

214

1 ERRORS IN THE DECISION OF THE SPECIAL INQUIRY OFFICER

2 The Decision of the Special Inquiry Officer recites:
3 " . . . The record indicates that the criminal case
4 against the respondent was not 'pending' on May 25,
5 1967 because it had become a final judgment
6 upon the expiration of 30 days after the rendition
7 of the judgment pronounced on October 13, 1966
8 without appeal or appeal having been filed therein,
9 as provided in Section 31, Judicial Code of California
10 (California Penal Code, 12476)." 11

12 The error concerning the procedure and requiring the
13 court to make a final judgment is available. Penal Code,
14 12476, provides:

15 " . . . I request that the court by the defendant: 1.
16 a final judgment of conviction . . . a sentence
17 of probation shall be ordered to be a
18 sentence within the meaning of this Section"

19 According to the Penal Code provisions, the court,
20 holding a final judgment, 1774, 1775 (1965), stated:
21 "The defendant, defendant, and the proceedings
22 in this case, there is no judgment, and
23 it is a requirement that defend-
24 ant be committed to institution as conditions
25 of probation. . . . Cal.App.2d 129, 133
26 1967 (1967) 45 Cal.App.2d 625, 627 [45
27 Cal.App.2d 625, 627 (1967)] and it is established that
28 this provision has been applied and no judgment entered
29 on appeal would require to be taken from the judgment
30 and no violation as an appeal from the probation order. . . ."

31 In a footnote directive, People v. Kraps, 238 Cal. App.
32

215

1 At the hearing before the Immigration Service, a certified
2 copy of the Order of the Superior Court of Los Angeles County,
3 dated May 29, 1967, vacating the finding of guilt of said court and
4 certifying the respondent to the Juvenile Court was received in
5 evidence. No other documents were filed on respondent's behalf.
6 The respondent does herewith attach to this motion the following
7 certified copies of the record of the Superior Court of the County
8 of Los Angeles and of the Juvenile Court thereof, to supplement
9 the Immigration report on behalf of the respondent:

- 10 1. The April 27, 1967, Notice of Motion and Motion
11 to Modify Terms of Probation and Sentence, Vacate Finding
12 of Guilt, and Certify Defendant to Los Angeles County
13 Juvenile Court and Declaration of David C. Marcus in
14 support thereof.
- 15 2. The affidavit of service on the Los Angeles County
16 District Attorney.
- 17 3. The April 27, 1967, Minute Order of the Superior
18 Court, continuing said proceedings until May 11, 1967.
- 19 4. The May 23, 1967 Minute Order of the Superior Court,
20 referring the matter to Juvenile Court and continuance
21 to May 18, 1967.
- 22 5. The May 18, 1967, Minute Order of the Superior
23 Court continuing the matter to May 25, 1967.
- 24 6. The May 25, 1967, Minute Order of the Superior Court
25 providing that the finding of "Guilty" be vacated and the
26 defendant certified to Juvenile Court.
- 27 7. Petition of July 13, 1967, certifying the respondent
28 as a ward of the Juvenile Court.
- 29 8. Findings and Order of Referee dated July 14, 1967,
30 accepting certification and continuing the matter until
31 July 31, 1967, for disposition.

216

1 of respondent and on December 1, 1966, proceedings were resumed
2 and respondent was placed on probation to the court for a period of
3 five years, one condition being that he spend the first year in
4 the County Jail.

5 On July 13, 1967, respondent, through counsel, filed a
6 motion with the Superior Court of Los Angeles County, supported by
7 the declaration of his attorney, to vacate the finding of guilt and
8 to remand respondent to the Juvenile Court of the Los Angeles Superior
9 Court for further proceedings. On May 25, 1967, the finding of
10 guilt was vacated and the respondent was certified to the Juvenile
11 Court of the Superior Court of Los Angeles County. On July 13, 1967,
12 a petition was filed in the Juvenile Court of the Superior Court of
13 Los Angeles County by the Probation Department of the Superior Court,
14 alleging that Munir Sirhan, a minor of the age of nineteen years,
15 came within the provisions of Section 602 of the Welfare and Insti-
16 tutions Code for the violation of Sections 11530 and 11531 of the
17 Health and Safety Code of the State of California, praying that he
18 be adjudged and declared a ward of the Juvenile Court and dealt with
19 as such.

