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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 730592

A. E. SLAYTON, Superintendent,
VIRGINIA STATE PENITENTIARY

Appellant

v.

JOHN ADAMS HAYES

Appellee

APPENDIX

WALLACE G. DICKSON
Attorney for Appellee

BENJAMIN N. A. KENDRICK
On Brief

EUGENE P. HINES
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Washington, D. C.
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Richmond, Virginia 23219

APPENDIX

TABLE OF CONTENTS

Letter to Assistant Attorney General Concerning Agreement as to Additional Pages to be Inculded in the Appendix

Transcript dated March 14, 1973, filed May 16, 1973;
Statement of the Court,
Statement of Counsel.
Testimony of John Adams Hayes,
Findings of Fact by the Court

Transcript dated April 10, 1973, Filed April 26, 1973;
Testimony of Ida Scafford and Joseph A. Rollo;
Findings of Fact and Conclusions of Law by the Court

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WALLACE O. DICKSON
BENJAMIN N. A. KENDRICK

December 6, 1973

Linwood T. Wells, Jr., Esq.
Assistant Attorney General
1101 East Broad Street
Richmond, Virginia 23219

Re: A. E. Slayton, Superintendant, Va. State Penitentiary v. John Adams Hayes
Record No. 730592

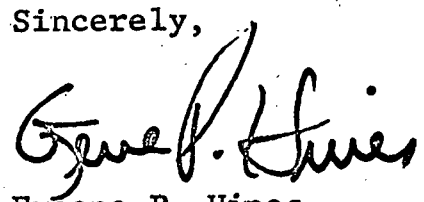
Dear Mr. Wells:

Pursuant to our telephone conversation of last week and our agreement as to the record on appeal, I am going to include for the record for appeal pages 4, 5, 17, 18-27, 32, 33, 43-46, 61, 67, and 69-70 of the transcript of the March 14, 1973 hearing and pages 3, 6-9, 19, 35, 36, 62-64, and 73-76 of the April 10, 1973 transcript.

These pages will be included in an appendix to my Brief.

Please contact me if you have any questions on the above.

Sincerely,



Eugene P. Hines

EPH:rr

cc: Clerk
Supreme Court of Appeals
Richmond, Virginia

1 MR. DICKSON: That is my understanding, Your
2 Honor.
3 MR. HAYES: Yes, sir.
4 THE COURT: All right, sir.
5 Anything you want to say?
6 MR. DICKSON: Your Honor, there has been a
7 Motion to Dismiss filed. I assume the Court wants to hear
8 argument first, or do you want to take testimony?
9 THE COURT: I think we ought to hear the entire
10 thing. I will take your Motion to Dismiss under considera-
11 tion after all the evidence is in. There are certain
12 allegations in the petition which I feel makes a
13 preliminary hearing essential here and the reason it was
14 not dismissed on the record. So go right ahead.
15 MR. DICKSON: Your Honor --
16 THE COURT: (Interposing) Just a minute. Let's
17 be sure this is agreeable to the Attorney General.
18 If you feel you ought to be heard on the Motion
19 to Dismiss, certainly I will hear you while we are all here.
20 It seems we ought to get all the evidence in and have it
21 at that time.
22 MR. WELLS: I have no objection to the taking of
23 testimony.

Constitutional grounds

5

1 THE COURT: All right.

2 MR. DICKSON: Your Honor, in way of opening

3 statement, it is the defendant's position that the State

4 precluded, by its action, precluded him from fulfilling

5 the conditions of the probation and that position is based

6 on several factors.

7 First of all, as the Court knows, the original

8 Order was that the defendant serve eight years, six and a

9 half of which were to be suspended, on the condition that

10 upon his release he would submit to a narcotics program

11 under the terms and conditions of Section 311 of the

12 Federal Act.

13 It is the defendant's position that the State,

14 having set that condition down, did not then upon his

15 release from the penitentiary take the necessary steps to

16 put him in a program under the narrow act which meets the

17 standards as set down in that act.

