

effect] true integration."⁴⁰ By allowing communities to place group homes away from the environment the programs require, we exhibit what Judge Bazelon decried as just another standardized response where a "benevolent purpose of deinstitutionalization [becomes] a justification for excessive neglect."⁴¹ If our goal is truly to rehabilitate, argued Judge Eagen in his dissent in *City of Pittsburgh v. Commonwealth*,⁴² should not the responsible authorities be able to put people in the environment most conducive to that end? And if we agree that the state, rather than the municipality has the greater expertise, should they not decide what environment is most conducive to rehabilitation?

The political struggle over the use of exclusionary zoning has just begun to be litigated in Vermont. We should endeavor not to lose sight of our primary objective: to find a suitable environment for our troubled youth.

Steven A. Adler

CONSTITUTIONALITY OF VERMONT'S CRIMINAL STATUTE ON IMPRISONMENT FOR DEBT—*State v. Carpenter*, 138 Vt. 140, 412 A.2d 285 (1980).

STATEMENT OF THE CASE

The defendant, sole owner and operator of a dress manufacturing business, failed to pay his employees within the period prescribed by state statute.¹ Employers² are held strictly liable for the

40. *Zoning*, *supra* note 37, at 899 (quoting H. Lamb, *COMMUNITY SURVIVAL FOR LONG TERM PATIENTS* (1976)).

41. Bazelon, *Institutionalization, Deinstitutionalization and the Adversary Process*, 75 COLUM. L. REV. 897, 908 (1975).

42. 468 Pa. 174, 360 A.2d 607, 614 (1976) (Eagen, J., Jones, C.J., and Nix, J., dissenting).

1. VT. STAT. ANN. tit. 21, § 342(a) (1978) provides that "[a]ny person having employees in his service doing and transacting business within the state shall pay each week, in lawful

nonpayment of wages with penalties ranging from fines to one-year imprisonment.³ A criminal information alleging twenty-eight counts of nonpayment of wages was initiated against the defendant.

The trial judge granted the defendant's motion to dismiss the prosecution,⁴ finding that the statute's distinction between employers and corporate officers, for purposes of assigning culpability, violated the equal protection clauses of the United States and the Vermont Constitutions.⁵ The court held, however, that the statute did not violate the state constitutional provision regarding imprisonment for debt.⁶ Before the district court entered a final order, the state took an interlocutory appeal under Rule 5(b) of the Vermont Rules of Appellate Procedure. The supreme court reversed the lower court, holding that the statute did not violate the equal protection guarantees, but was violative of the state constitutional standard prohibiting imprisonment for debt.⁷

I. PROCEDURAL CONTEXT

Vermont Rule of Appellate Procedure 5(b) provides that a judge may permit an appeal from an interlocutory order if it is found that the order involves a controlling question of law under dispute.⁸ Prior to the promulgation of this rule in 1971, the scope

money or checks, each of his employees, the wages earned by such employee."

2. "Employer" is defined as "any person having employees in his service." VT. STAT. ANN. tit. 21, § 341(b) (1978).

3. "Each employer who violates . . . this title and the officers of any corporation . . . who fraudulently permit their corporation . . . to violate these sections, shall be fined not more than \$500.00 or imprisoned not more than one year or both. Upon conviction, the court shall make an order requiring the payment of wages due and not paid." VT. STAT. ANN. tit. 21, § 345 (1978).

4. *State v. Carpenter*, No. 478-76 (Vt. Dist. Ct. Caledonia Cir., May 18, 1978) (Findings of Fact, Conclusions of Law, and Order).

5. *Id.*, U.S. CONST. amend. XIV, VT. CONST. ch. I, § 7.

6. VT. CONST. ch. II, § 40 (amended 1975) provides: "The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after his delivering up and assigning over, *bona fide*, all his estate, real or personal, in possession, reversion or remainder, for the use of his creditors, in such manner as shall be regulated by law."

7. *State v. Carpenter*, 138 Vt. 140, 148, 412 A.2d 285, 290 (1980).

8. VT. R. APP. P. 5(b) (1974) was based on 28 U.S.C. § 1292(b) (1976) and FED. R. APP. P. 5.

of interlocutory review was restricted solely to questions of law that were certified by the lower court.⁹ In recent years, the court had restricted its scope of review to those controlling questions of law set out in the lower court's order.¹⁰

The order permitting appeal in the instant case certified two controlling questions of law for review by the supreme court: 1) whether the statute's distinction between corporate officers and employees violated the equal protection guarantees, and, 2) whether the statute could be construed so as to save it from this challenge. On appeal, the defendant attempted to raise the additional issue of whether the statute violated the Vermont constitutional provision on imprisonment for debt.¹¹ The state challenged the introduction of this issue on the ground that it was beyond the scope of review by the supreme court, not having been a certified question in the lower court's order.

