

5087

OHIO STATE REFORMATORY—INMATES COMMITTED BY
JUVENILE COURT—MUST BE RELEASED WHEN AGE
TWENTY-ONE YEARS ATTAINED—SECTIONS 1639-30 PARA-
GRAPH 5, 2131-1 G.C.

SYLLABUS:

Inmates of the Ohio State Reformatory committed thereto by the Juvenile Court under the provisions of paragraph 5 of Section 1639-30, General Code, must be released upon attaining the age of twenty-one years as provided in Section 2131-1, General Code.

Columbus, Ohio, April 30, 1942.

Honorable Charles L. Sherwood, Director, Department of Public Welfare.
Columbus, Ohio.

Dear Sir:

I have your request for my opinion which is accompanied by the following statement of facts:

“Subject: W———— C———— No. 38038 Ohio State
Reformatory
Born December 23, 1920
Admitted October 4, 1939, from Franklin County
Auto Stealing and OMVWOC, 1 to 20

Action by Pardon and Parole Commission February 10, 1942
—‘Conditional release to Pickaway County, Ohio, authorities
on or after March 16, 1942. If not wanted, parole on or after
May 1, 1942, when arranged by parole division.’

The above named boy was released from the Ohio State Reformatory on March 16, 1942, to ‘Pickaway County authorities’ in accordance with the action of the Pardon and Parole Commission, to answer to a charge which it was understood was pending against him in that county for an offense committed prior to the Franklin County felony on which he was sentenced to the Reformatory.

Some time in 1938, this boy together with R————
W———— stole an automobile in Pickaway County and while driving the stolen car were involved in a traffic accident resulting in the death of a man. The boys were not apprehended, but upon their conviction in the Court of Common Pleas of Franklin County on another charge and their sent-

ence to the Ohio State Reformatory on October 4, 1939, they were identified as the Pickaway County offenders. They were then indicted by Pickaway County on a charge of involuntary manslaughter and a detainer on this indictment was filed with the Superintendent of the Ohio State Reformatory. Following the indictment it was learned that they were under 18 years of age at the time of the commission of the Pickaway offense. Therefore, the cases were turned over to the juvenile court upon a complaint filed therein in accordance with Section 1639-29 G.C. It is understood that the juvenile court took no action under Section 1639-32 G.C. to order the boys into recognizance for their appearance before the Court of Common Pleas but retained the complaint as an open charge in the juvenile court.

On March 16, 1942, upon this individual's release from the Ohio State Reformatory on the Franklin county sentence, he was taken by the Pickaway county authorities before the juvenile court of that county. At this time he had arrived at the age of 21 years, his age being 21 years and three months. The juvenile court upon hearing the complaint committed him to the Ohio State Reformatory as a juvenile delinquent, stating that although he knew the individual to be past 21 years of age he acted under the provisions of that part of Section 1639-30 G.C., which reads:

'Whenever a child commits an act or acts of delinquency before arriving at the age of 18 years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, the same as if the complaint and hearing were held before such child arrived at the age of eighteen years.'

The Superintendent of the Ohio State Reformatory, and this Department, question their authority to accept a juvenile court commitment in the case of one over 21 years of age, and the Superintendent has requested Pickaway authorities to remove W_____ C_____ from the Reformatory.

The same history applies to R_____ W_____, former No. 38037 Ohio State Reformatory, except that he was born on May 1, 1921, and will not arrive at the age of 21 until May 1, 1942."

You now inquire as to the disposition to be made of these two individuals by the authorities at the Ohio State Reformatory.

Subsequent to the transmission of your request you caused to be furnished to me a copy of the complaint filed on March 26, 1942, in the Juvenile Court of Pickaway County. This complaint reads in part

that W———— C———— and R———— W————, “who were minors under the age of eighteen years, to-wit, the ages of 17 years, respectively,” appeared to be delinquent children in that “they did on the 3rd day of December, 1938, at the county of Pickaway aforesaid, unlawfully and purposely steal, take and drive away a certain motor vehicle,” etc.