18 In addition, the State did not on the record

19 consent, as is required by the Federal Act, to his placement

20 in such a treatment program.

21 I would like to point out on that last point

22 that the defendant was released from the penitentiary.

23 THE COURT: This was the very first time?

occasions in jail?

THE WITNESS: At least.

MR. DICKSON: As well as interviewing or consulting with the people of the Prelude program?

THE WITNESS: Yes.

MR. DICKSON: In an attempt to get him in that program?

THE WITNESS: Yes, and I went to jail every time Mr. Hayes called me.

MR. DICKSON: That is all I have.

MR. WELLS: No questions.

(Witness excused.)

MR. DICKSON: I would like to make a few remarks, Your Honor.

Section 311 of the Federal Narcotics Rehabilitation Act, Subchapter 1, is the statute in point. I would like Your Honor to be aware of Section 3401 under that act. That is a declaration of policy, the policy of Congress in establishing the program for drug treatment centers throughout the nation. In that section, the law states that it is the policy of Congress that certain persons who are not charged with the commission of any offense should be afforded the opportunity to receive

1 commitment for treatment and that certain persons charged
2 or convicted of violating a Federal criminal law who are
3 determined to be addicted and are likely to be rehabilita-
4 ted through treatment should, in lieu of prosecution or
5 sentencing, be civilly committed for confinement and
6 treatment to effect their restoration to health and return
7 to society as useful members.
8 That is the statement of basic policy. In
9 Section 3411, the Title definition is that Congress
10 defines treatment as follows: In Section B of that
11 section, Subsection B of that section, treatment includes
12 confinement and treatment at a hospital and supervised
13 after-care. I believe it is the after-care that we're
14 talking about here, in a local facility in the community.
15 It includes but is not limited to medical, educational,
16 social, psychological and vocational services. Also
17 corrective and preventive guidance and training and other
18 rehabilitation services designed to protect the public
19 and benefit the addict by correcting his antisocial
20 tendency, ending his dependency on drugs and his suscept-
21 ibility to addiction.
22 Then in Section 3421, the Congress states, the
23 act states that provisions of this subsection shall not be

1 applicable with respect to any person against whom there
2 is pending a criminal charge, whether by indictment or
3 by information which has not been fully determined or who
4 is on probation or who is sentenced following conviction
5 of such a charge, including any time on parole or mandatory
6 release not fully served except that such provision shall
7 be applicable to any such person on probation, parole,
8 mandatory release, if the authority is authorized to
9 require his return to custody consistent to his commitment.
10 Your Honor, that section requires that the
11 authority, in this case the Arlington County Circuit
12 Court, must consent by letter of consent to the facility
13 under that requirement before a probationer or a parolee
14 can effectively be submitted to any program.
15 That statute, I think, is very clear that no one
16 in his situation as he was at the time can enter the
17 program and cannot be accepted into the program until
18 there is such consent.
19 I point out once again to the Court that consent
20 in this case was not forthcoming until the 29th of
21 December, 1971, some ten months after he had been initially
22 introduced to the program.
23 Subsequently, the records do not technically show

1 him fully admitted to any program until after his so-called
2 violation of probation and to his prejudice then after he
3 was submitted to the program, he was precluded from getting
4 back in the program.
5 The only thing that occurred after the consent
6 from the Court, the only thing that occurred after that
7 was the revocation hearing based on his leaving the
8 facility in which he was placed on two occasions. That
9 is my point. He was not technically admitted to any kind
10 of drug treatment program under the narrow act as required
11 by his probation conditions and Court Order.
12 THE COURT: Suppose I accept that argument. Where
13 does that leave us? There is only one of two results of
14 this hearing -- freedom or remand.
15 Now, it seems to me there would have to be a
16 third if I buy that argument -- that is, he ought to now
17 go into the program.
18 MR. DICKSON: I think that is a third alternative
19 available to the Court in this hearing. If the Court
20 determines that he is being ill detained because of the
21 way things were back during his probation period, the
22 Court could reinstitute his probation. He was supposed
23 to be on probation after one-half year of confinement in

