Juvenile Courts—The Reasonable Doubt Standard of Proof in Juvenile Delinquency Proceedings: Santana in the Aftermath of Winship. *State v. Santana*, 444 S.W.2d 614 (Tex. 1969), *vacated per curiam*, 397 U.S. 596, *rev'd and dismissed per curiam*, 457 S.W.2d 275 (Tex. 1970).

On February 2, 1967, fourteen-year-old George Santana was tried before a juvenile court jury on the charge of rape.[1] In response to an instruction to use a preponderance of the evidence standard, the jury found that he had committed the rape and that he was a delinquent child. The juvenile court declared Santana a delinquent and committed him to the custody of the Texas Youth Council. From this order, Santana appealed to the court of civil appeals contending as his first point of error that the thrust of *In re Gault*,[2] in requiring the safeguards of notice of charges, right to counsel, right to confrontation and cross-examination and the privilege against self-incrimination, required the state to prove beyond a reasonable doubt the elements of the crime charged and the refusal to require this quantum of proof was a denial of due process. The court of civil appeals reasoned that although the *Gault* decision specifically considered only the problems present under its fact situation, the underlying reasoning required the vital elements of the adjudication proceeding to comply with due process. The quantum of proof required to make a determination of whether a juvenile was a delinquent as a result of alleged misconduct was such a vital element. Thus the determination of delinquency would be valid only when the facts of delinquency were proven beyond a reasonable doubt rather than by a preponderance of the evidence as formerly required by the Texas decisions. The court of civil appeals held that having been adjudicated a delinquent by a preponderance of the evidence, Santana was denied due process and equal protection guaranteed by the fourteenth amendment. The judgment of the trial court was reversed and the case remanded to the juvenile court for a new trial.[3]

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1. Santana received a jury trial under TEX. REV. CIV. STAT. ANN. art. 2338-1, § 13 (Supp. 1966). Subsequently section 13 was amended in 1967 but the provision dealing with the jury trial for adjudication proceedings was left unaltered. TEX. REV. CIV. STAT. ANN. art. 2338-1, § 13 (Supp. 1969-1970). For a discussion of juvenile court law in Texas, see Frey, *The Evolution of Juvenile Court Jurisdiction and Procedure in Texas*, 1 TEX. TECH L. REV. 209 (1970); Purdom, *Juvenile Court Proceedings from the Standpoint of the Attorney for the State*, 1 TEX. TECH L. REV. 269 (1970).

2. 387 U.S. 1 (1967); *see* Ketchem, *What Happened to Whittington?*, 37 GEO. WASH. L. REV. 324 (1968).

3. Santana v. State, 431 S.W.2d 558 (Tex. Civ. App.—Amarillo 1968, writ granted), *noted in* 21 BAYLOR L. REV. 235 (1969). The court of civil appeals pointed out that its interpretation of *Gault* was in agreement with that of the Illinois Supreme Court in *In re* Urbasek, 38 Ill. 2d 535, 232

The Texas Supreme Court granted a writ of error[4] and in a six-to-three decision reversed the judgment of the court of appeals and affirmed the judgment of the trial court.[5]

> We ascribe to the *Gault* court not a desire to abolish the attempt of the state to treat and rehabilitate the child through juvenile proceedings, but a laudable mandate that in juvenile proceedings, the rights of the child be preserved; that the proceedings be conducted with basic fairness. Instead of the *worse* of both worlds under the abused juvenile proceedings, the *Gault* court, it is thought, desired to preserve the *best* of both worlds for the minor; i.e., the individual, particularized treatment of the disturbed, rebellious or wayward minor, while at the same time, insuring that the hearings be conducted with dignity and fairness and with the essentials of due process being observed.[6]

While the Texas Supreme Court accepted the dismal picture painted in *Gault* of abuses in the juvenile system, it was unwilling to condemn the Texas system. In addition the court stressed its duty to uphold the spirit of the juvenile laws as fixed by the Texas legislature while at the same time insuring to minors the basically fair proceedings required by *Gault* and the Texas and United States Constitutions.

