Opinion No. 57-215

August 27, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal, Assistant Attorney General

TO: Glenn B. Neumeyer, Assistant District Attorney, Third Judicial District, Las Cruces, New Mexico

QUESTION

QUESTION

Assuming the validity of the Juvenile Act, and proper jurisdiction had by the Court, and eliminating abuses of discretion, must bail be granted to a juvenile detained under the Juvenile Act?

CONCLUSION

No.

OPINION

ANALYSIS

§ 13-8-42, N.M.S.A., 1953 Comp., (p.s.), provides:

"When any juvenile found violating any law or ordinance, or whose surroundings are such as to endanger his welfare, is taken into custody, **such taking into custody shall not be termed an arrest . . . Whenever advisable,** such juvenile shall be released to the custody of his parent or other responsible adult . . ." (Emphasis ours.)

§ 13-8-43, N.M.S.A., 1953 Comp., (p.s.), provides:

"If the juvenile is not released as hereinabove provided . . . accompanied by a written report by the officer taking the juvenile into custody, stating: (1) The facts of the offense, and (2) the reason why the child is not released to the parent. Pending further disposition of the case, the probation officer or court may release such juvenile to the custody of the parent or other person, or may detain the juvenile in such place as the probation officer or court shall designate, ... but no juvenile shall be held in detention longer than forty-eight (48) hours, unless upon order of the court."

In the State of New Mexico, there have been three cases decided by the Supreme Court that touch upon this proposition. First of these was In re Santillanes, 47 N.M. 140, 138 P. 2d 503, where the court said:

"-- the provisions of the State and Federal Constitutions relating to involuntary servitude do not have reference to legitimate authority for the control and education of children. -- And so, it has been held that although unequal penalties are imposed, as between juveniles and adults, this does not offend against the rule that unequal penalties may not be imposed. (Citing cases.) Children disciplined and controlled under such acts are not deprived of the equal protection of the law or of due process of law.

This case held that upon habeas corpus the petitioner was denied due process of law under the Constitution, both Federal and State. This Court denied the allegation, citing the above quoted language.

In the second case pertaining to this matter, State ex rel. Naramore v. Hensley, 53 N.M. 308, 207 P. 2d 529, the Court held that the State was the beneficial party in an action in Juvenile Court and that the parents of the juveniles had no right to contest under the Constitution.

The third case decided in this jurisdiction is State v. Doyal, 59 N.M. 454, 286 P. 2d 306, wherein the Court, in approving language from the Santillanes case, supra, stated:

"Challenge is further made on the ground that failure to provide for an appeal, and failure to protect against double jeopardy and self-incrimination makes the act unconstitutional -- that no due process of law is provided. These objections are all stricken down once we say, as we do, that this is not a criminal proceeding. The authorities generally, we might say almost universally, hold that juvenile court proceedings are entirely different in nature and character from criminal proceedings."

None of these cases deal specifically with the question of whether or not under the statutes comprising the Juvenile Code, there is a right to bail. This matter, however, has been considered by other courts and is the subject of a short annotation in 160 ALR 284, at p. 287. In that annotation, Espinosa v. Price (Tex.), 188 SW 2d 576, is cited and the following language is contained in that case:

"The civil nature of proceedings against delinquent children excludes application of constitutional and statutory provisions as to bail in criminal cases. -- That no provision of the state or federal constitution was infringed by a refusal to admit to bail upon appeal children who were committed for delinquency under the Juvenile Delinquency Act of Texas."

The same holding was made in Ex parte Newkosky, 94 NJL 314, 116 Atl. 716, and in Cinque v. Boyd, 99 Conn. 70, 121 Atl. 678.

We suggest further that the matter contained in 25 Am. Jur. 207 and 31 Am. Jur. 784, et seq., be perused for a full discussion of the general powers of juvenile courts and the civil nature of such proceedings.

Thus it is the holding of this office that under the Juvenile Code, a juvenile is not entitled to bail nor is he entitled, as a matter of right, to bond on supersedeas after a determination has been made that he is a juvenile delinquent and a sentence of detention has been passed against him. Of course, so far as the question of supersedeas bond is concerned, the matter would be under the rules of the court and discretionary with the court.