

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM
SUPERIOR COURT

ROCKINGHAM, SS.

07-S-2885

SUPERIOR COURT
2008 MAR -5 P 12:32

STATE OF NEW HAMPSHIRE

V.

JESSE BROOKS

STATE'S RESPONSE TO DEFENDANT'S MOTION TO AUTHORIZE TRANSPORT
BY DEPARTMENT OF CORRECTIONS TO MERRIMACK RIVER CLINIC

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and submits the following response to Defendant's Motion to Authorize Transport by Department of Corrections to Merrimack River Clinic:

1. On or about February 29, 2008, the defendant filed a motion asking this court to authorize transport to the Merrimack River Clinic from the Rockingham County House of Corrections.
2. Prior to filing the motion, counsel for the defendant contacted undersigned counsel seeking the State's position. Undersigned counsel informed counsel for the defendant that it was the State's understanding that the Rockingham County Department of Corrections would first need to evaluate the defendant, and make a determination as to whether methadone treatment was appropriate for this particular defendant, before a transport motion would become relevant. Counsel for the defendant conceded that this would need to be done, and agreed to note in a footnote that the Rockingham County Department of Corrections had not yet made an actual determination that methadone treatment was appropriate for the defendant. Defendant's counsel indicated that the transport order motion was necessary in the event that the Department of Corrections

made a determination that methadone treatment was appropriate. With the understanding that the defendant would make the appropriate notation in the footnote, the State took no position on the motion.

4. It has now come to the State's attention that the Rockingham County Department of Corrections has evaluated the defendant, and made a determination that methadone treatment will not be provided to the defendant. See Rockingham County Department of Corrections Determination Regarding Treatment of Jesse Brooks, attached hereto as Exhibit A. As such, the defendant's motion is moot, and the State requests that the Court accordingly deny it as moot.

5. Additionally, it is worth noting that upon the information and belief of undersigned counsel for the State, prisoners are not "frequently" transported to methadone clinics in the State of New Hampshire, but rather it is relatively rare. Moreover, it is important to recognize that it is the Rockingham County House of Corrections which is responsible for the defendant's medical care, rather than the court. RSA 30-B, generally: see also State v. Evans, 127 N.H. 501, 504 (1985). Similarly, when confronted with the question of whether the Nashua District Court had the authority and jurisdiction to issue a sentence which in part ordered the Hillsborough County Department of Corrections to transport an inmate to methadone treatments, the New Hampshire Supreme Court found that the district court exceeded its authority. See Petition of Hillsborough County for a Writ of Prohibition, New Hampshire Supreme Court Docket Number 03-0389, attached hereto as Exhibit B, and 7/10/03 Order, Petition of Hillsborough County, New Hampshire Supreme Court Docket Number 03-0389, attached hereto as Exhibit C.

WHEREFORE, the State of New Hampshire respectfully requests that this

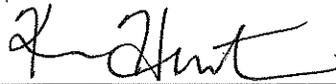
Honorable Court:

- A. Deny the defendant's motion; and
- B. Grant such other relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE
By its attorneys

KELLY A. AYOTTE
ATTORNEY GENERAL

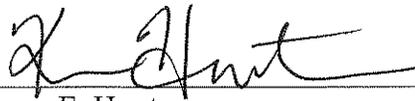


Dated: March 5, 2008

Karen E. Huntress
Assistant Attorney General
Homicide Unit

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2008, the foregoing Response to Defendant's Motion to was forwarded by electronic and first class mail to Maria Durant, Esq., William Kettlewell, Esq., and Peter Anderson, Esq., counsel for the defendant.



Karen E. Huntress

Dated: March 5, 2008

Exhibit A

Date: 3/3/2008

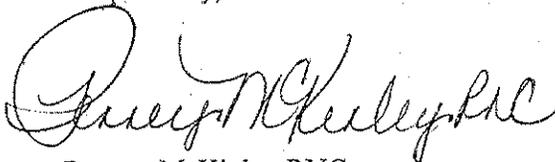
To: Superintendent Wright

From: Penney McKinley RNC

RE: inmate Brooks, Jesse

Inmate Brooks, Jesse arrived in the facility 2/29/08, and claimed to have a significant medical history to include multiple motor vehicle accidents resulting in numerous fractures of his spinal column, and limbs. Due to his history of injuries from childhood to present, he states he is currently prescribed benzodiazepines, and opiates to include being a patient of a local Methadone Clinic in Newington, NH. The later being a result of his addiction to both opiate pain medications and street heroin. Of note on intake his initial drug screen was only positive for the benzodiazepines. We have initiated the established and proven detoxification protocol endorsed by the National Commission on Correctional Health Care, and the daily monitoring of inmate Brooks by qualified medical professionals, and to date he is progressing without incident. We have also obtained a Release of Information from his Primary Care Provider in Las Vegas, NV to address appropriately his ongoing medical issues, as well as his drug dependency. We would like to continue to treat inmate Brooks here in the Rockingham County Department of Corrections, as we feel that he is being well managed and will continue to receive the appropriate and necessary treatment, we have no desire to continue an unnecessary use of a dangerous medication, as we feel inmate Brooks' medical issues can be successfully addressed using alternative means. We request that his use of Methadone be discontinued and we be allowed to treat this inmate as all other inmates incarcerated within the Rockingham County Department of Corrections using a "want versus need" approach.

Respectfully,



Penney McKinley RNC

3/3/2008

Confidential

1

Exhibit B

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

03 - 0389

2003 TERM
JUNE SESSION

PETITION OF HILLSBOROUGH COUNTY FOR
A WRIT OF PROHIBITION
TO VACATE THE NASHUA DISTRICT COURT'S
ORDER REQUIRING HILLSBOROUGH COUNTY TO
TRANSPORT A PRISONER TO A PRIVATE HEALTH CARE FACILITY
EACH DAY FOR METHADONE TREATMENTS
AND TO PAY FOR THE TREATMENTS

Hillsborough County
By its Legal Counsel,
Carolyn M. Kirby, Esquire
300 Chestnut Street
Manchester, NH 03101
Tel. 603-627-5628

TABLE OF CONTENTS

QUESTION PRESENTED	Page 1
CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE	Page 1
STATUTES, RULES AND OTHER AUTHORITY	Page 1
DOCUMENTS IN THE CASE	Page 1
STATEMENT OF THE CASE	Page 2
STAGE OF THE PROCEEDINGS	Page 2
ARGUMENT	Page 2
JURISDICTIONAL BASIS FOR THE PETITION	Page 4
CONCLUSION	Page 5
PARTIES AND COUNSEL	Page 6
CERTIFICATE OF SERVICE	Page 6
APPENDIX	Page 7

NOW COMES Hillsborough County, by and through its legal counsel, Carolyn M. Kirby, and, pursuant to RSA 490:4 petitions this Honorable Court for a writ of prohibition, directing the Nashua District Court (Howorth, J.) to vacate that portion of a sentencing order requiring Hillsborough County to transport Jeffrey Dale to a private healthcare facility for the purpose of receiving methadone treatments and requiring the government to pay for the treatment and transportation.

QUESTION PRESENTED

Does the Nashua District Court have the authority and jurisdiction to order Hillsborough County to transport a sentenced prisoner each day to a private healthcare facility to receive methadone prescribed by a private physician and require the government to pay for the methadone treatments.

