



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 40 | Number 2

Article 12

2-1-1962

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Recommended Citation

Lawrence T. Hammond Jr., *Criminal Law -- Attempted Suicide*, 40 N.C. L. REV. 323 (1962).

Available at: <http://scholarship.law.unc.edu/nclr/vol40/iss2/12>

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Criminal Law—Attempted Suicide

At common law suicide was a felony, and attempted suicide was a misdemeanor.¹ Suicide was described by Blackstone as a double offense. He stated:

[T]he law of England wisely and religiously considers that no man hath a power to destroy life but by commission from God, the author of it; and as the suicide is guilty of a double offense, one spiritual, in evading the prerogative of the Almighty, and rushing into his immediate presence uncalled for; the other temporal, against the king, who hath an interest in the preservation of all his subjects, the law has, therefore, ranked this among the highest crimes, making it a peculiar species of felony, a felony committed on one's self.²

A person who committed suicide was punished at common law by burial in the public highway with a stake driven through his body and by forfeiture of his goods and chattels to the king.³ Attempted suicide was apparently punished like any other misdemeanor.⁴ Since

¹ *Rex v. Mann*, 110 L.T.R. (n.s.) 781 (Crim. App. 1914); *Regina v. Burgess*, Le. & Ca. 258, 169 Eng. Rep. 1387 (Crim. App. 1862); see also 1 HALE P.C. 412 (1778).

² 4 BLACKSTONE, COMMENTARIES * 189 [hereinafter cited as BLACKSTONE].

³ 4 BLACKSTONE * 189; CLARK & MARSHALL, CRIMES 557 (6th ed. 1958); MILLER, CRIMINAL LAW 272 (1934) [hereinafter cited as MILLER]. Blackstone stated that this punishment was prescribed to prevent suicide by imposing sanctions on a man's reputation and personal property after his death. 4 BLACKSTONE * 189.

⁴ See *May v. Pennell*, 101 Me. 516, 519, 64 Atl. 885, 887 (1906); *Rex v. Mann*, 110 L.T.R. (n.s.) 781 (Crim. App. 1914); *Regina v. Burgess*, Le. & Ca. 258, 169 Eng. Rep. 1387 (Crim. App. 1862).

A point often raised by writers and jurists is whether suicide is murder. This question is of more than academic interest when it is contended that attempted suicide is attempted murder. There is a split of authority. That suicide is murder: *Commonwealth v. Hicks*, 118 Ky. 637, 82 S.W. 265 (1904); Mikell, *Is Suicide Murder?*, 3 COLUM. L. REV. 379, 384 (1903); MILLER 227. That suicide is not murder: *Commonwealth v. Wright*, 26 Pa. County Ct. 666 (1902); *Regina v. Burgess*, *supra*. However, attempted suicide is not attempted murder, and when this theory has been suggested it has been promptly rejected. *Commonwealth v. Wright*, *supra*; *Regina v. Burgess*, *supra*. When punished at all, attempted suicide has uniformly been punished as an attempted felony rather than as attempted murder. *State v. Carney*, 69 N.J.L. 478, 55 Atl. 44 (Sup. Ct. 1903); *State v. LaFayette*, 117 N.J.L. 442, 188 Atl. 918 (C.P. 1937); *Rex v. Mann*, *supra*; *Regina v. Burgess*, *supra*.

punishment by forfeiture is no longer possible,⁵ suicide is not punishable today.

In *State v. Willis*⁶ the defendant was indicted for attempted suicide. At the trial, however, the defendant's motion to quash the indictment because it failed to state a crime was sustained. The state appealed, and the North Carolina Supreme Court unanimously reversed, holding that suicide and attempted suicide are misdemeanors in North Carolina.⁷

The court reached its decision by relying entirely on the common law since there were no statutes directly bearing on the subject. The court reasoned that the common law is in effect in North Carolina except where abrogated or repealed;⁸ that suicide and attempted suicide were crimes at common law; therefore, suicide and attempted suicide are crimes in North Carolina.⁹

The case law on suicide and attempted suicide is in conflict. North Carolina is the second state to hold attempted suicide to be a crime on a purely common law basis. New Jersey has twice upheld convictions for attempted suicide.¹⁰ Both cases were decided on the same reasoning as the principal case.¹¹ Indiana and Iowa have held that attempted suicide is not a crime because they have no common

⁵ *E.g.*, Mo. CONST. art. I, § 30; N.C. CONST. art. II, § 1.

⁶ 255 N.C. 473, 121 S.E.2d 854 (1961).

⁷ The court concluded that suicide was probably a misdemeanor because of N.C. GEN. STAT. § 14-1 (1953), which provides: "A felony is a crime which is or may be punishable by either death or imprisonment in the State's prison. Any other crime is a misdemeanor." Therefore, attempted suicide is an attempted misdemeanor, which is punishable as a misdemeanor.

