Volume 76 | Issue 2 Article 10

February 1974

Criminal Procedure--Habeas Corpus--Federal Jurisdiction Expanded

Charles J. Kaiser
West Virginia University College of Law

CRIMINAL PROCEDURE—HABEAS CORPUS—FEDERAL JURISDICTION EXPANDED

The petitioner, Charles Braden, was indicted by a Kentucky grand jury for the commission of felonies, but prior to trial he escaped from custody. He was later arrested and convicted of felonies committed in Alabama and imprisoned in the Alabama state prison. When the Kentucky authorities lodged an interstate detainer[1] with the Alabama warden, Braden unsuccessfully requested a speedy trial as guaranteed by the sixth amendment.[2] The petitioner then instituted habeas corpus proceedings in the Federal District Court for the Western District of Kentucky naming the Kentucky authorities who had lodged the detainer as respondents.[3] The district court ruled that the petitioner had been denied a speedy trial and ordered the Kentucky authorities to secure his presence in Kentucky for trial within sixty days or dismiss the indictment against him. The Commonwealth of Kentucky appealed, and the Court of Appeals for the Sixth Circuit reversed, applying the reasoning of *Ahrens v. Clark*[4] which required the physical presence of the petitioner within the territorial jurisdic-

[1]An interstate detainer is a warrant or "hold order" filed against a prisoner imprisoned in another state or jurisdiction. Its purpose is to insure that after the prisoner has completed his present term of detention, he will be made available to the authority which has placed the detainer. This system developed in response to the problems of sovereignty and expediency which arise when two states want the same man for trial. However, the system is easily used to the detriment of the prisoner. A detainer may be filed by a great number of officials and for as little reason as a desire to question the prisoner. Additionally, the detainer has made it easy to categorize prisoners. When a detainer has been filed against him, a prisoner is deemed a bad security risk, thus being denied many otherwise available privileges, including, in some jurisdictions, the opportunity for parole. Jacob and Sharma, *Justice After Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process*, 18 U. KAN. L. REV. 493, 579-89 (1970); Tuttle, *Catch 2254: Federal Jurisdiction and Interstate Detainers*, 32 U. PITT. L. REV. 489 (1971); Note, *Detainers and the Correctional Process*, 1966 WASH. U.L.Q. 417.

[2]The sixth amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." In Smith v. Hooey, 393 U.S. 374 (1969), the Supreme Court held that when a prisoner in one state who has been indicted on a criminal charge in a second state demands to be brought to trial on the indictment, the second state must make a "diligent, good-faith effort" to bring him to trial.

[3]The federal habeas corpus statute is found at 28 U.S.C. § 2241 (1970) (hereinafter referred to as section 2241).

[4]335 U.S. 188 (1948). The circuit court based its decision upon its previous decision in White v. Tennessee, 447 F.2d 1354 (6th Cir. 1971). *White* was based upon *Ahrens*.

tion of the district court as a prerequisite to the granting of a petition for a federal writ of habeas corpus.[5]

The United States Supreme Court granted certiorari. *Held*, reversed. The Court overruled *Ahrens v. Clark*, holding that federal habeas corpus jurisdiction is not limited to petitions filed by persons physically within the territorial limits of the district court, so long as the court issuing the writ has jurisdiction over the custodian of the prisoner. *Braden v. Judicial Circuit Court*, 410 U.S. 484 (1973).

The writ of habeas corpus originated in English common law and was thought so important by the founding fathers of this country that a clause was inserted into the United States Constitution providing that the privilege of the writ may not be suspended except in cases of rebellion, invasion, or the necessity of public safety.[6] Congress revised this area of the law in 1867, making two important changes in the granting of the writ. First, the availability of federal habeas corpus was extended to state as well as federal prisoners when the state prisoner was held in "violation of the Constitution or laws or treaties of the United States."[7] Second, the power to grant writs of habeas corpus was given to "the Supreme Court, any justice thereof, the district courts and any circuit judge *within their respective jurisdictions*."[8]

The significance of the phrase "within their respective jurisdictions" remained uncertain until 1948 when the Supreme Court decided *Ahrens v. Clark*.[9] In *Ahrens*, a petition for a writ of habeas corpus was filed by 120 German nationals held in custody at Ellis Island, New York, prior to deportation. The petition was filed in the United States District Court for the District of Columbia, naming the Attorney General of the United States as respondent. The

---

[5]Braden v. Judicial Circuit Court, 454 F.2d 145 (6th Cir. 1972).