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

NH Constitution Part I Article 37 Separation of Powers (Attachment 6)
NH Constitution Part II Article 4 Power to Establish Courts (Attachment 7)
NH Constitution Part II Article 5 Power to Make Laws (Attachment 8)

STATUTES, RULES AND OTHER AUTHORITY

RSA 30-B:1 County Department of Corrections (Attachment 9)
RSA 30-B:3 Superintendent; Other Personnel, Appointment (Attachment 10)
RSA 30-B:4 Superintendent: General Duties and Powers (Attachment 10)
RSA 502-A:1 District Courts (Attachment 12)
RSA 502-A:11 Criminal Cases, District Courts (Attachment 13)
RSA 651:2 Sentences and Limitations (Attachment 14)
RSA 490:4 Jurisdiction of Supreme Court (Attachment 15)

DOCUMENTS IN THE CASE

Court Order dated 6/6/03 (Attachment 1)
Hillsborough County's Motion to Reconsider dated 6/6/03 (Attachment 2)
Hillsborough County's Memorandum of Law dated 6/10/03 (Attachment 3)
Defendant Jeffrey Dale's Memorandum of Law dated 6/12/03 (Attachment 4)
Court Order 6/16/03 (Attachment 5)

STATEMENT OF THE CASE

On June 6, 2003 the Nashua District Court (Howorth, J.), issued an order on sentencing in State of New Hampshire v. Jeffrey Dale (Nashua District Court Docket No. 00-Cr-09653). The Court imposed upon the defendant the balance of a twelve month deferred sentence, to wit; 270 days at the Hillsborough County House of Corrections. Most significantly, the order also required the County to transport the defendant each day to the Merrimack River Medical Center for methadone treatments and made the State responsible for payment of the methadone treatments.

Jeffrey Dale is a resident of the State of Maine. Mr. Dale is purported to be a heroin addict who was being treated at a private health care facility in Maine prior to his incarceration. On information and belief the Maine facility arranged for his treatment at Merrimack River Medical Center. Hillsborough County had no role in the treatment plan or arrangements related thereto.

Upon receipt of the June 6th order, Hillsborough County filed a motion to reconsider that portion of the order that related to the terms and conditions of confinement. Through its motion and memorandum of law in support thereof, the County challenged the District Court's authority to direct the medical treatment of a prisoner sentenced to the county correctional facility. The Court denied the County's motion after a hearing and issued an order dated June 16, 2003. The June 16, 2003 order acknowledged that the District Court is not a constitutional court. However, it addressed a theoretical 42 U.S.C. Section 1983 action that might be filed if methadone treatments were ceased and continued its order on the daily transport and methadone treatment. This petition arises from the two court orders.

STAGE OF THE PROCEEDINGS

Jeffrey Dale is serving a 270 day sentence on a criminal conviction at the Hillsborough County Department of Correction.

ARGUMENT

The County seeks a writ of prohibition because the District Court orders are beyond the scope of the Court's authority. The orders violate the separation of powers doctrine outlined in the state and federal constitution and the statutory mandates of the parties. The orders also create a right and obligation that does not exist under state or federal law.

Part 1 Article 37 of the New Hampshire Constitution creates a separation of powers of government. The provision declares that "[I]n the government of this state, the three essential powers thereof, to wit, the legislative, executive and judicial, ought to be kept separate from, and independent of, each other ..." NH Constitution Part 1, Article 37. Article III of the United States

Constitution "establishes a 'judicial department' with the 'province and duty ... to say what the law is' in particular cases and controversies." Plaut v. Spendthrift Farm, 541 US 211, 219 (1995); citing Marbury v. Madison, 2 L Ed 60 (1803).

New Hampshire's legislative branch of government exercised its power under Part 2, Article 4 of the NH Constitution to create the district courts and limit the role of those court to the purposes outlined in RSA Chapter 502-A. The Nashua District Court was established under RSA 502-A:1, XIX. The District Court's jurisdiction in a criminal case is outlined in RSA 502-A:11. State v. Jeffrey Dale was heard by the court and sentenced under the Nashua District Court's jurisdiction outlined in RSA 502-A:11 and RSA 651:2. None of the statutory provisions at issue empower the District Court to issue an order requiring specific medical treatment by a private health care facility at the government's expense.

The New Hampshire legislative branch of government also exercised its authority under Part 2, Article 5 to pass laws for the benefit and welfare of the state and protection and preservation of its subjects. Specifically, RSA 30-B creates county correctional facilities and outlines the duties and responsibilities of the correctional superintendents. RSA 30-B:1 requires each county to maintain a correctional facility. The county commissioners are required to appoint a superintendent and other personnel to properly care for prisoners. RSA 30-B:3. The superintendent of corrections is vested with the power and duty to manage correctional facilities consistent with the mandates of Chapter 30-B and other chapters related to the management of inmates. RSA 30-B:4. The superintendent is also vested with the custody of inmates confined to the facility. RSA 30-B:4, II.

The District Court does not have the authority to create particular conditions of confinement in a correctional facility not otherwise stated in the law. Rather, judicial deference is accorded to correctional professionals because the "operation of correctional facilities is the province of the legislative and executive branches of our government, not the judicial." Bell v. Wolfish, 441 US 520, 548 (1979). This deference precludes judges and juries from substituting their judgement for that of prison officials. Whitley v. Albers, 475 US 312, 322 (1986). New Hampshire recognizes the separation of powers doctrine and the prohibition against lower courts' interference with the terms and conditions of confinement once a sentence is imposed. State v. Evans, 127 NH 501, 506 (1985). "Absent a violation of an inmate's rights, the judiciary may not interfere ..." Id. Consistent with the Evans case, this Honorable Court should exercise its jurisdiction to protect the rights of other coequal branches of government and prohibit an unlawful infringement on the management of prisoners by a statutory court.

The Nashua District Court had jurisdiction to sentence the defendant to the correctional facility. See NH RSA 502-A and RSA 651. The Court's jurisdiction and authority is limited by statutory law. Nowhere in the statutes relating to the district courts does the Court have the authority to issue orders relative to the treatment and conditions of confinement of a prisoner once that individual is lawfully sentenced. Conversely, the superintendent of corrections is responsible for the proper care of prisoners committed to the county correctional facility. See :

NH RSA 30-B. Statutory language must be interpreted in accordance with its common usage. State v. Hill, 146 NH 568, 575 (2001). The Court cannot add words the legislature chose not to include. State v. Hatt, 144 NH 246, 247 (1999). In short, the Court had the authority to *impose the defendant's sentence*. (Emphasis added). However, it did not and does not have the authority to direct that the defendant be transported to a private medical/treatment facility for the purpose of receiving a specific controlled drug, nor does it have the authority to require the State to pay for that treatment and drug once the sentence is imposed.

By imposing sentencing orders attempting to direct the management of correctional inmates and/or institutions, the Court oversteps its judicial bounds. Whitley v. Albers, *supra*. Judicial oversight of jail conditions is not authorized as long as the conditions or degree of confinement is within the sentence imposed and does not otherwise violate the Constitution. Hewitt v. Helms, 459 US 460, 468 (1983). "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." Hewitt v. Helms, *supra*. citing Price v. Johnston, 334 US 266, 285 (1948). Courts have no power to control the management of a prisoner or to create conditions of confinement unique to a particular prisoner. De Blasio v. Johnson, 128 FSupp. 2d 315(E.D.Va. 2000), *aff'd* 12 Fed Appx 149 (4th Cir. 2001).

