



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL

ATTORNEY GENERAL

July 17, 1952

Hon. Henry Wade
District Attorney
Records Building
Dallas, Texas

Opinion No. V-1481

Re: Proper court for a sanity
trial on one previously
adjudged insane at the time
of trial for a capital
criminal offense.

Dear Sir:

Your request for an opinion of this office
presents for determination the following question:

"Where a person has been charged with
the offense of murder and has interposed
the defense of insanity and the District
Court has found him to be insane at the
time of trial and he has been confined in
the insane asylum, but is now certified by
the Superintendent of the Asylum as sane,
is it the province of the County Court of
Dallas County to bring him to trial to de-
termine his sanity, or is it the duty of
the District Court that first found him to
be insane to try him under Article 932a-3,
C.C.P.?"

Section 3 of Article 932a, V.C.C.P., pro-
vides:

"When the defendant so committed to a
hospital for the insane becomes sane, the
superintendent of the hospital shall give
written notice of that fact to the Judge
of the Court from which the order of commit-
ment issued. Upon receipt of such notice
the Judge shall require the sheriff to bring
the defendant from the hospital and place
him in the proper custody until the hearing
may be had before a jury in such Court to
determine defendant's sanity, and if he be
found sane, he shall be discharged, unless
he had been previously found to be sane at
the time at which he is alleged to have
committed the offense charged, in which

event, unless previously acquitted, he shall be tried for the offense charged."

In Ex parte Frailey, 146 Tex. Crim. 557 177 S.W.2d 72, 74 (1944), the court, in considering a similar factual situation, stated:

"It is evident from the just above quoted provisions of the Act of the 45th Legislature that where insanity is offered as a defense in a criminal proceeding, such enactment governs wherein in Section 3 thereof it lays down the procedure relative to trials in order to establish the fact that such person has been restored to sanity, and that such trials, initiated as provided in Section 3, must be had in the county where the criminal prosecution was pending at the time of the presentation of such insanity plea and the trial thereunder.

"A statute similar to the present 932a, C.C.P. was found in the Revised Statutes of 1895, Art. 120, which reads as follows: 'Any patient, except such as are charged with or convicted of some offense, and have been adjudged insane in accordance with the provisions of the Code of Criminal Procedure, may be discharged from the asylum at any time upon the recommendation of the superintendent, approved by the board of managers. Any patient coming within the above exception can only be discharged by order of the court by which he was committed.' (Italics ours)

"This statute was passed February 5, 1858. Again, in the 1911 revision of the laws we find this above quoted article appearing as Art. 142 of the Revised Statutes 1911. However, the same seems to have been omitted in the latest revision of such statutes in 1925. Evidently the Legislature, finding the need for a statute of like import, in 1937 passed what we now find to be Art. 932a, C.C.P., Vernon's Criminal Statutes, and thus restored the law as it had existed since 1858, with the exception of the interim between 1925 to 1937, and again leaving the trial of a restoration

to sanity of a person 'charged with a criminal offense' to the court which had declared such person to be of unsound mind." /Emphasis added./

"It therefore follows that the county court of Kaufman County was without jurisdiction to try the question of relator's sanity, and its judgment relative thereto is void and of no effect, and relator therefore should be confined in the State hospital, still possessed, however, of her right to have the question of her sanity determined by the Dallas Court."

Also in Ex parte Knox, 147 Tex. Crim. 110, 178 S.W.2d 861 (1944), it was held that since relator was charged with a criminal offense the statute relative to the determination of sanity was Article 932a, V.C.C.P., and not Article 5561a, V.C.S., Article 5561a being the statute referred to for ordinary trials for lunacy and being governed entirely by civil procedure.

Thus Article 932a deals only with those persons charged with a crime, while Article 5561a relates solely to the trial of persons who are not charged with a crime, and therefore when one is charged with a crime the issue of insanity must be tried pursuant to the provisions of Article 932a. This being true, it is incumbent upon the district court in which the original proceeding was had, rather than the county court, to determine the question of sanity in a restoration proceeding.

In providing that written notice of the fact that a defendant originally insane but now sane be given to the judge of the court from which the order of commitment issued, Section 3 of Article 932a is not free from doubt as to which court was intended. However, by reason of the authorities to the effect that Article 932a is an exclusive procedure in regard to persons charged with a crime, we agree with you that such restoration proceeding must necessarily be referred to the district court wherein the original criminal proceeding is pending. We believe the language used in Article 932a relative to the court from which the order of commitment came is to be construed in this factual situation as being the District Court of Dallas County. Jurisdiction is still vested in the district

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court, and the county court of Dallas County would be without jurisdiction to try the question of sanity and any judgment from that court would necessarily be void and without effect.

SUMMARY

A defendant charged with crime and found to be insane at the time of trial and confined in an asylum but who is now certified by the superintendent of such asylum as being sane must be returned to the court wherein he was found to be insane for a restoration proceeding to determine the question of sanity of such defendant.

Yours very truly,

APPROVED:

PRICE DANIEL
Attorney General

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BA:am