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Criminal Law - Consent to or Waiver of Delay - Whether a Defendant in a Criminal Proceeding Waives the Statutory Right to Be Tried within Four Months of Arrest by Entering a Plea of Guilty after the Four-Month Period Has Elapsed

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DISCUSSION OF RECENT DECISIONS

CRIMINAL LAW—CONSENT TO OR WAIVER OF DELAY—WHETHER A DEFENDANT IN A CRIMINAL PROCEEDING WAIVES THE STATUTORY RIGHT TO BE TRIED WITHIN FOUR MONTHS OF ARREST BY ENTERING A PLEA OF GUILTY AFTER THE FOUR-MONTH PERIOD HAS ELAPSED—The effect of a plea of guilty on a criminal defendant's right to a speedy trial¹ was recon-

¹ Ill. Const. 1870, Art. II, § 9.

sidered recently in the case of *People v. DeCola*.² The defendant, under indictment on two charges of burglary and one of grand larceny, had been imprisoned continuously without bail after his arrest, which took place more than four months before the cases were finally scheduled for trial. The defendant had not been responsible for any of the delay which preceded his trial.³ On the date of the trial, the defendant filed a written motion for discharge in each count on the ground that he had been deprived of his right to a speedy trial in that he had not been tried within the four month period required by statute.⁴ The motion for discharge was overruled; the defendant was tried on one burglary charge and found guilty. The following day, he pleaded guilty to the other two charges and was sentenced by the trial court on all three counts. The defendant appealed directly⁵ to the Supreme Court of Illinois which reversed the judgment on the first count of burglary, but affirmed the judgments of conviction on the two charges to which the defendant had pleaded guilty after holding that the defendant, by his plea of guilty, had waived his right to speedy trial.

While the application of this statute has been in issue in previous cases, in the instant case it was the sole issue. Prior Illinois decisions indicate confusion both in the intended purpose of the statute and in the strictness with which it is to be applied. Although it has been interpreted by some courts as an extension of the general constitutional provision which guarantees the right to a speedy trial and therefore held to be absolute in its scope and application,⁶ acceptance of this interpretation has steadily diminished, culminating with the decision in the instant case that a plea of guilty negatives the assumption that there are issues to be tried and therefore waives the right to a speedy trial. The decision also pointed out that non-jurisdictional defects are waived by a plea of guilty and that a speedy trial is not jurisdictional.

² 15 Ill. (2d) 527, 155 N. E. (2d) 622 (1959).

³ The State unsuccessfully contended that by failing to demand an immediate trial and by requesting a jury trial, which he ultimately waived, the defendant had consented to the first continuance.

⁴ It is provided in Ill. Rev. Stat. 1959, Vol. 1, Ch. 38, § 748, that any person arrested for a criminal offense, who has not been admitted to bail and has not been tried within four months from the date of his arrest, shall be discharged, unless the delay results from the prisoner's own application.

⁵ Ill. Rev. Stat. 1959, Vol. 1, Ch. 38, § 780½, provides that criminal cases above the grade of misdemeanor shall be appealed directly to the Supreme Court.

⁶ *People v. House*, 10 Ill. (2d) 556, 141 N. E. (2d) 12 (1957); *People v. Stillwagon*, 373 Ill. 211, 25 N. E. (2d) 795 (1940); *People v. Emblen*, 362 Ill. 142, 199 N. E. 281 (1935); *People v. Schmagien*, 361 Ill. 371, 198 N. E. 142 (1935); *People v. Szobor*, 360 Ill. 233, 195 N. E. 648 (1935); *Newlin v. People*, 221 Ill. 166, 77 N. E. 529 (1906).

The question of whether lapse of the four months period removes a case from the trial court's jurisdiction was raised in *People v. Utterback*,⁷ where the defendant sought a writ of habeas corpus on this ground and several others. It was held that the trial court had jurisdiction over the person and subject matter and that a writ of habeas corpus cannot be used to effect the results of a writ of error after a judgment of conviction. The defendant had relied upon the earlier case of *People v. Szobor*,⁸ in which it was held that the trial court no longer had jurisdiction over the defendant. In answer to this contention, the Supreme Court held that reference in the Szobor case to the trial court's being without jurisdiction to accept a plea or enter judgment after the expiration of the four-month period was not necessary to a decision of the case and that any language in that opinion which so indicated was thereby overruled.

