Virginia State Crime Commission

Inherent Authority of Courts to Defer and Dismiss

2011

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Executive Summary

During the 2011 Regular Session of the Virginia General Assembly, Delegate Todd Gilbert introduced House Bill 2513 (HB 2513), which would have statutorily prohibited trial courts from taking criminal cases under advisement, with a later dismissal of the charges upon completion of terms and conditions, unless otherwise statutorily authorized to do so. A letter was sent from the Senate Courts of Justice Committee, asking the Crime Commission to review the subject matter of the bill.

House Bill 2513 was introduced as a response to the Virginia Supreme Court case of Hernandez v. Commonwealth, 281 Va. 222 (2011). In Hernandez, the Supreme Court held that trial courts have the inherent authority to defer issuing a final order in a criminal case for a period of time; during this time, they may place the defendant on whatever terms of bond are deemed appropriate. While this raises the possibility that trial courts could then use this power as a creative means to place a defendant on a probationary period, and later acquit him, the Hernandez decision does not specifically affirm that trial courts may do so. A later opinion by the Virginia Court of Appeals, Taylor v. Commonwealth, 58 Va. App. 435 (2011), specifically states that trial courts do not have the inherent authority to do this.

To that extent, HB 2513 would merely be a codification of Virginia's current case law on this issue. However, the engrossed portion of the bill added a sentence, prohibiting trial courts from deferring findings of guilt for more than 60 days. Based upon a reading of the applicable cases, it is unclear whether a statutorily imposed time-frame would be upheld by the Virginia Supreme Court. While the Court is clear that trial courts have an inherent authority to decide cases, and with that authority comes the authority to defer making a decision—though not for an unlimited period of time—the Court has not indicated to what extent this authority may be modified or curtailed by the legislature.

The Crime Commission reviewed the relevant case law in Virginia, and considered the subject matter of HB 2513. After deliberating, the Commission declined to endorse the legislation, and made no recommendations on this issue.

Background

During the 2011 Regular Session of the Virginia General Assembly, Delegate Todd Gilbert introduced HB 2513, which would have statutorily prohibited trial courts from taking criminal cases under advisement, with a later dismissal of the charges upon completion of terms and conditions, unless otherwise statutorily authorized to do so.[1]

The bill was referred to the Senate Courts of Justice Committee, where it was passed by indefinitely; a letter was sent to the Crime Commission asking for a review of the subject matter of the bill. The proposed statute, as passed by the House of Delegates, was as follows:

§ 19.2-298.02. Deferred disposition in a criminal case.

> *No court shall have the authority, upon a plea of guilty or nolo contendere or after a plea of not guilty, when the facts found by the court would justify a finding of guilt, to defer proceedings or to defer entry of a final order of guilt or to dismiss the case upon completion of terms and conditions except as provided by statute. In no case shall the court defer entry of a final order of guilt for more than 60 days following conclusion of all of the evidence.*

House Bill 2513 was introduced in response to the case of Hernandez v. Commonwealth.[2] In that case, the Supreme Court of Virginia appeared to hold that trial courts have an inherent authority to take criminal cases under advisement, place the defendant on terms of bond that resemble probation, and at a later date, dismiss the charges. The wording of the opinion implies that because this authority is inherent, a trial court may take this action, even in the absence of a statute that specifically authorizes such a disposition.[3] The Court noted that "the act of rendering judgment is with the inherent power of the [trial] court," and therefore, "it was within the inherent authority of the court to 'take the matter under advisement' or 'continue the case for disposition' at a later date."[4] The Court also stated that "while such a case [is] pending, the [trial] court has statutory authority to continue bail requirements."[5]

However, the Supreme Court also observed that "once a court has entered a judgment of conviction of a crime, the question of the penalty to be imposed is entirely within the province of the legislature, and the court has no inherent authority to depart from the range of punishment legislatively prescribed."

