

CITATION: VAOPGCPREC 3-90
Vet. Aff. Op. Gen. Couns. Prec. 3-90

DATE: 03-20-90

TEXT:

SUBJECT: Reduction of Benefits Pursuant to 38 U.S.C. §§ 3113 and 505

QUESTION PRESENTED:

May a veteran who has been found "not guilty by reason of insanity" under California law and committed to a state hospital for care and treatment be subject to reduction or cessation of VA benefits pursuant to 38 U.S.C. § 505 or 3113?

COMMENTS:

1. The question arose when opinions issued by the Los Angeles and San Francisco District Counsels reached opposite conclusions. The Los Angeles District Counsel opinion held that VA benefits may be barred pursuant to §§ 505 and 3113, emphasizing that legislative intent behind enactment of the statutes would require this result. The San Francisco opinion held that veterans committed to state hospitals following a finding of not guilty by reason of insanity were not convicted, nor were they incarcerated in a penal institution. Thus, the provisions of §§ 505 and 3113 would not apply. For the following reasons, we agree with the conclusion of the San Francisco District Counsel that the provisions of 38 U.S.C. §§ 505 and 3113 do not apply in this type of case.
2. The opinion of the Los Angeles District Counsel looked to the legislative history of 38 U.S.C. §§ 3113 and 505 to arrive at the conclusion that Congressional intent was to include those individuals who had been found not guilty by reason of insanity and confined to a state hospital for care and treatment within the scope of the statutes. However, the Supreme Court has made it clear that " i n determining the scope of a statute, we first look to its language. If the statutory language is unambiguous, in the absence of 'a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.' " United States v. Turkette, 452 U.S. 576 (1981). quoting Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980). The Supreme Court has stated that guides to statutory construction should serve only to resolve, not create, an ambiguity. Callahan v. United States, 364 U.S. 587, 596 (1961).
3. The language of the statutes is clear. 38 U.S.C. § 3113 requires reduction in VA compensation benefits for a beneficiary of compensation "who is incarcerated in a Federal, State, or local penal institution for a period in excess of sixty days for conviction of a felony ... for the period beginning on the sixty-first day of such

incarceration and ending on the day such incarceration ends...." See also 38 C.F.R. §§ 3.665.

Section 505 of Title 38 similarly provides that:

No pension under public or private laws administered by the Veterans' Administration shall be paid to or for an individual who has been imprisoned in a Federal, State, or local penal institution as a result of conviction of a felony or misdemeanor for any part of the period beginning sixty-one days after such individual's imprisonment begins and ending when such individual's imprisonment ends." See also 38 C.F.R. § 3.666.

4. Examination of the legislative history of sections 3113 and 505 does not reveal a clearly expressed legislative intent contrary to the language of the statutes. The Los Angeles District Counsel argues that the Congressional intent behind enactment of both statutes is revenue saving, not punishment. If, arguably, the intent is revenue saving, this is not contrary to the plain words of either statute. Moreover, an intent to save money does not require enlargement of the scope of the statute, that is, to include those found not guilty due to insanity and committed to a state hospital.

5. Nothing in the legislative history of s 3113 indicates an intention for the statute to be broadly construed. In fact, the original version of H.R. 7511 included those convicted of misdemeanors. The compromise agreement, however, provided that the limitation of benefits "would apply only to persons incarcerated for a felony conviction." Explanatory Statement of Compromise Agreement Concerning H.R. 7511, reprinted in 1980 U.S. Code Cong. & Admin. News 3323, 3326. The explanatory statement further states that "the limitations provided for under the compromise agreement apply to persons convicted of felonies and sentenced to imprisonment while they are institutionalized in a hospital facility on transfer from (but not on parole from) a penal institution." Id. at 3327. This provision indicates that normally, persons committed to a hospital would not be deprived of benefits.

6. In order to invoke the provisions of the above statutes, the veteran must meet two criteria, (1) incarceration in a penal institution in excess of 60 days, and (2) conviction of a felony. (Section 505 includes conviction of a misdemeanor as well as a felony.) Absence of either factor will prevent operation of the statute. It appears that, under California law, neither criteria has been met.