In this case, there is no State or Constitutional right for the sentenced defendant to be transported to a private facility or to receive methadone. The sentenced defendant has been remanded to the care of the superintendent of corrections. The superintendent is responsible for utilizing his discretion to provide for the proper care of the defendant without interference from the court. The District Court has no jurisdiction to order transportation for the purposes outlined in the order. The State has no obligation to pay for methadone or the course of treatment prescribed by the District Court in the orders. The County has no obligation to transport the defendant for treatment to an outside provider. Holly v. Rapone, 476 F. Supp. 226 (E.D. Pa. 1979) (Inmate had no constitutional right to methadone and County had no obligation to provide it).

JURISDICTIONAL BASIS FOR THE PETITION

RSA 490:4 gives this Honorable Court general superintendence of all courts of inferior jurisdiction to prevent and correct errors and abuses. The exercise of this court's original jurisdiction is necessary based on the public need and the governments desire for a speedy resolution of the issues. Petition of Mone, 143 NH128, 132 (1998). In this case, the sentenced prisoner is serving a 270 day sentence. Each day he is transported at the County's expense to a private healthcare facility for a treatment that is neither ordered nor sanctioned by the County correctional superintendent or the jail's treating physician. Further, under the order the government is required to pay for the treatment and attempt to manage the prisoner in the correctional facility while he is under the influence of the court ordered narcotic drug. There is no basis for the County to review the status of the treatment nor is, or was, there opportunity for

correctional medical staff to provide input obtained through daily interaction or observation of the prisoner's behavior. The County cannot adjust the level of the drug despite changes in behavior or physical condition during the entire term of the prisoner's incarceration.

A writ of prohibition is appropriate in this case based on the clear necessity since there is no other adequate remedy and the right of relief is clear. Hillsborough County v. Superior Court, 109 NH 333, 335 (1969). The writ prevents a subordinate court from exercising jurisdiction on matters over which it is not vested, and seeks to prevent a lower court from acting outside its legal authority. Petition of Cigna Healthcare, 146 NH 683, 687 (2001); Powell v. Pappagianis, 108 NH 523 (1968). There is no other appellate remedy available to the County. The District Court disregarded the limitations on its authority and unlawfully exercised jurisdiction over the terms and conditions of confinement of a prisoner. Each day that passes the County incurs expense for manpower, transport and treatment. It is also exposed to multiple safety and security risks. The District Court's authority is limited by the statutory framework within which it was created and authorized to operate. The legislature did not give the District Court authority to dictate terms and conditions of confinement. Issuance of a writ of prohibition is a matter of clear necessity because the prisoner is currently serving the sentence imposed by the District Court and the County is deprived of its statutory right and obligation to properly care for and manage this inmate during his incarceration and it unlawfully expending financial resources that are otherwise dedicated and available to it.

CONCLUSION

A writ of prohibition should issue in this case. The Nashua District Court exceeded its jurisdiction and authority. The district court is not a constitutional court and has no authority to mandate the terms and conditions of confinement.

PARTIES AND COUNSEL

For Hillsborough County:

Carolyn M. Kirby, Esquire
300 Chestnut Street
Manchester, NH 03010

For the State of New Hampshire:

Peter Heed, Attorney General
33 Capitol Street
Concord, NH 03301

and

John Dolan, Esquire
Hudson Police Department
Constitution Drive
Hudson, NH 03051

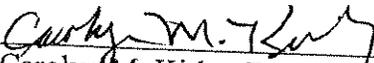
For Jeffrey Dale:

Barry S. Weinstein, Esquire
573 Maple Street
Manchester, NH 03104

Dated: June 20, 2003

Respectfully Submitted,
Hillsborough County

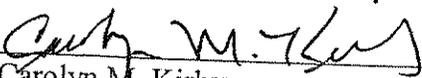
By its legal counsel,



Carolyn M. Kirby, Esquire
300 Chestnut Street
Manchester, NH 03101
(603) 627-5628

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, postage prepaid to Barry Weinstein, Esquire, Attorney General Peter Heed and John Dolan, Esquire.



Carolyn M. Kirby

APPENDIX

HILLSBOROUGH COUNTY THE STATE OF NEW HAMPSHIRE
NASHUA DISTRICT COURT

JUNE 6, 2003

State

v

Jeffrey Dale

DOB: 7/19/75

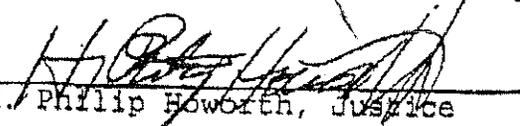
Docket 00-CR-09653

ORDERS ON SENTENCING

This case was originally heard on sentencing 5/9/03. The defendant had admittedly not met the conditions of his deferred sentence, having been convicted in Superior Court after 12/21/01. There was a question of methadone maintenance, which he had been receiving in Maine. Arrangements have been made for him to receive such maintenance at the Merrimack River Medical Center in Hudson, N. H. The court therefore issues the following orders:

1. The balance of the 12-month deferred sentence to the House of Correction is imposed, that being 270 days. The defendant may be given work release if he otherwise qualifies.
2. While in custody, the defendant shall be transported by the sheriff on weekends, starting 6/7/03, at 9:45 AM, each Saturday and Sunday, and at 11:00 AM weekdays, Monday through Friday, thereafter, to Merrimack River Medical Center, 323 Derry Road, Hudson, New Hampshire, for methadone treatment, and back to the jail after the treatment has been given.
3. The State of New Hampshire shall be responsible for the payment of the methadone treatment, either through direct payment or through Medicaid or other funding, with a right of recovery against those chargeable.
4. If the State establishes a methadone treatment program at the Valley Street Jail or some other state facility, the treatment may be given at that location rather than at Merrimack Valley Medical Center.

It is so ordered.


H. Philip Howorth, Justice

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
ST. NO. 00-CR-09653

NASHUA DISTRICT COURT

THE STATE OF NEW HAMPSHIRE

V.

JEFFREY DALE

MOTION TO RECONSIDER

NOW COMES James O'Mara, Superintendent, by and through legal counsel with this Motion to Reconsider and in support thereof says as follows:

1. Earlier today, June 6, 2003, this Honorable Court issued an order directing the sheriff to transport the defendant each day to a private healthcare facility for the purpose of receiving methadone and thereafter return the defendant to the Hillsborough County Department of Corrections.
2. The order further requires the State of New Hampshire to pay for the methadone and medical care.
3. Methadone is a controlled narcotic.
4. This Honorable Court has no authority to direct the medical treatment of an individual lawfully remanded to the custody of the superintendent under R.S.A. 30-B.
5. Medical treatment of an inmate falls within the purview of the correctional professionals.
6. The Hillsborough County Department of Corrections has legitimate safety and security concerns with housing an inmate who will be under the

influence of a controlled narcotic while serving his sentence at the correctional facility.

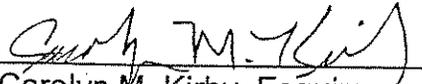
7. The Hillsborough County Department of Corrections has the sole responsibility and liability for the safety of the defendant and all others at the correctional facility. The facility has neither background information on the defendant nor medical information to ascertain the security issues associated with housing an inmate under the influence of a controlled narcotic.

WHEREFORE, James O'Mara, superintendent, respectfully requests that this Honorable Court:

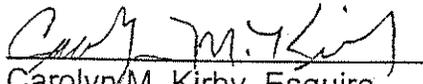
- A. Grant this Motion;.
- B. Rescind a portion of the sentencing order that requires transport and treatment outside the facility for methadone.
- C. Whatever further relief the Court deems just and proper.