> So it boils down to this: are juvenile proceedings hereafter to be true adversary proceedings like the ordinary criminal trial? Must the

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N.E.2d 253 (1968), *noted in* 17 AM. U.L. REV. 549 (1968); 72 DICK. L. REV. 547 (1968); 18 KAN. L. REV. 87 (1969); 53 MINN. L. REV. 883 (1969); 19 SYRACUSE L. REV. 1041 (1968). The court of appeals did not discuss the cases of other jurisdictions that have held that *Gault* did not require the quantum of proof to be beyond a reasonable doubt.

4. The state was able to seek a writ of error from the Texas Supreme Court under authority of TEX. REV. CIV. STAT. ANN. art. 2338-1, § 21 (1964):

> An appeal may be taken by any party aggrieved to the Court of Civil Appeals, and the case may be carried to the Supreme Court by writ of error or upon certificate, as in other civil cases.

The court noted that the preponderance of the evidence issue had almost been waived in the trial court:

> Counsel for Santana did not object to the wording of the jury issues on the ground that they called for answers based upon a "preponderance of the evidence." Nor did counsel ask for or submit requested issues for the jury based upon the quantum of proof "beyond a reasonable doubt." The point was raised for the first time on motion for new trial as fundamental error. In the ordinary civil case, the alleged error in the charge to the jury would be considered as waived. But in view of the constitutional importance of this case to the public generally, and in view of the fact that juvenile proceedings are not designed to be conducted as ordinary adversary proceedings, the point raises a question of fundamental error, and it will be so treated.

State v. Santana, 444 S.W.2d 614, 615 (Tex. 1969).

5. State v. Santana, 444 S.W.2d 614 (Tex. 1969), *noted in* 7 HOUSTON L. REV. 400 (1970); 23 SW. L.J. 914 (1969); 48 TEXAS L. REV. 230 (1969).

6. 444 S.W.2d 614, 617 (Tex. 1969).

> juvenile be "convicted" upon a finding of guilt beyond a reasonable doubt? Is the quantum of proof "beyond a reasonable doubt" so essential that its absence, in a juvenile case involving loss or curtailment of liberty, is a denial of constitutional rights? Or may the State be able to assist youth in these *sui generis* proceedings where the finder of fact, the judge or jury, is convinced by a preponderance of the evidence that acts have been committed, that the child is a delinquent, and that he needs the help of the State?[7]

In answer, the court concluded that *Gault* did not require that the juvenile trial be adversary and criminal in nature and that the beyond a reasonable doubt test was not required. In rendering its decision, the Texas Supreme Court sided with the highest courts of California, New York, and Oregon and the Court of Appeals for the District of Columbia that had held since *Gault* that the concept of guilty beyond a reasonable doubt was inapplicable to juvenile court adjudicatory proceedings.[8]

Santana filed his petition in the United States Supreme Court for a

7. *Id.* at 617-18.

8. Many of these decisions were rendered after the Texas Court of Civil Appeals had decided *Santana* (June 24, 1968, rehearing denied July 29, 1968) and before the Texas Supreme Court's decision (July 23, 1969, rehearing denied October 1, 1969). *In re* Dennis M., 450 P.2d 296, 75 Cal. Rptr. 1, (1969) (opinion of February 20, 1969); *In re* Ellis, 253 A.2d 789 (D.C. Cir. 1969) (opinion of May 23, 1969), *affirming the holding of In re* Wylie, 231 A.2d 81 (D.C. Cir. 1966); *In re* Samuel W., 24 N.Y.2d 196, 247 N.E.2d 253, 299 N.Y.S.2d 414 (1969) (opinion of March 6, 1969), *noted in* 33 ALBANY L. REV. 642 (1969); 44 ST. JOHN'S L. REV. 101 (1969); 20 SYRACUSE L. REV. 1009 (1969); State v. Arenas, 453 P.2d 915 (Ore. 1969) (opinion of April 30, 1969). It should be noted that in *Dennis M.* the California court relied on CAL. WELFARE & INST. CODE § 701 (West 1961) and in *Arenas* the Oregon court relied on ORE. REV. STAT. § 419.500 (1959). Both statutes expressly sanctioned the use of the preponderance of evidence standard. Texas had no statute regarding the proper quantum of proof in delinquency proceedings.