1 Was it really shown by the evidence that that was the
2 cause, that that was the real cause for him to walk away?
3 That is what he's got to show.
4 THE COURT: You don't have any citation to give
5 me on that issue, do you?
6 MR. WELLS: No, I do not.
7 THE COURT: What do you say about the fact that
8 the letter from Judge Russell consenting to the submission
9 of the Federal program is dated December 29, 1971?
10 MR. WELLS: I would have to say that the Court
11 really wasn't asked for consent until the letter was
12 received December 15th so the letter that was written on
13 the 29th was presumably mailed fourteen days after the
14 letter of request was made.
15 THE COURT: Whose burden is it? Is it the
16 Court's burden to affirmatively send the letter or to sit
17 back and wait for somebody to ask them to?
18 MR. WELLS: The consent on one of the orders --
19 it has never been clear on which consent we're talking
20 about.
21 THE COURT: I saw that.
22 MR. WELLS: The consent on that order --
23 MR. DICKSON: (Interposing) That order was not,

1 MR. DICKSON: I have talked to the probation
2 department and I think if the Court wanted to explore this,
3 they would find as I did that the programs are much more
4 able to cope with the individual's needs today than they
5 were then although there is still the problem of juris-
6 diction.
7 I think that might benefit the Court although I
8 would request whether the Court is in a position to
9 consider placement on probation until the Court is prepared
10 to rule on this petition.
11 THE COURT: Either one of the parties is entitled
12 to the Court's ruling. I'm not trying to get out of that,
13 and if either of you insist that be done before we find
14 out what is available, that will be the end of it.
15 MR. DICKSON: I would be very happy if the Court
16 would set a date when that kind of information from the
17 experts in this field would be taken.
18 MR. WELLS: Your Honor, I have this problem.
19 Suppose the experts say, "Yes, the program is fine now.
20 You need two psychiatrists for thirty people. We've got
21 the two psychiatrists for thirty people." Then the
22 defendant-petitioner is remanded to the custody of the
23 probation officer at whatever place has these facilities.

1 longer employed.

2 THE COURT: I don't know if there is any evidence

3 like that available. There may not be. I assume this was

4 considered when the Attorney General's office did not

5 present any evidence. I'm not suggesting you should but

6 I just want to be sure that you have every opportunity to

7 develop this record fully.

8 MR. WELLS: Yes.

9 THE COURT: You would wish that opportunity?

10 MR. WELLS: Yes.

11 THE COURT: I think you are entitled to it.

12 You are in Richmond?

13 MR. WELLS: Yes.

14 THE COURT: That will mean coming back up here

15 again.

16 MR. WELLS: That is part of the job.

17 THE COURT: I dislike intensely deferring it

18 but I am concerned about the issues involved in it. It

19 seems to me, frankly, that it would be the easy way out

20 although the correct way out -- I haven't decided yet --

21 to say here's a man who just walked away twice and we're

22 giving him a chance to walk away a third time. That may

23 be the answer to this. But on the other hand, I am bound

1 to some degree by his testimony where he went out there
2 and repaired the house and washed windows and washed dishes,
3 and that is not going to help his drug addiction.
4 How much time do you want to put on whatever
5 further evidence?
6 MR. WELLS: I wouldn't think it would last
7 longer than an hour.
8 THE COURT: Next week? Would that be enough
9 time?
10 MR. DICKSON: I presume I will have the opportunity
11 to put on additional evidence.
12 THE COURT: Yes, you will.
13 MR. DICKSON: And, Your Honor, the Order in the
14 file directs the sheriff to return the defendant to the
15 road camp on conclusion.
16 THE COURT: On conclusion. The hearing is not
17 concluded. He will be here in Arlington until then.
18 MR. WELLS: I have a case on April the 4th.
19 Before that time, I have got to be several other places.
20 THE COURT: Is April the 4th agreeable to you?
21 MR. DICKSON: Fine, Your Honor.
22 MR. WELLS: April the 10th -- I'm sorry, Your
23 Honor.

