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Judicial Abuse of Habeus Corpus

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EDITORIALS

JUDICIAL ABUSE OF HABEAS CORPUS

In March, 1929, in the ILLINOIS LAW REVIEW,[1] there appeared comment upon the action of Judge Charles A. Williams of the Superior Court of Cook County, Illinois, in releasing from a penitentiary on a writ of habeas corpus a man who had pleaded guilty to a charge of murder. There seemed to be as little judicial excuse for that action as one could well imagine.

1. 23 ILLINOIS LAW REVIEW 695.

It now appears that a greater imagination was needed. The same Judge Williams was persuaded to release on a writ of habeas corpus Emil Schneider, who had been convicted of an assault with intent to commit rape. Perhaps a man of that type at large is less to be feared than a murderer. But the person released in this instance was convicted in Du Page County. His attorney,[2] who appeared for Joseph Chapman in the earlier case, was no more successful in preventing the Supreme Court of Illinois from quashing the record made by Judge Williams in the second case[3] than he was in the first case.[4]

There was no real merit in the reasons assigned for releasing Chapman, but they had some plausibility. The reasons assigned for requesting a release of Schneider, who had been in the penitentiary at Joliet for two and one-half years, are positively puerile. Here they are: (1) While the indictment charged that Schneider made an assault with intent *forcibly* to ravish, yet the charge was void because it failed to allege that the female was under sixteen years of age. (2) The jury committed a fatal error when it returned a verdict that found Schneider guilty of an "assault with intent to rape"; it should have returned a verdict of guilty of an assault with an intent to *commit* rape. (3) The trial court was without jurisdiction to impose sentence in a penitentiary because Schneider was under twenty-one; he should have been sentenced to the reformatory at Pontiac. (4) Schneider was charged with rape as well as an assault with intent to commit rape. Under the Parole Act the jury is to fix the term of imprisonment upon a conviction where one is "charged" with rape. In the particular instance, the jury merely found him guilty as charged and that he was "about the age of twenty-one years." Upon this verdict, the trial court sentenced him "for a term of not less than one year nor more than fourteen years."[5] The point was, apparently, that because he had been "charged" with rape, the fact that he had been convicted of only an assault with intent to commit rape should have been ignored, and he should have been treated as if he had been convicted of rape.[6]

2. W. G. Anderson. The classified telephone directory for Chicago has under the title of "Lawyers" only one W. G. Anderson.

3. *People* ex rel v. *Williams* (1929) 334 Ill. 241, 165 N. E. 693.

4. *People* ex rel v. *Williams* (1928) 330 Ill. 150, 161 N. E. 312.

5. The record facts set forth were obtained from a copy of the brief and argument filed in the Supreme Court of Illinois by Mr. C. W. Reed, State's Attorney for Du Page County. Acknowledgment is made of his kindness. The "brief and argument" contains a copy of the common law record in the case of *People* v. *Schneider*.

6. If he had been convicted of rape, it may be conceded that the jury should have fixed the term of imprisonment. The conviction of an assault

The Supreme Court of Illinois had no apparent difficulty with any of these allegations.[7] Most of them seem only to jest with the administration of criminal justice. If that were not a matter of importance, the whole proceeding could be passed over as one of life's little jokes. But if one should think that the allegations set forth are matters of any moment, surely he will admit that the proper procedure would have been to have sued out a writ of error. This was never done, and it was available to Emil Schneider. There seems to be no excuse for the attempt to use habeas corpus as a substitute for a writ of error.

This case illustrates how an ancient writ can be abused; how it is possible to present the application to one judge and then another until a favorable judge is found.[8] Under an elective system of judges without any satisfactory concentration of judicial authority, the public welfare in particular questions is at the mercy of the

with intent to commit rape was equivalent to an acquittal of the counts charging rape.

7. The first suggestion ignored the fundamental difference between rape without consent and statutory rape; the second is the sort of nonsense that only American lawyers, apparently, can argue without smiling; the third merely involves a statutory provision which would seem to be beyond a perverse intellect to misinterpret; the fourth was based on the proposition that a charge of rape is equivalent to a conviction of rape despite the fact that the jury returned a verdict of an assault with intent to commit rape.

