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CRIMINAL LAW CASE NOTES AND COMMENTS

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THE SCOPE OF HABEAS CORPUS INQUIRY IN FUGITIVE EXTRADITION CASES

In *Sweeney v. Woodall*,¹ the petitioner, a Negro, had escaped from imprisonment in Alabama and made his way to Ohio, where he was apprehended by Ohio officials pursuant to a request for rendition by the Governor of Alabama.² The Ohio executive ordered his return to Alabama,³ whereupon Woodall applied to the Ohio courts for a writ of habeas corpus, alleging that while confined in Alabama he had been subjected to cruel and unusual punishment in violation of the Fourteenth Amendment. The fugitive offered to prove that his Alabama jailors had frequently beaten him with a nine pound strap with metal prongs, resulting in unconsciousness and permanent wounds; that he had been stripped to the waist and made to work all day in the broiling sun without a rest period; and that he had been forced to be a "gal-boy" or female for the homosexuals among the prisoners. Woodall contended that he would be treated even more inhumanely if returned.⁴

Having exhausted his remedies in the courts of Ohio without relief,⁵ Woodall renewed his petition in the federal courts.⁶ The District Court dismissed the petition but the Court of Appeals for the Sixth Circuit reversed and remanded the case for a hearing upon the merits.⁷ The Supreme Court in turn reversed the Court of Appeals, holding that if the prisoner had not escaped he would have had to bring his action in Alabama;⁸ that by escaping to "another jurisdiction he should not be allowed to affect the authority of the Alabama

1. 344 U.S. 86 (1952).

2. "A person charged in any State with Treason, Felony, or other Crime, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime." Article Four, section two, of the United States Constitution. The procedure to be followed has been set out by Congress in 18 U.S.C. §3281 (1948). The papers required in a request for rendition must contain a demand for the fugitive, a copy of the indictment or an affidavit charging the fugitive with a crime, and authentication by the Governor or Chief Magistrate of the demanding state. See 2 Moore, EXTRADITION, §632 (1891).

3. If the asylum state refuses to comply with the request there is no remedy available to the demanding state. *Kentucky v. Dennison*, 24 How. 66 (1861). Thus it has been called a moral duty only.

4. *Sweeney v. Woodall*, 344 U.S. 86, 88 (1952). Mr. Justice Douglas in his dissent says that, "lurid details are offered in support of this main charge."

5. *In re Woodall*, 88 Ohio App. 202, 89 N.E.2d 493 (1949).

6. The power of a federal court to grant a writ is conferred by 28 U.S.C. §2241 (1948), which states that a writ "shall not extend to a prisoner unless—1.) He is in custody under or by color of authority of the United States, or, . . . 3.) He is in custody in violation of the Constitution or treaties of the United States . . ." See *Ex parte Royall*, 117 U.S. 241 (1886).

7. 194 F.2d 542 (6th Cir. 1952).

8. "An application for a writ of habeas corpus in behalf of a person in custody pursuant to the 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. . . ." 28 U.S.C. §2254 (1948).

courts to determine the validity of his imprisonment'';⁹ that our federal system requires the prisoner to test the claimed unconstitutionality of his treatment by Alabama in the courts of that state;¹⁰ and that in Alabama all parties may be heard and all pertinent testimony will be readily available.¹¹ Woodall therefore must return to the cruel treatment he fears (assuming his allegations are true) in order to have his case heard upon its merits.

The problem of a fugitive's right to raise questions of cruel and unusual punishment, in habeas corpus proceedings, first arose in *Johnson v. Dye*,¹² a case involving facts substantially similar to the *Sweeney* case. There the Court of Appeals for the Third Circuit held that the petitioner need not have exhausted his remedies in the courts of the asylum state in order to apply to the federal courts;¹³ that cruel and unusual punishment by a state is prohibited by the Fourteenth Amendment;¹⁴ and that an inquiry into the truth of such assertions is permissible in a habeas corpus petition while the fugitive is still in asylum.¹⁵ The *Dye* case was reversed by the Supreme Court¹⁶ in a one sentence per curiam opinion citing *Ex parte Hawk*.¹⁷ This ambiguous reversal left in doubt whether the Supreme Court meant that the prisoner must exhaust his remedies in the courts of the asylum state or the demanding state before a hearing upon the merits of the claim would be considered by the federal courts. As a result of this ambiguity the circuits became divided as to just what the rule was. Several circuits held that an inquiry into the actions of the demanding state was proper in such a petition.¹⁸ Other circuits ruled that the writ tested only the detention by the asylum state, and that any issues regarding the actions of the demanding state must be heard there.¹⁹ Not

9. *Sweeney v. Woodall*, 344 U.S. 86, 89 (1952).