DATED: June 6, 2003

Respectfully submitted,


Carolyn M. Kirby, Esquire
Legal Counsel

I hereby certify that a copy of the within Motion has been forwarded to John Dolan, Husdon Police Department, Barry Weinstein, Esquire, on this 6th day of June, 2003.


Carolyn M. Kirby, Esquire
Legal Counsel

STATE OF NEW HAMPSHIRE

NASHUA, SS
Docket Number: 00-CR-9653

DISTRICT COURT

THE STATE OF NEW HAMPSHIRE

v.

JEFFREY DALE

Memorandum of Law in Support of Motion to Reconsider Sentencing Order

Now Comes Hillsborough County and James M. O'Mara, Jr., Superintendent of Hillsborough County House of Corrections by and through legal counsel with this Memorandum of Law in Support of Motion to Reconsider Sentencing Order and in support thereof says as follows:

FACTS:

On June 6, 2003 this Honorable Court issued a sentencing order sentencing the defendant to the Hillsborough County Department of Corrections consistent with the Courts jurisdiction and authority. However, the order further directed Hillsborough County to transport the defendant each day to a private healthcare facility for the purpose of receiving methadone and directed the State of New Hampshire to pay for the methadone and its administration.

The Nashua District Court is a statutory court established pursuant to NH RSA 502-A. The Court's sentencing authority and parameters are outlined in NH RSA 651. The care and custody of inmates is statutorily within the purview of the county correctional superintendent under RSA 30-B.

ARGUMENT:

The superintendent of corrections is responsible for the proper care of prisoners committed to the county correctional facility. See NH RSA 30-B. The Nashua District Court has jurisdiction to sentence a defendant to the correctional facility. See NH RSA 502-A and RSA 651. The Court's jurisdiction and authority are limited by statutory law. Nowhere in the statutes relating to the district courts does the Court have the authority to issue orders relative to the treatment and conditions of confinement of a prisoner once that individual is lawfully sentenced. Statutory language must be interpreted in accordance with its common usage. *State v. Hill*, 146-NH-568, 575 (2001). The Court

cannot add words the legislature chose not to include. *State v. Hatt*, 144 NH 246, 247 (1999). In short, the Court had the authority to *impose the defendant's sentence*, however, it did not and does not have the authority to direct that the defendant be transported to a private medical/treatment facility for the purpose of receiving a specific controlled drug, nor does it have the authority to require the State to pay for that treatment and drug once the sentence is imposed.

The court order violates the separation of powers doctrine. Article III of the United States Constitution "establishes a 'judicial department' with the 'province and duty ... to say what the law is' in particular cases and controversies." *Plaut v. Spendthrift Farm*, 541 US 211, 219 (1995); citing *Marbury v. Madison*, 2 L Ed 60 (1803); The court does not have the authority to create particular conditions of confinement in a correctional facility not otherwise stated in the law. Rather, judicial deference is accorded to correctional professionals because the "operation of correctional facilities is the province of the legislative and executive branches of our government, not the judicial." *Bell v. Wolfish*, 441 US 520, 548 (1979). This deference precludes judges and juries from substituting their judgement for that of prison officials. *Whitley v. Albers*, 475 US 312, 322 (1986). The NH Supreme Court recognizes the separation of powers doctrine and the prohibition against lower courts' interference with the terms and conditions of confinement once a sentence is imposed. *State v. Evans*, 127 NH 501, 506 (1985). "Absent a violation of an inmate's rights, the judiciary may not interfere ..." *Id.*

"While the judiciary has broad discretion in its sentencing authority, it cannot violate the separation of powers by invading the right of the legislature to appropriate money for prison programs or the right of the executive to devise and implement rehabilitative and educational programs at the State prison. The judiciary is properly cognizant of its powers as a coequal branch of government; it must be zealous in protecting the rights of other coequal branches." *Id.*

By imposing sentencing orders attempting to direct the management of correctional inmates and/or institutions, the Court oversteps its judicial bounds. *Whitley v. Albers*, *supra*. Judicial oversight of jail conditions is not authorized as long as the conditions or degree of confinement is within the sentence imposed and does not otherwise violate the Constitution. *Hewitt v. Helms*, 459 US 460, 468 (1983). "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Hewitt v. Helms*, *supra* citing *Price v. Johnston*, 334 US 266, 285 (1948). Courts have no power to control the management of a prisoner or to create conditions of confinement unique to a particular prisoner. *De Blasio v. Johnson*, 128 FSupp. 2d 315 (E.D.Va. 2000), *aff'd* 12 Fed Appx 149 (4th Cir. 2001).

In this case there is no State or Constitutional right for the sentenced defendant to be transported to a private facility or to receive methadone. The sentenced defendant has been remanded to the care of the superintendent of corrections. The superintendent is responsible for utilizing his discretion to provide for the proper care of the defendant

without interference from the court. The Court has no jurisdiction to order transportation at this point. The State has no obligation to pay for methadone or the course of treatment prescribed by the Court in the Court's order. The County has no obligation to transport the defendant for treatment to an outside provider.

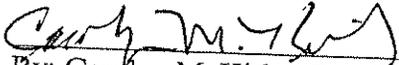
CONCLUSION:

The Court order violates the separation of powers doctrine. The Court has no authority to issue the order for treatment or transport once the defendant was sentenced to the custody of the correctional superintendent. The defendant has no right to methadone.

DATED: June 10, 2003

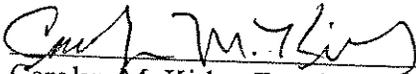
Respectfully submitted,

HILLSBOROUGH COUNTY AND
JAMES O'MARA, JR., SUPERINTENDENT


By: Carolyn M. Kirby, Esquire
Legal Counsel for Hillsborough County
300 Chestnut Street
Manchester, NH 03101-2492
Phone: 603-627-5628

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appearance has this day, June 10, 2003, has been forwarded to John Dolan, Esquire, Hudson Police Department and Barry Weinstein, Esquire.


Carolyn M. Kirby, Esquire

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS

NASHUA DISTRICT COURT
NO. 00-CR-09653

THE STATE OF NEW HAMPSHIRE

V.

JEFFREY A. DALE

MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO RECONSIDER
SENTENCING ORDER

At a deferred sentence hearing on May 9, 2003, the Court determined that the defendant was undergoing methadone maintenance. The case was continued until June 6, 2003 in order for the defendant to make arrangements with a local clinic to continue his treatment while incarcerated, or alternatively, to undergo pre-incarceration detoxification. Pursuant to the Court's direction, the defendant arranged with the Merrimack River Medical Center in Hudson, New Hampshire to receive daily methadone doses during his incarceration at the Hillsborough County House of Correction. On June 6, 2003, the Court ordered imposition of the defendant's deferred sentence and further ordered that the sheriff's department transport the defendant to and from his treatments, and that the State pay for the cost of the treatments.

The Eighth Amendment to the United States Constitution prohibits the State from subjecting a defendant to cruel and abusive treatment. A sentence must be acceptable to contemporary standards and basic notions of dignity. Gregg v. Georgia, 428 U.S. 153 (1976). It is well settled that there is a violation of the Eighth Amendment if the medical needs of an inmate are ignored. Estelle v. Gamble 429 U.S. 97 (1976).