20 The matter coming on regularly for hearing on July 14,
21 1967, before a Referee of the Juvenile Court who accepted the
22 certification from the Los Angeles County Superior Court of the
23 State of California, was continued for disposition to July 31, 1967.

24 On January 11, 1967, an order was issued by the District
25 Director of the Immigration Department at Los Angeles to show cause
26 why the respondent should not be deported from the United States, on
27 the grounds that he had been convicted of the offense of violation
28 of Section 11530 of the Health and Safety Code of the State of
29 California. A hearing was conducted before Special Inquiry Officer
30 Edward F. Locke on June 6, 1967, and on July 11, 1967, the Special
31 Inquiry Officer rendered his decision ordering the respondent's
32 deportation from the United States.

217

218

219

William L. Shaw

• 6 •

220

the court should not be allowed to go to the extent of making a finding of fact as to the guilt of the defendant, but should be limited to the question of whether the evidence is sufficient to support the verdict.

ANALYSIS

The court in the present case is faced with the question of whether the evidence is sufficient to support the verdict. The court should not go to the extent of making a finding of fact as to the guilt of the defendant, but should be limited to the question of whether the evidence is sufficient to support the verdict.

In the present case, the court should not go to the extent of making a finding of fact as to the guilt of the defendant, but should be limited to the question of whether the evidence is sufficient to support the verdict.

The court in the present case is faced with the question of whether the evidence is sufficient to support the verdict. The court should not go to the extent of making a finding of fact as to the guilt of the defendant, but should be limited to the question of whether the evidence is sufficient to support the verdict.

The court in the present case is faced with the question of whether the evidence is sufficient to support the verdict. The court should not go to the extent of making a finding of fact as to the guilt of the defendant, but should be limited to the question of whether the evidence is sufficient to support the verdict.

The court in the present case is faced with the question of whether the evidence is sufficient to support the verdict. The court should not go to the extent of making a finding of fact as to the guilt of the defendant, but should be limited to the question of whether the evidence is sufficient to support the verdict.

- 1/ People vs. Halliday, 15 Cal. 2d 319, 102 P. 2d 1074; People vs. Palmer, 115 Cal. App. 2d 438, 253 P. 2d 755.
- 2/ People vs. Palmer, 115 Cal. App. 2d 438.
- 3/ People vs. Halliday, 15 Cal. 2d 319, 102 P. 2d 1074, and People vs. Mercer, 115 Cal. App. 2d 438, 253 P. 2d 755.
- 4/ In re Lynn, 65 Cal. App. 2d 396, 155 P. 2d 69.
- 5/ People vs. Bailey, 119 Cal. App. 2d 624, and People vs. Miller, 219 Cal. App. 2d 154.
- 6/ People vs. Palmer, 115 Cal. App. 2d 438, 253 P. 2d 755, 6 Cal. App. 447.

221

222

1 Neither of these cases are in point as they do not deal
2 with probationary sentences where the defendant is under the juris-
3 diction of the court. In Reid, Coram Nobis was invoked long after
4 defendant had begun serving his sentence, after a conviction on a
5 charge of murder. After disposition of the death penalty, the court
6 held that the motion should be denied as Coram Nobis would not
7 have been raised by a writ or on motion for a new trial, and that the
8 denial of the writ was proper. This case is distinguishable, unlike

9 Reid, the defendant in Reid was not under a
10 sentence at the time of the conviction but was under a sentence of imprisonment.
11 The Memorandum was denied on several grounds, after trial and
12 who found guilty, the court held that he was insane at the time of the
13 conviction and the sentence.

14 In Reid, the opinion will disclose that the
15 of the motion, as determined by the court to be "in the
16 of a motion for a new trial on merit in defendant's contention
17 the court is not entitled because only a single trial was
18 held and the defendant was not guilty by reason of insanity, but
19 that the defendant, after the advice of his attorney, had
20 knowingly and voluntarily admitted that he was insane and that
21 the defendant's admission did not constitute grounds to vacate the
22 judgment. The defendant testified under oath at the trial and
23 in error. This case has not application to the instant matter.

24 The following points and cases in support thereof are
25 also without merit as none involved a suspended and probationary
26 sentence. The Record of Coram Nobis has been well briefed and argued
27 in our previously supplied Memorandum to the Hearing Officer. We
28 again reiterate that the court was with jurisdiction to vacate the
29 finding of guilt and to certify the defendant to the Juvenile Court.

