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Juvenile Court: Contempt As Grounds for Adjudicating Delinquency

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In Matter of Jones, ___ N.C. App. ___, 297 S.E.2d 168 (1982), the North Carolina Court of Appeals held that an undisciplined juvenile's noncriminal activity that constitutes a willful violation of the terms of a court order cannot be grounds for an adjudication that the child is delinquent. The decision resolves an issue that has created disparate treatment of juveniles across the state, as judges have differed in their views of whether criminal contempt was a proper means of asserting control over status offenders who willfully violate court orders. Until the legislature says otherwise, it is not.

The Jones case involved a fifteen-year-old who was adjudicated undisciplined for being unlawfully absent from school forty-three times. The trial judge set the case for review a month later and ordered the juvenile to attend school regularly, to be home at 8:00 p.m. on weeknights and 11:00 p.m. on weekends, and to notify her custodian of her whereabouts at all times.

Before the review hearing, the court counselor filed a petition alleging that the girl was delinquent in that she had willfully violated the court's order by staying out all night, spending a weekend away from home, and missing school. At the hearing on the petition, the trial judge adjudicated her delinquent, finding that she had willfully violated the prior order, and indicated that he would place her on probation. But when the girl said she would not obey a probation order, the judge ordered her committed to the Division of Youth Services for not more than thirty days.

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In a brief opinion the Court of Appeals relied on legislative intent in interpreting G.S. 7A-517(12), the definition of "delinquent juvenile," to require that the trial court's order be reversed. The court pointed out that before July 1, 1978, the statutory definition included as delinquent "a child who has violated the conditions of his probation." The court saw the General Assembly's deletion [from former statute G.S. 7A-278(2)] of probation violation from the definition of delinquent child as indicating an intent that only criminal activity be the basis for an adjudication of delinquency. Therefore, the court reasoned, to permit courts to treat probation violations as criminal contempt and to adjudicate delinquency on the basis of contempt would frustrate the legislative purpose in removing probation violations as a basis for adjudicating delinquency.

It should be noted that the Jones case does not hold that criminal contempt may never be the basis for an adjudication of delinquency. G.S. 5A-11 lists the ten exclusive grounds for criminal contempt. The Jones decision addresses only one portion of one ground:

- (3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.
[Emphasis added.]

Since the court's holding rested solely on an interpretation of the legislative intent in removing violation of probation as an act of delinquency, it is difficult to read into the opinion a sweeping exception of criminal contempt from those offenses for which a juvenile may be adjudicated delinquent. It is possible, then, that an undisciplined juvenile's willful interference with a court's lawful process, order, directive, instruction, or execution thereof or the child's willful disobedience of a court's lawful process could constitute "a criminal offense under state law" within the meaning of the definition of delinquent juvenile in G.S. 7A-517(12). It is even more likely that conduct that comes within one of the other grounds for criminal contempt, such as willful behavior during court that directly tends to interrupt the proceedings, could be classified as delinquent.

On the other hand, it is possible that criminal contempt would never constitute a "criminal offense" within the contemplation of the legislature in its definition of delinquent juvenile. Although criminal in nature, contempt proceedings have been referred to as sui generis [Mauney v. Mauney, 268 N.C. 254, 150 S.E.2d 391 (1966)]. Thus, if confronted with the broader issue, our appellate courts might hold that a juvenile cannot be adjudicated delinquent on the basis of criminal contempt unless the underlying conduct is criminal.

Such a holding would be consistent with prevailing federal and state policies of treating status offenders as nondelinquent youths. Until our courts are faced with the issue, however, it simply is not clear whether the contempt provisions of Chapter 5A of the General Statutes have any applicability to juveniles.

