the end of the fifth volume in this series.

CHAPTER 1

INTRODUCTION: WHEN COMMITMENTS MAY BE QUESTIONED

Prison law does not begin with life in prison, the incidents of imprisonment, and prison programs. It begins with the defendant's main concern--liberty, which need not always await service of the term of the sentence. Commitments may be questioned, and courts may grant a prisoner freedom by a new sentence of probation, suspended sentence or fine, or may reduce the previously fixed term of commitment, either as to its maximum or the term to be served before the prisoner becomes eligible for parole.

We do not address ourselves to the common issues on appeals from convictions, the stages from arrest and accusation, trial and its incidents, at which errors of procedure may result in reversal of convictions. Nor do we deal with illegal sentences, those not authorized by statute. But a correctly conducted process leading to conviction may be followed by a sentence to imprisonment that is subject to examination and revision that may alter the terms of the commitment, or even result in a change from a sentence to imprisonment to a lesser sentence.

The several situations that may give rise to such an examination and alteration of sentence are dealt with in the chapters to follow. But there are a number of general themes that operate more or less in each situation, general principles of law and policy, that are identified in this chapter.

Appellate Review of Sentences

Appellate courts frequently protest that they do not have the power to review sentences that are not illegal, or that they will not substitute their view of what the sentence might be for that of the sentencing judge. The Supreme Court of the United States is often cited for the "hands-off" policy, but the Supreme Court itself has reviewed sentences, and has on occasion decided what the sentence, different from that of the trial judge, should be, as it did in Yates v. United States, 356 U.S. 363, 78 S. Ct. 766, 2 L. Ed. 837 (1958). It has reversed sentences that were based on faulty information (a subject we deal with in chapter 2)--Townsend v. Burke, 334 U.S. 736, 68 S. Ct. 1252, 92 L. Ed. 1690 (1948), and United States v. Tucker, 92 S. Ct. 589 (1972).

The federal courts are still in conflict over the issue.