30 Respectfully submitted.

31 DAVID C. MARCUS
32 Attorney for Respondent

223

1 in any manner modify the sentence originally pronounced and enter,
2 People vs. McMillan, 35 Cal 2d 510, and People vs. Holmstrom, 115
3 Cal App. 2d 327. Neither of these cases are in point. In McMillan,
4 the defendant was convicted of a felony and the court imposed a fine
5 payable in monthly installments. Later in the day the court, in the
6 presence of the defendant and his attorney provided that in the event
7 the installment payments were not paid, defendant was to be confined
8 in the County Jail. The Supreme Court held that the modified sentence
9 was proper. It is to be noted that this was not a probationary sen-
10 ence and the change was proper and effected on the same day the original
11 fine was imposed.

12 In Holmstrom, it is completely beside the point. This,
13 likewise, is not a probationary matter and the question is whether
14 the court had authority under the Provisions of §1193 Sub 1 of the
15 Penal Code in the absence of the defendant to prescribe whether a
16 sentence was to run concurrently or consecutively. In making certain
17 counts upon which the defendant was found guilty to run consecutively
18 the District Court of Appeal held ... "That the court had the power to
19 make the modification in the manner it did."

20 Under Point 2, the trial attorney suggests that the court
21 was without power to set aside the Judgment on motion not made on
22 statutory or court recognized grounds and cites, People vs. Behrmann,
23 34 Cal 2d 459. This case was not a probationary matter in which a
24 sentence was suspended but his authority for the proposition of law
25 that an oral notice of appeal does not comply with Rule 31 of Rules
26 On Appeal, though a later written notice of appeal is filed, and the
27 court was without jurisdiction or in the absence of a "Motion or
28 showing of facts to support a motion to vacate the Judgment."

29 In Point 3, he suggests that Coram Nobis lies only to
30 vacate or correct a judgment for errors of fact which if known would
31 have prevented the rendition and entry of the judgment questioned,
32 and cites People vs. Reid, 195 Cal 249, and People vs. McCoy, 115 Cal
33 App 2d 565.

224

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

TO: Michael T. Brown, Special Inquiry Officer
Los Angeles, California

FILE: AIO 711 700 - Los Angeles

In re: World 21,000 Release System

IN DEPORTATION PROCEEDINGS

IN REPLY TO MEMORANDUM: David W. Marcus, Esq.
215 West 11th Street
Los Angeles, California

IN REPLY OF TRIAL ATTORNEY: William S. Howell
Trial Attorney
Los Angeles, California

CHARGE:

I & M Act - Violation of law relating to illicit possession
of marijuana (Section 11350, Health and Safety
Code of California)

APPLICATION: Termination of proceedings

We have carefully examined the Brief In Reply To Motion
To Vacate Decision of Special Inquiry Officer and the argument which
lists five propositions of law with cited authority in support of his
proposition that the Superior Court was without jurisdiction to grant
the defendant's plea of guilty and certify the proceedings to the
Juvenile Court.

The several propositions asserted in the trial attorney's
argument are not applicable or apropos in the instant proceedings, and
the authorities which he cite do not support his position. It must be
remembered that proceedings in the case at bar were suspended after a
finding of guilt and the defendant was placed on probation. Under his
argument, which we shall label Point 1, the trial attorney suggests
where the sentence has been pronounced and the defendant has begun
serving the sentence, the court is without jurisdiction to add to or

225

case of a California court, after a finding of facts, that the proceedings be suspended and protection granted, constitutes a "suspension" within the meaning of Section 241(a)(1) of the Immigration and Nationality Act. Order of As. Ex. S. 122 Sup. 423, Attorney General, 1960's American-Flora vs. Rosenberg, 3 Cir. 1960, 264 F. 2d 667, cert. denied 363 U. S. 821, 1960.

After careful consideration and upon review of the entire record of these proceedings and the matters set forth in respondent's present motion in remittitur, including the exhibits attached thereto, and of the Trial Attorney's brief dated August 15, 1967, it is concluded that respondent's motion should be denied and that no change should be made in the decision heretofore entered on July 11, 1967.

ORDER IS IT ORDERED that the respondent's motion dated July 26, 1967 to vacate and set aside the decision dated July 11, 1967, be, and the same is hereby, denied.



