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Habeas Corpus--Punishment of Criminals--Prison Management [*Johnson v. Avery*, 252 F. Supp. 783 (M.D. Tenn. 1966]

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HABEAS CORPUS — PUNISHMENT OF CRIMINALS — PRISON MANAGEMENT

Johnson v. Avery, 252 F. Supp. 783 (M.D. Tenn. 1966).

Claims of prisoner mistreatment are frequently presented to the courts by way of petitions for habeas corpus. An overwhelming majority of these courts have traditionally refused to intervene on behalf of prisoners who have not exhausted their administrative remedies[1] on the ground that Congress has delegated prison administration from the courts to the Attorney General.[2] Nevertheless, several courts have taken a more liberal view and have afforded relief to prisoners who claim abridgement of their rights after incarceration.[3]

Johnson v. Avery[4] is a case representative of this more liberal view. In willful violation of a Tennessee state prison regulation, the petitioner, Johnson, had been preparing habeas corpus petitions for prisoners who were illiterate and had no counsel. As a result, he was transferred to solitary confinement.[5] The proceeding began as a request for law books[6] and a motion for release from solitary confinement under the 1964 Civil Rights Act.[7]

The court decided to treat the case as a petition for habeas corpus.[8] This raised a jurisdictional problem in that before a state prisoner can be eligible for federal habeas corpus relief, he must have exhausted all of the state remedies available to him.[9] Ordinarily this is a major impediment. Here, however, the petitioner had requested release from solitary confinement, and under Ten-

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[1] See, *e.g.*, Cannon v. Willingham, 358 F.2d 719 (10th Cir. 1966); Pope v. Daggett, 350 F.2d 296 (10th Cir. 1965); United States *ex rel.* Wakeley v. Pennsylvania, 247 F. Supp. 7 (E.D. Pa. 1965).

[2] Prisons and Prisoners Act, 18 U.S.C. § 4001 (1964).

[3] United States *ex rel.* Westbrook v. Randolph, 259 F.2d 215 (7th Cir. 1958); Coffin v. Reichard, 143 F.2d 443 (6th Cir. 1944).

[4] 252 F. Supp. 783 (M.D. Tenn. 1966).

[5] *Id.* at 784.

[6] The court treated this question summarily, asserting that the state is under no obligation to furnish inmates with legal materials. Barber v. Page, 239 F. Supp. 265 (E.D. Okla. 1965).

[7] 78 Stat. 243, 42 U.S.C. § 2000 (1964). The petitioner also sought relief under 28 U.S.C. § 1343(3) (1964). The opinion is unclear regarding upon which section of the 1964 Civil Rights Act the petitioner relied. 252 F. Supp. at 784.

[8] Actions such as the instant one are civil in nature; thus the court was presumably acting under FED. R. CIV. P. 81(a)(2).

[9] 28 U.S.C. § 2254 (1964).

nessee habeas corpus rulings, such relief was not available.[10] On this basis the court found that the exhaustion of remedies rule was satisfied and that it was free to take jurisdiction.[11]

The court was next faced with a problem of whether the petitioner had standing to challenge a prison regulation which deprived *others*, but not himself, of access to the courts. The court reasoned that because the other prisoners were essentially being denied all access to the courts, they themselves would be unable to challenge the regulation. Thus, if the petitioner were denied standing, a rule which is invalid on its face as conflicting with a federal law,[12] would go unchallenged. The court therefore found that the petitioner had standing, and that he must be released from solitary confinement due to the invalidity of the regulation.[13]

It seems that one of the major presumptions underlying the court's decision is that it had jurisdiction to examine the validity of the prison regulation. Most courts are reluctant to interfere in prison administration because they believe that such authority has been taken from the judiciary.[14] It does not follow, however, that there is an absolute lack of jurisdiction; a better conclusion is that the courts do have jurisdiction, but that self-restraint should be used in exercising it.

Despite this feeling that the judiciary lacks power to supervise prison administration, courts have interfered where deprivations were severe. Relief has been granted where medical help was unreasonably withheld,[15] where prisoners were denied access to the courts,[16] and where certain cases of cruel and unusual punishment arose.[17] However, relief has not been granted as a matter of course in all such cases.[18] As a matter of fact, an Illinois district court has held in *Siegal v. Ragen*[19] that a petition alleging denial of access to

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10 252 F. Supp. at 783.

11 *Ibid.*

12 28 U.S.C. § 2241 (1964).

13 252 F. Supp. at 786.

14 See text accompanying notes 1-2 *supra.*

15 United States v. Muniz, 374 U.S. 150 (1963).

16 *Ex Parte* Hull, 312 U.S. 546 (1940). *Contra,* Siegal v. Ragen, 88 F. Supp. 996 (N.D. Ill. 1949), *aff'd,* 180 F.2d 785 (7th Cir.), *cert. denied,* 339 U.S. 990 (1950).