Entries dated April 7, 1942, filed in the Juvenile Court of Pickaway County, read in part as follows:

“This day this cause came on for hearing and the said child was brought before the Judge, and it appearing that the Citation heretofore issued, has been duly served and that all persons interested are now before the court.

And the judge having heard the evidence and being fully advised in the premises, finds that said R———— E———— W———— was under the age of eighteen years, to-wit: about the age of seventeen years, and is a delinquent child, as stated in the affidavit; that he did *on the 3rd day of December, 1938*, at the county of Pickaway aforesaid, unlawfully and purposely steal, take and drive away a certain motor vehicle, * * *.

And it further appearing that said child is a suitable person to be committed to the care and custody of the Ohio State Reformatory, Mansfield, Ohio, as provided in 1639-30, subsection 5 of the Ohio General Code.

It is ordered and adjudged that said * * * be committed to the said Ohio State Reformatory, Mansfield, Ohio, to be received, cared for, educated and kept, until otherwise directed by due course of law. * * *” (Emphasis mine.)

On April 8, 1942, a Warrant to Convey was issued by the Juvenile Court of Pickaway County, which recited that R———— W———— and W———— C————, having been sentenced by the Juvenile Court of said county to be committed to the Ohio State Reformatory at Mansfield, were to be conveyed to the Ohio State Reformatory.

You have also caused to be furnished what is designated “Family and Personal History of Child” on a form prescribed by the Department of Public Welfare. The history relating to W———— C———— discloses that he was born December 23, 1920, and was at the time of his last commitment to the Ohio State Reformatory over 21 years and 3 months old. The history relating to R———— W———— discloses

that he was born May 1, 1921, and accordingly will be 21 years of age on May 1, 1942.

Certified copies of a Capias in each case, directed to the sheriff of Pickaway County, dated December 16, 1939, commanding the sheriff to take each of the individuals involved and "have him before the Court of Common Pleas at the Court House in said county forthwith to answer unto an indictment against him for stealing an automobile or driving it without owner's consent" are also furnished.

The returns of these certified copies show that both W———— C———— and R———— W———— were respectively arrested on March 15 and 16, 1942, by such sheriff. In each case an entry signed by the judge of the Court of Common Pleas of Pickaway County, dated March 26, 1942, and filed with the clerk of that county, reads as follows:

"This day this cause came on to be heard on motion of the defendant requesting that this cause be certified to the Juvenile Court of Pickaway County, Ohio, for the reason that at the time of the commission of the alleged crime set forth in the indictment herein, the defendant was under the age of eighteen years; and the Court being fully advised in the premises finds and determines that on December 3rd, 1938, the defendant was under the age of eighteen years.

It is hereby ordered that the cause be certified to the Juvenile Court of this County, for further proceedings according to law."

Certified copies of these entries were also filed in the Juvenile Court of Pickaway County on March 26, 1942.

Sections of the Juvenile Code pertinent to your inquiry are Sections 1639-1, 1639-2, 1639-16, 1639-30 and 1639-32, General Code.

Section 1639-1, supra, reads in part as follows:

"The words 'judge,' 'judge of the juvenile court,' 'juvenile judge' or 'juvenile court,' used in this chapter (G.C. secs. 1639-1 to 1639-62) or under the laws of this state, shall be construed to mean the judge or the court exercising the powers and jurisdiction conferred in this chapter.

The word 'child' includes any child under eighteen years of age.

The word 'adult' includes any person eighteen years of age or over. * * *

Section 1639-2, *supra*, defines a "delinquent child."

Section 1639-16, *supra*, provides in part that:

"The court shall have *exclusive original jurisdiction* under this chapter or under other provisions of the General Code:

1. Concerning any *child* who is (1) delinquent, (2) neglected, (3) dependent, or (4) crippled. * * *

(b) The court shall have original jurisdiction to determine all cases of misdemeanors charging *adults* (1) with contributing to, encouraging, or tending to cause by any act or omission, the delinquency, neglect or dependancy of any child; or (2) with any act or omission with respect to any child, which act or omission is a violation of any state law or municipal ordinance; or (3) with desertion, abandonment or failure to provide subsistence. * * *"
(Emphasis mine.)