The defendant's methadone maintenance is medical treatment intended to rid him of his heroin habit. The State has admitted as such. The continuation of this treatment is necessary at this time, not only for the long term goal of keeping the defendant from

reverting to illicit drug use, but, more importantly and immediate, to prevent him from undergoing a traumatic and dangerous withdrawal. The symptoms of such a withdrawal include, fever, abdominal cramps, diarrhea, nausea, tremors, and hallucinations. Although the State argues that The Hillsborough County House of Corrections is responsible for the proper care of prisoners committed to their jail, it has no facility or ability to treat the defendant's expected withdrawal, and, frankly, appears all too ready to just let matters take their cruel course. As the State intends to do nothing to prevent the defendant's trauma and suffering, it is the Court's responsibility pursuant to the provisions of the Eighth Amendment, and in accordance with principals of common decency, to protect him. The Court has attempted to do this by making provision in its sentencing order for the transportation of the defendant to and from the methadone clinic. The defendant submits that the Court had the inherent authority under the Constitution to make this order, and requests that it be kept in place

In the event that the Court deems that its order must be revoked due the separation of powers doctrine, or otherwise, the defendant submits that his Constitutional rights can only be protected by the Court granting his immediate release in order to allow him to continue his methadone maintenance at CAP Quality Care in Westbrook, Maine, or, alternatively, to allow him to undergo a normal 4-6 week detoxification at that clinic previous to resuming his incarceration.

June 12, 2003

Respectfully submitted
Jeffrey A. Dale
By his attorney,



Barry S. Weinstein
573 Maple Street
Manchester, NH 03104
(617) 669-3397

CERTIFICATE

I hereby certify that a copy of the foregoing Motion was forwarded this day to John Dolan, Esq. of the Hudson Police Department and Carolyn M. Kirby, Esq., Legal Counsel for Hillsborough County



Barry S. Weinstein

THE STATE OF NEW HAMPSHIRE
HILLSBOROUGH COUNTY NASHUA DISTRICT COURT

JUNE 16, 2003

State
v
Jeffery Dale
DOB: 7/19/75
Docket 00-Cr-09653

RECEIVED
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RULINGS ON MOTION TO RECONSIDER

A hearing was held 6/11/03 with respect to this court's order that the defendant be transported on a daily basis to a methadone clinic in Hudson, N. H., to continue his methadone treatment at State expense. The State moved for reconsideration of the court's order, arguing that this court had no authority to make such an order, and also arguing that requiring defendant to withdraw from both heroin and methadone was not cruel and unusual treatment. Defendant argued to the contrary.

The State agreed that it has a constitutional obligation to provide any medical treatment for at least life-threatening or otherwise significantly dangerous conditions. It denies that the condition of the defendant rises to the level that methadone or some similar medical treatment is constitutionally required, and says that defendant has a potential action under Article 1983 of the United States Code to determine whether it is.

Defendant argues that methadone treatment in defendant's case is constitutionally required. This is based on the fact, inter alia, that he has been on methadone only since January, 2003; that the treatment should continue for 2 years before withdrawal is appropriate; and that he would incur great suffering if his present methadone program were terminated. Defendant does agree with the State that he would have an action under Article 1983 should the state refuse him methadone maintenance.

The district courts in New Hampshire are not constitutional courts, and there is a major question about whether this court could make a valid determination as to whether continuation of methadone in defendant's case is constitutionally required. The court therefore continues the court's order of June 6 to July 11, 2003 in order to give defendant an opportunity to file an action under Article 1983 in Federal District Court. This court's order of June 6, 2003 will expire at 4 PM July 11, 2003 unless an earlier motion to continue the order in effect is filed by the defendant, and acted upon favorably by this court. If there is a decision against defendant rendered by the Federal District Court before July 11, 2003, the State may file a motion to dismiss this court's June 6, 2003 order for methadone maintenance, which this court would expect to grant.

It is so ordered.

H. Philip Howorth
H. Philip Howorth, Justice

6/16/03 3:40- Left voice mail for:
atty Weinstein
atty Kisby
atty Dolan

6/17/03 Copies sent to
atty Weinstein
atty Kisby &

Barbara S. Jackson

officers and employees operated by the state or by any of its political subdivisions, and of any successor system, and all contributions and payments made to any such system to provide for retirement and related benefits shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, any other purposes.

HISTORY

Amendments—1984. Added this article.

CROSS REFERENCES

New Hampshire retirement system, see RSA 100-A.

ANNOTATIONS

Cited

Cited in *Day v. New Hampshire Retirement Sys.* (1993) 138 N.H. 120, 635 A.2d 493.

LIBRARY REFERENCES

CJS

Pensions § 1 et seq.

States §§ 112-119.

[Art.] 37. [Separation of Powers.] In the government of this state, the three essential powers thereof, to wit, the legislative, executive, and judicial, ought to be kept as separate from, and independent of, each other, as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of union and amity.

ANNOTATIONS

- Administrative agencies, 9
- Compatible offices, 11
- Delegation of powers, 5
- Encroachment, 4
- Executive powers, 8
- Generally, 1

- Immunities, 10
- Judicial powers, 7
- Legislative powers, 6
- Overlapping of powers, 3
- Purpose, 2

1. Generally

Separation of powers clause prohibits each branch of government from encroaching on powers and functions of another branch, and is violated when one branch usurps an essential power of another. *Appeal of Judicial Conduct Comm.* (2000) 145 N.H. 108, 751 A.2d 514.

If the people are to remain free and retain their sovereignty, then government must be

limited; the separation of powers is essential to this end. *State v. LaFrance* (1983) 124 N.H. 171, 471 A.2d 340.

Separation of powers between the legislative, executive and judicial branches of government is a vital part of the state constitution. In *re Gamble* (1978) 118 N.H. 771, 394 A.2d 308.

This article does not require the erection of impenetrable barriers between the branches

Pt. 2, Art. 4 CONSTITUTION OF NEW HAMPSHIRE

Cited

Cited in Opinion of the Justices (1937) 88 N.H. 495, 190 A. 712; Opinion of the Justices (1950) 96 N.H. 517, 83 A.2d 738; Opinion of the Justices (1957) 101 N.H. 536, 133 A.2d 506; Gerber v. King (1967) 107 N.H. 495, 225 A.2d 620; Opinion of the Justices (1975) 115 N.H. 686, 349 A.2d 593; Opinion of the Justices (1977) 117 N.H. 310, 373 A.2d 991; Warburton v. Thomas (1992) 136 N.H. 383, 616 A.2d 495; Claremont Sch. Dist. v. Governor (1998) 143 N.H. 154, 725 A.2d 648.

LIBRARY REFERENCES

CJS

States §§ 48-50.

[Art.] 4th. [Power of General Court to Establish Courts.] The general court (except as otherwise provided by Article 72-a of Part 2) shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be holden, in the name of the state, for the hearing, trying, and determining, all manner of crimes, offenses, pleas, processes, complaints, actions, causes, matters and things whatsoever arising or happening within this state, or between or concerning persons inhabiting or residing, or brought, within the same, whether the same be criminal or civil, or whether the crimes be capital, or not capital, and whether the said pleas be real, personal or mixed, and for the awarding and issuing execution thereon. To which courts and judicatories, are hereby given and granted, full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.

HISTORY

Amendments—1966. Inserted "(except as otherwise provided by Article 72-a of Part 2)" in the first sentence.

