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CONSTITUTIONAL LAW-DUE PROCESS-RIGHT OF ACCUSED TO WRIT OF ERROR CORAM NOBIS

Bernard L. Trott
University of Michigan Law School

CONSTITUTIONAL LAW—DUE PROCESS—RIGHT OF ACCUSED TO WRIT OF ERROR CORAM NOBIS—Petitioner, a nineteen year old Negro, was convicted of rape in a circuit court of Alabama. The conviction, largely predicated on a confession made by petitioner on July 3, 1946, to the local police, was affirmed on April 24, 1947, by the Supreme Court of Alabama.[1] This petition was subsequently initiated before the Alabama Supreme Court seeking an order granting permission to petition the trial court for a writ of error coram nobis. The request was accompanied by an allegation that petitioner's confession had been induced by mental and physical torture administered by the local police. At no time during the previous trial and appeal had petitioner or his counsel offered any indication that his confession was not voluntary. In fact, all the testimony concerning the confession was uncontradicted and was to the effect that petitioner made the disclosure "to get it all off his chest." The petition in the new proceeding was supported only by the affidavits of three men who had been in jail with petitioner at the time of the confession. The state was allowed to introduce evidence, and a hearing on the evidence was conducted by the Alabama Supreme Court which held, by a vote of six to one, that the petition should be denied.[2] The denial of an opportunity to be heard in the trial court was alleged by petitioner to be a deprivation of due process under the Fourteenth Amendment, and the United

[1] Taylor v. State, 249 Ala. 130, 30 S. (2d) 256 (1947).
[2] Ex Parte Taylor, 249 Ala. 667, 32 S. (2d) 659 (1947).

States Supreme Court granted certiorari. *Held*, affirmed. In view of the implausibility of the allegation of coercion, the Alabama court was within its constitutional authority in denying the petition. Justice Murphy, in a dissenting opinion concurred in by Justices Rutledge and Douglas, expressed the view that since there was some evidence to substantiate petitioner's claim, he should be allowed a hearing in the trial court. *Taylor v. Alabama*, 335 U.S. 252, 68 S.Ct. 1415 (1948).

It is now well settled that a conviction based on a confession secured by mental or physical coercion is void as a denial of due process of law.[3] It is also clear that due process requires that a state provide corrective procedure which will give a prisoner an opportunity to establish as a matter of fact that his confession was involuntary.[4] The only question involved here is whether the Alabama procedure provided petitioner with sufficient opportunity to be heard on his allegation. Habeas corpus was not available to petitioner because in Alabama the writ will not issue to impeach a conviction where the record is regular on its face and the proponent has only parol testimony to substantiate his claim.[5] Apparently the proper remedy under the circumstances was the writ of error coram nobis. To petition a trial court for coram nobis, which is traditionally a special writ used to secure the vacation of a former conviction because of a subsequently disclosed mistake of fact,[6] it is necessary first to secure the permission of the appellate court which affirmed the conviction sought to be set aside.[7] The Alabama practice, whereby the appellate court requires the petitioner to make a showing of reasonableness and probability of truthfulness in his claim before granting permission to return to the trial court,[8] is supported by authority[9] and reason.[10] It seems

[3] ROTTSCHAEFER, CONSTITUTIONAL LAW, § 327 (1939); Lisenba v. California, 314 U.S. 219, 62 S.Ct. 280 (1941); Chambers v. Florida, 309 U.S. 227, 60 S.Ct. 472 (1940); Hysler v. Florida, 315 U.S. 411, 62 S.Ct. 688 (1941); Ashcraft v. Tennessee, 322 U.S. 143, 64 S.Ct. 921 (1944); Malinske v. New York, 324 U.S. 401, 65 S.Ct. 781 (1944).

[4] Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340 (1935); Brown v. Mississippi, 297 U.S. 278 at 287, 56 S.Ct. 461 (1936).

[5] Vernon v. State, 240 Ala. 577 at 581, 200 S. 560 (1941).

[6] 24 C.J.S., Criminal Law, § 1606; United States v. Wright, (D.C. Ill. 1944) 56 F. Supp. 489; People v. Gilbert, 25 Cal. (2d) 422, 154 P. (2d) 657 (1944); Johnson v. Williams, 244 Ala. 391, 13 S. (2d) 683 (1943); Kinsey v. State, 155 Fla. 159, 19 S. (2d) 706, cert. den. 324 U.S. 846, 65 S.Ct. 678 (1945); Grandbouche v. People, 104 Colo. 175, 89 P. (2d) 577 (1939).

[7] Hysler v. Florida, 315 U.S. 411, 62 S.Ct. 688 (1941); State v. Hudspeth, 191 Ark. 963, 88 S.W. (2d) 858 (1935); House v. State, 130 Fla. 400, 177 S. 705 (1937).

[8] Johnson v. Williams, 244 Ala. 391, 13 S. (2d) 683 (1943).

[9] Kinsey v. State, 155 Fla. 159, 19 S. (2d) 706, cert. den. 324 U.S. 846, 65 S.Ct. 678 (1945); State v. Kingman, 239 Wis. 188, 300 N.W. 244 (1941). See Young v. United States, (C.C.A. 5th, 1943) 138 F. (2d) 838, where, in speaking of the writ of coram nobis at p. 839, the court said, "If such a remedy still exists, permission to file it will not be granted by an appellate court which has affirmed a conviction unless a meritorious showing is made."

[10] It seems clear that if securing the permission of the appellate court is to be anything more than a mere formality, the appellate court cannot be bound to accept the petitioner's allegations at face value.

apparent that, if a petitioner has a valid basis for requesting the vacation of a judgment by the trial court, requiring him to make a showing of validity before the appellate court, places no undue burden upon him. Thus there would appear to be little reason for disagreeing with the majority opinion in the principal case that Alabama's criminal procedure in this respect meets the requirements of due process. If the procedure is proper there could be no denial of due process unless petitioner was refused the benefit of the established procedure by a clearly arbitrary decision on the facts.[11] This does not appear to be the case. Even the dissenters in the principal case would apparently agree that the Alabama court's conclusion on the facts was not unreasonable, yet they contend that it was incorrect, apparently giving more weight to the evidence presented by the petitioner than did the state court. This position would serve to make the United States Supreme Court a tribunal for the review of findings of fact made in the state courts and for the regulation of judicial procedures therein. It was also contended by the dissenters that the Alabama practice of requiring a showing of truthfulness in petitioner's claim was a denial of due process; that unless petitioner's claim appears untrue on its face, a hearing before the trial court should be granted. It is suggested that the dissenting position would make the obstructing of justice a simple matter for any convicted defendant who can fabricate a defense plausible on its face, and would place far greater restrictions on the states' power to regulate their own judicial proceedings than can be justified as requirements of due process of law.[12]

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[11] See 7 STANDARD PROC. 918.

[12] Brown v. Mississippi, 297 U.S. 278 at 285, 56 S.Ct. 461 (1936); Rogers v. Peck, 199 U.S. 425 at 434, 26 S.Ct. 87 (1905).