There is nothing to show which of these suggestions, or whether all of them, appealed to Judge Williams.

8. "After the conviction, and imprisonment of Schneider, efforts were made in his behalf to obtain his release on parole, but were unavailing, the parole board for some reason or other being unwilling to parole him. Later, his attorney informed me that he was about to apply to Judge Lindsay, then Chief Justice of the Criminal Court of Cook County, for a writ of habeas corpus. I informed him that I did not believe it was legal, or that Judge Lindsay had jurisdiction. He laid the matter before Judge Lindsay, and the judge apparently agreed with me that he had no jurisdiction, for he did not issue the writ, and I doubt if the petition for habeas corpus was even actually filed. No doubt the judge told his attorney before the filing of the writ, that he was of the opinion that he was without jurisdiction, and the filing of the petition would not avail him anything.

"Later, other counsel appeared as representing this defendant, and the petition for the writ was filed before Judge Williams. I appeared, and opposed the same, but the writ was issued, and the defendant brought into court." Reed, C. W., Letter of May 9, 1929, to writer.

See *People* v. *McCarthy* (N. Y., 1929) 165 N. E. 810. The Code of Criminal Procedure in New York provides for an appeal to the Court of Appeals if a judge thereof, or a justice of the appellate division of the department where the conviction was had, issues the proper certificate. This provision is interpreted as follows:

"Only one such application can be made. It may be made to any judge of the appellate division or to any judge of the Court of Appeals. The application is to the judge personally, not to the court. The judge must hear the application, if made to him. *When, however, he has heard and denied the application, it is final;* application cannot be made to any other judge either of the appellate division or of the Court of Appeals. If this were not so, it would be possible for the application to be made to all of the judges of these courts in succession." (Italics supplied.)

least capable judge. If possible, the issuance of the writ of habeas corpus should be placed under restraint by proper legislation.[9]

Furthermore, emphasis should be placed on the fact that Judge Williams released a man who had not been convicted in Cook County. Recently there has been a newspaper article stating that Judge T. N. Greene in Peoria upon application filed by Victor Michel had released from the Joliet penitentiary two individuals who had been convicted in Cook County.[10] All of this is just one more item of evidence that the administration of criminal law in the State of Illinois is archaic and even disgraceful to the civilization of which some Americans like to boast.

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9. "From my experience in this case, and from a perusal of other cases cited in my brief, it seems to me that some legislation should be passed whereby the writ of habeas corpus should be limited in cases of prisoners held in penal institutions, to the courts from the venue of which prisoner was convicted. In other words, it would appear outrageous if a certain judge sitting in Cairo, Illinois, should assume the power of issuing writs of habeas corpus to review the convictions of criminals sent to the Joliet penitentiary from the Criminal Court of Cook County." Reed, C. W., letter of May 9, 1929, to writer.

The Supreme Court of Illinois in the case under review holds that the Superior Court of Cook County had no "jurisdiction" to issue the writ *if* the Circuit Court of Du Page County had jurisdiction of the subject matter and of the person of Schneider. See also, *Goodman* v. *Daly* (1929) 165 N. E. 906.

But most any defect can be *said* to be jurisdictional and apparently some judges cannot distinguish even roughly between jurisdictional and non-jurisdictional facts. Perhaps there is no dividing line between them that is always obvious. We seem to need legislation (assuming its constitutionality) that will prevent so far as possible courts of co-ordinate jurisdiction from interfering with each other under circumstances similar to those in the case under review. Such conflicts are not conducive to the proper administration of justice.

In *People* v. *Zimmer* (1911) 252 Ill. 9, 96 N. E. 529, Mr. Justice Hand wrote: "The writ of habeas corpus is a high prerogative writ and when properly issued supersedes all other writs, and by reason of that fact it should be confined to its legitimate office, otherwise an ignorant, reckless, or partisan judge, by usurpation, may through the writ work a great wrong to society and the state by discharging offenders who have been lawfully convicted and sentenced to imprisonment by other courts while legally exercising co-ordinate jurisdiction with the court granting such discharge."

10. Chicago Daily Tribune, Friday, September 13, 1929. For further information concerning this release on habeas corpus, see the Chicago Daily Tribune for October 25 and 26 (news item and editorial).