10. *Id.* p. 90.

11. *Id.* p. 90.

12. 175 F.2d 250 (3d Cir. 1950), *rev'd*, 338 U.S. 864 (1950). Johnson, a convicted murderer, escaped from prison in Georgia and fled to Pennsylvania where he was arrested and ordered returned to Georgia pursuant to interstate rendition procedure. In petitioning the Pennsylvania and ultimately the federal courts for a writ of habeas corpus, Johnson alleged that he had been subjected to cruel and unusual punishment by the State of Georgia in violation of the Fourteenth Amendment.

13. The court noted a conflict existing among the circuits as to the applicability of 28 U.S.C. §2254, requiring exhaustion of state remedies, and decided that the petitioner need not have exhausted his remedies in the Pennsylvania courts. *United States ex rel. Darcy v. Superintendent of County Prison*, 111 F.2d 409, 411 (3d Cir. 1940), cert. den., 311 U.S. 662 (1940). *McCline v. Myering*, 75 F.2d 716, 718 (7th Cir. 1934). *Contra: Lyon v. Harkness*, 151 F.2d 731 (1st Cir. 1945), cert. den. 327 U.S. 782 (1946). *Kauffman v. Mount*, 131 F.2d 1112 (5th Cir. 1942). See 25 NOTRE DAME LAW 153 (1949).

14. The Supreme Court has not yet definitively ruled on the issue of whether cruel and unusual punishment is prohibited by the Fourteenth Amendment. In *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1947), the court went so far as to assume that infliction of cruel and unusual punishment by a state would violate the due process clause. Protection against such punishment would seem to be a part of the "very essence of a scheme of ordered liberty" which Mr. Justice Cardozo declared was the test in deciding which rights fall within the protection of the Fourteenth Amendment. *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). See 36 CORNELL L. Q. 362 (1951), and 2 STAN. L. REV. 174 (1949).

15. *Johnson v. Dye*, 175 F.2d 250 (3d Cir. 1950).

16. 338 U.S. 864 (1950).

17. In *Ex parte Hawk*, 321 U.S. 114, 116 (1944), the court stated that, "habeas corpus by one detained under a state court judgment of conviction for a crime will be entertained by a federal court only after all state remedies available . . . have been exhausted. . . ."

18. *Sweeney v. Woodall*, 194 F.2d 542 (6th Cir. 1952). *United States ex rel. Jackson v. Ruthazer*, 181 F.2d 588 (2d Cir. 1950). *Johnson v. Dye*, 175 F.2d 250 (3d Cir. 1950).

19. *Ross v. Middlebrooks*, 188 F.2d 308 (9th Cir. 1951). *Davis v. O'Connell*, 185 F.2d 513 (8th Cir. 1950). *Johnson v. Matthews*, 182 F.2d 677 (D.C. Cir. 1950).

until *Sweeney v. Woodall*²⁰ did the Supreme Court directly meet the issue and apparently adopt the latter view.

The scope of inquiry in habeas corpus cases dealing with interstate rendition has been strictly limited in the past and the courts generally have confined themselves to the following factors: (a) the identity of the fugitive;²¹ (b) whether the prisoner is a fugitive from justice;²² and (c) whether the accused was in the demanding state at the time the alleged crime was committed.²³ If the fugitive were permitted to test the validity of his original incarceration this traditional scope of review would either be broadened or an exception raised to include allegations of cruel and unusual punishment. The *Sweeney* case decided in favor of the narrower approach by requiring the prisoner to test his claim in the courts of the demanding state.

The *Sweeney* case represents a reluctance on the part of the courts to enlarge the traditional scope of review on the grounds that the writ tests only the detention by the asylum state,²⁴ although not till *Johnson v. Matthews*²⁵ was there a case specifically denying substantive review where allegations of cruel and unusual punishment were made. Exceptions to this limited review have been made in the past. In *Commonwealth ex rel. Mattox v. Superintendent of County Prison*,²⁶ a state court granted the petitioner's release when it appeared that he would face the danger of lynching if returned to the demanding state. The tendency of the state and lower federal courts to inquire more fully into claimed constitutional abuses²⁷ reflects a growing dissatisfaction with the traditional scope of review.²⁸

Many reasons have been advanced for following the view of the *Sweeney* case in retaining the traditional scope of review in habeas corpus proceedings. But assuming that the allegations of cruel and unusual punishment are true, it seems clear that any reasons advanced for requiring a man to return to imprisonment, which is known to be barbaric and cruel and which will endanger his life, must be of the most convincing nature.