Facts similar to those in the Jones case are familiar to every district court judge who hears juvenile cases. The courts' lack of coercive authority in such cases has generated frustration and growing controversy over the proper handling of status offenders, including questions as to whether they should be removed from the court system altogether. At least two state supreme courts have responded to the issue by permitting the secure detention of repeat status offenders under carefully defined conditions only in carefully restricted types of facilities [see State ex rel. L.E.A. v. Hammergren, 294 N.W.2d 705 (Minn. 1980); L.A.M. v. State, 547 P.2d 827 (Alaska 1976)]. A California appellate court granted a writ of habeas corpus to release a juvenile who had been detained on the basis of criminal contempt. The court sympathized with juvenile court judges forced to deal with the "maddening, baffling, and annoying" law applicable to status offenders, and it urged the legislature to choose among three alternative responses to the dilemma: (1) declare that status offenders are no business of the state and leave parents and children to work out their problems without state intervention; (2) remove status offenders from the jurisdiction of the court and respond to their problems through other state-supported agencies and services; or (3) give juvenile court judges the authority, in proper cases, to detain status offenders in secure facilities [In re Ronald S., 69 Cal. App.3d 866, 138 Cal. Rptr. 387, 392-93 (1977)].

Our Court of Appeals in the Jones case did not stray from the narrow issue before it to address the larger problem. It did convey a message consistent with decisions of other courts that have rejected the use of criminal contempt as a basis for incarcerating juveniles whose underlying offense was noncriminal: "Juvenile courts cannot be permitted to accomplish indirectly that which they could not accomplish directly. Any change must come from the Legislature" [W.M. v. State, 437 N.E.2d 1028 (Ind. App. 1982)]. Accord, In Interest of Tasseing H., 281 Pa. Super. 400, 422 A.2d 530 (1980); In re Ronald S., supra].

The 1978 amendment deleting probation violation from the definition of delinquency resulted from a movement toward deinstitutionalization and from an effort to conform North Carolina law to federal standards in order to qualify the state for funds under the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. §§ 5601 et seq.]. In re-

sponse to nationwide concerns about courts' inability to enforce supervisory orders involving status offenders, the federal law has been amended to define circumstances in which noncriminal offenders who violate valid court orders may be placed in secure facilities. A final rule implementing this Valid Court Order Amendment was published and became effective on August 16, 1982 [28 C.F.R. § 31.303(i)(3); 47 Fed. Reg. 35,687 (1982)].

The new rule provides that a juvenile offender found to have violated a valid court order may be held in a secure detention or correctional facility. It provides standards and safeguards for determining whether a valid court order exists, for detaining a juvenile pending a violation hearing, and for due process rights before and during a violation hearing.

The essential elements of a valid court order under the rule include: (1) the juvenile was brought into court and made subject to an order, issued pursuant to proper authority, regulating his future conduct; (2) the court entered a judgment or remedy based on the facts after a hearing that observed proper procedures; and (3) the juvenile received adequate and fair warning of the consequences of violating the order at the time it was issued, and a written warning was given to him and his attorney. The rule provides that a juvenile may be detained pending a violation hearing if the court finds, at a hearing held within a 24-hour grace period, that there is probable cause to believe that he violated a valid court order. An earlier draft of the rule would have restricted prehearing detention to cases in which the child had a demonstrable recent record of either failing to appear in court or violent conduct that resulted in physical injury. Although not required by the final rule, those or other limitations could be adopted by a state.

Under the Valid Court Order Amendment a juvenile must be provided the following due process rights before and during a violation hearing:

1. The right to have the written charges served on him a reasonable time before the hearing;
2. The right to a court hearing;
3. The right to an explanation of the nature and consequences of the proceeding;
4. The right to counsel and to appointed counsel if the child is indigent;
5. The right to confront witnesses;
6. The right to a transcript or record of the proceeding; and
7. The right to appeal.

The rule also requires a judge, before ordering secure detention as a result of a violation hearing, to determine that

there is no less restrictive alternative appropriate to the needs of the juvenile and the community.

Neither the Valid Court Order Amendment nor the new federal rule directly affects North Carolina law. They do suggest approaches that are appropriate for legislative consideration and set limits within which statutory changes could be made without risking the loss of federal funds.

The Jones decision leaves unanswered the question of whether criminal contempt may ever be used as the basis for adjudicating delinquency. It does make clear that using criminal contempt to make a finding of delinquency--and thereby to broaden detention and dispositional alternatives--is not a permissible response to the noncriminal behavior of a status offender who willfully violates the terms of a court order. Implicit in the court's decision is the message that formulating an appropriate, effective judicial response to such behavior is a legislative task. Recent changes in the Juvenile Justice and Delinquency Prevention Act and rules issued pursuant to the Act provide some additional scope of alternatives for legislative consideration.