Analysis

While the Hernandez case seems to give the impression that trial courts can make use of their inherent authority to favor certain well-deserving defendants, by placing them on conditions similar to that of probation, and later dismiss the criminal charges if the defendant satisfies all of the conditions, it is significant to note that the Supreme Court did not explicitly say so. Instead, the Court noted, "we [leave] open the question whether a court may defer judgment and continue a case with a *promise* of a particular disposition at a later date. That question…is not before us here."[6]

The Hernandez opinion repeatedly cites the earlier case of Moreau v. Fuller.[7] The Moreau case similarly stands for the proposition that upon hearing the evidence in a criminal case, it is "within the inherent authority of the court to 'take the matter under advisement' or 'continue the case for disposition' at a later date."[8] However, the Supreme Court acknowledged in Moreau that the doctrine of the separation of powers

means that "the judiciary…may not assume a power of clemency or pardon which is a unique function of executive power."[9]

These two observations by the Virginia Supreme Court seem to indicate that the inherent authority articulated in the Hernandez case does not extend to trial judges making creative use of bail conditions and continuances, so as to place the defendant on a type of "probation," which has the possibility of ending in an acquittal. A recently published opinion by the Virginia Court of Appeals directly states this. In the case of Taylor v. Commonwealth, the Court of Appeals held that it is a fallacy "that the power to enforce begets inherently a discretion to permanently refuse to do so."[10] On the contrary:

> [A] Virginia court cannot refuse to convict a guilty defendant merely because it questions the category of offense assigned by the legislature, considers the range of statutory punishment too harsh, or believes certain guilty offenders undeserving of a criminal conviction.[11]

Although a petition for appeal was filed to the Virginia Supreme Court in the Taylor case, it was denied; as a published opinion, the Court of Appeals holding in Taylor v. Commonwealth is now the law in the Commonwealth and is binding on all trial courts. Reading the Hernandez and Taylor cases in conjunction, the current state of the law in Virginia seems to be that trial judges have the inherent authority to defer issuing a final judgment in a criminal case, and during this time period, they can place the defendant on whatever conditions of bond are deemed appropriate. However, the trial court cannot take a case under advisement in perpetuity, or absolutely refuse to render a judgment. Even more significantly, the trial court cannot use its inherent authority as a mechanism to provide leniency or acquit a defendant who is guilty of a crime.[12]

If this is the current state of the law, HB 2513 would merely represent a codification of the principle that trial judges in criminal cases may not make use of "deferred dispositions" to help defendants gain an acquittal, unless the legislature has specifically authorized such a possibility for the criminal charge that is the before the court. The last sentence of the engrossed version of HB 2513, which places a time limit of 60 days on how long a trial judge may defer entering a final order of guilt, might be held to be an impermissible breach of the separation of powers, though. If courts have an inherent authority to defer a matter, per Hernandez, it remains unclear, based upon a reading of the relevant cases, to what extent the legislature can modify or restrict such authority.

Conclusion

The Crime Commission reviewed the cases of Hernandez v. Commonwealth and Taylor v. Commonwealth, and considered the subject matter of HB 2513. After deliberations, the Crime Commission took no position on either HB 2513 or the issue of deferred dispositions.

[1] H.B. 2513, 2011 Gen. Assemb., Reg. Sess. (Va. 2011).
[2] Hernandez v. Commonwealth, 281 Va. 222 (2011).
[3] *See, e.g.,* VA. CODE ANN. §§ 18.2-251, 18.2-57.3 (West 2011).
[4] Id. at 225.
[5] Id. at 225.
[6] Id. at 225.
[7] Moreau v. Fuller, 276 Va. 127 (2008).
[8] Id. at 137.
[9] Id. at 136.
[10] Taylor v. Commonwealth, 58 Va. App. 435, 439 (2011).
[11] Id. at 442.
[12] *Accord,* Epps v. Commonwealth, 59 Va. App. 71 (2011).