17 Davis v. Berry, 216 Fed. 413 (S.D. Iowa 1914), *rev'd on other grounds,* 242 U.S. 468 (1917). *Contra,* Louisiana *ex rel.* Francis v. Resweber, 329 U.S. 459 (1947); *Ex parte* Pickens, 101 F. Supp. 285 (D. Alaska 1951).

18 See cases cited as *contra* in notes 16-17 *supra.*

19 88 F. Supp. 996 (N.D. Ill. 1949), *aff'd,* 180 F.2d 785 (7th Cir.), *cert. denied,* 339 U.S. 990 (1950).

the courts failed to state a claim for which relief could be granted. The circular reasoning of that decision is evident: Because the petitioner was in court, he was not presently being denied access and, therefore, had no complaint. The *Siegal* case is demonstrative of the unusual extremes to which courts may go pursuant to the doctrine of non-reviewability of prison administration.

The tendency toward abstention may actually be motivated, not by lack of jurisdiction, but by a feeling that courts lack the expertise to cope with the peculiar problems of prison supervision. There may be an underlying fear that judicial action would not be based upon an understanding of all the factors involved and that such action could seriously disrupt prison discipline.

The *Johnson* case serves as a rebuttal for the above argument. The court proceeded reasonably and cautiously. It laid down general guidelines, but left room for the exercise of discretion by prison officials, who have a better understanding of all the problems involved:

> This is not to say that state prison authorities may not impose reasonable restraints upon the activities of so-called "jail-house lawyers . . . ." It may be . . . that a regulation prohibiting the giving or receipt of compensation for such services, or restricting and regulating the time when they could be rendered . . . would pass muster. Indeed, a regulation prohibiting the practice altogether might well be sustained if the state afforded to prison inmates any reasonable alternative, such as . . . access to a public defender . . . . The present regulation, however, is absolute in its terms, it affords no alternatives, and it has the practical effect of silencing forever any constitutional claims which many prisoners might have.[20]

Thus, it is possible for the courts to review prison regulations and to set guidelines for legally acceptable regulations. With regard to the *Johnson* case, a question arises, however, as to whether habeas corpus is an appropriate procedural device to accomplish this end. Most cases have held that the only relief authorized under habeas corpus is the prisoner's immediate release from confinement:[21]

> The sole purpose of this proceeding is to inquire into the legality of the relator's detention. Habeas corpus may not be used to secure judicial decision of any question which, even if determined in the prisoner's favor, could not result in his immediate release.

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[20] 252 F. Supp. at 785.

[21] See, *e.g.*, *Ex parte* Parks, 93 U.S. 18 (1876); Benjamin v. Hunter, 176 F.2d 269 (10th Cir. 1949); United States *ex rel.* Binion v. United States Marshal, 188 F. Supp. 905 (D. Nev. 1960).

> The only relief authorized is the discharge of the prisoner, and that only if his detention is found to be unlawful . . . .[22]

The case most often cited in support of this proposition is *McNally v. Hill*.[23] In that case the petitioner, who was serving two consecutive sentences, was attempting to challenge the validity of the second sentence and thus establish his eligibility for parole. He had not yet begun to serve the second sentence. The Supreme Court held that habeas corpus was not available to the petitioner for litigating his right to release from a future sentence.[24] In that opinion, the Court carefully traced the history of the writ of habeas corpus and concluded that the only remedy available under it was complete and immediate release.[25]

While the *McNally* decision could conceivably be limited to its facts, courts have consistently relied upon it for the general proposition that the only relief authorized under habeas corpus is the petitioner's total and immediate release from confinement.[26]

It may be argued that the latter interpretation of *McNally* is erroneous. Habeas corpus is a civil remedy[27] governed by equitable principles.[28] Equitable discretion is written into the federal statute which permits the court to "dispose of the matter as law and justice require."[29] Such language is not consonant with the formalistic view espoused by most courts that there is no choice of remedies.

Since the 1934 *McNally* decision, the Supreme Court has begun to show a more liberal trend in interpreting the habeas corpus statute.[30] For example, in *Jones v. Cunningham*,[31] the petitioner who was free on parole, wished to challenge by means of habeas corpus the validity of his conviction. The Supreme Court held that one on parole was "in custody" within the meaning of the habeas corpus statute.[32] The language in that opinion indicates that habeas corpus is an expanding area of the law: "[Habeas corpus] is not now and never has been a static, narrow, formalistic remedy; its scope has

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[22] United States *ex rel.* Binion v. United States Marshal, *supra* note 21, at 908.

[23] 293 U.S. 131 (1934).