[6]U.S. Const. art. I, § 9.

[7]28 U.S.C. § 2241(c)(3) (1970). The statute as quoted is as the law presently appears. As enacted into law in 1867, the statute read: "That the several courts of the United States, and the several justices and judges of such courts, within their respective jurisdictions, in addition to the authority already conferred by law, shall have power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the Constitution, or of any treaty or law of the United States . . . ." Act of Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385. *Compare with* the original habeas corpus law. Act of Sept. 24, 1789, ch. 20, § 14, 1 Stat. 73.

[8]28 U.S.C. § 2241(a) (1970) (emphasis added). For the text of the original statute, see note 7 *supra*.

[9]335 U.S. 188 (1948).

Supreme Court held that the petitioner's physical presence within the territorial jurisdiction of the district court was a prerequisite to granting a petition for a writ of habeas corpus. The Court based its decision primarily upon the belief that Congress's paramount concerns were the risk of escape and the administrative expense connected with transporting a prisoner to whatever district court he might desire to petition.[10]

In light of its decisions in *McNally v. Hill*[11] and *Hirota v. MacArthur*,[12] it appears that the Supreme Court did not intend its holding in *Ahrens* to seriously limit the availability of the writ to state prisoners. In *McNally v. Hill*, the Court held that a prisoner serving the first of two consecutive sentences could not attack the second of these through habeas corpus. The Court reasoned that "[a] sentence that the prisoner has not begun to serve cannot be the cause of restraint which the statute makes the subject of inquiry."[13] *McNally* established the prematurity doctrine,[14] which, broadly stated, means that a prisoner cannot contest through habeas corpus any prison sentence which will not be served until sometime in the future. Thus, if the prisoner can only contest the sentence he is presently serving, no hardship is imposed by requiring him to file his petition in the district court of his confinement, naming his present jailer as respondent.

In *Hirota v. MacArthur*, the Court held that a military tribunal established in Japan by the Allied Powers was not a tribunal of the United States and, therefore, "the courts of the United States have no power or authority to review, to affirm, set aside or annul the judgments and sentences imposed . . . ."[15] Justice Douglas, who delivered the Court's opinion in *Ahrens*, concurred in *Hirota*, explaining that *Ahrens* was not intended to impair the

---

[10]The *Ahrens* Court seemed to be particularly persuaded by the legislative history of the Act of February 5, 1867. During the debate on the floor of the Senate, the bill was opposed because "an application might be made to a district judge in Florida to bring before him some men convicted and sentenced and held under imprisonment in the State of Vermont or in any of the further States." CONG. GLOBE, 39th Cong., 2d Sess. 730 (1867) (remarks of Senator Johnson). This objection to the bill was remedied by an amendment which added the words "within their respective jurisdictions." CONG. GLOBE, 39th Cong., 2d Sess. 790 (1867) (remarks of Senator Trumbull).

[11]293 U.S. 131 (1934).

[12]338 U.S. 197 (1948).

[13]293 U.S. at 138.

[14]The term "prematurity doctrine" is used by the Court in Peyton v. Rowe, 391 U.S. 54, 63 n.17 (1968).

