PEPPERDINE UNIVERSITY

Pepperdine Law Review

Volume 2 | Issue 1 Article 10

12-15-1974

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In re N, Juvenile Court Must Inform Minor of His Right to Appeal

Ever since the United States Supreme Court's decision in *In Re Gault*,[1] the Juvenile Court System in California has been undergoing reform at an ever-accelerating rate.[2] Although Justice Fortas, in *Gault*, expressed his opinion that the Juvenile Courts need not become mirror images of the adult penal system,[3] where procedures have been challenged, the appellate courts have been quick to adopt those procedures used in adult proceedings under the general criminal law.[4] In *Re N*[5] is representative of this approach. The issue raised was whether or not the failure of a Juvenile Court to inform the juvenile of his right to appeal, his right to have appointed counsel if indigent, his right to a free transcript if indigent and the procedures for filing an appeal, violated the minor's right to equal protection under the law. The minor, N, made an attempt to obtain an order allowing him to file a late appeal. Failing this, he raised

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1. 387 U.S. 1 (1967).

2. *See, e.g., In re* William F., Sup. Ct. No. 87581 (April 17, 1974) (juvenile's counsel has right to make closing argument); Bryan v. Superior Court, 7 Cal. 3d 578, 498 P.2d 1079, 102 Cal. Rptr. 831 (1972) (juvenile's admissions made to juvenile court judge and probation officer inadmissible in trial as an adult); Dana J. v. Superior Court, 4 Cal.3d 836, 484 P.2d 595, 94 Cal. Rptr. 619 (1971) (juvenile has right to free transcripts on appeal if he is personally unable to afford counsel; *In re* J., 26 Cal. App.3d 768, 103 Cal. Rptr. 21 (1972) (juvenile entitled to "fair notice" of charges); *In re* Gladys R., 1 Cal.3d 855, 464 P.2d 127, 83 Cal. Rptr. 671 (1970) (judge may not read a juvenile's "social report" before the jurisdictional hearing); *In re* Paul T., 15 Cal. App.3d 886, 93 Cal. Rptr. 510 (1971) (juvenile has right to counsel; he must make a "knowing waiver" of right to remain silent; cases must be proved beyond a reasonable doubt); *In re* Corey, 266 Cal. App.2d 295, 72 Cal. Rptr. 115 (1968) (probation report prejudicial and inadmissible at jurisdictional hearing); People v. Lara, 67 Cal.2d 365, 432 P.2d 202, 62 Cal. Rptr. 586 (1967) (dissenting opinion of Justice Peters).

3. 387 U.S. at 30; McKiever v. Pennsylvania, 403 U.S. 528, 545 (1971).

4. *E.g.*, Bryan v. Superior Court, 7 Cal.3d 575, 498 P.2d 1079, 102 Cal. Rptr. 831 (1972), People v. Hicks, 4 Cal.3d 757, 484 P.2d 65, 94 Cal. Rptr. 393 (1971) *and* People v. Harrington, 2 Cal.3d 991, 471 P.2d 961, 88 Cal. Rptr. 161 (1970).

5. 36 Cal. App. 3d 935, 112 Cal. Rptr. 89 (1974).

the issue in a petition for a writ of habeas corpus.[6] The writ was issued on the grounds that the Juvenile Court's failure to so inform the minor denied him equal protection under the law.[7]

In May, 1972, the minor was arrested for robbery.[8] A petition was filed with the Juvenile Court, describing him as a person within section 602 of the California Welfare and Institutions Code.[9] The allegations were denied at the pre-trial stage, and the matter was set for a contested jurisdictional hearing on June 2.[10] Because the minor qualified as an indigent, he was represented by a Deputy Public Defender. At the jurisdictional hearing, the petition was sustained as to all allegations. The dispositional hearing was held on June 21, 1972, at which time the juvenile was committed to the California Youth Authority.

The Juvenile Court did not inform the minor that he had a right to appeal, nor was there any evidence that he was informed by his counsel, or his probation officer.[11] Hence, no notice of appeal was filed by or on behalf of the minor. In September, 1972, the juvenile learned from an attorney at the Youth Law Center in San Francisco that his case could be appealed. On October 5, a notice of appeal was filed, being received by the County Clerk on October 11. The Clerk did not file the notice but stamped it "Received but not filed"

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6. *In re* Benoit, 10 Cal.3d 72, 78, 514 P.2d 97, 100, 109 Cal. Rptr. 785, 788 (1973) (*habeas corpus* is the proper remedy where a motion for an order to permit the filing of a late appeal is not available).

7. 36 Cal. App. 3d at 940, 112 Cal. Rptr. at 91.

8. CAL. PENAL CODE, § 211 (West 1970).

9. CAL. WELF. AND INST. CODE, § 650 (West 1972):

> A proceeding in the juvenile court to declare a minor a ward or a dependent child of the court is commenced by the filing with the court, by the probation officer, of a petition, in conformity with the requirements of the article.

CAL. WELF. AND INST. CODE, § 653 (West 1972):

> Whenever any person applies to the probation officer to commence proceedings in the juvenile court, such application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Sections 600, 601 or 602, or that a minor committed an offense described in Section 602 within the county and setting forth the facts in support thereof. . . .

CAL. WELF. AND INST. CODE, § 602 (West Supp. 1974):

> Any person under the age of 18 years who violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime . . . is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

10. There is generally no arraignment or preliminary hearing in juvenile court. Cases are set on two calendars: pre-trial, to allow bargaining and out-of-court dispositions and trial for contested matters not disposed of during pre-trial.