In support of its stand, the Supreme Court places a great deal of emphasis upon the relations between the federal and state governments, stating that, "considerations fundamental to our federal system require that the prisoner

20. *Sweeney v. Woodall*, 344 U.S. 86 (1952).

21. *In re White*, 55 Fed. 54 (2d Cir. 1893).

22. *Bruce v. Rayner*, 124 Fed. 481 (4th Cir. 1903).

23. *Id.* p. 141. See Scott and Roe, *THE LAW OF HABEAS CORPUS*, 390 (1923), 36 Cornell L.Q. 362 (1951), 47 Col. L.R. 470 (1947). Certain factors such as the guilt or innocence of the accused, alibis and the sufficiency of the indictment will not be considered. *Hyatt v. Corkran*, 188 U.S. 691 (1903). See 2 Moore, *EXTRADITION*, §632 (1891).

24. *Compton v. Alabama*, 214 U.S. 1 (1909). In *Johnson v. Matthews*, 182 F.2d 677 (D.C. Cir. 1950), the court disagreed with the *Dye* case and held that the review tests only the actions and detention of the asylum state.

25. 182 F.2d 677 (D.C. Cir. 1950). The court held that the writ tested only the detention by the asylum state and not that of the demanding state. The scope of permissible review has been established by the Supreme Court. *Compton v. Alabama*, 214 U.S. 1 (1909). *Ex parte Reggel*, 114 U.S. 642 (1885).

26. 152 Pa. Super. 167, 31 A.2d 576 (1943). The court said, "where there is sufficient competent evidence to sustain a charge that the accused relator will be unable to have a fair trial and will be in grave danger of being lynched if returned . . . the judge hearing the writ . . . may refuse to deliver the fugitive to the demanding state. *Id.* at p. 173.

27. Several courts have held that the scope of review includes allegations of constitutional abuses. *Commonwealth ex rel. Mattox v. Superintendent of County Prison*, 152 Pa. Super. 167, 31 A.2d 576 (1943), *Johnson v. Dye*, 175 F.2d 250 (3d Cir. 1950), *Sweeney v. Woodall*, 194 F.2d 542 (6th Cir. 1952), *United States ex rel. Jackson v. Ruthazer*, 181 F.2d 588 (2d Cir. 1950).

28. See 47 Col. L.Rev. 470 (1947).

test the claimed unconstitutionality of his treatment by Alabama in the courts of that state."²⁹ This view follows the rule of comity which holds that one court should defer action on causes properly within its jurisdiction, "until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter."³⁰ However, the "flexible nature" of the writ of habeas corpus will allow a waiver of this rule "when necessary to prevent an unjust and illegal deprivation of human liberty."³¹ Viewing cruel and unusual punishment as a violation of the Fourteenth Amendment, it can be fairly argued that requiring a man to return to such treatment in order to obtain relief would qualify him for this waiver.³² If such a waiver were to be allowed the possibility of ill will between the respective sovereignties, which is the basis of many rules of comity, would be no greater than when the constitutionality of any state action is passed upon in the federal courts. Moreover, the rare number of these cases leads to the conclusion that this danger is more apparent than real.³³

A second argument in support of the *Sweeney* rule is that to permit the fugitive to test the validity of his original incarceration in the asylum state would place a premium on and encourage escaping to another jurisdiction,³⁴ for if Woodall had not escaped he would have had to exhaust his remedies in the Alabama courts before making an application to the federal courts sitting in Alabama.³⁵ As has elsewhere been pointed out, there is little validity to the argument.³⁶ Prisoners do not escape with the idea of being recaptured and resisting their return to prison, for in the event of recapture, the escapee would likely be subjected to an additional prison term. In addition, the fugitive bears the burden of proof as to the truth of his allegations.³⁷ Because of the reluctance of the courts to release an obviously guilty man, this proof must be of the most convincing nature. Thus, the difficulty in proving allegations of cruel and unusual punishment might itself be a healthy deterrent if the escape argument has any validity.