With regard to the constitutional question raised by the defendant here, the court held in *People v. Hartman*,⁹ that where the question concerns whether there has been a waiver of the statute and deprivation of constitutional rights, the constitution does not fix the time, and the statute is only intended to implement the constitutional provisions, but a violation of the statute or of the procedure under the statute does not in itself create a constitutional question.

With questions of jurisdiction and constitutionality decided against the interests of the defendant, the sole issue in this case became that of whether the defendant waived his statutory right by entering pleas of guilty after his motion for discharge had been overruled. The court pointed out that it had previously ruled in the affirmative in *People v. Lantz*,¹⁰ and in *People v. Sweeney*,¹¹ but that in those cases, the issue as to waiver by a plea of guilty was one of many issues presented as alternative grounds of decision.

In holding as it did, the Supreme Court made definite a ruling which is consistent with views presented by it in a steady line of cases in which the effect of this statute has been in issue. It is apparent from the reversal of the judgment of conviction on the first charge, that the court thought the defendant's motion to be discharged under the statute, made before the pleas of guilty were entered, was improperly rejected by the trial court. It would then be difficult to agree that the decision in the

⁷ 385 Ill. 239, 52 N. E. (2d) 775 (1944).

⁸ 360 Ill. 233, 195 N. E. 648 (1935).

⁹ 408 Ill. 133, 96 N. E. (2d) 449 (1951).

¹⁰ 387 Ill. 72, 55 N. E. (2d) 78 (1944).

¹¹ 409 Ill. 223, 99 N. E. (2d) 143 (1951).

instant case is just, were the harshness of the ruling not somewhat mitigated by the fact that, as the court pointed out, a guilty defendant can now waive indictment, enter a plea of guilty, and begin serving his sentence as soon as he is arrested.¹²

The statute, commonly known as the "four term act," was enacted to implement the constitutional provision for a speedy trial by stating an arbitrary period during which any prisoner must be tried for his crime or be discharged. As in cases where a statute of limitations is applied, the guilt or innocence of the prisoner is not material to proper execution of the statute, as the statute was enacted to prevent the government from unduly harsh treatment of the prisoner and with the knowledge that the guilty as well as the innocent might benefit from its application. Even if it be conceded that no constitutional question is involved, the expiration of the four months period, without the prisoner's having been brought to trial, places him within the statute and entitles him to be discharged. Since his guilt or innocence is not material to the statutory right, it appears to follow that a plea of guilty should not waive the right even after the period has elapsed.

MISS J. FLEMING

EMINENT DOMAIN—SETTING ASIDE VERDICT AND NEW TRIAL—WHETHER REMITTITUR MAY BE UTILIZED IN A STATUTORY EMINENT DOMAIN ACTION—In the recent case of *Department of Public Works and Building v. Huff*,¹ the Supreme Court of Illinois considered a question of first impression in Illinois: whether a remittitur was proper in a statutory eminent domain proceeding? The defendants in the eminent domain action had been awarded damages by a jury. The plaintiff condemnor moved to vacate the judgment and for a new trial, urging that the verdicts were beyond the range of the evidence. The trial judge overruled the plaintiff's motions on condition that the defendants consent to a remittitur, which the defendants did. The plaintiff appealed directly to the Supreme Court of Illinois² on the ground that the remittitur was improper because there was no authority for the trial judge's action in either the statutes concerning eminent domain³ or in the Civil Practice Act.⁴ That tribunal

¹² Ill. Rev. Stat. 1959, Vol. 1, Ch. 38, § 702. See also, *People v. Bradley*, 7 Ill. (2d) 619, 131 N. E. (2d) 538 (1956).

¹ 15 Ill. (2d) 517, 155 N. E. (2d) 563 (1959).

² The opinion of the Supreme Court of Illinois did not give the ground of direct appeal from the trial court. However, the State of Illinois was interested as a party, through the Department of Public Works and Buildings, which would furnish a ground under Ill. Rev. Stat. 1959, Vol. 2, Ch. 110, § 75(1) (b).

³ Ill. Rev. Stat. 1959, Vol. 1, Ch. 47, § 1, et seq.

⁴ Ill. Rev. Stat. 1959, Vol. 2, Ch. 110, § 1, et seq.