11. 36 Cal. App.3d at 938, 112 Cal. Rptr. at 90; CAL. WELF. AND INST. CODE, § 800 (West 1972). *See Cal. Ct. R.* 250 (1972).

because the sixty (60) day filing period had long since elapsed.[12]

The minor's new attorney filed a notice of motion for order to file a late appeal with the Superior Court on October 19, 1972. After a hearing on the motion, the Court granted it and ordered the Clerk to file the notice of appeal. The notice of appeal, along with the record of the jurisdictional and dispositional hearings was filed with the District Court of Appeals. However, on its own motion, the Court of Appeals vacated both the filing and the order because the Superior Court lacked jurisdiction.

In desperation, the minor filed a writ of habeas corpus on March 13, 1973. The Superior Court denied the writ and the minor appealed from that ruling.

The California Rules of Court, Rule 250, requires that

> "After imposing sentence in a *criminal case upon conviction after trial*, the court shall advise the defendant of his right to appeal from the judgment, of the necessary steps and time for taking an appeal and of the right of an indigent defendant to have counsel appointed by the reviewing court."[13] [Emphasis added]

At the time of the juvenile's jurisdictional and dispositional hearings there was no requirement under the Juvenile Law that a minor be informed in the same manner. For that matter, there was no requirement that he be informed at all. Thus, the issue is whether or not this procedure denies the juvenile equal protection of the law.

Section 800 of the California Welfare and Institutions Code provides that a juvenile who has been found to be a person described in Section 602 has the right to appeal.[14] The United States Supreme Court has held that a state is not required to provide an appellant process; but, if a state does provide such a process, it must be kept free of unreasonable distinctions which may impede the open access to the courts.[15] This right to appeal, once established, is a *funda-*

12. *Cal. Ct. R.* 31(a) (1972), *amending Cal. Ct. R.* 31(a) (1961).
13. *Cal. Ct. R.* 250 (1972); 36 Cal.3d at 939, 112 Cal. Rptr. at 91.
14. CAL. WELF. AND INST. CODE, § 800 (West 1972):
> A judgment or decree of a juvenile court . . . assuming jurisdiction and declaring any person to be a person described in Section . . . 602 . . . may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment . . . .

15. Rinaldi v. Yeager, 384 U.S. 305 (1966).

mental right[16] and thus it may not be abridged by the state unless it can establish a *compelling* interest.[17] Furthermore, the state must also establish "that the distinctions drawn by the regulation are *necessary* to further its purpose."[18] The burden is upon the State to demonstrate that it has a *compelling* interest in refusing to have a juvenile appraised of his right to appeal, and that such denial serves the purpose of the Juvenile Court Process.

For years the Juvenile Court Process has been considered civil in nature.[19] The policy was that the juvenile was not being punished but given the opportunity to rehabilitate himself. There was widespread belief that an informal proceeding without the clash and clamor of a court of law would be a progressive approach. Thus, in *In Re N*, the Attorney General argued that Rule 250 should be restricted in its application by its express language; in other words, to a "criminal case upon conviction after trial" and has no application to the Juvenile Court Processes. For the court to so hold would further the policy set out in section 503 of the California Welfare and Institutions Code and those cases construing that section.[20] Unfortunately, that concept has turned out to be an excuse often used to cover up the abuses of the system.[21] Recent cases have demonstrated that the courts are no longer willing to use the "civil in nature" distinction as a rationale for denying juveniles procedural protections.[22]

The Court of Appeals held that to restrict the application of Rule 250 to cases coming under the general criminal law would deny the minor equal protection of the law. The Court noted that the Judicial Council, subsequent to this Petitioner's hearing, added

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16. *In re* J., 26 Cal. App.3d 768, 771, 103 Cal. Rptr. 21, 23 (1972); *cf. In re* Gault, 387 U.S. 1 (1967).

17. Serrano v. Priest, 5 Cal.3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971); *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969).

18. *Id.*, 36 Cal. 3d at 939, 112 Cal. Rptr. at 91.

19. CAL. WELF. AND INST. CODE § 503:

> An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding.

People v. Lara, 67 Cal.2d 365, 432 P.2d 202, 62 Cal. Rptr. 586 (1967); G. v. Superior Court, 30 Cal. App.3d 572, 106 Cal. Rptr. 505; *cf. In re* Gault, 387 U.S. 1 (1967).

20. *See* CAL. WELF. AND INST. CODE, § 503.

21. *Cf.* People v. Lara, 67 Cal.2d 365, 432 P.2d 202, 62 Cal. Rptr. 586 (1967) (dissenting opinion); *In re* Gault, 387 U.S. 1 (1967).

22. *See, supra* note 2. *But see* McKiever v. Pennsylvania, 403 U.S. 528 (1971) (denying juveniles the right to a trial by jury).

Rule 251,[23] giving juveniles the same procedural protections. This action was construed as giving "tacit approval" to the approach taken by the court in *In re N.* The Court thus followed closely the trend established by the Appellate Courts in other recent juvenile cases.[24] Yet, unless there is broad legislative reform of California's Juvenile Court Processes, it appears that such progress will continue only through a case by case application to the juvenile of those procedural protections guaranteed the adult offender.[25]

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23. *Cal. Ct. R.* 251 (1973).
24. *See, supra* note 2.
25. *See, In re* William F., — Cal.3d —, 520 P.2d 986, 113 Cal. Rptr. 170 (1974) (and dissenting opinion).