Another reason advanced for the decision in the *Sweeney* case is that the demanding state can better and more readily defend against its claimed constitutional abuses in the courts of that state.³⁸ But, whenever a fugitive contests his rendition the demanding state assumes a certain burden to aid in overcoming the prisoner's allegations. It does not appear that this burden would be sufficiently increased, when allegations of cruel and unusual punishment are made, to warrant sending the prisoner back to the brutal treatment he alleges. Moreover, the relatively small number of these cases and the present status of modern communications and transportation greatly detract from this argument.

While the reasons in support of the *Sweeney* decision do not appear to be of the most convincing nature, the decision of the court nevertheless requires

29. *Sweeney v. Woodall*, 344 U.S. 86, 90 (1952).

30. *Darr v. Burford*, 339 U.S. 200 (1950). See *Ross v. Middlebrooks*, 183 F.2d 308 (9th Cir. 1951)—a case involving the same basic problem as the *Sweeney* and *Dye* Cases.

31. *Wade v. Mayo*, 334 U.S. 681 (1947). *Price v. Johnston*, 334 U.S. 266, 283 (1947).

32. See note 14, *supra*.

33. See 64 Har. L. Rev. 271 (1950), where it is pointed out that in the first part of 1950, only six such cases were reported.

34. *Sweeney v. Woodall*, 344 U.S. 86, 89 (1952). The court said that the prisoner could not change his position by a form of "self-help" in escaping from prison.

35. 28 U.S.C. 2254 (1948). *Ex parte Hawk*, 321 U.S. 114 (1944). See note 8, *supra*.

36. *Horowitz and Steinberg*, 23 So. Calif. L.Rev. 441 (1950).

37. *Ibid.*

38. *Sweeney v. Woodall*, 344 U.S. 86, 89 (1952).

the fugitive to return to the demanding state where it is assumed he will be able to obtain adequate relief.³⁹ The next question then is whether that relief is available. The *Sweeney* case indicates the prisoner may renew his suit for habeas corpus in the courts of the demanding state, and if relief is not accorded him there he may apply to the federal courts after exhausting his state remedies.⁴⁰ There are several factors that tend to make this remedy unattractive. While this time consuming litigation proceeds, the prisoner (assuming his allegations are true) may be subjected to more of the punishment which he alleges to be illegal, while facing the added danger of retaliation. The possibility of speedy relief in the state courts would appear remote since punishment of extreme degrees is often provided by state statutes that have been upheld by the state courts as constitutional.⁴¹ The retaliatory and racial prejudices that may exist in the demanding state courts could also prevent quick relief from the "cruel" punishment.

Should state courts fail to provide relief to the prisoner, the federal courts are severely limited as to the type of remedies available in a habeas corpus proceeding. While the usual remedy in habeas corpus is the release of the prisoner,⁴² courts are hesitant to grant such relief because an obviously guilty man would be turned loose upon society. Injunctive remedies do not appear to be obtainable in the federal courts. The circuits are in conflict as to whether a federal prisoner seeking a writ of habeas corpus may be remanded to the federal prison with instructions for the protection of his Constitutional rights.⁴³ This reluctance to enjoin federal prison officials leaves only a slight possibility that such an order would issue from a federal court to a state official.⁴⁴

However, if no remedy other than release should prove to be available, the problem becomes one of balancing conflicting public interests: i.e., the right of a state to demand that a criminal pay for his crime, as opposed to the protection of those basic rights guaranteed by the Fourteenth Amendment. Just as it is felt that the gathering of illegal evidence is best discouraged by making it inadmissible and its use the cause for reversal, even though the accused is proven guilty by other evidence,⁴⁵ such releases might reasonably be justified as a means of protecting a prisoner's civil rights, and encouraging prison reform.⁴⁶

Remedies other than habeas corpus might be available to the returned prisoner. A tort action against the responsible state officials is the principal form of legal redress, but this action affords no quick relief from the existing punishment and frequently state statutes prevent a prisoner from suing while imprisoned.⁴⁷ As a result evidence and testimony grow cold and prisoners are forced to look to the federal courts. A prisoner may choose to bring an action

39. *Id.* p. 89.

40. *Id.* p. 89.

41. See *Application of Middlebrooks*, 88 F.Supp. 943 (S.D. Calif. 1950), rev'd, 188 F.2d 308 (9th Cir. 1951), where this issue is discussed in the District Court's opinion.

42. *Coffin v. Reichard*, 143 F.2d 445 (6th Cir. 1952).