Michael F. Leese
Special Inquiry Officer

226

- 3 -

227

March 22, 1967, wherein it is stated, the court stated that the
primary purpose of the writ of habeas corpus is to protect and
the defendant's rights are protected in the juvenile court.
In the instant motion, respondent's counsel states that the defendant
did not commit any crime by being and his motion should not
be granted as a matter of course. When study of the entire
motion was made on 3, 1967 in support of the motion to deny
motion as a matter of course, wrote finding it to be, and finally
was refused (denied) in the juvenile court because that motion
shows in that any violation of the innocence of the defendant,
the court should not grant it. Attached to the motion attached to
the court that the defendant did not in fact commit the crime of
which he was charged and that he is a minor and of justice,
the court should not grant the motion because the court is not
satisfied in a way of course motion for it was not allowed to be
granted of right, which the motion sought to redress, but was allowed
solely to a discretionary procedural matter. The issue of guilt
was not raised by the motion as a factual matter.

In the instant motion, respondent's counsel correctly points out (top,
page 7) that California courts retain authority at any time during
the time of probation to revoke, modify or change an order of sus-
pension of imposition or execution of sentences (Calif. Penal Code,
Section 1203.3). It is clear from the language of Section 1203.3
that jurisdiction of the court to act thereunder extends solely to
the
revocation, modification or change of the terms of sentences imposed.

228

UNITED STATES DEPARTMENT OF JUSTICE
Solicitor General and Department of Justice

Writ: A 10 241 1967 - Los Angeles

In the matter of)

JOHN WILLIAM ALANBY SIMON,)

IN DEPARTMENT OF JUSTICE

Respondent)

Writ:

1. The writ of Habeas Corpus, 241(a)(1), is granted to the respondent, who is an inmate of the Los Angeles County Jail, pending the writ of Habeas Corpus (Criminal Code of California).

2. The writ of Habeas Corpus is granted to the respondent to vacate the writ of Habeas Corpus dated July 11, 1967.

ON BEHALF OF RESPONDENT:

ON BEHALF OF PETITIONER:

DAVID C. MARSH
Attorney at Law
212 West 5th Street
Los Angeles, California 90013

William S. Nowell
Trial Attorney
Los Angeles, California 90013

RECOMMENDATION OF THE SPECIAL INQUIRY OFFICER

RECOMMENDATION

The facts of this case are fully set forth in the decision entered herein on July 11, 1967, and do not now require repetition. Respondent now moves, by his motion dated July 24, 1967, to have the aforesaid decision vacated and set aside and the finding of the Special Inquiry Officer reconsidered, presumably for termination of these proceedings. In support of the present motion, the respondent has submitted copies of the moving papers filed with the Superior Court in support of the Minute Order of that Court

229

4. * Briefly, the reasons for this appeal are:

1. The hearing officer erred in holding that the Superior Court of the County of Los Angeles was without jurisdiction to effect a finding of guilt of a minor and his probationary order and certifying same under to the Juvenile Court of the County of Los Angeles. (Page 3 of the Opinion of the Special Inquiry Officer)

2. In holding that the minor must establish his "innocence" or produce "evidence" in support of the motion "addressed to the Court that the defendant did not in fact, commit the crime of which he was convicted, which resulted in a miscarriage of justice". (Page 2 of Opinion of the Special Inquiry Officer).

3. The hearing officer erred in finding that the motion and supporting affidavits and documents filed in the Superior Court "cannot therefore be assimilated to a Writ of Coram Vobis for it was not addressed to an area of fact which the motion sought to redress but was addressed solely to a discretionary procedural matter. The issue of guilt was not raised by the motion and is a factual matter." (Page 2 of the Opinion of the Special Inquiry Officer.)

4. The hearing officer erred in finding that Section 1203.3 limits the jurisdiction of the Court to act thereunder extends solely to revocation, modification or change of the terms of the sentence imposed.

5. The hearing officer erred in holding that "the Superior Court was without jurisdiction to enter its Order dated May 25, 1967 for that order was not effecting the sentence but sought to grant a power which the court did not then possess, to wit, change the finding of guilt."

6. The hearing officer erred in holding that the respondent is a deportable alien under the provisions of Section 241(a) (11).

7. The hearing officer erred in failing to terminate the proceedings and discharge the respondent.

230

231

Form 1-200A
(Rev. 8-9-65)

232

UNITED STATES GOVERNMENT

Memorandum

TO : William S. Swell, Trial Attorney,
Los Angeles, Calif.

AIC 741 679 R13
DATE: September 21, 1967

FROM : Special Inquiry Clerk,
Los Angeles, Calif.