The supreme court held that the scope of review under the Rules of Appellate Procedure reaches "those issues necessary to determine the validity of the order or ruling from which [the] appeal is taken."¹² The court is thus not limited solely to certified questions, and will reach issues beyond the scope of the interlocutory order "where they are fairly raised by the order appealed."¹³ The imprisonment for debt issue was held to be appropriately within the court's scope of review.¹⁴

II. WAGE REGULATION

Many states have enacted laws requiring the timely payment of wages to employees.¹⁵ Criminal penalties have been imposed in

9. The limitation was strictly applied under the pre-1971 rules. See *Central Vermont Medical Center v. Town of Plainfield*, 128 Vt. 557, 559, 268 A.2d 788, 789 (1970); *In re Crescent Beach Ass'n*, 126 Vt. 449, 453, 236 A.2d 497, 500 (1967); *Dresden School Dist. v. Norwich Town School Dist.*, 124 Vt. 227, 230, 203 A.2d 598, 600 (1964).

10. See *Lyon v. Bennington College Corp.*, 137 Vt. 135, 136, 400 A.2d 1010, 1011 (1979).

11. Vt. CONST. ch. II, § 40, *supra* note 6.

12. *State v. Carpenter*, 138 Vt. 140, 145, 412 A.2d 285, 288 (1980).

13. *Id.* at 146, 412 A.2d at 289.

14. *Id.*

15. See U.S. DEPT. OF LABOR, *GROWTH OF LABOR LAW IN THE UNITED STATES* 105 (1967).

some states against employers who fail to pay wages within a period prescribed by statute. These penalties range from minimal fines to one-year imprisonment.¹⁶ The rationale often articulated for criminal penalties is that nonpayment of wages is an offense against the "public welfare."¹⁷ Criminal penalties are imposed to alleviate economic hardship to unpaid workers and to maintain a sense of regularity in the marketplace.¹⁸

Prior to 1963, Vermont's approach to the problem of nonpayment of wages was through a statute which provided for individual compensation through civil tort remedies initiated by the state's attorney.¹⁹ This scheme applied to a limited class of employers²⁰ and imposed a maximum forfeiture of fifty dollars to the state. The statute was significantly broadened in 1963.²¹ Criminal sanctions were imposed to deter nonpayment, and it was mandated that the employer who is convicted be required to pay all wages due to the employee.²²

III. IMPRISONMENT FOR DEBT

State constitutional provisions which prohibit imprisonment for debt are quite common.²³ The provisions are widely varied,

16. See, e.g., ALASKA STAT. § 23.05.280 (1972) (imposing penalty of one year imprisonment and/or a \$1,000 fine); HAWAII REV. STAT. § 388-10 (Supp. 1979) (imposing one year imprisonment and/or a \$100-\$10,000 fine); R.I. GEN. LAWS § 28.14-17 (1979) (imposing ten to ninety days imprisonment and/or a \$50-\$100 fine for each day of failing to pay).

17. See *Wirtz v. Malthor, Inc.*, 391 F.2d 1, 3 (9th Cir. 1968); *State v. Feist*, 115 R.I. 201, 203, 341 A.2d 726, 728 (1975).

18. See *Smith, The Constitutionality of Bi-monthly Pay Day Laws*, 16 TENN. L. REV. 940, 942 (1941).

19. 1941 Vt. Acts, No. 164. Section 6617 provided that "[s]uch employer, or leasee, or other person carrying on the business thereof, that fails to pay the wages of an employee . . . shall forfeit to the state fifty dollars for each failure, to be recovered in an action of tort . . . by the state's attorney of the county in which such violation occurs."

20. *Id.*, § 6614 applied to "mining, quarrying, manufacturing, mercantile, telegraph, telephone, railroad or other transportation employer and an express, water, electric light or power company employer, doing and transacting business within the state."

21. See VT. STAT. ANN. tit. 21, §§ 341-345 (1978).

22. See note 3, *supra*.

23. See Note, *Imprisonment for Debt: In the Military Tradition*, 180 YALE L.J. 1679, 1679 n. 1 (1971).

however, ranging from an absolute ban on imprisonment²⁴ to requirements that a debtor be released from jail once his property is turned over to his creditors.²⁵ The general principle underlying these provisions is that the "honest but insolvent debtor" should not be imprisoned for the failure to pay a commercial debt.²⁶ Consequently, there is usually a requirement that the debtor be found guilty of fraud or "willful defiance" before imprisonment will be imposed.²⁷ The constitutional provision in Vermont prevents continued imprisonment for debt once the debtor's assets are surrendered and there is not a strong presumption of fraud involved.²⁸