The Texas Supreme Court also referred to DeBacker v. Brainard, 183 Neb. 461, 161 N.W.2d 508 (1968), where four of the seven judges of the Nebraska Supreme Court held the Nebraska statute requiring the use of the preponderance of evidence in juvenile delinquency proceedings unconstitutional. Under the Nebraska Constitution, since no legislative act could be declared unconstitutional except by a concurrence of five judges, the holding of *DeBacker* was that the preponderance of the evidence statute was constitutional even though the majority of the court held to the contrary. On February 24, 1968, the United States Supreme Court noted probable jurisdiction. DeBacker v. Brainard, 393 U.S. 1076 (1968). After the Texas Supreme Court had rendered its decision in *Santana*, the United States Supreme Court dismissed the appeal in *DeBacker* on the preponderance of the evidence issue after the juvenile's counsel candidly stated during oral argument that in his view the evidence in the case was sufficient to warrant the finding of delinquency had the reasonable doubt standard been used. The Court held that this case was not an appropriate vehicle for consideration of the standard of proof issue. DeBacker v. Brainard, 396 U.S. 28 (1969), *noted in* 36 BROOKLYN L. REV. 279 (1970); 18 KAN. L. REV. 87 (1969); 14 ST. LOUIS U.L.J. 158 (1969).

writ of certiorari to the Texas Supreme Court on December 29, 1969.[9] The first question presented was:

> Whether Petitioner has been denied due process and equal protection of the laws, as guaranteed him by the Fourteenth Amendment to the Constitution of the United States, by the Texas Supreme Court's holding that the proper quantum of proof in a juvenile delinquency proceeding involving loss of liberty was by a preponderance of evidence, rather than by the reasonable doubt standard.[10]

While Santana was proceeding through the courts, a parallel development was occurring in New York. Twelve-year-old Samuel Winship was brought before the New York Family Court for having stolen $112 from a woman's purse, an act which if done by an adult would have constituted the crime of larceny.[11] The judge, while acknowledging that the proof might not establish guilt beyond a reasonable doubt, rejected Winship's contention that such proof was required by the fourteenth amendment. The judge instead relied on the statutory quantum of preponderance of the evidence[12] and found the youth to be a delinquent. During a subsequent dispositional hearing, Winship was ordered placed in a training school. On appeal the Appellate Division of the New York Supreme Court affirmed without opinion.[13] The New York Court of Appeals then affirmed by a four-to-three vote, expressly sustaining the constitutionality of the statutory quantum of proof.[14] On appeal, the United States Supreme Court on March 31, 1970, reversed.[15] In a five-to-three decision, the Court held that due process required the use of the reasonable doubt standard of proof during the adjudicatory stage of a delinquency proceeding when a juvenile has been charged with an act which would constitute a crime if committed by an adult.

After rendering its decision in *Winship*, the United States Supreme

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9. Santana v. Texas, petition for cert. filed, 32 U.S.L.W. 3241 (U.S. Jan. 6, 1970) (No. 1002).

10. Petitioner's Brief for Certiorari at 2, Santana v. Texas, 397 U.S. 596 (1970).

11. N.Y. FAM. CT. ACT § 712(a) (McKinney 1963), defined a juvenile delinquent as "a person over seven and less than sixteen years of age who does any act which, if done by an adult, would constitute a crime."

12. N.Y. FAM. CT. ACT § 744(b) (McKinney 1963): "Any determination at the conclusion of an adjudicatory hearing that a [juvenile] did an act or acts must be based on a preponderance of the evidence."

13. *In re* Winship, 291 N.Y.S.2d 1005 (App. Div. 1968).

14. *In re* Winship, 24 N.Y.2d 196, 247 N.E.2d 253 (1969).