43. In *Coffin v. Reichard*, 143 F.2d 445 (6th Cir. 1952), the court that habeas corpus was not limited to a mere release or remand. However in *Williams v. Steele*, 194 F.2d 32 (8th Cir. 1952), the court said, "the function of habeas corpus is not to correct a practise, but only to ascertain whether the procedure complained of has resulted in an unlawful detention."

44. See 59 Yale L.J. 800 (1950), and *United States v. Jones*, 108 F.Supp. 266 (D.C. Fla. 1953).

45. *Malenski v. New York*, 324 U.S. 401 (1944). *Lyons v. Oklahoma*, 322 U.S. 596 (1943).

46. See, *Sutherland, DUE PROCESS AND CRUEL PUNISHMENT*, 64 Har. L. Rev. 271 (1950).

47. See 26 Geo. L. J. 105 (1938).

for injunctive relief under the federal Civil Rights Act.⁴⁸ While in such an action the prisoner need not first exhaust his state remedies, the courts might hesitate to grant injunctive relief, as a result of a fear that the threat of contempt proceedings would hamper prison administration.⁴⁹ Because of the difficulty in proving an intent to deprive the prisoner of his constitutional rights, relief through money damages is also severely limited.⁵⁰ The only other relief for the prisoner is the possibility of active federal prosecutions under the Civil Rights Act or state legislation to reform the prison system—both of which appear very remote.⁵¹

Thus it would seem that the prisoner has no adequate remedy in the demanding state to correct alleged abuses of his constitutional rights. Habeas corpus appears to be the most practical course, but the disadvantages of such an action remain unremedied.

The Supreme Court may not have entirely set aside the decision of the Third Circuit in the *Dye* case. The concurring opinion of Justice Frankfurter further adds emphasis to a point brought out by the majority: It was urged that the fugitive had made no suggestion in his application that he would be without opportunity to resort to the courts of Alabama for protection upon his return.⁵² This would appear to leave open the possibility that if Woodall had alleged in his application that he would be without such opportunity to resort to the state courts for protection, the Supreme Court would have heard the merits of the case.⁵³ It could then be argued that this constitutional protection would extend to future punishment so severe (upon his return) as to hinder or place an extremely high price on the prisoner's resort to the courts. Such a view is in accord with the dissent in the *Dye* case, which said that relief should only be granted where prospective mistreatment is alleged that would allow an application to the demanding state courts only at the risk of death or severe bodily harm.⁵⁴ *Ross v. Middlebrooks*,⁵⁵ and other cases⁵⁶ recognized the need for a different rule from that of the *Sweeney* case where there is danger of future mistreatment or unavailability of state remedies.

More than mere allegations of future cruel and unusual punishment will be required in order to obtain a hearing upon the merits, since Woodall had alleged that much. Perhaps there must be an interrelation between the allegations of future cruel punishment and the resulting unavailability of the courts. But any future action will surely fail unless it is alleged that the courts of the demanding state are only open at the price of great bodily harm.

48. 18 U.S.C. §242 (1948), allows a person to bring an action against any person who willfully under color of state law, deprives him of his constitutional rights.

49. *Thorp v. Clark*, 67 F.Supp. 703, 709 (D.C.N.H. 1946). *United States v. Jones*, 108 F.Supp. 266 (D.C. Fla. 1953).

50. *Screws v. United States*, 325 U.S. 91 (1945).

51. Federal relief is hampered by the same factors that make it extremely difficult for an individual complainant to secure relief.

52. *Sweeney v. Woodall*, 344 U.S. 86, 89, 90 (1952).

53. Mr. Justice Frankfurter cites *Cochran v. State of Kansas*, 316 U.S. 255 (1942), where the court held that a suppression of appeal documents by prison officials would be a violation of the Fourteenth Amendment.

54. *Johnson v. Dye*, 175 F.2d 250 (3rd Cir. 1950).

55. 188 F.2d 308 (9th Cir. 1951). The court stated that requiring the prisoner to return to the demanding state to present his allegations, "is not aggravated in this case by an allegation or showing of probable mistreatment en route or other special circumstances . . ." which would allow the court to ignore a rule of comity.

56. *Marbles v. Creech*, 215 U.S. 69 (1909). See dissent in *Johnson v. Matthews*, 182 F.2d 677 (D.C. Cir. 1950), and the dissent in *Johnson v. Dye*, 175 F.2d 250 (3rd Cir. 1950).