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George N. Stevens
University of Washington School of Law

JURISDICTION OF THE JUSTICES OF THE PEACE TO SENTENCE

GEORGE N. STEVENS*

Members of the Magistrates Association of the State of Washington have reported difficulty in ascertaining the extent of their power to impose sentences on persons found guilty of certain offenses because of an apparent conflict in the statutory law of Washington. In order to resolve this difficulty it is necessary to distinguish between the power of a Justice of the Peace to hear and determine a particular case and his power to impose sentence upon a finding of guilty

The Constitution of the State of Washington provides for Justices of the Peace.[1] It further provides that the Justices of the Peace shall have such powers, duties and jurisdiction as the Legislature may prescribe.[2] Consequently, the source of authority with respect to what a Justice of the Peace may or may not do is the Session Laws of the State of Washington.

So far as the criminal jurisdiction of the Justices of the Peace is concerned, the basic expression of the Legislative intent is found in what is now RCW 3.20.040:

"Justices of the Peace shall have jurisdiction concurrent with the superior courts of all misdemeanors and gross misdemeanors committed in or which may be tried in their respective counties *Provided,* That justices of the peace in cities of the first class shall in no event impose greater punishment than a fine of five hundred dollars, or imprisonment on the county jail for six months, and justices of the peace other than those elected in cities of of the first class shall in no event impose greater punishment than a fine of one hundred dollars, or imprisonment in the county jail for thirty days."

This statute does two things. First, it gives the Justice of the Peace concurrent jurisdiction with the Superior Court of *all* misdemeanors and gross misdemeanors committed in or which may be tried in their respective counties. Second, it limits the power of Justices of the Peace to impose punishment.

*Dean of the School of Law, University of Washington. An address delivered to the Second Annual Meeting of the Magistrates Association of the State of Washington, held at the University of Washington School of Law on September 17, 18, 19, 1953.

[1] WASH. CONST. Art. IV, § 1 (1889).

[2] WASH. CONST. Art. IV, § 10 (1889).

A question of statutory construction is inevitable. Does the limitation on the power to impose sentence constitute a limitation on the power to hear and determine *all* misdemeanors and gross misdemeanors? What was the legislative intent?

In view of the procedures established by the Legislature by those statutes now known as RCW 10.04.030, 10.16.130 and 10.04.100, a strong argument could be made that it was not the legislative intent to limit the jurisdiction of the Justices of the Peace to hear cases involving misdemeanors and gross misdemeanors, but only to limit their power to impose punishment.

"RCW 10.04.030 Hearing-Judgment. On the return of any warrant issued by him, the justice shall docket the cause. Unless a continuance is granted, he shall forthwith hear and determine the cause, and either acquit, convict and punish, or if the offense proves to be one which should be tried in the superior court, and is bailable, hold the offender to bail, or in default of bail, commit him to jail, as the facts and law may justify

"RCW 10.16.130 Order for trial before justice. If it appears that an offense has been committed of which a justice of the peace has jurisdiction, and one which would be sufficiently punished by a fine not exceeding one hundred dollars:

(1) If the magistrate having the complaint is a justice of the peace, he shall cause the complaint to be altered and proceed as in like cases before a justice of the peace, or

(2) If the magistrate is not a justice of the peace, he shall certify the papers, with a statement of the offense appearing to be proved, to the nearest justice of the peace, and shall, by order, require the defendant and the witnesses to furnish bonds, with sufficient sureties, to be approved by the magistrate, for their appearance before the justice at the time and place stated in the order. The justice shall proceed to the trail of the action as if originally commenced before him.

"RCW 10.04.100 Verdict of guilty-Proceedings upon. If the defendant is found guilty, the justice or the jury, as the case may be, shall assess his punishment. If, in the opinion of the justice or the jury, as the case may be, the punishment they are authorized to assess is not adequate to the offense, they may so find, and thereupon the justice shall order the defendant to furnish a bond for his appearance in the superior court of the county. He shall also require the witnesses to furnish bonds for their appearances thereat and proceed as in proceedings by a committing magistrate.