[15]338 U.S. at 198.

availability of the writ, but only to provide better judicial administration according to the will of Congress. As Justice Douglas pointed out, the "denial of a remedy in one District Court was not a denial of a remedy in all of them."[16]

The prematurity doctrine and the *Ahrens* jurisdictional requirement remained largely unaltered until 1968[17] when the Supreme Court's decision in *Peyton v. Rowe*[18] overruled *McNally v. Hill*. *Peyton* specifically held that a prisoner serving consecutive sentences in a state prison is "in custody" for federal habeas corpus purposes and can, during any one sentence, challenge through federal habeas corpus the validity of a sentence to be served in the future.[19] Therefore, following *Peyton*, an inconsistent situation existed. Although the prematurity doctrine was abolished, the *Ahrens* jurisdictional requirement remained unaltered. A prisoner serving consecutive state sentences in the same prison could use federal habeas corpus to challenge a future sentence, but a prisoner serving consecutive sentences in different states was unable to attack the future sentence because he was not within the same jurisdiction as his future jailer. Federal prisoners are not confronted with the same problem, since they may bring a challenge at any time in the sentencing court irrespective of where they may be incarcerated.[20]

Prior to *Braden*, the Supreme Court recognized this inequity. In *Nelson v. George*,[21] Chief Justice Burger, writing for the Court, noted that "[s]ound judicial administration" calls for an amend-

---

[16]*Id.* at 201 (concurring opinion 1949).

[17]In 1966, Congress amended section 2241 by adding subsection (d), which allows a prisoner in custody in the state prison of a state having more than one federal judicial district to file a petition for a writ of habeas corpus in either the district court where he is in custody, or the district court where the state court that sentenced him is located. No mention was made about the interstate problem, but it is to be noted that this amendment was made prior to the *Peyton v. Rowe* decision. Therefore, Congress could not have had the multistate problem in mind during the consideration of this amendment.

[18]391 U.S. 54 (1968).

[19]*Id.* at 67.

[20]28 U.S.C. § 2255 (1970) provides that a federal prisoner

> claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence. A motion for such relief may be made at any time.

[21]399 U.S. 224 (1970).

ment to section 2241 in order to correct the anomaly.[22] The legislative change was never made.[23] With this in mind, a majority of the Court felt *Braden* a proper case in which to overrule *Ahrens* and, thus, do judicially what the legislative branch had refused to do.

Justice Brennan, writing for five members of the Court in *Braden*, ruled that since *Peyton*'s abolition of the prematurity doctrine, a state prisoner is now able to use federal habeas corpus proceedings as a means of attacking confinement which *may* be imposed in the future.[24] The majority reasoned that a state prisoner's physical presence within the territorial jurisdiction of the district court was no longer a prerequisite to the exercise of federal habeas corpus jurisdiction, so long as the court issuing the writ has jurisdiction over the future custodian of the prisoner.

Justice Rehnquist, joined by Chief Justice Burger and Justice Powell, dissented vigorously, arguing that the Court's decision upholds a district court's authority to command a state court to determine the validity of an affirmative defense prior to trial.[25] The dissent also pointed out that the Court was legislating: "However impatient we may be with a federal statute which sometimes may fail to provide a remedy for every situation, one would have thought it inappropriate for this Court to amend the statute by judicial action."[26]

It can be argued that from the vantage of the sound and even-handed administration of justice, the *Braden* decision was necessary and desirable.[27] The majority, however, failed to choose care-

---

[22]*Id.* at 228 n.5.

[23]An amendment to § 2241 was drafted by the Administrative Conference of the United States Courts and introduced during the 92d Congress, but no action was taken on it. Braden v. Judicial Circuit Court, 410 U.S. 484, 500 n.17 (1973).

[24]410 U.S. at 486.

[25]*Id.* at 505 (dissenting opinion).

[26]*Id.* at 510 (dissenting opinion).

