

1947

Criminal Law Notes and Comments: Recent Legislation

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If Illinois adopted the doctrine that a court loses jurisdiction when the conviction results from a violation of due process, rendering the conviction void, it would be possible to grant relief to the petitioner upon application for a writ of habeas corpus. This point of view would not do violence to the traditional scope of habeas corpus in Illinois, but would merely suggest a new attitude towards the concept of jurisdiction. If we assume that a court only has the power to try the accused in a constitutional manner, it is proper to say that the court loses jurisdiction to convict, and the resulting conviction is void when a violation of due process occurs. Since the petitioner would have the burden of proving his contentions and of overcoming the presumption of validity,⁷⁴ it is not likely that this procedure would result in an undue burden upon the state courts. It would be available, however, in situations which are possibly without remedy in the state of Illinois at the present time and would guarantee fundamental rights without making recourse to the federal courts necessary. It is recognized that this may be seized upon by many who may attempt to invoke the remedy of habeas corpus in a last attempt at gaining freedom after all the principals who participated in the trial are dead or are no longer available to appear against them. But the passage of many years and an unlikely story are elements which the courts can consider in passing on the credibility of the petitioner. It is essential that the courts of Illinois be more readily accessible to those who have really been convicted through deprivation of due process, but cannot meet the technical requirements of writ of error coram nobis.

In improving the remedy of habeas corpus in Illinois it might also be desirable to provide for appellate review in habeas corpus proceedings.⁷⁵ In doing this, Illinois would be following the precedent of other states⁷⁶ and of the federal procedure.⁷⁷ It would appear to be desirable to obtain a ruling of an appellate court upon a denial of habeas corpus and in that way prevent numerous proceedings in the lower courts, and at the same time give the petitioner an opportunity to obtain an authoritative ruling of a superior court.

PHILIP RUBIN.

Recent Legislation

RICHARD W. COOPER

Release of Persons Arrested for Drunkenness—A recently enacted Massachusetts statute, S. B. 565, App. May 16, 1947, Ch. 272, § 45, which requires the release of certain persons arrested for drunkenness, is similar to the Model Arrest Act which was proposed by the Interstate Commis-

⁷⁴ *Johnson v. Zerbst*, 304 U. S. 458, 468 (1938); *Walker v. Johnston*, 312 U. S. 275, 286 (1941).

⁷⁵ Note (1928) 41 Harv. L. R. 902 (advocates appellate review of habeas corpus proceedings).

⁷⁶ Rev. Stat. of Neb. (1943) 29-2823 "The proceedings upon any writ of habeas corpus shall be recorded by the clerk and judges respectfully, and may be reviewed as provided by law for appeal in civil cases"; Page's Ohio Gen. Code (1938) § 12187; Wis. Stat. (1945) § 274.05.

⁷⁷ 28 U. S. C. A. § 463-466.

sion on Crime in 1941. The Model act provides that any officer in charge of a police department may release, instead of taking before a magistrate, any person who has been arrested without a warrant by an officer of his department if he is satisfied that there is no ground for complaint or that the person was arrested for drunkenness and no further proceedings are desirable, and that the arrested person is a resident of the state and will appear in court upon a summons. Under the Massachusetts statute the arrested person must address a written statement to the court or trial justice having jurisdiction of his offense, setting forth his name and address, his dependents, if any, his place of employment, if any, and whether he has been arrested for drunkenness within the preceding twelve months. The statement is delivered to the officer in charge of his place of confinement who indorses thereon his opinion of the probable truth of the statement for the use of the trial justice and transmits it to the trial justice or probation officer if there is such an officer in the jurisdiction. The police officer may then, without further order from the court, release the person if he believes the statement to be true, that the person will appear upon a summons, and that he has not been arrested for drunkenness more than four times within the preceding twelve months.