15. *In re* Winship, 347 U.S. 377 (1970).

Court was faced with the question of what to do with *Santana*. On April 20, 1970, the Court decided in a per curiam opinion to grant the petition for a writ of certiorari, vacate the judgment and remand the case to the Texas Supreme Court for further consideration in light of *Winship*.[16] On June 17, 1970, the Texas Supreme Court in a per curiam opinion resolved *Santana*:

> There has since been presented to this Court a joint motion of counsel for Santana and counsel for the State, acting through the County Attorney of Lubbock County, Texas. Such motion recites that George Rivera Santana had been discharged by the Texas Youth Council on January 21, 1970; that no further court proceedings, either civil or criminal, would be pursued against the said Santana; and that all proceedings against Santana arising out of the matters alleged in the State's petition should be dismissed with prejudice to the State.
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> It is therefore ordered, adjudged and decreed that the judgments of this Court and all courts below be set aside and that the case be, and hereby is, dismissed with prejudice to further action by the State. It is so ordered.[17]

While this decision resolved *Santana*, prospective and retroactive problems concerning the quantum of proof remain. *Winship* requires adherence to the beyond a reasonable doubt standard for the adjudication of delinquency predicated on conduct that would have been criminal had it been committed by an adult in cases brought to juvenile court after it was announced, April 20, 1970.[18] The impact will be an increase in the number of cases where: (1) the intake officer will refuse to refer the case to juvenile court because he can foresee that he could not supply the prosecutor with sufficient evidence; (2) the prosecutor will refuse to file a petition of delinquency in juvenile court because he cannot supply the court with enough evidence to justify the higher burden of proof; (3) the prosecutor will refuse to charge delinquency predicated on conduct that would have been criminal had it been committed by an adult but instead charge delinquency based on the child-type offenses, such as habitually violating a compulsory school attendance law of Texas, habitually so deporting himself as to injure or endanger the morals or health of himself or others, or habitually associating with vicious and immoral persons, because the higher standard required by

16. Santana v. Texas, 397 U.S. 596 (1970). Mr. Chief Justice Burger and Mr. Justice Stewart dissented for the reasons set forth in Mr. Chief Justice Burger's dissenting opinion in *Winship* and Mr. Justice Black dissented for the reasons set forth in his dissenting opinion in *Winship*.

17. State v. Santana, 457 S.W.2d 275 (Tex. 1970).

18. For a discussion of the quantum of proof, see 68 MICH. L. REV. 567 (1970); 5 WILLAMETTE L.J. 149 (1968).

Winship was limited to conduct that would have been criminal had it been committed by an adult; (4) the juvenile will not admit guilt but will require the prosecutor to prove his case; (5) the juvenile will demand a jury in order to insure that he will receive the higher standard of proof; and (6) the juvenile will not be adjudicated a delinquent because the state, either before the jury or before the judge in a non-jury case, will not be able to meet the higher burden of proof. This increased burden required by the higher standard is illustrated by the problem concerning corroborating evidence. Using preponderance as the standard had reduced the need for corroborating proof of the crime's commission so that the juvenile court had been permitted to use a voluntary confession without corroborating evidence to establish the state's case.[19] With the change of standards, the courts now will require the same proof as in criminal cases. For example, the rule in criminal cases that an extrajudicial confession of arson would be insufficient to support a conviction unless there was corroborating proof of the commission of the crime also will be the rule in juvenile court.[20]

In delinquency cases where adjudication occurred prior to April 20, 1970, retroactivity of the beyond a reasonable doubt standard is critical.[21] If *Winship* were applied retroactively, a multitude of adults, who were tried as juveniles under the preponderance standard, and juveniles, both incarcerated and released, could theoretically be entitled to corrective relief. The incarcerated juvenile who had been adjudicated a delinquent by a jury under instruction to use preponderance of the evidence could clearly seek a new trial. The incarcerated juvenile adjudicated delinquent by the judge and the juvenile who had pled guilty will no doubt find it difficult to receive relief if he must show that he was adjudicated delinquent by a preponderance of the evidence standard. The adult who once was tried as a juvenile and the juvenile who has been released from incarceration will face a mootness question.[22] If he

19. *In re* Gonzalez, 328 S.W.2d 475, 478 (Tex. Civ. App.—El Paso 1959, writ ref'd n.r.e.); Cantu v. State, 207 S.W.2d 901 (Tex. Civ. App.—San Antonio 1948, no writ); Robinson v. State, 204 S.W.2d 981, 982 (Tex Civ. App.—Austin 1947, no writ).