The first of these three sections empowers the Justice of the Peace to look into the merits, and acquit, convice, punish, *or* send the case up to the Superior Court if the offense proves to be one which should

be tried there. The second clearly distinguishes between jurisdiction to hear and determine and the power to impose sentence by its positive instruction to the magistrate as to the place for trial. And the third statute, in so many words, instructs the Justice of the Peace how to proceed where, *after he has heard and determined,* he feels that the punishment he is authorized to assess is not adequate. In each instance, the power to look into the merits is assumed and procedures are set up to make effective the separate and distinct limitation on the power to impose sentence.

The legislative intent might well be ascertained from yet another approach. The Legislature established the punishment for gross misdemeanors and misdemeanors when not otherwise fixed by statute by general provisions in what are now RCW 9.92.020[3] and 9.92.030.[4] The maximum punishment under these statutes is well beyond the maximums authorized by RCW 3.20.040. Substantive statutes, such as those dealing with motor vehicles, provide that:

"Any person violating any provisions of this title for the violation of which no penalty is prescribed, or for the violation of which a different penalty is not imposed either by this title or by any other law of this state, shall be guilty of a misdemeanor."[5]

Common sense dictates the conclusion that it certainly was not the legislative intent to deprive the Justices of the Peace of jurisdiction to hear and determine misdemeanor and gross misdemeanor cases simply because the maximum penalty was beyond the power of the Justices of the Peace to impose.

First, suppose that the maximum penalty provided by law for a misdemeanor or gross misdemeanor is greater than the maximum punishment which a Justice of the Peace is authorized to impose under RCW 3.20.040. On such a set of facts, does a Justice of the Peace have the jurisdiction to hear and determine the guilt or innocence of a person

[3] RCW 9.92.020 Punishment for gross misdemeanor when not fixed by statue. Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both.

[4] RCW 9.92.030 Punishment for misdemeanor when not fixed by statute. Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for not more than ninety days, or by a fine of not more than two hundred and fifty dollars.

Note that this statute does not contain the "or both" authorization. State v. Low, 192 Wash. 631, 74 P.2d 458 (1937) held that the punishment authorized under this section is fine or imprisonment, but not both.

[5] RCW 46.64.050.

accused of the particular misdemeanor or gross misdemeanor, in spite of the limitation on his power to enforce the maximum penalty? This very contention was made in *State v. Davis*.[6] In this case the Justice of the Peace had imposed a sentence of only $25, well within his power under the proviso. In the language of the Court:

"Respondent further contends that the justice of the peace had no jurisdiction to try him on the complaint made, for the reason that § 3 of the statute of 1889 provides for a fine of not less than $25, nor more than $200, or imprisonment for a period of not less than ten nor more than ninety days. While it is true that, under Pierce Code, § 3071, Laws 1901, p. 34, a justice of the peace may not impose a fine of more than $100, nevertheless, we think said section confers upon justices of the peace jurisdiction of all misdemeanors, and that such justices are merely restricted by said section to imposing a fine not exceeding $100, or imprisonment as in said section stated. In this case the justice imposed a fine of $25, and did not exceed his jurisdiction."

But, suppose the Justice of the Peace imposes a sentence beyond his power. Does this deprive him of jurisdiction over the offense charged, provided it is a misdemeanor or gross misdemeanor? This question reached our Supreme Court in *State* ex rel. *Rush v. Orton*.[7] The court held:

"The complaint in the justice court clearly charges a misdemeanor. The justice of the peace had jurisdiction. *** The judgment of the justice of the peace was clearly erroneous in imposing both the one hundred dollar fine and the thirty days imprisonment. *** So, in the instant case, the justice had jurisdiction, the case was heard, the defendant on his plea was adjudged guilty; and the only question for determination by the superior court was the legality of the sentence imposed. We hold that it was the duty of the superior court, under the above-quoted statute, to remand the case to the justice of the peace with instructions that a legal sentence be pronounced."

The decision in the *Rush* case clearly distinguishes between jurisdiction to hear and determine and power to impose punishment, and holds that the latter is not a limitation on the former. Error in the imposition of sentence is not fatal to jurisdiction over the offense. The case is sent back for a legal sentence.