SUBJECT: Service of notice of appeal, Munir Bishara S. Sirhan.

There is served upon you herewith a copy of Form I-200 A,
notice of appeal, filed in the above case by counsel.

You are granted to September 26, 1967 to answer the appeal.

233

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

IN DEPORTATION PROCEEDINGS

IN THE MATTER OF:

A- 10 711 679

MINER NICHOLAS SALASCHI GEMAN,

Respondent

TO THE SPECIAL INQUIRY OFFICER:

I waive my right to file a brief in ^{support of appeal} the above-entitled proceeding.

Dated at Los Angeles, Calif. this 8th day of November 1964.

Trial Attorney

234

UNITED STATES GOVERNMENT

Memorandum

TO : Regional Commissioner, Southwest Region,
San Pedro, California

AIO 711 879

DATE: November 29, 1967

FROM : George K. Rosenberg, District Director,
Los Angeles, California

SUBJECT: Haniir Bishara Salimoh Bishara - Request for Oral Argument

Attention: Regional Counsel

This case presents the novel question of whether the Service can ignore a court action which it is believed is outside the jurisdiction of the court but which was intended to set aside a conviction upon which an order of deportation is based.

The Special Inquiry Officer in this case has supported and upheld the Government's contention that the Superior Court had acted improperly in setting aside a finding of guilt and remanding the case to the Juvenile Court.

For the reasons set forth above, it is urged that the Appellate Trial Attorney should represent the Service in the appeal before the Board of Immigration Appeals.

Attached is a copy of the record of proceeding for use of the Appellate Trial Attorney.

Attachment

235

UNITED STATES DEPARTMENT OF JUSTICE

Memorandum

TO: General Counsel
Attorney General
Board of Immigration Appeals
225 West Building, Washington, D. C.
FROM: M. F. Ferguson, Deputy Regional Commissioner
Southeast Region

DATE: January 21, 1968

SUBJECT: Munir Bishara Salameh Sirhan, AIO 711 879.

The respondent is appealing, and is requesting oral argument. He was found deportable under Section 241(a)(11).

The issue involved is whether the respondent may circumvent Matter of A-F, 8 I&N Dec. 449, by an order of the sentencing court declaring that the "guilty" finding is being vacated and defendant certified to the Juvenile Court. The issue was resolved by the Special Inquiry Officer adversely to the respondent. The issue is a novel one, and it is requested that the Service be represented at oral argument.

Enclosed is a copy of record of proceeding.

M. F. Ferguson

Attachment

file 1/29

CA
A-10
1-29-68

236

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Date January 20, 1948

TO: Board of Immigration Appeals

FROM: Assistant Trial Attorney
Immigration and Naturalization Service

SUBJECT: SALEH M. SIRHAN, A10 711 879

- ☐ Attached is a self-explanatory communication concerning the case of the above-named alien.
- ☐ Attached is a copy of the order entered by the Board in the above-named case. It is requested that it be designated for publication as a Board decision.
- ☐ It is requested that the Board expedite the subject case.
- ☐ The Immigration and Naturalization Service desires to be represented in oral argument of this case. Please advise date set for oral argument, and any subsequent changes thereof.

Remarks:

File
Work Folder
Special Log
General Log

Form 83
(8-10-65)

237

Memorandum

TO: Mr. Tolson, Mr. DeLoach, Mr. Mohr, Mr. Bishop, Mr. Casper, Mr. Callahan, Mr. Conrad, Mr. Felt, Mr. Gale, Mr. Rosen, Mr. Sullivan, Mr. Tavel, Mr. Trotter, Mr. Tele. Room, Mr. Holmes, Miss Gandy
Immigration & Naturalization Service

FROM: Theo. G. Finerman, Chairman
Board of Immigration Appeals

SUBJECT: *Amir Bichara Salameh Sirhan* - A-10711879

With respect to the above listed case, the hearing has been calendared for oral argument at 2:00 p.m. on Tuesday, February 20, 1968.

Theo. G. Finerman

238

Memorandum

TO : M. A. Vielhauer, Appellate Trial Attorneys, January 31, 1963
Immigration & Naturalization Service

FROM : Thos. G. Finnegan, Chairman
Board of Immigration Appeals

SUBJECT: Munir Bishara Salameh Sirhan - A-10711679

The above listed case has been recalendared for
oral argument at 2:00 p.m. on Tuesday, February 27,
1963.

Thos G. Finnegan

RTA