[24] *Id.* at 135.

[25] *Id.* at 136-38.

[26] See, *e.g.*, Benjamin v. Hunter, 176 F.2d 269 (10th Cir. 1949); United States *ex rel.* Binion v. United States Marshal, 188 F. Supp. 905 (D. Nev. 1960).

[27] United States *ex rel.* Seals v. Wiman, 304 F.2d 53, 64 (5th Cir. 1962).

[28] Fay v. Noia, 372 U.S. 391, 438 (1963).

[29] 28 U.S.C. § 2243 (1964).

[30] 28 U.S.C. §§ 2241-55 (1964).

[31] 371 U.S. 236 (1963).

[32] 28 U.S.C. § 2241(C)(3) (1964).

grown to achieve its grand purpose — the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty."[33]

Two other cases which indicate this trend toward a broader interpretation of habeas corpus are *Dowd v. Cook*,[34] and *Ex parte Hull*.[35] In *Dowd* the Court granted relief without releasing the prisoner, and in *Hull* the Court granted only a *conditional* release. In both cases the petitioners challenged the validity of prison regulations which interfered with inmates' access to the courts. The *Dowd* Court made specific mention of the flexibility permited by the statute:

> Fortunately, we are not confronted with the dilemma envisaged by the State of having to choose between ordering an absolute discharge of the prisoner and denying him all relief. The District Court has power . . . to "dispose of the matter as law and justice require."[36]

If the Court had in fact adhered to the strict view that the only relief authorized under habeas corpus is immediate release, neither of these decisions would have been possible.

The circuit and district courts have generally failed to adopt the broader interpretation of habeas corpus[37] as set out in *Jones*, *Dowd*, and *Hull*. The Seventh Circuit[38] has gone no farther than to follow the Supreme Court's example in *Hull*. On the other hand, the Sixth Circuit has expressed a much more liberal view. In *Coffin v. Reichard*,[39] the petitioner was confined to an institution for the treatment of drug addicts. His petition alleged mistreatment at the hands of the guards and his fellow inmates. The court ordered that he be transferred to another institution, justifying its action in the following terms:

> A prisoner is entitled to the writ of habeas corpus when, though lawfully in custody, he is deprived of some right to which he is lawfully entitled even in his confinement, the deprivation of which serves to make his imprisonment more burdensome than the law allows or curtails his liberty to a greater extent than the law permits. . . . A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him

[33] 371 U.S. at 243.

[34] 340 U.S. 206 (1951).

[35] 312 U.S. 546 (1941).

[36] 340 U.S. at 209-10.

[37] See cases cited note 21 *supra*.

[38] See United States *ex rel.* Westbrook v. Randolph, 259 F.2d 215 (7th Cir. 1958).

[39] 143 F.2d 443 (6th Cir. 1944).

> by law. . . . When a man possesses a substantial right, the courts will be diligent in finding a way to protect it. The fact that a person is legally in prison does not prevent the use of habeas corpus to protect his other inherent rights.[40]

It was precisely this language upon which the Tennessee district court relied in deciding the *Johnson* case.[41]

In conclusion, it can be said that the future of the law regarding the nonreviewability of prison regulations is uncertain. So also is the question of which remedies are available under habeas corpus. Presently, most courts believe that review of prison regulations is not within the realm of judicial power. They also believe that the only relief available under habeas corpus is total release. Cases such as *Johnson*, however, indicate a trend toward broadening the law in both of these areas.

If habeas corpus were extended to permit the courts to correct prison abuses without necessarily freeing the complainant, it is unlikely that the pandemonium envisioned by its opponents would occur.[42] The courts are not apt to issue decrees which would seriously upset prison discipline. *Johnson* affords an excellent example of the reasonableness with which courts are likely to act.

Another possible outcome of such a ruling is that it would stimulate the creation of more effective administrative channels for the treatment of valid prisoner complaints. Such a result would also serve to free the court dockets of groundless habeas corpus petitions; the exhaustion of remedies rule would require prisoners to pursue administrative channels open to them before becoming eligible for federal habeas corpus relief. Furthermore, the realization that a successful habeas corpus proceeding is no longer a certain means to freedom would also deter frivolous habeas corpus petitions.[43]

Johnson is currently on appeal to the Sixth Circuit Court of Appeals, and if that court elects to follow its 1944 decision of *Coffin v. Reichard*,[44] the case should be affirmed. Such an affirmance would have an important effect on the future utilization of habeas corpus in reviewing prison regulations.

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[40] *Id.* at 445. (Footnotes omitted.)

[41] 252 F. Supp. at 786.

[42] See generally Comment, 72 YALE L.J. 506 (1963).

[43] *Ibid.*

[44] 143 F.2d 443 (6th Cir. 1944).