THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

February 25, 1952

Hon. Austin F. Anderson
Criminal District Attorney
Bexar County Courthouse
San Antonio 5, Texas

Opinion No. V-1414

Re: Proper procedure for a sanity hearing for a person who has been placed on adult probation following conviction of a felony and who has subsequently been arrested for another crime.

Dear Sir:

Your request for our opinion reads in part as follows:

"On September 15, 1951, Subject was convicted of burglary, on a plea of guilty, by the Criminal District Court of Bexar County, Texas. No issue was raised as to his sanity. Subject was sentenced to serve four years on probation. Subsequently on October 19, 1951, Subject committed forgery and was arrested. While lodged in the county jail, and on the 7th day of November 1951, he was examined by the County Health Officer, and on the 8th day of November 1951, by a psychiatrist in private practice; both of whom found Subject to be psychotic, i.e. insane. Both the County Judge of Bexar County and the Judge of the Criminal District Court of Bexar County were cognizant of the facts and were amenable to a trial in either court.

"On December 12, 1951, after expiration of the term at which Subject was convicted, the questions arose:

"1. Should Subject be committed to the State Hospital by following the procedure outlined in Art. 5561a, V.C.S., or by following Art. 921 et seq. V.C.C.P.? and

"2. Could Subject be committed to the State Hospital for a period not to exceed ninety days for observation and/or treatment by virtue of Art. 3193o-1 V.C.S.? and

"3. Is either the civil or the criminal procedure set out above exclusive of the other?

"4. Would the County Court have jurisdiction to try the defendant for insanity if he had not committed a crime while on probation?"

Subsequent to your request you advised us that the complaint in the foregoing case is still pending and no indictment has been returned.

Article 5561a, V.C.S., provides in part:

"If information in writing under oath be given to any county judge that any person in his county, not charged with a criminal offense, is a person of unsound mind, and that the welfare of either such person or any other person or persons requires that he be placed under restraint, and such county judge shall believe such information to be true, he shall forthwith issue a warrant for the apprehension of such person, or, if such like information be given to any justice of the peace in such county, said justice may issue a warrant for the apprehension of said person, making said complaint and warrant returnable to the county court of said county, and said county judge in either event shall fix a time and place for the hearing and determination of the matter, either in term time or in vacation, which place shall be either at the court house of the county, or at the residence of the person named, or at any other place in the county, as the county judge may deem best for such hearing. . . ."

Article 3193o-1, V.C.S., authorizes the county judge to commit mentally ill patients to

State Hospitals for ninety days for observation and treatment.

Article 921, V.C.C.P., provides:

"If at any time after conviction and by the manner and method as hereinafter provided, it be made known to the Judge of the Court in which the indictment has been returned, that the defendant has become insane, since his conviction, a jury shall be empaneled as in ordinary Criminal cases to try the question of insanity."

Article 932a, V.C.C.P., provides in part:

"Section 1. In any case where insanity is interposed as a defense and the defendant is tried on that issue alone, before the main charge, and the jury shall find the defendant insane, or to have been insane at the time the act is alleged to have been committed, and shall so state in their verdict, and further find the defendant:

"a. To have been insane at the time the act is alleged to have been committed, but sane at the time of the trial, he shall be immediately discharged;

"b. To have been insane at the time the act is alleged to have been committed and insane at the time of trial, or sane at the time the act is alleged to have been committed and insane at the time of trial, the Court shall thereupon make and have entered on the minutes of the Court an order committing the defendant to the custody of the sheriff, to be kept subject to the further order of the County Judge of the county, and the proceedings shall forthwith be certified to the County Judge who shall at once take the necessary steps to have the defendant committed to and confined in a State hospital for the insane until he becomes sane.

"Sec. 2. When the defense on the trial of the main charge is the insanity of the defendant the jury shall be instructed, if they acquit him on that ground, to state that fact with their verdict, and if they further find the defendant:

"a. To have been insane at the time the act is alleged to have been committed, but sane at the time of the trial, he shall be immediately discharged;

"b. To have been insane at the time the act is alleged to have been committed and insane at the time of trial, or sane at the time the act is alleged to have been committed and insane at the time of the trial, the Court shall thereupon make and have entered on the minutes of the Court an order committing the defendant to the custody of the sheriff, to be kept subject to the further order of the County Judge of the county and the proceedings shall forthwith be certified to the County Judge who shall at once take the necessary steps to have the defendant committed to and confined in a State hospital for the insane until he becomes sane.

". . ."

In Ex parte Knox, 147 Tex. Crim. 110, 178 S.W.2d 861 (1944), it is stated:

"Relator was under the accusation of felony theft, as evidenced by certain complaints filed in a justice court of Hidalgo County, and was held thereunder by virtue of a warrant issued out of such court on December 20, 1943; that while held in jail on such warrant by the sheriff of such county, on February 9, 1944, relator's wife filed an affidavit in lunacy in the county court, alleging that relator was a person of unsound mind, etc., and requesting that he be tried thereunder in the county court of such county. On February 23, 1944, the grand jury of Hidalgo County indicted relator for felony theft in three cases, and

returned same into the district court of that county, they being the same cases under which he was held by virtue of the justice court warrants.

"Relator now makes application to this court requesting that we issue our writ of habeas corpus herein, and that we also issue writ of mandamus to the county judge of Hidalgo County, directing him to forthwith try relator in such county court under the affidavit in lunacy in order to determine his sanity thereunder.