The issue in *Carpenter* concerns the apparent conflict between the constitutional mandate and the penalties imposed by the wage payment statute.²⁹ The state's position was that the constitutional provision was not applicable to judicial review of a criminal statute. Contending that the state constitution only prohibits imprisonment as a remedy in the civil context, the state argued that the 1963 revision was indicative of a legislative intention to criminalize the nonpayment of wages as a public welfare offense. As such, it argued, criminal penalties of imprisonment were appropriately imposed by the statute.³⁰

The supreme court took a somewhat different view of the statute. Characterizing it as "not only a shield for the protection of the commonweal, but a club with which individual compensation is coerced,"³¹ the court struck down the imprisonment penalty. Because

24. ALA. CONST. art. I, § 20 provides that "no person shall be imprisoned for debt." This provision has been interpreted as an absolute bar on imprisonment. See *Carr v. State*, 106 Ala. 35, 37-38, 17 So. 350, 351 (1895).

25. The Rhode Island provision is illustrative: "The person of a debtor, when there is not strong presumption of fraud, ought not to be continued in prison, after he shall have delivered up his property for the benefits of his creditors, in such manner as shall be prescribed by law." R.I. CONST. art. I, § 11.

26. See Note, *supra* note 23, at 1679.

27. See, e.g., *People v. LaMothe*, 331 Ill. 351, 356, 163 N.E. 6, 8 (1928); Comment, 15 CAL. L. REV. 153, 154 (1927).

28. VT. CONST. ch. II, § 40 (amended 1975), *supra* note 6.

29. Compare *id.* with VT. STAT. ANN. tit. 21, § 345 (1978), *supra* note 3.

30. Reply Brief of the Appellant at 4, 15, *State v. Carpenter*, 138 Vt. 140, 412 A.2d 285 (1980).

31. 138 Vt. 140, 147, 412 A.2d 285, 289 (1980).

the statute mandated both payment to the aggrieved employees and imprisonment of the employer, the court reasoned that the statute was not simply a criminal enactment for the protection of the public welfare.³² The private goal of the employee in obtaining unpaid wages apparently cannot be realized by the imposition of an imprisonment penalty against the employer.

The court went on, however, to introduce another dimension into its analysis of the statute, which is somewhat inconsistent with its earlier discussion. The court appears to characterize the payment of wages as a contractual obligation for which imprisonment cannot be imposed. Emphasizing the strict liability nature of the statute, the court held that detention for "the mere failure to pay a contract debt" violated the constitutional provision.³³ This logic questions the authority of the legislature to characterize wage nonpayment as a public welfare offense punishable by criminal penalties. The court did not fully resolve this issue and left the question of the state's power to impose fines unanswered.

IV. EQUAL PROTECTION

While employers are held strictly liable for the offense of nonpayment, a showing of fraud must be made against corporate officers. The court applied the rational basis test to determine whether this distinction violated equal protection standards.³⁴ Finding no suspect class of fundamental rights at issue, the court's inquiry was limited to whether the distinction served any of the conceivable purposes behind the statute.³⁵

The court found a rational distinction between employers and corporate officers for purposes of assigning liability for nonpayment.³⁶ Whereas employers have complete control over their busi-

32. *Id.* at 146-47, 412 A.2d at 289.

33. *Id.*, quoting *Makarov v. Commonwealth*, 217 Va. 381, 385, 228 S.E.2d 573, 575 (1976).

34. 138 Vt. at 142-43, 412 A.2d at 287.

35. The court has applied the rational basis test generally in the field of economic regulation. *See, e.g.*, *Pabst v. Commissioner*, 136 Vt. 126, 132-133, 388 A.2d 1181, 1184-85 (1978); *State v. Giant of St. Albans, Inc.*, 128 Vt. 539, 546, 268 A.2d 739, 743 (1970).

36. 138 Vt. 140, 143, 412 A.2d 285, 287 (1980).

ness, corporate officers, as a class of agents, are not similarly powerful in that they are constrained by a board of directors. Furthermore, the court noted that it is often the case that those who are responsible for wage payments are not the same individuals who make the decisions which will determine whether funds will be available for wages. Finding these differences sufficient to sustain the legislative distinction, the court upheld the statute as being related to the goal of fostering the regular payment of wages.³⁷

CONCLUSION

Although the scope of this decision is narrow in that it simply prevents the penalty of imprisonment from being used against employers who fail to pay wages without culpable intent, the rationale for the decision is sufficiently distorted to hinder future legislative action. It remains unclear whether or to what extent criminal penalties may be imposed for the offense of nonpayment of wages.

The court has, however, clarified the scope of interlocutory review. The scope of appellate review has been broadened to include all of the issues necessary to determine the validity of the order. The statement of the controlling question of law will no longer be the dispositive factor in the appellate court's analysis and will be considered only as an aid in identifying the relevant issues.

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37. *Id.* at 143-44, 412 A.2d at 287-88.

