CIVIL PROCEDURE-HABEAS CORPUS-EXHAUSTION OF STATE REMEDIES IN RENDITION CASES

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Civil Procedure—Habeas Corpus—Exhaustion of State Remedies in Rendition Cases—Respondent, a convict, was apprehended in Ohio after escaping from an Alabama prison. He attempted to prevent rendition by petitioning the Ohio courts for a writ of habeas corpus, alleging that he had suffered cruel and unusual punishment in the Alabama prison contrary to the Fourteenth Amendment and, if forced to return, would be subject to further brutal treatment. His petition was denied at all levels in the Ohio courts and the United States Supreme Court denied certiorari. A similar petition was then denied by the Federal District Court in Ohio, but the court of appeals reversed without opinion and ordered a hearing on the merits. On certiorari to the United States Supreme Court, held, reversed. The remedies of the state of incarceration must be exhausted before a federal court can consider an application for a writ of habeas corpus. Sweeney v. Woodall, (U. S. 1952) 73 S. Ct. 139.

This decision carries to a logical conclusion the doctrine that one who seeks a writ of habeas corpus from a federal court alleging the unconstitutionality of state custody must first exhaust all state remedies. The Supreme Court has explained this rule in terms of comity between courts when the state court first secures jurisdiction, of a presumption that state courts will follow the law of

11 "The infinite possibilities of injury which exist aboard a ship render precedent of negligible assistance in determining what contents the courts will pour into the flask labelled 'unseaworthiness.' Few would have thought that the presence on board of a brutal mate or a greenhorn untrained sailor would render a ship 'unseaworthy'; or that a seaman would be able to convince a court that he fell in the shower of a docked ship because the soapy floor rendered it 'unseaworthy.' To the courts has been handed a simple instrument for the imposition of absolute liability with no limitation but judicial conscience." Note, The Tangled Seine: A Survey of Maritime Personal Injury Remedies, 57 Yale L.J. 243 at 254 (1947).


2 Woodall v. Sweeney, (6th Cir. 1952) 194 F. (2d) 542.

3 Darr v. Burford, 339 U.S. 200, 70 S.Ct. 587 (1950); Ex parte Hawk, 321 U.S. 114, 64 S.Ct. 448 (1943). For a compilation of the cases developing the doctrine see annotations in 94 L.Ed. 785 (1950) and 88 L.Ed. 576 (1944). The doctrine has been incorporated into the Judicial Code, 62 Stat. L. 967 (1948), 28 U.S.C. §2254: "An application for a writ of habeas corpus in behalf of a person in custody pursuant to a judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

"An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented."
the land, and of the "delicate" federal-state relations problem created if a federal district court should overthrow decisions of state tribunals. The application of this doctrine to rendition proceedings had been left in doubt by an earlier Supreme Court decision which did not make clear whether a fugitive petitioner had to exhaust the remedies in the state of asylum or the state of incarceration before proceeding in a federal court. In the principal case, the Supreme Court, per curiam, gave the following reasons for adopting the latter approach: (1) the prisoner should have no greater rights as a fugitive than he had as a prisoner in Alabama where he would have had to apply to the state courts; (2) rendition proceedings do not contemplate appearance by the demanding state; (3) the federal system requires that the constitutionality of prisoner treatment be determined by the courts of the state where that treatment was dealt out; and (4) the state of incarceration is a more convenient place to try the issue. The lone dissent by Justice Douglas was based on the fear that, if the allegations were true, the prisoner was being sent to a place of extreme personal danger and possible death before he could assert his constitutional rights. This would seem to be a high price to pay for the maintenance of the principles behind the rule requiring exhaustion of state remedies.

6 If the brutality exists as alleged, it is possible that the prisoner would have no right to appeal to a state court because of the physical danger involved.
7 Habeas corpus has long been used, however, to test certain aspects of the rendition proceedings. 47 Col. L. Rev. 470 (1947). An extension of the scope of the writ then would not be a "seismic innovation."
8 This is the argument based primarily on comity, see note 5 supra, and is thus merely another way of stating the conclusion in this case.
9 Principal case at 141-142.
10 See note 5 supra. State courts in the state of asylum have been reluctant to investigate the constitutionality of treatment of a prisoner. Ex parte Wallace, 36 Wash. (2d) 48, 227 P. (2d) 737 (1951); Ex parte Paramore, 95 N.J. Eq. 386, 123 A. 246 (1924); State v. McClure, 87 Ohio App. 520, 96 N.E. (2d) 308 (1950); People v. Ruthazer, 198 Misc. 1044, 102 N.Y.S. 241 (1950). But such relief has been granted. Commonwealth v. Supt. of County Prison, 152 Pa. Super. 167, 31 A. (2d) 576 (1943), and see theory in Ex parte Rae, 215 Mich. 156, 183 N.W. 774 (1921).
judicial lever to encourage prison reforms where treatment is considerably below the standards of decency involves no inherent evil.¹¹ Where a state has allowed its prisoner treatment to sink to the level of brutality, the inconvenience to that state of coming to the state of asylum to defend against the great writ is not a particularly appealing argument.¹² In cases tried under the now repudiated opposite rule, the courts have handled the problems with competence and with a due regard for the penal systems of the state of incarceration.¹³ However, unless it can be shown that state remedies are unavailable,¹⁴ or the Supreme Court adopts another theory which would avoid the consequences envisioned by Justice Douglas,¹⁵ the use of habeas corpus in this type of case has now been foreclosed.

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¹¹ Compare exclusionary rules of evidence as used to control police activities, 50 MICH. L. REV. 567 (1952).
¹² The burden of proof on petitioner to establish past brutal treatment and likelihood of its continuation should be very great. See note 13 infra.
¹³ Harper v. Wall, (D.C. N.J. 1949) 95 F. Supp. 771 (writ granted on showing of brutal treatment); Ex parte Marshall, (D.C. N.J. 1949) 85 F. Supp. 771 (writ denied on showing that conditions had been rectified in state of incarceration).
¹⁴ The Supreme Court expressly reserved this possibility in the principal case. Sweeney v. Woodall, 73 S.Ct. 139 at 140 (1952) and see statute, note 3 supra.
¹⁵ Query whether likelihood of brutal treatment immediately on return to state of incarceration would “render [state court] process ineffective to protect the rights of the prisoner” within the meaning of the Judicial Code section quoted in note 3 supra? The writer in 23 So. CAL. L. REV. 441 (1950), suggests that rendition of the prisoner by the state of asylum in these circumstances constitutes “state action” which may be struck down under the Fourteenth Amendment.