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Habeas Corpus - Jurisdiction - Exhaustion of State Remedies as Prerequisite to Federal Relief

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HABEAS CORPUS—JURISDICTION—EXHAUSTION OF STATE REMEDIES AS PREREQUISITE TO FEDERAL RELIEF—Petitioner, a prisoner of the Commonwealth of Pennsylvania convicted of armed robbery in 1947, filed a petition for a writ of habeas corpus in federal district court after several efforts to secure the writ in a state court had been unsuccessful. Jurisdiction was based on exhaustion of available state remedies. The petition alleged that the Commonwealth had violated petitioner's rights under the due process clause of the Fourteenth Amendment by denying him the right to be represented by counsel at his trial. The Commonwealth moved to dismiss on the ground that the petition on its face showed that state remedies had not been exhausted. Following the hearing, *held,* writ granted. Since poverty prevented petitioner from paying the fees then considered mandatory for the filing of an appeal, he had sufficiently exhausted available state remedies. Failure of petitioner to be represented by counsel at his trial resulted in a denial of his constitutional rights. On petition for rehearing by the Commonwealth, *held,* denied. Even if, as now claimed by the Commonwealth, the filing fees were not mandatory, the case involved "exceptional circumstances" which allowed the court to issue the writ despite non-exhaustion of state remedies. *Commonwealth of Pennsylvania v. Cavell,* (W.D. Pa. 1957) 157 F. Supp. 272.

The power of federal courts to issue writs of habeas corpus to state prisoners upon a determination that rights guaranteed by the United States Constitution have been violated is clearly established.[1] The delicate nature of this power, the respect due state court judgments, and recognition of the equal duty of both federal and state courts to protect rights guaranteed by the Constitution combine to give rise to a presumption that the states have developed adequate methods of protecting these rights.[2] Before a state prisoner can secure a writ of habeas corpus from a federal court he must show either that he has exhausted all appropriate state remedies, that there is an absence of available state corrective process, or that his case involves special circumstances rendering such process ineffective to protect his rights.[3] In the principal case the inability of petitioner to pay mandatory filing fees for an appeal was a proper basis for determining at the original hearing that petitioner had exhausted all state remedies.[4] The difficult problem raised by the court's refusal to grant the Commonwealth a rehearing, however, remains unresolved. The petition for rehearing asserted that the filing fees were not in fact mandatory and there-

[1] In re Loney, 134 U.S. 372 (1890); Ex parte Royall, 117 U.S. 241 (1886).

[2] Young v. Ragen, 337 U.S. 235 (1949); Wade v. Mayo, 334 U.S. 672 (1948); Mooney v. Holohan, 294 U.S. 103 (1935).

[3] Ex parte Hawk, 321 U.S. 114 (1944). Rule codified in 28 U.S.C. (1952) §2254.

[4] United States v. Cummings, (2d Cir. 1956) 233 F. (2d) 188; Dolan v. Alvis, (6th Cir. 1951) 186 F. (2d) 586. See also 65 HARV. L. REV. 185 (1951). *Contra,* Willis v. Utecht, (8th Cir. 1950) 185 F. (2d) 210. It may be assumed that the court was correct in determining that petitioner's constitutional rights had been violated. Johnson v. Zerbst, 304 U.S. 458 (1938); Uveges v. Commonwealth of Pennsylvania, 335 U.S. 437 (1948).