"It appears from the record that prosecution had begun in the matter of the felony thefts by a filing of complaints in the proper court prior to the attempt to have the question of relator's sanity inquired into by the county court, and that at the time of such filing of the insanity affidavit prosecution was pending in the felony cases. See 5 Words and Phrases, Perm. Ed., p. 281. Therefore relator was at such time charged with a criminal offense, and the statute relative to the determination of his sanity is found in Art. 932a, Vernon's Ann. C.C.P., and not in Art. 5561a, Vernon's Texas Statutes 1939, Cumulative Supplement. . . ."

In view of the foregoing, it is our opinion that the county court has no jurisdiction to commit the defendant to the State hospital under the provisions of either Article 5561a, V.C.S., or 3193o-1, V.C.S.

In McKibben v. State, 140 Tex. Crim. 1, 148 S.W.2d 423 (1940), it is stated:

"Appellant was convicted in Comanche County of robbery and his punishment assessed at five years in the penitentiary.

"Appellant gave notice of appeal to this court and the record was filed here on the 26th day of February, 1940. It is now shown by proper certified copies of orders and judgments that on May 3, 1940, there was pending in Eastland County, Texas, a

prosecution against appellant in which he was charged with a felony, to-wit, forgery.

"On the date last mentioned an affidavit was filed in the District Court of Eastland County where the forgery charge was pending averring that appellant was then insane, and requesting that he be first tried on that issue before putting him to trial upon the forgery charge. A jury was impaneled and it returned a verdict finding that appellant was then insane. Said judgment was certified to the County Judge of Eastland County, who by proper orders committed appellant to the asylum at Wichita Falls, where he is now confined.

"Art. 925, C.C.P., provides: 'Upon the trial of an issue of insanity, if the defendant is found to be insane, all further proceedings in the case against him shall be suspended until he becomes sane.'

"Counsel for appellant has filed a motion asking that under the provision of the article quoted further proceedings in the present cause be suspended until this court is properly advised that appellant has become sane. The article in question applies to proceedings in the Court of Criminal Appeals as well as to the trial court. See Williams v. State, 135 Tex. Cr. R. 585, 124 S.W.2d 990; Jones v. State, 137 Tex. Cr. R. 150, 128 S.W.2d 815.

"Under the provision of Article 921, C.C.P., as amended in 1931, Acts 42nd Legislature, page 82, Chapter 54, Vernon's Ann. Tex. C.C.P. art. 921, it is contemplated that the issue of insanity after conviction should be tried and determined by the District Court in which the conviction occurred. Ex parte Milliken, 108 Tex. Cr. R. 121, 299 S.W. 433; Ex parte Davenport, 110 Tex. Cr. R. 326, 7 S.W.2d 589, 60 A.L.R. 1403; Escue v. State, 88 Tex. Cr. R. 447, 227 S.W. 483; Bland v. State, 137 Tex. Cr. R. 486, 132 S.W.2d 274, 130 S.W.2d 292. None of the cases mentioned presents a

> situation similar to that here present and in enacting the statute referred to the Legislature apparently did not foresee nor contemplate a situation as has arisen here. The judgment of present insanity of appellant was not in the District Court where the instant conviction occurred, but was in a District Court where another felony charge was pending against appellant. There can be no question, therefore, of the jurisdiction of the District Court of Eastland County to determine the issue of present insanity of appellant as it related to the charge of forgery pending against him in that county. . . .
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> "The question is not free from difficulty. However, without going into a further discussion of the matter at this time we have concluded that no harm can ultimately result to either the State or appellant to direct the retirement of this case from the docket, and the stay of further proceedings therein until this Court is advised by proper orders and judgments that appellant has been restored to sanity, and it is so ordered."

In view of the foregoing it is our opinion that the issue of insanity could be tried in the District Court to which the indictment is returned under the provisions of Article 932a, V.C.C.P., or in the District Court which placed the defendant on probation under the provisions of Article 921 et seq., V.C.C.P.

Passing now to your fourth question, it was held in Attorney General's Opinion V-712 (1948) that:

> "A convict, who becomes insane while out of the penitentiary on parole, conditional pardon, or reprieve, is within the purview of Article 921, and the issue of his insanity can be tried and determined only in the District Court in which he was convicted, and then only when his application for a trial as to his insanity, accompanied by one or more of the affidavits

required by Article 922, is presented to the Judge of the Court. Dotson v. State, 195 S.W.2d 372.

"The fact that a convict becomes insane while out of the penitentiary on parole, conditional pardon, or reprieve does not deprive the District Court in which he was convicted of its exclusive jurisdiction to try and determine the issue of his insanity."

If a defendant is still serving his sentence under probation (Art. 781b, V.C.C.P.), and has not subsequently committed another crime, the rule announced in the above Attorney General's Opinion is applicable and the District Court which placed the defendant on probation has exclusive jurisdiction to try the issue of defendant's insanity.

SUMMARY

Where a person who is convicted of burglary and is placed on probation, subsequently commits forgery the County Court has no authority to commit such person to a State Hospital for insanity under the provisions of either Article 5561a or 3193o-1, V.C.S.

The issue of insanity should be tried in the District Court which placed him on probation under Article 921, V.C.C.P., or in the District Court in which the indictment is returned for forgery under the provisions of Article 932a, V.C.C.P. Ex parte Knox, 147 Tex. Crim. 110, 178 S.W.2d 861 (1944); McKibben v. State, 140 Tex. Crim. 1, 148 S.W.2d 423 (1940).

The County Court would not have jurisdiction to try such person for insanity

during the period of probation, even if he had not committed a crime during such period, since the District Court which placed him on probation has exclusive jurisdiction to try the issue of insanity under Article 921, V.C.C.P. Att'y Gen. Op. V-712 (1948).

Yours very truly,

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