[27]It is at least questionable that this decision was needed, even for the equitable administration of justice, because of an evolution in the state laws regarding interstate detainers. In 1958, an Interstate Compact was proposed by the Council of State Governments as a solution to the problems caused by the detainer system. Basically, the Compact provides that prison officials must inform prisoners of detainers which are filed against them. A prisoner may then file a formal request for trial on the outstanding charges, and the confining jurisdiction then agrees to grant temporary custody of the prisoner to the prosecutor for the trial. If the filing jurisdiction fails to bring the defendant to trial within 180 days after request, the charges are dismissed with prejudice in the filing state and the detainer is no longer valid.

fully the factual situation in which to overrule *Ahrens*. As a result, the decision in *Peyton v. Rowe*, which permitted prisoners serving consecutive sentences to challenge through federal habeas corpus proceedings the legality of a future sentence, may have been overextended by *Braden*. The specific problem is, as Justice Rehnquist pointed out in dissent, that Braden had neither been convicted of a crime nor sentenced to prison in the State of Kentucky.

The effect of the *Braden* decision is to make federal habeas corpus relief available to a state prisoner who only *might* be required to serve a future state prison sentence. Federal habeas corpus, it seems, has been expanded into a pretrial testing device for affirmative defenses which otherwise could only be aired at trial. The final interpretation of the *Braden* decision will have to come from the lower courts who must apply it. However, it seems clear that a broad interpretation of *Braden* will lead to a situation where federal habeas corpus can be used wherever there is a possibility that a state prisoner's Constitutional rights have been infringed, even though there has been no trial on the facts.

Charles J. Kaiser, Jr.

THE COUNCIL OF STATE GOVERNMENTS, SUGGESTED STATE LEGISLATION: PROGRAM FOR 1958, 81 (1957). To date, thirty-six states and the United States have accepted this agreement. Act of Dec. 9, 1970, Pub. L. No. 91-538, 84 Stat. 1397; ARIZ. REV. STAT. ANN. § 31-481 (1956); ARK. STAT. ANN. § 43-3201 (1949); CAL. PENAL CODE § 1389 (Deering 1971); COLO. REV. STAT. ANN. § 39-23-1 (Supp. 1969); CONN. GEN. STAT. ANN. § 54-186 (1960); DEL. CODE ANN. tit. 11, § 2540 (Cum. Supp. 1970); GA. CODE ANN. § 77-501b (1964); IDAHO CODE § 19-5001 (Supp. 1970); ILL. ANN. STAT. ch. 38, § 1003-8-9 (Smith-Hurd 1970); IOWA CODE ANN. § 759A.1 (1950); KAN. STAT. ANN. § 22-4001 (1964); ME. REV. STAT. ANN. tit. 34, § 1411 (Supp. 1972); MD. ANN. CODE art. 27, § 616A (1971); MASS. ANN. LAWS, Special Acts 1965 ch. 892; MICH. STAT. ANN. § 4.147(1) (1969); MINN. STAT. ANN. § 629.294 (1947); MO. ANN. STAT. § 222.160 (1962); NEB. REV. STAT. § 29.759 (1965); NEV. REV. STAT. § 178.620 (1971); N.H. REV. STAT. ANN. § 606A (1955); N.J. STAT. ANN. § 2A:159A-1 (1971); N.Y. CODE OF CRIM. PRO. § 669b (McKinney 1957); N.C. GEN. STAT. § 148-89 (1964); N.D. CENT. CODE § 29-34-01 (1960); OHIO REV. CODE ANN. § 2963.30 (Page 1954); ORE. REV. STAT. § 134.606 (1971); PA. STAT. ANN. tit. 19, § 1431 (1964); S.C. CODE ANN. § 17-221 (1962); TENN. CODE ANN. § 40-3901 (1955); UTAH CODE ANN. § 77-65-4 (1953); VT. STAT. ANN. tit. 28, § 1501 (1970); VA. CODE ANN. § 53-304.1 (1972); WASH. REV. CODE § 9.100.010 (1961); W. VA. CODE ANN. § 62-14-1 (1966); WIS. STAT. ANN. § 976.05 (Spec. Pamphlet 1970); WYO. STAT. ANN. § 7-408.9 (Cum. Supp. 1973). If Kentucky and Alabama had had this type of legislation, there would have been no issue for the Supreme Court to decide.