By Section 1639-30, *supra*, it is provided in part as follows:

"The court may conduct the hearing in an informal manner, and may adjourn the hearing from time to time. In the hearing of any case the general public may be excluded, and only such persons admitted as have a direct interest in the case. All cases involving children shall be heard separately and apart from the trial of cases against adults. The court shall hear and determine all cases of children without a jury.

If the court shall find that the child is delinquent, neglected, dependent or otherwise within the provisions of this act, it may by order duly entered proceed as follows: * * *

5. In case of a male child over sixteen years of age who has committed an act which if committed by an adult would be a felony, the judge may commit such child to the Ohio state reformatory.

Whenever a child commits an act or acts of delinquency before arriving at the age of eighteen years, and the complaint is not filed or hearing held until after said child arrives at the age of eighteen years, the court shall have jurisdiction to hear and dispose of such complaint, the same as if the complaint and hearing were held before such child arrived at the age of eighteen years.

No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any

child be charged with or convicted of a crime in any court, except as provided in section 1639-32, General Code. * * *

Whenever the court shall commit a child to any institution or agency it shall transmit with the order or commitment a summary of its information concerning such *child*."

Section 1639-32, *supra*, reads:

"In any case involving a delinquent child under the provisions of this chapter who has committed an act which would be a felony if committed by an adult, the judge after a full investigation and after a mental and physical examination of such child has been made by the bureau of juvenile research, or by some other public or private agency, or by a person or persons, qualified to make such examination, may order that such child enter into a recognizance with good and sufficient surety subject to the approval of the judge, for his appearance before the court of common pleas at the next term thereof, for such disposition as the court of common pleas is authorized to make for a like act committed by an adult; or the judge may exercise the other powers conferred in this chapter in disposing of such case."

Sections 2131 and 2131-1, General Code, contained among the sections relating to the Ohio State Reformatory, are also here relevant. Section 2131, *supra*, reads:

"The superintendent shall receive all male criminals between the ages of sixteen and thirty years sentenced to the reformatory, if they are not known to have been previously sentenced to a state prison. Male persons between the ages of sixteen and twenty-one years convicted of felony shall be sentenced to the reformatory instead of the penitentiary. Such persons between the ages of twenty-one and thirty years may be sentenced to the reformatory if the court passing sentence deems them amenable to reformatory methods. No person convicted of murder in the first or second degree shall be sentenced or transferred to the reformatory."

Section 2131-1, *supra*, provides:

"A male child over sixteen years of age committed by a juvenile court as provided by law shall also be received by the superintendent. After a child so committed has been received, sole control over such child shall be in the reformatory and the jurisdiction of the juvenile court over such child shall cease. * * * Such children shall be committed until they arrive at the age of twenty-one years of age, unless sooner released for satisfactory behavior and progress in training. * * *"

As to the nature of the Juvenile Courts of Ohio, and the jurisdic-

tion and purpose thereof, it is said as follows at page 64 of Adams and Hosford Ohio Probate Practice and Procedure:

“The legislature has established the juvenile court in the exercise of its police power, to protect children and to remove them from evil influences, and the juvenile court act, which provides for the care of delinquent children, does not declare delinquency a crime. Such statutes are corrective and not criminal.”

