

Opinion No. 43-4315

June 15, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Honorable John J. Dempsey, Governor of New Mexico, Santa Fe, New Mexico

We have your request for an opinion of June 14, 1943, concerning the question of whether or not the Governor has the power under Article 5, Section 6 of the Constitution of the State of New Mexico to pardon a juvenile who has been adjudged to be delinquent by a juvenile court, and made a ward of such court.

Article 5, Section 6 provides:

"* * * the Governor shall have power to grant reprieves and pardons after conviction for all offenses except treason and in cases of impeachment."

The Supreme Court of New Mexico has considered the above section of the Constitution in the cases of *Ex parte Bustillos*, 26 N.M. 449, 194 P. 886; *State v. Magee Publishing Company*, 29 N.M. 455, 224 P. 1028, 38 A.L.R. 142; *Ex parte Magee*, 31 N.M. 276, 242 P. 332; *Clovis v. Hamilton*, 41 N.M. 4, 62 P. 2d 1151. In all of these cases it seems to have been assumed by our Supreme Court that conviction "for all offenses" referred to conviction of any criminal offense against the Laws of the State of New Mexico.

In the New Mexico cases cited in 29 and 31 N.M., the court first found that the contempt of court was a criminal contempt, and therefore, under the facts constituted a conviction of a crime which was therefore subject to the pardoning power of the Governor.

In the case of *Clovis v. Hamilton*, *supra*, the court stated:

"The Governor, by virtue of Article 5, Section 6 of the Constitution, has the power to pardon, after conviction, for all offenses **against the state** except treason and in cases of impeachment." (Emphasis ours.)

The question becomes whether a juvenile delinquent who may have been adjudged to be delinquent on the basis of having violated a state law, and has therefore been declared a ward of the court, has been "convicted of an offense against the state."

The following cases have held that the word "offense" is synonymous with the word "crime."

State v. Rose, 106, N. E. 50, 51, 89 Ohio St. 383; *People v. Chimovitz*, 211 N. W. 650, 651, 237 Mich. 247; *State v. Eubanks*, 38 So. 407, 408, 114 La. 428; *State v. West*, 43 N. W. 845, 847, 42 Minn. 147; *Ex parte Campion*, 112 N. W. 585, 588, 79 Neb. 364.

Ex parte Campion, supra, held under a constitutional provision similar to ours, that "offense" was equivalent to "crimes," and that the Governor could not pardon a person unless he had been convicted of a crime.

The Supreme Court of Washington stated in the case of In re Mason, 3 Wash. 609, 612:

"They (juvenile delinquents who have been declared wards of the Court) are not subject to the penal laws of the state, have no right to trial by jury, and do not come within the pardoning power any more than persons committed to the insane asylum."

39 Am. Jur. 535 states:

"The power to pardon, except as limited by the Constitution, extends to every offense against the Government known to the law, but is limited to offenses against the state as such. An executive has no power to pardon a private wrong or relieve the wrongdoer of the civil consequences thereof."

The Supreme Court of New Mexico, In the Matter of the Application of Jose Santillanes for a Writ of Habeas Corpus, No. 4760, 47 N.M. , P. , considered the question at length concerning whether or not juvenile delinquency proceedings are criminal proceedings, and held that such proceedings are not criminal. On page 11 of the original opinion the court stated:

"* * * we are dealing with a special statutory **civil proceeding** and not a criminal statute so far as the case of the juvenile itself is concerned."

In view of this holding, the basis of which was that a juvenile who had been adjudged to be a delinquent and a ward of the court had not been convicted of a crime, and that the juvenile proceedings relative to such adjudication were "special statutory civil proceedings," it would seem plain, and it is therefore my opinion that the Governor does not possess power to pardon a person adjudged to be a ward of the court, since such person has not been convicted of a crime.

Hoping that the above fully answers your question, I remain

By HARRY L. BIGBEE

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