1 P R O C E E D I N G S

2 THE COURT: Gentlemen, as I recall, at the conclusion of
3 the testimony when this matter was heard before, I inquired primarily
4 of the Attorney General's Office if they desired to put on any
5 additional testimony regarding the Crossroads Program as it existed
6 at the time that the petitioner contends that he received no
7 assistance in the two times that he was there. And it was your
8 request that you did. So I assume that's why we are here.

9 MR. WELLS: Yes, sir.

10 THE COURT: Now, Mr. Dickson, you have some evidence also.
11 Is that correct?

12 MR. DICKSON: Your Honor, I may have.

13 THE COURT: Well, let's proceed with the Commonwealth's
14 evidence.

15 MR. WELLS: I call Iola Scrafford.

16 THE COURT: All witnesses that will testify in the Hayes
17 matter, please come forward to be sworn at this time.

18 MR. ~~WELLS~~ DICKSON: Your Honor, there is Mr. Tom Geib whom the
19 petitioner may wish to call at a later time. He will be available.
20 Of course, he's across the street.

21 THE COURT: Is there no one else in the courtroom to
22 testify in this matter?

23 (The Clerk swore two witnesses.)

1 involved in, the residential as distinguished —

2 A Residential.

3 Q You indicated, I think, that the program did not involve

4 what I would describe as straight, pure, medical treatment. Is that

5 correct?

6 A Definitely not. We are not —

7 Q Did it include psychiatric treatment by a psychiatrist?

8 A No. Let me say that according to the way we were set up

9 at that time, we had a contract with the Narcotic Rehab Act. Anyone

10 who was committed to the program was then also committed to what it

11 would be known as NARA. After the commitment, we were able to obtain

12 a medical examination and a psychiatric evaluation. This could not

13 be done prior to commitment because there would be no funds to pay for

14 it.

15 Q All right. Now when you say "commitment" —

16 A I am talking about a civil comitment through the Federal

17 Court to Crossroads Program.

18 Q Of your own knowledge, do you know whether that occurred in

19 the case of the petitioner?

20 A No, it did not. We had instituted the proceedings for it.

21 It was to be at Federal Court the following Friday after he left.

22 We had to obtain a letter of consent from the presiding judge who,

23 I believe, was Judge Russell at the time. We got the letter dated

1 December 29th, but John had left the day before on December 28th.

2 Q All right. So that the Court understands your testimony —

3 and if what I say is not correct, I want you to so say — are you telling

4 the Court that the petitioner would not have received: number one,

5 medical treatment; and, number two, psychiatric treatment until such

6 time as he was committed civilly?

7 A No, that's not accurate. I am saying the medical examination

8 and psychiatric evaluation. If he had become physically ill, we have

9 an arrangement with Fairfax Hospital that he could have been taken

10 there. It would have been for an acute illness; or, you know, if he

11 had exhibited any bizarre behavior we could have called in our

12 consultant psychiatrist. But essentially he is not normally in the

13 program until he goes through the medical examination and the

14 psychiatric evaluation.

15 Q Let me just state to you that at the prior hearing the

16 petitioner described the treatment at Crossroads as: number one,

17 not including medical treatment; and number two, not including

18 psychiatric treatment. On the assumption that if he had stayed in

19 Crossroads, if he —

20 MR. DICKSON: Your Honor, I am going to object to any

21 questions regarding any assumptions on behalf of this witness. I

22 don't know that assumptions are admissible.

23 MR. WELLS: I will rephrase the question.

1 BY MR. WELLS:

2 Q In what manner, if in any manner, does treatment change
3 between or did treatment change in December of 1971 as contrasted
4 between the time before the time one is committed and after the
5 time one is committed?

6 A No, the esential change would be that during the psychiatric
7 evaluation it would be determined that the client needed treatment
8 in view of the psychiatric modality, rather than the type we had.
9 We would request, you know, that he be transferred to another modality.

10 Q Tranferred where?

11 A To a psychiatric hospital.

12 Q Well, then I take it that the program at Crossroads as a
13 particular location did not include and would never include psychiatric
14 care. Is that correct?