See also *The Children's Home of Marion County, et al. v. Fetter, et al.* 90 O.S. 110, and *Leonard v. Licker*, 3 O.A. 377 (1914). In the latter case it was said as follows at pages 380 and 391:

“It has been held by the supreme court of the state of Ohio with reference to the constitutionality of certain sections providing for the commitment of children now known in the statutes as delinquent children, that ‘It is neither a criminal prosecution, nor a proceeding according to course of the common law, in which the right to a trial by jury is guaranteed. The proceeding is purely statutory; and the commitment, in cases like the present, is not designed as a punishment for crime, but to place minors of the description, and for the causes specified in the statute, under the guardianship of the public authorities named, for proper care and discipline, until they are reformed, or arrive at the age of majority. The institution to which they are committed is a school, not a prison; nor is the character of their detention affected by the fact that it is also a place where juvenile convicts may be sent, who would otherwise be condemned to confinement in the common jail or the penitentiary.’

This language is a part of the opinion of White, J., as found in *Prescott v. The State*, 19 Ohio St., 184, 187. * * *

* * * The Ohio state reformatory is a prison for persons who are convicted of felonies and committed thereto upon a sentence of the court following such conviction; but for delinquent children who may be committed thereto after having committed an act constituting a felony it is only a school or place of reformation. It is what its name imports, a reformatory. The case just cited sustains the position of the court in this regard.”

Your attention is also directed to 24 O. Jur. 548, et seq., and cases cited.

At the outset it might be pointed out that even though these two boys were first sentenced to the Ohio State Reformatory by the Com-

mon Pleas Court of Franklin County as "male criminals" under the provisions of Section 2131, General Code, the Juvenile Court of Pickaway County, upon their release from the Reformatory in March, 1942, and after their cases had been certified to such court by the Common Pleas Court of Pickaway County, as shown by the entries quoted above, assumed jurisdiction over them. If there is any authority in law for such jurisdiction, it is undoubtedly in paragraph 5 of Section 1639-30 above quoted. A literal construction of these provisions would give the Juvenile Court jurisdiction over an individual during his entire life for an act of delinquency committed before arriving at the age of eighteen years. Such a construction would, of course, be absurd in view of the nature and purpose of the Juvenile Courts as set forth above, and particularly in view of the fact that Section 2131-1, General Code, requires the release of boys committed to the Reformatory when they arrive at the age of twenty-one years of age.

Construing all of these related sections together, therefore, the logical conclusion is that W——— C———, who was past twenty-one years of age at the time of his last commitment to the Reformatory from the Juvenile Court of Pickaway County, was beyond the jurisdiction of that court, and it likewise follows that R——— W——— was not. It is not necessary or appropriate, however, for this office to pass on this particular question, as it is not the function of the Attorney General, the Director of Public Welfare or the Superintendent of the Ohio State Reformatory, to review, set aside or modify the judgments or orders of a court. Each court has the power and authority to determine its own jurisdiction.

In Opinion No. 397, Opinions Attorney General, 1927, Vol. I, p. 689, the syllabus reads as follows:

"Administrative officers in the performance of their official duties should act in accordance with the orders of a court, even though such orders may not be in accord with the opinion of the Attorney General and even though the court's decision may have been made in the discharge of an administrative duty rather than in its strictly judicial capacity."

Your attention is also directed to Opinion No. 1277, Opinions Attorney General, 1927, Vol. III, p. 2297, the first paragraph of the syllabus of which reads as follows:

"The judgment or sentence of the trial court is a finality,

unless and until the same be set aside or modified by a court of competent jurisdiction, and the Superintendent of the Ohio State Reformatory, the Ohio Board of Clemency and all other administrative officers are bound thereby, in the absence of action thereon by a court having jurisdiction so to act."

The only question which requires an answer in so far as your department and the reformatory is concerned is as to the present disposition of these two cases. It seems clear that W———— C————, being over 21 years of age, should be discharged immediately, and that R———— W————, who will arrive at the age of 21 years on May 1, 1942, should be discharged as of such date. Whether or not they may be returned to the jurisdiction of the Court of Common Pleas of Pickaway County on the indictments still pending is likewise not a question for this office to determine but one solely within the determination of that court in the event of their being taken into custody by the law enforcement officials of that county.

Respectfully,

THOMAS J. HERBERT
Attorney General.