ANNOTATIONS

Executive officers, 5
Historical, 1
Judicial officers, 4

Judicial powers, 3
Limitations, 2

1. Historical

The phrase "inhabiting or residing" as used in this article is strong evidence that when the constitution was adopted the word "inhabitant" was used as the equivalent for citizen. *Barker v. Young* (1922) 80 N.H. 447, 119 A. 330.

2. Limitations

The general court has power to constitute new tribunals, and to provide new modes of trial for future cases, provided the right to trial by jury is secured to everyone in the last

resort in every case where it is guaranteed by the constitution. *State v. Almy* (1892) 67 N.H. 274, 28 A. 372.

3. Judicial powers

This article does not authorize the legislature to take from the judicial department a power recognized as an essential attribute of judicial tribunals. *Opinion of the Justices* (1933) 86 N.H. 597, 166 A. 640.

4. Judicial officers

The legislature may not constitutionally

CONSTITUTION OF NEW HAMPSHIRE

Justices (1975) 115 N.H.
Opinion of the Justices
3 A.2d 991; Warburton
H. 383, 616 A.2d 495;
Governor (1998) 143

empower any individual but a judicial officer to exercise marital jurisdiction, although the legislature has the authority to determine which judicial officers should exercise that jurisdiction, or to create special judicial positions for that purpose. Opinion of the Justices (1986) 128 N.H. 17, 509 A.2d 746.

power of the general court to create inferior tribunals. Karamanou v. H.V. Greene Co. (1922) 80 N.H. 420, 124 A. 373.

Cited

Cited in State v. Gerry (1896) 68 N.H. 495, 38 A. 272; Wheeler ex rel. Boulanger v. Morin (1943) 93 N.H. 40, 35 A.2d 513; Opinion of the Justices (1961) 103 N.H. 325, 171 A.2d 429; Petition of Harvey (1967) 108 N.H. 196, 230 A.2d 757; State v. Dean (1975) 115 N.H. 520, 345 A.2d 408; Boehner v. State (1982) 122 N.H. 79, 441 A.2d 1146; Claremont Sch. Dist. v. Governor (1998) 142 N.H. 737, 712 A.2d 612.

5. Executive officers

A statute which invests the insurance commissioner with judicial power to determine facts regarding the revocation of licenses, and does not attempt to remove him from the superintending power of the supreme court as to questions of law, is a valid exercise of the

LIBRARY REFERENCES

New Hampshire Bar Journal

Apparently no definite courts are established by the New Hampshire Constitution, but there is confirmation, by reference, of the pre-existence of the Superior Court, which, from the time of the Revolution, had functioned as the highest law court of the state. The Independence of the Judiciary, 1 N.H.B.J. 28 (July 1959).

The "people's right to reconstruct" the judiciary is provided by this article and article 73 of part 2 of the New Hampshire Constitution. The Independence of the Judiciary, 1 N.H.B.J. 28 (July 1959).

CJS

Courts § 120 et seq.

[Art.] 5th. [Power to Make Laws, Elect Officers, Define Their Powers and Duties, Impose Fines and Assess Taxes; Prohibited from Authorizing Towns to Aid Certain Corporations.] And further, full power and authority are hereby given and granted to the said general court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, ordinances, directions, and instructions, either with penalties, or without, so as the same be not repugnant or contrary to this constitution, as they may judge for the benefit and welfare of this state, and for the governing and ordering thereof, and of the subjects of the same, for the necessary support and defense of the government thereof, and to name and settle biennially, or provide by fixed laws for the naming and settling, all civil officers within this state, such officers excepted, the election and appointment of whom are hereafter in this form of government otherwise provided for; and to set forth the several duties, powers, and limits, of the several civil and military officers of this state, and the forms of such oaths or affirmations as shall be respectively administered unto them, for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and also to impose fines, mulcts, imprisonments, and other punishments; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said state; and upon all estates within the same; to be issued and disposed of by warrant, under the hand of the governor of this state for the time being, with the advice and

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CHAPTER 30-B
COUNTY DEPARTMENTS OF CORRECTIONS

Facilities			
30-B:1	County Department of Corrections.	30-B:12	Inspection of Corrections Facilities.
30-B:2	Real Estate; Buildings.	30-B:13	Reporting Requirements.
		30-B:14	Superintendent's Bills.
Administration of Department of Corrections		Commitment of Offenders	
30-B:3	Superintendent; Other Personnel; Appointment.	30-B:15	Place of Commitment.
30-B:4	Superintendent; General Duties and Powers.	30-B:16	Federal Prisoners.
30-B:5	Removal of Superintendents, Officers, and Employees.	Employment of Offenders	
30-B:6	Policies; Rules and Regulations.	30-B:17	Employment of Prisoners.
30-B:7	Discipline of Inmates.	30-B:18	Prisoners Awaiting Trial.
30-B:8	Escapes.	30-B:19	Application of Earnings.
30-B:9	Delivery of Articles Prohibited.	30-B:20	Work Release.
30-B:10	Penalty for Delivery of Articles.	30-B:21	Temporary Removal or Transfer.
30-B:11	Use of Force.	30-B:22	Removal of Prisoners Because of Epidemic or Repairs to Facility.
		30-B:23	Expense of Removal.
		30-B:24	Transfer of Female Prisoners.

CROSS REFERENCES

Certification of state corrections officers by police standards and training council, see RSA 188-F:22 et seq.

Facilities

30-B:1 County Department of Corrections. Each county shall provide, keep, and maintain facilities, administered by a county department of corrections, for the reception and confinement of prisoners committed to or ordered to be detained at a county correctional facility.

HISTORY

Source. 1988, 89:1, eff. June 17, 1988.

30-B:2 Real Estate; Buildings. As provided in RSA 23:3, each county shall have suitable correctional facilities. In accordance with RSA 28:7, when authorized by the county convention, the county commissioners may purchase such real estate as may be required for a county correctional facility; and may repair, enlarge, or erect county buildings housing county correctional facilities; and may sell any of the county's real estate. As provided in RSA 72:23, II, county correctional facilities shall be exempt from taxation except that county farms and their lands, buildings, and taxable personal property shall be taxed.

30-B:3

COUNTIES

Attachment 10

HISTORY

Source. 1988, 89:1, eff. June 17, 1988.

Administration of Department of Corrections

30-B:3 Superintendent; Other Personnel; Appointment.

I. The county commissioners of each county shall appoint a superintendent of the county department of corrections, to supervise and manage the county department of corrections. The commissioners may also appoint such other officers, agents, and employees as may be required to properly care for prisoners committed to or detained at county correctional facilities.

II. No county commissioner shall be superintendent of the county department of corrections.

HISTORY

Source. 1988, 89:1, eff. June 17, 1988.

30-B:4 Superintendent; General Duties and Powers. The superintendent of the county department of corrections, as an agent of the county commissioners, shall be vested with all of the powers and subject to all the duties and limitations provided in this and other chapters relative to the management of county correctional facilities. These shall include, but are not limited to, the following:

- I. The superintendent shall report to the board of county commissioners of his county and be answerable to it for the efficient and effective operation of county correctional facilities.
- II. The superintendent shall, under the supervision of the county commissioners, have custody of all the inmates confined to those facilities.
- III. (a) The superintendent shall, in person or by agent, receive all persons sent by lawful authority to the county department of corrections and retain them until they are released by process appropriate under law, except as provided in subparagraph (b).
(b) Whenever a person in the custody of the superintendent under subparagraph (a) is transported to a state court, the sheriff through the sheriff's deputies and bailiffs shall be responsible for custody and control of such person during the time period such person is in the courthouse.
- IV. The superintendent shall monthly present to the presiding or designated justice and the clerk of the superior court in his county a certified list of all pretrial prisoners who are or have been in his custody with the times and causes of their confinements or discharges.
- V. The superintendent shall provide each prisoner in his custody with necessary sustenance, clothing, bedding, and shelter.
- VI. The superintendent of the county department of corrections shall cause to be kept a correct and itemized account of each employed prisoner's earnings and debits made and incurred on their account, and shall retain

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Source. 1988, 89:1,
297:2, eff. Jan. 1, 199

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30-B:5 Remov
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30-B:6 Policies

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Source. 1988, 89:1, eff.