When the case gets back to the Justice of the Peace he must decide whether the punishment which he is authorized to impose is adequate. If he feels that it is, he may enter judgment up to the maximum of the proviso of RCW 3.20.040. However, if the justice, or the jury, as the

[6] 43 Wash. 116, 86 Pac. 201 (1906).
[7] 145 Wash. 289, 259 Pac. 1077 (1927).

case may be, is of the opinion that the punishment which they are authorized to impose is not adequate, they may so find and should proceed, as the Legislature provided in what is now RCW 10.04.100, to send the case to the Superior Court for more appropriate punishment. Not only has this procedure been approved by our Supreme Court,[8] but it has been definitely determined that such a procedure does not constitute double jeopardy.[9]

Consequently, the answer to the first hypothetical is that so long as the offense charged is a misdemeanor or gross misdemeanor the Justice of the Peace has jurisdiction to hear and determine the guilt or innocence of the accused, but his power to sentence upon a verdict of guilty is limited by the proviso of RCW 3.20.040, and when his power to punish is not adequate he must proceed in accordance with RCW 10.04.100 by sending the case to the Superior Court.

Will it make a difference if the minimum penalty established for the particular misdemeanor or gross misdemeanor is greater than the maximum penalty authorized under the proviso of RCW 3.20.040?

The legislative intent on this question is clear. Under RCW 10.16.-130, Order for trial before a Justice, such a case should not be sent to a Justice of the Peace, not because he does not have jurisdiction, but because the offense is one for which the Justice of the Peace could not impose an adequate punishment. But, suppose such a case is sent to the Justice of the Peace.

Where a case starts before a Justice of the Peace, the Legislature wisely provided under RCW 10.04.030 that the Justice of the Peace should forthwith hear and determine the cause, and either acquit, convict and punish, or if the offense proves to be one which should be tried in the Superior Court, hold the offender to bail or commit him to jail as the facts and the law may justify Here again he has power to look into the merits, even though he may not have power to impose punishment.

And finally, if at a hearing before the Justice of the Peace, the defendant is found guilty, is not the Justice of the Peace in a position to say that since the punishment he is authorized to assess is not adequate to the offense, the defendant is ordered to furnish a bond for his appearance in the Superior Court of the county under RCW 10.04.100?

[8] State *ex rel.* Murphy v. Taylor, 101 Wash. 148, 172 Pac. 217 (1918), State v. Friedlander, 141 Wash. 1, 250 Pac. 453 (1926).

[9] State v. Friedlander, 141 Wash. 1, 250 Pac. 453 (1926), appeal dismissed 275 U.S. 573 (1927).

Consequently, whether a case of this kind starts before a Justice of the Peace or is improperly referred to him under RCW 10.16.130, no harm seems to come of it, provided that the Justice of the Peace does not himself impose a sentence. At least, no case in point has been found.

Suppose, however, that the Justice of the Peace on the facts of this second hypothetical finds the accused guilty and imposes a punishment in accord with the offense and beyond the proviso of RCW 3.20.040. Is this merely error in the sentence imposed? Under the reasoning of the cases above referred to one might well come to such a conclusion. However, in *State* ex rel *Wagner v. Superior Court*,[10] our Supreme Court held:

"The statute under which relator was prosecuted *** provides for a fine of not less than $250, nor more than $1,000, for the offense of which relator was convicted. ***

"It seems to us that the justice of the peace had no jurisdiction of the offense charged, since the law mandatorily required upon conviction a fine of not less than two hundred fifty dollars, and the justice of the peace had jurisdiction to assess a fine of one hundred dollars only. It follows, therefore, that it was a case the punishment for which as provided by law he was unable to impose. ***

"*** It will be seen in the instant case that the relator was not tried before a court of competent jurisdiction, because the court was not competent to impose a fine of two hundred fifty dollars as required by law. It is not a case where the court has only entered an erroneous judgment. If the statute under which the relator was tried gave the court power to fine in the amount of one hundred dollars or less, then its action would only be erroneous because the amount imposed would be greater than its power under the law. *State v. Davis.* But in this case, the court had no power to hear the case, because it could not impose the sentence required by law."

This case holds that where the minimum sentence for violation of a misdemeanor or gross misdemeanor is greater than the maximum sentence that a Justice of the Peace may impose under RCW 3.20.040, the Justice of the Peace has no power to hear the case.

With all due respect to the Supreme Court in that case, I think it failed to fully consider the legislative intent as expressed in the statutes above cited, none of which were discussed in the opinion; nor does the court distinguish between jurisdiction to hear and determine and power to punish, in the light of the Washington statutes above referred to.