fore the prisoner did have an available state remedy. There is authority for the proposition that the availability of a state remedy can be asserted at any stage in the federal proceedings and if it is found that petitioner has not exhausted his state remedies the court must order him to do so before it can reconsider the merits of his petition.[5] The court in the principal case acknowledged that the Commonwealth was not estopped from raising this question[6] but refused to grant the rehearing, holding that the case involved special or exceptional circumstances which established the requisite jurisdictional basis for issuance of the writ by a federal district court.[7] It has been recognized that the term "exceptional circumstances" cannot be effectively defined and that the various factors present in each case must be appraised before a determination is made as to whether such circumstances are present.[8] The decisions in which "exceptional circumstances" have been found to exist seem to be limited to two general situations: cases involving clear state interference with federal power,[9] and cases in which it would be a gross violation of substantive justice to require the petitioner to follow through on state remedies before seeking federal relief.[10] The clearest example of such a situation is where the petitioner is to be executed before he could properly utilize the available state remedies.[11] The court in the principal case has in effect established a third category of "exceptional circumstances." Where there exists a seemingly apparent violation of the petitioner's constitutional rights, a "good faith" attempt on his part to comply with the state remedies known to him will excuse the normal requirement of exhaustion of state remedies in the event a proper state remedy is subsequently discovered to have been available. The factors relied on by the court in finding "exceptional circumstances" seem to indicate that it might

[5] United States v. Ragen, (7th Cir. 1949) 178 F. (2d) 377; United States v. Ragen, (7th Cir. 1949) 178 F. (2d) 379. In both cases a new remedy was created after a hearing in federal district court and the circuit court of appeals refused to examine the merits of the petitions on appeal until petitioners had availed themselves of the new state remedy.

[6] Principal case at 277.

[7] Principal case at 276.

[8] Frisbie v. Collins, 342 U.S. 519 (1952).

[9] Ex parte Edwards, (S.D. Fla. 1941) 37 F. Supp. 673; Ex parte Jervey, (C.C. S.C. 1895) 66 F. 957. Both cases involved state interference with the power to control interstate commerce.

[10] Moore v. Dempsey, 261 U.S. 86 (1923) (mob domination made fair determination of case by state courts impossible); Frisbie v. Collins, note 8 supra (state officers kidnapped petitioner and brought him back to the state where he was imprisoned); Brown v. Allen, 344 U.S. 443 (1953) (petitioner prevented from utilizing available state remedies through interference by prison officials); Boyd v. O'Grady, (8th Cir. 1941) 121 F. (2d) 146 (petitioner's prison term would have expired before he could have secured a hearing in a state court); Bacom v. Sullivan, (5th Cir. 1952) 194 F. (2d) 166 (petitioner unsuccessfully attempted to get determination of his claims by state courts for four years and had not yet started to serve jail sentence); Dooly v. Mahoney, (E.D. Wash. 1942) 42 F. Supp. 890 (petitioner given sentence clearly void on its face).

[11] Thomas v. Teets, (9th Cir. 1953) 205 F. (2d) 236.

have been unwilling to cause petitioner further hardship and delay.[12] Normally something more than hardship and delay must be found to establish special circumstances.[13] It is clear that if the court had granted the rehearing and determined that petitioner did have an available state remedy it would not have been required to dismiss the petition absolutely. Instead it could have retained jurisdiction while granting a delay in issuing the writ, during which time petitioner would have been required to seek relief under the appropriate state remedy. If at the end of the delay granted petitioner could show that he was still unable to secure relief, the court could allow the writ to issue.[14] Under this approach individual hardship and delay for petitioner would have been minimized while the overriding policy of allowing state courts at least one opportunity to pass on the merits of petitioner's claims would have been protected.[15]

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[12] Petitioner's poverty, his low mental capacity and the difficulty the Commonwealth had in determining that there was an exception to the mandatory filing fee requirement were additional factors on which the court based its determination that the facts established "exceptional circumstances."

[13] See, generally, Sweeny v. Woodall, 344 U.S. 86 (1952); Dickson v. Castle, (9th Cir. 1957) 244 F. (2d) 665; Ross v. Middlebrooks, (9th Cir. 1951) 188 F. (2d) 308.

[14] Shipman v. DuPre, 339 U.S. 321 (1950); Ex parte Sullivan, (D.C. Utah 1952) 107 F. Supp. 514.

[15] See Beverly, "Federal-State Conflicts in the Field of Habeas Corpus," 41 CALIF. L. REV. 483 at 488 (1953).