20. *Cf.* Robinson v. State, 204 S.W.2d 981, 982-83 (Tex. Civ. App.—Austin 1947, no writ).

21. For a discussion of the retroactivity of *Gault*, see 44 NOTRE DAME LAWYER 158 (1968); 22 U. MIAMI L. REV. 906, 917-19 (1968); *cf.* 74 DICK. L. REV. 556 (1970).

22. The briefs for certiorari in *Santana* did discuss the mootness issue. Respondent's Brief in Opposition for Certiorari at 3-4, Santana v. Texas, 397 U.S. 596 (1970) (footnote omitted).

> 1. *Petitioner's Case has Become Moot Because He is No Longer Under The Care, Custody Or Control Of The Texas Youth Council.*
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> Petitioner was committed to the Texas Youth Council as a juvenile delinquent on February 3, 1967. He was released on parole January 8, 1969. He attained seventeen (17) years of age on November 4, 1969, and was fully released and discharged on January 21, 1970.
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> It is a general policy and procedure of the Texas Youth Council to fully discharge a

succeeds in overcoming this hurdle and receives an order granting a new trial, then his age at the time of the new trial, if he was over 15 at the time of commission, would govern whether he would be tried as a juvenile, waived by juvenile court to criminal court for trial as an adult, or taken directly to criminal court for trial as an adult.[23] Conceivably the ultimate result, a criminal trial with adult punishment, would be more severe than training school incarceration based on a juvenile court adjudication that used an unfair standard of proof.

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juvenile from its authority and control after such child has attained the age of seventeen (17) years and also successfully served a one-year period of parole.

Although juvenile delinquency proceedings in Texas are civil in nature, and are not considered to be criminal, the doctrine of mootness, as set forth in *St. Pierre v. United States*, 319 U.S. 41 (1943), and as modified in *Sibron v. New York*, 392 U.S. 40 (1968), would apply to the instant case.

Respondent concedes that Petitioner was discharged from state supervision before he could have brought his case to this Court for review, however, his case was fully reviewed by all the available state appellate courts and there is no possibility that any collateral legal consequences will be imposed upon him by virtue of the challenged juvenile proceedings.

Therefore, Respondent suggests that the Petition should be denied for this Court should not entertain a moot controversy.

Petitioner's Reply Brief for Certiorari at 2-3, Santana v. Texas, 457 S.W.2d 275 (Tex. 1970).

1. *The Case Is Not Moot Because The State Should Not Be Allowed To Deny Petitioner Effective Legal Review By The Mere Subterfuge Of An Administrative Discharge From The Custody Of The Texas Youth Council Made After Petitioner Had Asked This Honorable Court For Review.*

. . . .

2. *The Case Is Not Moot Because There Are Collateral Legal Consequences Which Will Affect Petitioner.*

23. The age at the time of trial and not the age at the time of the commission of the offense governs in Texas when the age at commission is over 15. For applicable cases, see Frey, *supra* note 1, at 221 n.51 (1970). The juvenile courts have jurisdiction over alleged delinquents between the ages of 10 and 17 for boys and 18 for girls. TEX. REV. CIV. STAT. ANN. art. 2338-1, § 3 (Supp. 1969-1970). The juvenile court may waive jurisdiction if the violation charged is a felony and the child was 15 or older at the time of commission. TEX. REV. CIV. STAT. ANN. art. 2338-1, § 6(b) (Supp. 1969-1970).

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