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HABEAS CORPUS-FEDERAL COURTS-EXHAUSTION OF STATE REMEDIES

E. W. Rothe, Jr.
University of Michigan Law School

HABEAS CORPUS—FEDERAL COURTS—EXHAUSTION OF STATE REMEDIES—Petitioner's writ of habeas corpus, alleging denial of due process of law in violation of the Fourteenth Amendment, was quashed on the merits by an inferior Florida court whose action was affirmed without opinion by the Florida Supreme Court. It was impossible to ascertain whether the affirmance was on the merits or on the ground that, under Florida law, habeas corpus was not the proper procedure to raise the due process issue. A later decision by the Florida Supreme Court clearly established that the prior case had been decided on the merits of the constitutional question, and that habeas corpus was available in Florida to raise the due process issue.[1] Petitioner did not seek review of the Florida court's decision by certiorari to the United States Supreme Court, but later instituted habeas corpus proceedings in a federal district court which ordered his release. On certiorari to the United States Supreme Court, *held,* the district court had properly exercised its discretion to issue the writ. Four justices dissented on the ground that, because petitioner had failed to exhaust his "state remedies," the constitutional question was not properly before the court. *Wade v. Mayo,* 334 U.S. 672, 68 S.Ct. 1270 (1948).[2]

Considerations of respect for state judicial processes, administrative necessities of federal courts, and the fact that state as well as federal courts are charged with protection of federal rights, have dictated self-imposed limitations on the power of federal courts to grant writs of habeas corpus. Consequently, to secure the writ from a federal district court, a petitioner must make a substantial showing of a

[1] Johnson v. Mayo, 158 Fla. 264, 28 S. (2d) 585 (1946).

[2] For a discussion of the substantive problem involved in the principal case, the right of an indigent accused to counsel in a non-capital state case, see note on Bute v. Illinois, supra, p. 705.

denial of a federal right, and must also show that all state remedies available, which include all appellate remedies in state courts and in the United States Supreme Court by appeal or certiorari, have been exhausted.[3] The few exceptions to this rule, "rare cases of peculiar urgency," fall within well defined categories.[4] While the facts in the principal case do not bring it within one of the recognized exceptions to the rule, it is submitted that the case was correctly decided. Appeal of petitioner's conviction to the Florida Supreme Court would have been useless, in view of the decision of that court on the merits in the habeas corpus proceeding.[5] His failue to seek certiorari in the United States Supreme Court appears excusable since, had application been made, it would almost certainly have been denied, for at that time it was not clear that the state court's decision was on the merits, and certiorari will not be granted if adequate state grounds for the decision appear.[6] As the Court points out, denial of the writ of habeas corpus under these circumstances would leave petitioner "completely remediless, having been unable to secure relief from the Florida courts and being barred from invoking federal aid."[7] Furthermore, the decision in the principal case does not seriously impair the valuable certainty of the exhaustion rule, since petitioner had secured a decision on the merits by the highest state court, thus satisfying the reason for the rule. In addition, the district court is free to weigh the failure to apply for certiorari against the injustice which would result from a denial of the writ. Since federal judges sparingly exercise their discretion to grant habeas corpus,[8] it is submitted that the principal case infuses desirable flexibility into the exhaustion of state remedies requirement[9] without destroying it as a guide to the use, by state prisoners, of the writ of habeas corpus in federal courts.

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[3] Ex parte Hawk, 321 U.S. 114 at 116, 64 S.Ct. 448 (1943). For an excellent review of the authorities, see Guy v. Utecht, (C.C.A. 8th, 1944), 144 F. (2d) 913; and Ex parte Roberts, (D.C. W.Va. 1945) 61 F. Supp. 864.

[4] Peculiar urgency is recognized where: (1) the state affords no remedy to raise the constitutional question; Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340 (1935); (2) the remedy afforded by state law was, in actual practice, unavailable or failed to provide a full and fair adjudication of federal questions; Moore v. Dempsey, 261 U.S. 86, 43 S.Ct. 265 (1923); (3) the state improperly interfered with the functions of the federal government. In Re Neagle, 135 U.S. 1, 10 S.Ct. 658 (1890).

[5] Furthermore, the time allowed by Florida law for an appeal had elapsed. See Williams v. Kaiser, 323 U.S. 471, 65 S.Ct. 363 (1945); Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019 (1938). However, the contention that petitioner should be denied relief because he had failed to appeal his conviction finds support in Goto v. Lane, 265 U.S. 393, 44 S.Ct. 525 (1924); Woods v. Nierstherheimer, 328 U.S. 211, 66 S.Ct. 996 (1946).

[6] Williams v. Kaiser, supra, note 5; White v. Ragen, 324 U.S. 760, 65 S.Ct. 978 (1945).

[7] Principal case at 682.

[8] Less than two percent of the habeas corpus petitions filed in federal district courts from 1943 to 1945 resulted in a reversal of the conviction and a release of the prisoner. Principal case at 682. But see Howard v. Dowd, (D.C. Ind. 1938) 25 F. Supp. 844.

[9] See 47 MICH. L. REV. 72 (1948), discussing the need for such flexibility because of injustice often produced by a rigid requirement of exhaustion of state remedies.