The decision should be limited to its facts. I doubt whether this case

[10] 144 Wash. 71, 256 Pac. 784 (1927).

would be authority for the contention that a Justice of the Peace has no power to hear a case coming to him under RCW 10.04.030; 10.16.-130 or 10.04.100 where he does not impose an illegal sentence but properly sends the case along to the Superior Court. In fact, the Supreme Court in discussing the *Wagner* case in a later opinion said:[11]

"*** It would seem that, in the prosecution of Mr. Wagner for violation of the game laws, the Justice of the Peace did, in fact, have power, as a committing magistrate, to hear the case, but, because of the sentence provided for by law, had no authority to find the accused guilty, but had authority only to bind him over to the Superior Court for trial. It may be that, in the opinion of this Court in the *Wagner* case, supra, the jurisdiction of the justice, as a committing magistrate, to hear the case, was confused with the assumed jurisdiction of the justice to try the case, find the accused guilty and impose sentence, which latter jurisdiction was clearly lacking."

At this point then, we must draw the conclusion that where the minimum punishment prescribed for a particular misdemeanor or gross misdemeanor is beyond the power of a Justice of the Peace to impose sentence because of the proviso of RCW 3.20.040, either the Justice of the Peace, at worst, has no jurisdiction to hear the case, under the *Wagner* decision, or, at best, may act as a committing magistrate, under the dictum of the *Hulet* case.

What is the effect of this decisional law on, for example, RCW 46.56.010 which deals with the operation of motor vehicles while under influence of intoxicants or drugs?

"Upon the first conviction for the violation of the provisions of this section the court shall impose a fine of not less than fifty dollars or more than five hundred dollars or not less than ten days or more than one year in jail, or both such fine and imprisonment, and shall, in addition thereto, revoke the operator's license of such person. Upon second or subsequent conviction for a violation of the provisions of this section the court shall impose a fine of not less than one hundred dollars or more than one thousand dollars and not less than thirty days or more than one year in the county jail, or both such fine and imprisonment, and shall, in addition thereto, revoke the operator's license of such person."

The fine or imprisonment terms for a first conviction are clearly within the jurisdiction of the Justice of the Peace both to hear and to impose punishment under the Davis case. The minimum punishment for a second conviction either by fine or imprisonment is the maximum

[11] *In re* Hulet, 159 Wash. 98, 102, 292 Pac. 430, 432 (1930).

under the proviso of RCW 3.20.040. So, requirements of the *Wagner* case are met, and the Justice of the Peace has jurisdiction both to hear and to impose sentence, or refer the matter to the Superior Court for more adequate punishment. But, the matter does not end here. The penalty provisions of RCW 46.56.010 for both a first and second conviction state that the operator's license of such person be revoked. This provision is mandatory, not discretionary. Consequently, under the language of the *Wagner* case, and it is still law, the Justice of the Peace has no jurisdiction over this offense since the law requires a sentence upon conviction which the Justice of the Peace is not authorized to impose under RCW 3.20.040, *unless* some other statute confers this additional power on the Justice of the Peace. RCW 46.20.250 provides:

"Every court in fixing the penalty shall forthwith revoke the vehicle operator's license of a person upon his conviction of any of the following crimes.

(1) Manslaughter resulting from the operation of a motor vehicle;

(2) Perjury or the making of a false affidavit to the director under any licensing law pertaining to motor vehicles or any other law of this state requiring the registration of motor vehicles or regulating their operation on public highways;

(3) Any crime punishable as a felony under the motor vehicle laws of this state or any other felony in the commission of which a motor vehicle is used;

(4) Conviction or forfeiture of bail upon three charges of reckless driving all within the preceding two years;

(5) A conviction of an operator of a motor vehicle, involved in an accident resulting in the death or injury of another person, upon a charge of failing to stop and disclose his identity at the scene of the accident;

(6) Operating a vehicle upon the public highways of this state while under the influence of or affected by the use of intoxicating liquor or of any narcotic drug.

The foregoing offenses shall be in addition to any other offenses for which revocation of a vehicle operator's license is by law provided.

