

11-12-1969

11-12-1969 Justice Harlan, Per Curiam

John Harlan
US Supreme Court Justice

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SUPREME COURT OF THE UNITED STATES

No. 15.—OCTOBER TERM, 1969.

Clarence DeBacker, Appellant, }
v. } On Appeal From the
Homer Brainard, Sheriff of } Supreme Court of
Dodge County, Nebraska. } Nebraska.

[November 12, 1969]

PER CURIAM.

After a hearing before a juvenile court judge, appellant DeBacker was found to be a "delinquent child"¹ and ordered committed to the Boys Training School at Kearney, Nebraska.² DeBacker did not seek direct review of his commitment, but instead sought state habeas corpus. The Nebraska District Court dismissed appellant's petition, a divided Nebraska Supreme Court affirmed,³ and last Term we noted probable jurisdiction over the present appeal. 393 U. S. 1076. Because we find that resolution of the constitutional issues presented

¹ "Delinquent child shall mean any child under the age of eighteen who has violated any law of the state or any city or village ordinance." Neb. Rev. Stat. § 43-201 (4). Appellant was charged with having a forged check in his possession with the intent to utter it as genuine, an act which for an adult would be forgery under Neb. Rev. Stat. § 28-601 (2).

² Appellant was 17 when committed, and it appears that under Nebraska law he could be kept in the training school until his 21st birthday.

³ Four of the seven justices of the Nebraska Supreme Court thought the Nebraska statutory provisions which require that juvenile hearings be without a jury, Neb. Rev. Stat. § 43-206.03 (2), and be based on the preponderance of the evidence, Neb. Rev. Stat. § 43-206.03 (3), were unconstitutional. The Nebraska Constitution provides, however, that "No legislative act shall be held unconstitutional except by the concurrence of five judges." Neb. Const., Art. V, § 2.