⁸ N.C. GEN. STAT. § 4-1 (1953).

⁹ The court stated that such collateral consequences of suicide as aiding another to commit suicide and accidentally killing another while attempting to commit suicide would not be punished in a jurisdiction in which suicide is not a crime in the absence of statute. *McMahan v. State*, 168 Ala. 70, 53 So. 89 (1910); *State v. Campbell*, 217 Iowa 848, 251 N.W. 717 (1933); *Grace v. State*, 44 Tex. Crim. App. 193, 69 S.W. 529 (1902). It is likely that this idea influenced the court in making its decision. However, in at least two cases these collateral consequences have been punished on the ground that suicide was unlawful, and the defendant was thus engaged in an unlawful act, although neither suicide nor attempted suicide was a crime in the particular jurisdiction. *Wallace v. State*, 232 Ind. 700, 116 N.E.2d 100 (1953); *Commonwealth v. Mink*, 123 Mass. 422 (1877).

¹⁰ *State v. Carney*, 69 N.J.L. 478, 55 Atl. 44 (Sup. Ct. 1903); *State v. LaFayette*, 117 N.J.L. 442, 188 Atl. 918 (C.P. 1937).

¹¹ Attempted suicide is now a crime by statute in New Jersey. N.J. STAT. ANN. § 2A: 170-25.6 (Supp. 1960). The statute reads: "Any person who attempts to commit suicide is a disorderly person."

law offenses, and there is no statute making it an offense.¹² Pennsylvania has also held that attempted suicide is not a crime.¹³

The Massachusetts court has formulated one of the most interesting rules in this area. In *Commonwealth v. Dennis*¹⁴ the court held that attempted suicide was not a crime in Massachusetts because the Massachusetts statute punishing attempts¹⁵ was based entirely upon the punishment for the crime attempted. Since suicide itself could not be punished, attempted suicide could not be. The court reluctantly followed this doctrine in *Commonwealth v. Mink*,¹⁶ stating that the legislature had intentionally or inadvertently left attempted suicide without punishment.¹⁷ Maine followed the Massachusetts rule in *May v. Pennell*.¹⁸ Twelve other states have statutes similar to the Maine and Massachusetts statutes.¹⁹ Therefore, if confronted with the problem, and if the established case law was followed, these states would also hold that attempted suicide was not a crime.

Six states have statutes providing that attempted suicide is a

¹² *State v. Wallace*, 232 Ind. 700, 116 N.E.2d 100 (1953) (suicide is not a crime but is unlawful); *State v. Campbell*, 217 Iowa 848, 251 N.W. 717 (1933) (suicide is neither a crime nor unlawful). In addition to Indiana and Iowa, Hawaii and Wisconsin have neither common law offenses nor a statute making suicide unlawful. See HAWAII REV. LAWS § 1-1 (1955); WIS. STAT. ANN. § 939.10 (1958).

In the principal case the North Carolina court pointed out that unless suicide is a crime, attempted suicide cannot be. Following this reasoning three states have precluded attempted suicide from being a crime because all three have specifically stated that suicide itself is not a crime. *Tate v. Canonica*, 5 Cal. Rep. 28, 33 (Dist. Ct. App. 1960) (dictum); *Blackburn v. State*, 23 Ohio St. 146, 163 (1872) (dictum); *Grace v. State*, 44 Tex. Crim. App. 193, 69 S.W. 529 (1902). Illinois has implied by way of dictum that attempted suicide is a crime but has firmly stated that suicide itself is not. *Royal Circle v. Achterrath*, 204 Ill. 549, 566-67, 68 N.E. 492, 498 (1903). But this seems contradictory since it was pointed out in the principal case that unless the act attempted is a crime, the attempt cannot be.

¹³ *Commonwealth v. Wright*, 26 Pa. County Ct. 666 (1902).

¹⁴ 105 Mass. 162 (1870).

¹⁵ MASS. ANN. LAWS ch. 274, § 6 (1956).

¹⁶ 123 Mass. 422 (1877).

¹⁷ It would seem that the legislature intended this result since the same statute is still on the books eighty-four years later.

¹⁸ 101 Me. 516, 64 Atl. 885 (1906).

¹⁹ ALASKA COMP. LAWS ANN. § 65-2-5 (1949); CAL. PENAL CODE § 664; FLA. STAT. ANN. § 776.04 (1944); KAN. GEN. STAT. ANN. § 21-101 (1949); MINN. STAT. ANN. § 610-27 (Supp. 1960); MO. STAT. ANN. § 556.150 (1953); MONT. REV. CODES ANN. § 94-4711 (1947); N.H. REV. STAT. ANN. §§ 590:5, :6 (1955); ORE. REV. STAT. § 161.090 (1959); UTAH CODE ANN. § 76-1-31 (1953); VT. STAT. ANN. tit. 13, § 9 (1958); W. VA. CODE ANN. § 6120 (1955).

crime.²⁰ Although these statutes, with the exception of the New Jersey statute which was adopted in 1960, were enacted in the early part of this century, no reported cases arising under them have been found.