15 A Only — well, it's not totally correct. Our staff there
16 is supervised by the consultant psychiatrist of the program. And he
17 would, you know, determine at that time whether anyone, you know,
18 would be appropriate for our program. If psychiatric, you know,
19 if continuous psychiatric treatment is involved that person would not
20 be appropriate for our program.

21 Q And I take it he would be transferred to a different
22 location?

23 A Right.

1 Q And he would receive some other kind of treatment?

2 A Correct.

3 Q Did you have any personal contact with the petitioner

4 in December of 1971?

5 A I can't remember. I don't believe I saw him in December.

6 I knew him. I think I had talked to him on his previous stay there

7 which would be earlier, some months earlier.

8 Q You did talk with him about his — I believe that date was

9 in March?

10 A I believe I just spoke to him before he went into the

11 house. And I think I had seen him several times there at the house

12 when I visited.

13 Q How long in the period of December, 1971 did it normally

14 take from entrance into Crossroads until the time one was civilly

15 committed?

16 A At that time, because of the backlog in the Federal Court,

17 we sometimes had to wait six to eight weeks before we could get on the

18 Court docket, the Federal Court. That has since changed in that we

19 have every Friday now available to us for these civil commitments.

20 But from what I understand, there was only one Federal judge at that

21 time.

22 Q The petitioner, at the other hearing, as I recall his testi-

23 mony testified to something like this; that he was requested, or forced,

of the staff or was he simply available upon your request for some consultations?

A He was available not on my request but regularly once a week for two hours. We had a contract for two hours every week.

Q Now during March of 1971, do your records reflect that — first of all, let me ask who was the consulting psychiatrist?

A Doctor James Thorpe at that time.

Q Doctor James Thorpe.

Do your records reflect whether or not Doctor James Thorpe visited the Crossroads Residential Treatment Center during the month of March, 1971?

no psych consultant with resident

A No, he did not. He merely consulted with the staff.

Q He consulted with the staff?

A Right.

Q He did not consult with the residents?

A No.

Q Does he not consult from time to time with any of the residents?

A No, our consultant psychiatrist still consults with only the staff; sees patients as they are staffed, if he deems that it would be advisable.

Q When you say he sees patients —

A This would be —

1 Q — because that is a program you have laid out.

2 A Right.

3 Q But you can't testify as to whether this petitioner was

4 present —

5 A No.

6 Q — at those meetings; or whether he was requested to be

7 present?

8 A No.

9 Q If he said that he had attended none, would you say that

10 that could be correct?

11 A I'd say unlikely, but I couldn't argue it. I have no

12 proof to the contrary.

13 Q Now during your intake procedures, according to your

14 testimony, as a part of intake there is no psychiatric or medical

15 evaluation made?

16 A Right.

17 Q That is only made after commitment which would be six

18 or eight weeks away in 1971?

19 A Right.

20 Q Today it's done on a weekly basis under the —

21 A For those who go into NARA, we have a program for those

22 under 18 that do not. They still have to wait. We do not do a

23 psychiatric evaluation on every client. I think the counsellors are

1 sensitive enough to know when it would be necessary. And our
2 psychiatrist, as the case is presented to him — you know — with
3 the total family history would make that —
4 Q That is today?
5 A Right.
6 Q But in '71, it is your testimony — if I am not incorrect —
7 that no psychiatric or medical evaluation was made until after
8 commitment.
9 A For those who were going to be committed.
10 Q Right.
11 So, what did your intake procedure consist of?
12 A Just simply the vital information, plus the short social
13 history.
14 Q And upon whose shoulders rested the decision whether to
15 accept or to refuse to intake a certain resident?
16 A This would be done at a staff meeting with our entire
17 staff and our psychologist.
18 Q Now was that done in the case of Mr. Hayes, the petitioner?
19 A I would assume, but again, you know, unless I had the
20 staff — we do have records of that. And I would have to look back
21 to see what date he was staffed.
22 Q Could it be true that that was not done prior to intake?
23 A It would be most unusual.