Committee on Judiciary
Reference Paper

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SUBJECT: Equal Protection problems in making certain inferior courts courts of record.

I. INTRODUCTION

Under ch 623, Oregon Laws 1971, and ch 134, Oregon Laws 1973, district courts will become courts of record on July 1, 1975. Appeals from district court would go to circuit court on the record rather than de novo. Senate Bill 403 (1973), which is recommended by Classes of Offenses; Disposition of Offenders, Preliminary Draft No. 2, would provide for appeal from district court to the Court of Appeals on the record.

No similar provisions are made in the bill for justice and municipal courts. Under the present law, one convicted on a not guilty plea in municipal or justice court would be entitled to a de novo review in circuit court. Under the recommendation of Preliminary Draft No. 2, justice courts would be changed to correspond to district courts with regard to record and appeal. Municipal courts would be given the option.

As will be shown below, any major differences with regard to appeals between classes of inferior courts or between specific inferior courts would give rise to Equal Protection Clause problems under the U. S. and Oregon Constitutions.

II. JURISDICTION OF INFERIOR COURTS

Generally, district court has concurrent jurisdiction with municipal court (within a city) and justice court (outside a city) over state traffic violations. (ORS 484.030). District court has concurrent jurisdiction with municipal court over violations of the city charter or city ordinances. (ORS 46.040). ORS 221.315 sets up procedures for prosecuting charter and ordinance violations in district court.

In addition to concurrent jurisdiction, many cities have traffic ordinances which are exact or nearly exact copies of state traffic laws (although the respective penalties may differ). Thus, it appears that an arresting officer has the discretion, in certain situations, to cite the defendant into either municipal court or district court. He may also have the discretion to cite the defendant for either a state law violation or an ordinance violation. (In State v. Gillen, 10 Or App 169, 499 P2d 345 (1972), the argument was raised but not reached by the court that an arresting officer's power to charge under statute or ordinance was violative of the Equal Protection Clause.)

III. EFFECTS OF THE DISCRETION

As the law stands today, the discretionary choices of the officer would have little effect. The procedures in municipal, district and justice courts are similar; including the right to a de novo review in circuit court. If the district court

becomes a court of record with review on the record while municipal court remains a court not of record with de novo review, the officer's decision on which court to cite the defendant into could have major consequences.

According to Professor George Platt, An Odd Couple: The Criminal Sanction and the Municipal Ordinance, 7 Will L J 43 at 50 (1971), there are major advantages to a de novo review. For example, from 1957 to 1966, 86% of all cases appealed de novo from Portland Municipal Court to Multnomah County Circuit Court resulted in either dismissal or a reduced sentence. In a four-month period in 1970, 30 cases were set for de novo review from Eugene Municipal Court to Lane County Circuit Court (five cases were later consolidated). Of these, 18 were dismissed, two acquitted and five postponed. There were no convictions.

IV. EQUAL PROTECTION ARGUMENTS

The Equal Protection problem is best illustrated by the following example: Two people are cited in the same city for violation of the same state traffic offense (or one is cited for an identical municipal offense). One is cited into municipal court and the other into district court. One is thus entitled to two jury trials and an appeal to the Court of Appeals while the other is entitled to one jury trial and an appeal to circuit court and/or the Court of Appeals on the record.

Griffin v. Illinois, 351 U. S. 12 (1956), held that even if a state is not required to afford certain rights to a criminal defendant, if it does so Equal Protection requires that it must afford those rights equally to all. This holding applies to appeals as well as trials:

> "The equal protection of law implies that all litigants similarly situated may appeal to courts for both relief and defense under like conditions with like protection, and without discrimination." Sexton v. Barry, 223 F2d 220 (6th Cir 1956).

The Oregon Court of Appeals dealt with an equal protection problem involving municipal courts in Miller v. Jordan, 3 Or App 134, 472 P2d 841 (1970). In that case the defendant was charged with a municipal traffic violation. The officer could have charged the defendant with an identical state offense simply by checking the appropriate box on the citation. Municipal court had jurisdiction over both municipal and state offenses. The municipal court held that the defendant was required to pay, in advance, a fee for a jury trial as required by ordinance. He would not have been required to pay the fee if he had been charged with the state offense. The circuit court and the Court of Appeals held that requiring the fee violated Equal Protection.

> "Here the only factor which determines whether an accused can exercise his right to a jury trial without advance deposit is the arbitrary decision of the arresting officer. No legislative standard guides its exercise." At 843.

In a similar situation dealing with jury trials, the Minnesota Supreme Court held that when a municipality is given concurrent jurisdiction over a crime with the state the

municipality must provide the same procedures as the state courts. Otherwise, "basic civil rights of the defendant would depend upon the arbitrary choice of the prosecutive authorities as to the court in which the action against him would be instituted. State v. Hoben, 256 Minn 436, 98 NW2d 813 (1959).

In Miller v. Jordan, supra, the court relied heavily on State v. Pirkey, 203 Or 697, 281 P2d 698 (1955). In that case the court held that the statute which allowed the crime of drawing a bank check on insufficient funds to be treated as a misdemeanor or felony at the discretion of the grand jury or magistrate violated Equal Protection. There were no guidelines as to how the decision should be made on whether to treat the crime as a misdemeanor or felony.

> "If there is no rational basis for classifying one person or group of persons as being subject to one statutory regulation, while subjecting others to a different regulation, then the legislation must fall under the constitutional provision." 203 Or 697. At 703-04.

In making the decision as to which court to cite a defendant into, the police officer is exercising his own discretion without any legislative guidelines. This is the type of standardless discretion which concerned the courts in Pirkey and Miller v. Jordan.

If there is a rational basis for the classification, two persons may be treated differently. In State v. Belt, 98 Adv Sh 776, ____ Or App ____, 517 P2d 1219 (1974), the defendant was indicted in circuit court for criminally negligent homicide, DUIL and .15. By being indicted in circuit court the defendant

lost his right to a six man unanimous jury verdict in district court. The defendant argued this violated due process. The court noted that the state did not elect to charge the defendant in circuit court on a whim or caprice. Rather, it did so to avoid a plea of double jeopardy. Thus there was a sound basis for distinction. It should be noted that the defendant did not make an Equal Protection argument in this case.

An Equal Protection argument was made and rejected in State v. Mayo, 97 Adv Sh 380, ____ Or App ____, 511 P2d 456 (1973). Here, the defendant was indicted for two felonies and a misdemeanor (assault 3). He contended that he was denied Equal Protection because the indictment denied him the right to a unanimous jury verdict. The court held that there was a rational basis of distinction in this case (apparently the double jeopardy problem), and further, that the unanimous verdict of a six man jury did not provide significantly greater protection than a 10-2 verdict.

In the above cases the court noted that the classification was rational and not arbitrary, capricious or whimsical. There were definite guidelines. This should be contrasted with Miller v. Jordan, supra, where the police officer was given no guidance as to which statute to cite the defendant under.

V. CONCLUSION

If a de novo review is allowed in municipal and justice courts and is not allowed in district court, the Equal Protection Clause would be violated for the following reasons:

1. The "guaranty of like treatment to all persons similarly situated" would be violated. State v. Pirkey, supra.

2. The classification as to who would go to municipal and justice courts and who would go to district court would be arbitrary and capricious as no guidelines are provided for the officer. Miller v. Jordan, supra.

3. There would be a significant difference between the appellate procedure in district court and that in municipal and justice court. Platt, supra.