Does this statute increase the power of Justices of the Peace to impose sentences? Two opinions of the Attorney General say that a Justice of the Peace has power under this statute to revoke an operator's license[12]. However, neither opinion went into the question of the validity of the enlargement of the Justices' of the Peace jurisdiction to sentence in view of the proviso of RCW 3.20.040.

The problem boils down to this: Can the Legislature in Washington

[12] 1937-38 OP. ATT'Y. GEN. 235 and 1941-42 OP. ATT'Y GEN. 229.

increase the power of the Justice of the Peace to sentence in special cases without amending the proviso of RCW 3.20.040?

The answer to this question is of vital importance to Justices of the Peace. Several recent statutes have purported to increase the jurisdiction of the Justices of the Peace to impose sentence for particular offenses far beyond the maximums permitted by RCW 3.20.040. For example, RCW 66.44.180, of the Alcoholic Beverage Control Act, provides:

"Every justice of the peace and magistrate shall have concurrent jurisdiction with superior court judges of the state for all violations of the provisions of this title, and may impose any punishment provided therefor."

Similar provisions are found in the Food Fish and Shellfish Act[13] and Game and Game Fish Act.[14] If statutes such as these are valid, then the jurisdiction of the Justice of the Peace to sentence may differ with the offense charged. A careful search of the Washington statutes should be made and the attention of all Justices of the Peace should be called to all provisions increasing, in any respect, the power of the Justices of the Peace to hear and to sentence.

Fortunately, we have an excellent decision of our Supreme Court, In re *Hulet*,[15] on the Constitutionality of statutes such as these which increase the jurisdiction of a Justice of the Peace to sentence in special cases without amending or purporting to amend RCW 3.20.040.

The petitioner, one Hulet, had been charged before a Justice of the Peace with violation of the prohibition laws. He pleaded guilty and was sentenced by the Justice to serve ninety days in county jail *and* to pay a fine of $600. Our Supreme Court said:

"Petitioner contends that, under the statutes of this state, the jurisdiction of justices of the peace for precincts other than cities of the first class, under circumstances similar to those disclosed by the record herein, is limited to the imposition of a fine not exceeding $100, or a sentence of not to exceed thirty days in the county jail. Petitioner contends that, in so far as the

[13] FOOD FISH AND SHELLFISH RCW 75.08.270 Justice and superior courts have concurrent jurisdiction. Every justice of the peace shall have jurisdiction concurrent with the superior court of all misdemeanors and gross misdemeanors committed in violation of the fisheries code and of the rules, regulations, and orders made by the director in accordance with existing law and to impose any penalty or confiscation provided for such offenses.

[14] GAME AND GAME FISH RCW 77.16.240 General penalty—jurisdiction of courts. Every justice of the peace shall have jurisdiction concurrent with the superior courts of all misdemeanors and gross misdemeanors committed in violation of the provisions of this title and may impose any punishment in this title provided for such offenses.

[15] 159 Wash. 98, 292 Pac. 430 (1930).

sentence imposed upon him by the justice exceeds these limits, the same was unlawful, and that petitioner, after serving so much of the sentence as lies within what he contends is the jurisdiction of the justice, is entitled to his discharge.***

"Petitioner relies upon the case of *State* ex rel. *Wagner v. Superior Court.* This decision would, indeed, be directly in point were it not for § 14, chapter 19, Laws of 1917, p. 61, and chapter 122, Laws of 1921, p. 398, above quoted, which sections purport to vest justices of the peace with jurisdiction to impose punishments in excess of those provided for by Rem. Com. Stat., § 46, supra [now RCW 3.20.040]. If the last mentioned statutes are valid, in so far as they purport to increase the jurisdiction of justices of the peace, then it follows that the *Wagner* case is not controlling here."

The Supreme Court then proceeded to test the validity of the act under which Hulet was sentenced against the constitutional requirements for valid legislation. The court found that all these requirements were met, and that, consequently, the statute increasing the power of the Justice of the Peace to impose sentence was valid in every respect.

In the light of this decision, it is safe to say that our Legislature may increase the power of the Justices of the Peace to sentence in special cases without amending the basic limitation. And, when such a provision becomes law, the Justice of the Peace may impose any punishment for the particular misdemeanor or gross misdemeanor that the title establishes, be it fine, imprisonment, both, or even confiscation of property, without regard to the limitation of RCW 3.20.040.