30-B:7 Disciplin
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30-B:8 Escapes.

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COUNTY DEPARTMENTS OF CORRECTIONS

30-B:8

the balance of those earnings in escrow until the prisoner is discharged from the county department of corrections, whereupon the superintendent shall cause the prisoner to be paid the amount due and take a receipt.

HISTORY

Source. 1988, 89:1, eff. June 17, 1988. 1998, added "except as provided in subparagraph 297:2, eff. Jan. 1, 1999. (b)" at the end of that subparagraph and

added subpar. (b).
Amendments—1998. Paragraph III: Designated the existing paragraph as subpar. (a),

30-B:5 Removal of Superintendents, Officers, and Employees. The provisions of RSA 28:10-a, relative to the discharge or suspension from employment of county employees, shall apply to superintendents, officers, and employees appointed by the county commissioners under this chapter.

HISTORY

Source. 1988, 89:1, eff. June 17, 1988.

30-B:6 Policies; Rules and Regulations.

I. The county commissioners shall establish policies and procedures for the management of the county department of corrections as authorized in RSA 28:12.

II. The commissioners shall adopt any necessary rules and regulations for the fulfillment of the powers and duties of the superintendent.

HISTORY

Source. 1988, 89:1, eff. June 17, 1988.

30-B:7 Discipline of Inmates. If any inmate in a county correctional facility is refractory and stubborn, and refuses to work or to perform his work in a proper manner, the superintendent may put him in close confinement until he submits to perform his task and obey the superintendent's orders.

HISTORY

Source. 1988, 89:1, eff. June 17, 1988.

30-B:8 Escapes.

I. If an offender escapes from a county correctional facility the superintendent shall have the power to pursue, retake, and bring him back, and to require all necessary aid for the purpose and, when taken, may place the prisoner in administrative segregation, in accordance with the standards of the facility from which he escaped, until the superintendent has determined that the prisoner is willing to submit to the regulations of the facility.

shall be located in Franklin, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Franklin District Court.

XV. HENNIKER-HILLSBOROUGH DISTRICT. The Henniker-Hillsborough district shall consist of the towns of Henniker, Warner, and Bradford in Merrimack county and the towns of Hillsborough, Deering, Windsor, Antrim and Bennington in Hillsborough county. The court shall be located in a city or town within the judicial district in a location and facility designated pursuant to RSA 490-B:3, having regard for the convenience of the communities within the district, provided, however, that the court shall not be located in any building which does not meet the minimum standard prescribed by the New Hampshire court accreditation commission pursuant to RSA 490:5-c. The court shall hold sessions regularly at the principal court location and elsewhere in the district as justice may require. Special sessions of said court for cases arising from the town of Henniker shall be held at the principal court location as the caseload and justice requires. The court shall bear the name of the city or town in which it is located.

XVI. NEW LONDON DISTRICT. The New London district shall consist of the towns of New London, Wilmot, Newbury, and Sutton. The district court for the district shall be located in New London, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be New London District Court.

XVII. [Repealed.]

Hillsborough County

XVIII. MANCHESTER DISTRICT. The Manchester district shall consist of the city of Manchester. The district court for the district shall be located in Manchester, holding sessions regularly therein as justice may require. The name of the court shall be Manchester District Court.

XIX. NASHUA DISTRICT. The Nashua district shall consist of the city of Nashua and the towns of Hudson and Hollis. The district court for the district shall be located in Nashua, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Nashua District Court.

XX. MERRIMACK DISTRICT. The Merrimack district shall consist of the towns of Merrimack, Litchfield, and Bedford. The district court for the district shall be located in Merrimack, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be the Merrimack District Court.

XXI. MILFORD DISTRICT. The Milford district shall consist of the towns of Milford, Brookline, Amherst, Mason, Wilton, Lyndeborough, and Mont Vernon. The district court for the district shall be located in Milford, holding sessions regularly therein and elsewhere in the district as justice may require. The name of the court shall be Milford District Court.

XXII. JAFFREY-PETERBOROUGH DISTRICT. The Jaffrey-Peterborough district shall consist of the towns of Peterborough, Hancock, Greenville,

502-A:10 Bonds.

[Repealed 1983, 383:78, VI, eff. Jan. 1, 1984.]

HISTORY

Former RSA 502-A:10, which was derived from 1963, 331:1, related to bonds each clerk was required to furnish.

Jurisdiction

502-A:11 Criminal Cases, District Courts. Each district court shall have the powers of a justice of the peace and quorum throughout the state and shall have original jurisdiction, subject to appeal, of all crimes and offenses committed within the confines of the district in which such court is located which are punishable by a fine not exceeding \$2,000 or imprisonment not exceeding one year, or both, including all violations of the provisions of RSA 266:16 and 266:25 pertaining to vehicles exceeding permitted size or weight, regardless of whether the defendant is a natural person or any other person; provided, however, that any town which may vote to continue its municipal court in accordance with the provisions of RSA 502-A:35 shall have exclusive jurisdiction over offenses committed within the confines of that town, in accordance with the provisions of RSA 502:18, until such municipal court is subsequently abolished under the provisions of RSA 502-A:35.

HISTORY

Source. 1963, 331:1. 1977, 281:1. 1981, 146:5, XXII. 1992, 284:35, eff. Jan. 1, 1993.

Amendments—1992. Substituted "\$2,000" for "\$1,000".

—1981. Substituted "RSA 266:16 and 266:25" for "RSA 263:39".

—1977. Inserted "including all violations of the provisions of RSA 263:69 pertaining to vehicles exceeding permitted size or weight, regardless of whether the defendant is a natural person or any other person" following "imprisonment not exceeding one year, or both".

CROSS REFERENCES

Classification of crimes, see RSA 625:9.

Jurisdiction of criminal actions and proceedings generally, see RSA 592-A:1.

ANNOTATIONS

Constitutionality, 1

Criminal jurisdiction, 3, 4

Generally, 3

Prosecutions of felonies, 4

Scope of jurisdiction generally, 2

Transfer of cases to superior court, 5

1. Constitutionality

This section and RSA 502-A:12 conform

with the provisions of Part 2, Article 77 of the New Hampshire Constitution, authorizing the

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ANNOTATIONS

1. Discretion of court

Sentencing is within the discretion of the trial court unless the sentence is grossly dis-

proportionate to the crime. *State v. Wheeler* (1980) 120 NH 496, 416 A2d 1384.

LIBRARY REFERENCES

New Hampshire Practice

2 N.H.P. Criminal Practice & Procedure §§ 853, 854.

West Key Number

Criminal Law ⇐ 977 et seq.

CJS

Criminal Law § 1558 et seq.