New York enacted an attempted suicide statute²¹ which, because of the strong criticism by other jurisdictions²² and by writers,²³ was repealed in 1919.

Just a few months before the North Carolina court rendered its decision in the principal case, England passed a new suicide act²⁴ which provides that suicide and attempted suicide are no longer crimes. This action was preceded by a tremendous wave of criticism from the public, legal writers, the Magistrates' Association and the British Medical Association.²⁵ The actual statistics on how the crime was treated aroused the ire of some writers. One pointed out that in 1956 there were 5,387 cases of attempted suicide, but only 613 persons were prosecuted; and only thirty-three were actually sent to prison.²⁶ Another writer revealed that the Home Office instructions to police were not to prosecute unless a court order was the only means of providing refuge or asylum. This discretion, he added, explained why few prosecutions were brought. The writer, however, was highly critical of leaving such discretion to the police in such a delicate matter.²⁷

It is submitted that as a matter of public policy the decision in the principal case is highly questionable. Its only effect will be to make suicidal attempts more successful,²⁸ and it probably will not even

²⁰ NEV. REV. STAT. § 202.495 (1957); N.J. STAT. ANN. § 2A:170-25.6 (Supp. 1960); N.D. CENT. CODE ANN. § 12-33-02 (1960); OKLA. STAT. ANN. tit. 21, § 812 (1958); S.D. CODE § 13.1903 (1939); WASH. REV. CODE § 9.80.020 (1961).

²¹ N.Y. Laws 1919, ch. 414, § 1.

²² *May v. Pennell*, 101 Me. 516, 64 Atl. 885 (1906); *Commonwealth v. Wright*, 26 Pa. County Ct. 666 (1902).

²³ *E.g.*, Larremore, *Suicide and the Law*, 17 HARV. L. REV. 331, 340 (1904).

²⁴ See 1961 CRIM. L.R. 591.

²⁵ See 103 SOL. J. 821 (1959); 1958 SCOTS L.T. 141.

²⁶ 1958 SCOTS L.T. 141, 143.

²⁷ 103 SOL. J. 821, 822 (1959). Attempted suicide is not a crime in Scotland. 1958 SCOTS L.T. 141, 143. It is also not a crime in France, Spain, Belgium, Sweden, Germany, Norway or Denmark. 125 JUST. P. 240, 241-42 (1961).

²⁸ *Commonwealth v. Dennis*, 105 Mass. 162 (1870); *Commonwealth v. Wright*, 26 Pa. County Ct. 666 (1902).

discourage a second attempt by the same person.²⁹ As stated by a leading authority on criminal law:³⁰

When a man is in the act of taking his own life there seems to be little advantage in having the law say to him: "You will be punished if you fail." . . . What is done to him will not tend to deter others because those bent on self-destruction do not expect to be unsuccessful. It is doubtful whether anything is gained by treating such conduct as a crime.

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Criminal Law—Homicide—Death Resulting More Than a Year and a Day After Assault

In *Commonwealth v. Ladd*,¹ indictments for murder and manslaughter alleged that the defendant struck the victim on September 21, 1958, and that the victim died as a result of this assault on November 1, 1959. The defendant moved to quash the indictments, contending that at common law there could be no criminal responsibility for a killing where the death ensued more than a year and a day after the stroke.² The Pennsylvania Supreme Court held that these motions to quash were properly overruled. The majority reasoned that the common law "year and a day" rule was not part of the definition of murder, but only a rule of evidence or procedure. After determining that the rule was evidentiary in nature, the court asserted that it was within the judicial province to abolish the rule in light of the advancement of scientific medicine in determining cause of death.³ Consequently, the majority held that the indictments were not fatal and did properly charge the crimes of murder and manslaughter. A vehement dissent charged that the abolition of the

²⁹ See Larremore, *supra* note 23, at 331.

³⁰ PERKINS, CRIMINAL LAW 68 (1957).

¹ 402 Pa. 164, 166 A.2d 501 (1960).

² PA. STAT. ANN. tit. 18, § 4701 (Supp. 1960), does not define murder, but merely divides murder into degrees and provides punishments. The Pennsylvania courts have construed this absence of statutory definition as giving murder its common law meaning. *Commonwealth v. Bolish*, 381 Pa. 500, 113 A.2d 464 (1955); *Commonwealth v. Dorazio*, 365 Pa. 291, 74 A.2d 125 (1950).

³ "[W]e may change a common-law rule of evidence without being guilty of judicial legislation, and abolish it when we are aware that modern conditions have moved beyond it and left it sterile." *Commonwealth v. Ladd*, 402 Pa. 164, 175, 166 A.2d 501, 507 (1960).