7. A finding of not guilty by reason of insanity under the provisions of Cal. Penal Code § 1026 (Deering 1982) is not a judgment of conviction. In re Merwin, 108 Call.App.31, 290 P.1076 (1930). This section provides that if a defendant pleads both not guilty by reason of insanity and not guilty, he will first be tried for

the crime, then, if he is found guilty, he will be tried on the question of his sanity. Following that trial or hearing:

If the verdict or finding be that the defendant was insane at the time the offense was committed, the court, unless it shall appear to the court that the insanity of the defendant has been recovered fully, shall direct that the defendant be confined in a state hospital for the care and treatment of the mentally disordered or any other appropriate public or private treatment facility approved by the community program director....

It is well settled in California that although separate hearings or trials are held for each issue, they jointly constitute but one trial. People v. Marshall, 99 Cal. App. 224, 278 P.258 (1929).

8. In People v. Skinner, 39 Cal.3d 765, 217 Cal. rptr. 685, 704, P.2d 752 (1985), the Supreme Court of California stated, "it is fundamental to our system of jurisprudence that a person cannot be convicted for acts performed while insane." (quoting People v. Nash, 52 Cal.2d 36, 50-51, 338 P.2d 416 (1959)). The court in In re Merwin, supra at 1077, explained that since wrongful intent or criminal mens rea is an essential element of crime, an insane person lacking mens rea could not be held responsible for a crime he or she committed. See also People v. Nash, supra, People v. Brock, 57 Cal.2d 644, 21 Cal.Rptr.560, 371 P.2d 296 (1962), People v. Darling, 58 Cal.2d 15, 22 Cal. Rptr. 484, 372 P.2d 316 (1962).

9. Secondly, the California code has impliedly recognized that persons committed to state hospitals based upon a finding of not guilty due to insanity (NGI) are not considered incarcerated in penal institutions. It is the State Department of Mental Health and not the Department of Corrections, FN1 which evaluates persons committed pursuant to Section 1026 of the Penal Code in order to determine whether the patient's propensity for dangerous behavior or escape makes it necessary to treat the patient in a secure setting. Cal. Welf. & Inst. Code § 7228 (Deering 1988). Further, Cal. Welf. & Inst. Code § 4132 (Deering 1982) provides that:

It is hereby declared that the provisions of this code reflect the concern of the Legislature that mentally disordered persons are to be regarded as patients to be provided care and treatment and not as inmates of institutions for the purpose of secluding them from the rest of the public. Whenever any provision of this code heretofore or hereafter enacted uses the term "inmate," it shall be construed to mean "patient."

10. Lastly, Cal. Welf. & Inst. Code § 7275 (Deering 1988) provides that the estate of a patient shall be liable for care, support, and maintenance of the person while a patient in a state institution. This section specifically states that this liability shall exist even when the person has become a patient pursuant to the

provisions of §1026 of the Penal Code. No similar provision exists in the state providing that prisoners in penal institutions shall be liable for their care, support and maintenance.

11. California case law overwhelmingly supports the conclusion that a person committed to a state hospital based upon a finding of not guilty due to insanity is not "incarcerated in a penal institution." Although the California code does not define "penal institution," the California Supreme Court has recognized that state hospitals are nonpenal institutions. People v. Sage, 26 Cal.3e 498, 165 Cal. Rptr. 260,281, 611 P.2d 874 (1980). Further, the Court has held that the confinement period of a prisoner is essentially different in nature from the commitment period in a state hospital. "The purpose of incarcerating a prisoner is punishment.... In contrast, the commitment of a mentally disordered sex offender is designed primarily for treatment." People v. Saffell, 25 Cal.3d 223, 157 Cal. Rptr. 897, 599 P.2d 92 (1979). Another California court held that "the law abhors the punishment of insane persons for the commission of acts out of which charges of crime arise, whether the insanity exist sic at the time such acts are committed or only at the time the punishment is about to be inflicted...." People v. Grace, 77 Cal. App. 762, 247 P. 585 (1926). As one court noted, "it may be properly concluded that the Legislature intended that an insane person charged with a crime as well as any other insane person should be subject to the provisions of the Welfare and Institutions Code, both for the protection of the person, his property rights, and for the protection of the public." Baer v. Smith, 68 Cal.App.2d 716, 157 P.2d 646, 650 (1945). More specifically, it has been held that the confinement of persons committed under section 1026 is not punishment. In re Jones 260 Cal.App.2d 906, 68 Cal. Rptr. 32 (1968).

HELD:

The provisions of 38 U.S.C. §§ 505 and 3113 do not apply to veterans who, under California law, have been found "not guilty by reason of insanity" and confined to a state hospital for care and treatment.

1 The California Department of Corrections administers California's various prisons. Cal. Penal Code §§ 5000-5011 (Deering 1980).

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