ALR

Propriety of sentencing judge's consideration of defendant's perjury or lying in pleas or testimony in present trial. 34 ALR4th 888.

General Provisions

651:1 Applicability.

I. The provisions of this chapter govern the sentencing for every offense, whether defined within or outside the code, except as provided by RSA 630.

II. This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Any appropriate order exercising that authority may be included as part of the judgment of conviction.

HISTORY

Source. 1971, 518:1. 1973, 370:1, eff. Nov. 1, 1973.

Amendments—1973. Paragraph I: Deleted "other than murder" following "offense" and added "except as provided by RSA 630" following "code".

ANNOTATIONS

Cited, 3

Sentence for homicide, 1

1. Sentence for homicide

Although court has authority under RSA 651:20 to suspend a sentence that has already been imposed or is being executed, such authority is specifically made inapplicable to all sentences imposed for first degree murder under RSA 630:1-a, III by virtue of this section. *State v. Smith* (1979) 119 NH 674, 406 A2d 135.

Suspension of license, 2

2. Suspension of license

This section granted no authority to suspend or revoke a license, and court could not revoke license of person found guilty of negligent homicide. *State v. Buckingham* (1981) 121 NH 339, 430 A2d 135.

3. Cited

Cited in *State v. Thayer* (1978) 118 NH 819, 395 A2d 500; *State v. Perkins* (1981) 121 NH 713, 435 A2d 504.

651:2 Sentences and Limitations.

I. A person convicted of a felony or misdemeanor may be sentenced to imprisonment, probation, conditional or unconditional discharge, or a fine.

II. If a sentence of imprisonment is imposed, the court shall fix the maximum thereof which is not to exceed:

- (a) Fifteen years for a class A felony,
- (b) Seven years for a class B felony,

(c) One year for a misdemeanor,

(d) Life imprisonment for murder in the second degree,

and, in the case of a felony only, a minimum which is not to exceed 1/2 of the maximum, or if the maximum is life imprisonment, such minimum term as the court may order.

II-a. A person convicted of murder in the first degree shall be sentenced as provided in RSA 630:1-a.

II-b. A person convicted of the felonious use of a firearm, as provided in RSA 650-A:1, shall, in addition to any punishment provided for the underlying felony, be given a minimum mandatory sentence of one year imprisonment for a first offense and a minimum mandatory sentence of 3 years' imprisonment for any subsequent offense. Neither the whole nor any part of the additional sentence of imprisonment hereby provided shall be served concurrently with any other term nor shall the whole or any part of such additional term of imprisonment be suspended. No action brought to enforce sentencing under this section shall be continued for sentencing, nor shall the provisions of RSA 651-A relative to parole apply to any sentence of imprisonment imposed.

II-c. A person convicted of attempted murder shall be sentenced to a term of not more than 30 years imprisonment.

II-d. A person convicted of manslaughter shall be sentenced as provided in RSA 630:2, II.

II-e. To the minimum sentence of every person who is sentenced to imprisonment for a maximum of more than one year shall be added a disciplinary period equal to 150 days for each year of the minimum term of his sentence, to be prorated for any part of the year. The presiding justice shall certify, at the time of sentencing, the minimum term of the sentence and the additional disciplinary period required under this paragraph. This additional disciplinary period may be reduced for good conduct as provided in RSA 651-A:22. There shall be no addition to the sentence under this section for the period of pre-trial confinement for which credit against the sentence is awarded pursuant to RSA 651-A:23.

III. A person convicted of a violation may be sentenced to probation, conditional or unconditional discharge, or a fine.

IV. A fine may be imposed in addition to any sentence of imprisonment, probation, or conditional discharge. The amount of any fine imposed on:

(a) Any individual may not exceed \$2,000 for a felony, \$1,000 for a misdemeanor, and \$500 for a violation.

(b) A corporation or unincorporated association may not exceed \$50,000 for a felony, \$10,000 for a misdemeanor and \$500 for a violation. A writ of execution may be issued by the court against the corporation or unincorporated association to compel payment of the fine, together with costs and interest.

(c) If a defendant has gained property through the commission of any

Appeal of McKenney (1980) 120 N.H. 77, 412 A.2d 116; State v. Flynn (1983) 123 N.H. 457, 464 A.2d 268; State v. Merski (1983) 123 N.H. 564, 465 A.2d 491; State v. Sands (1983) 123 N.H. 570, 467 A.2d 202; Sharon Steel Corp. v. Whaland (1983) 124 N.H. 1, 466 A.2d 919; State v. LaFrance (1983) 124 N.H. 171, 471 A.2d 340; Connolly's Case (1986) 127 N.H. 786, 508 A.2d 1054; Bricker v. Putnam (1986) 128 N.H. 162, 512 A.2d 1094; Kenneth E. Curran, Inc. v. Auclair Transportation, Inc. (1986) 128 N.H. 743, 519 A.2d 280.

LIBRARY REFERENCES

New Hampshire Court Rules
Conduct of pro tempore judge, see Rule 38, Rules of the Supreme Court, New Hampshire Court Rules Annotated.

490:4 Jurisdiction. The supreme court shall have general superintendence of all courts of inferior jurisdiction to prevent and correct errors and abuses, including the authority to approve rules of court and prescribe and administer canons of ethics with respect to such courts, shall have exclusive authority to issue writs of error, and may issue writs of certiorari, prohibition, habeas corpus, and all other writs and processes to other courts, to corporations and to individuals, and shall do and perform all the duties reasonably requisite and necessary to be done by a court of final jurisdiction of questions of law and general superintendence of inferior courts.

HISTORY

Source. RS 171:2, 3. CS 181:5, 6. 1855, Amendments—1971. Inserted "including 1659:1, 10. 1859, 2211:3. GS 189:1. GL 208:1. the authority to approve rules of court and 1885, 42:1. PS 204:2. 1901, 78:7. PL 315:2. RL prescribe and administer canons of ethics 369:2. RSA 490:4. 1971, 341:1, eff. Aug. 24, with respect to such courts" following "errors and abuses".

CROSS REFERENCES

Appeals from probate courts, see RSA 567-A.
Issuance of extraordinary writs by Superior Court, see RSA 491:7.
Jurisdiction conferred by special provisions, see RSA 490:5.
Rehearings and appeals from decisions of certain administrative agencies, state departments or officials, see RSA 541.
Transfer of questions to supreme court from district courts, see RSA 502-A:17-a.
Transfer of questions to supreme court from probate courts, see RSA 547:30.
Transfer of questions to supreme court from superior court, see RSA 491:17.

ANNOTATIONS

I. GENERALLY, 1-9
II. SUPERINTENDENCE OF COURTS GENERALLY, 10-29
III. CERTIORARI, 30-49
IV. OTHER EXTRAORDINARY WRITS, 50-69

Exhibit C

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

**In Case No. 2003-0389, Petition of Hillsborough County,
the court on July 10, 2003, issued the following order:**

On the record before us, we conclude that the district court's sentence exceeded its authority. The case is remanded for resentencing, which shall take place on Friday, July 11, 2003.

Brock, C.J., and Broderick, Nadeau, Dalianis, and Duggan, JJ.,
concurred.

Remanded.

**Eileen Fox,
Clerk**

Distribution:

Nashua District Court 00-CR-09653
Carolyn M. Kirby, Esquire
Peter Heed, Attorney General
John Dolan, Esquire
Barry S. Weinstein, Esquire
Honorable H. Philip Howorth
Laura Mitchell, Supreme Court
File