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## Habeas Corpus—Applicability of Doctrine of Res Judicata

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## ABSTRACTS

**Habeas Corpus—Applicability of  
Doctrine of Res Judicata**

Oscar A. Harrison was found guilty of murder in the first degree and sentenced to life imprisonment by the Circuit Court of Wayne County on December 31, 1947. Harrison's attorneys were paid \$3000 to defend him; they did not appeal the decision to the Supreme Court of Appeals of West Virginia. On March 10, 1958, Harrison requested a transcript of his murder trial from the Circuit Court of Wayne County. The court refused this request, noting that the statutory period for appeal or writ of error had expired. Over ten years had passed since Harrison was sentenced. The same court granted his second request for a transcript in 1964. In 1967, Harrison filed a habeas corpus proceeding in the United States District Court for the Northern District of West Virginia alleging (a) ineffective assistance of trial counsel because of failure to prosecute appeal, and (b) improper denial of a transcript of the trial proceedings. Harrison's defense attorney testified that the \$3000 was payment only for legal services at the trial, and that he and the other defense attorney had agreed that the trial involved no reversible error which would have warranted an appeal. In contrast, Harrison testified that he desired an appeal and that the \$3000 included payment to the attorneys to prosecute an appeal. In denying relief the district court noted that Harrison had been unsuccessful in at least twenty prior habeas corpus proceedings, and that past experience had shown Harrison's testimony to be lacking in credibility. This decision was affirmed by the United States Court of Appeals for the Fourth Circuit, and certiorari was denied by the Supreme Court of the United States in 1968 (390 U.S. 1035). Undaunted, Harrison filed a habeas corpus proceeding in the Circuit Court of Wayne County based upon the same grounds that were alleged in the federal district court. Relief was denied by the Circuit Court of Wayne County on July 28, 1969, for the same reasons that relief had been denied in the federal district court. Harrison then filed a writ of error in the Supreme Court of Appeals of West Virginia. *Held*, affirmed. Where a prisoner seeking habeas corpus relief had alleged the same grounds—ineffective assistance of trial counsel because of failure to prosecute an appeal, and improper denial of the transcript of trial proceedings—in a federal habeas corpus proceeding, the decision of the federal court denying relief was final

and conclusive in the state habeas corpus proceeding by virtue of the doctrine of *res judicata*. *State ex rel. Harrison v. Coiner*, 176 S.E.2d 677 (W. Va. 1970).

In reaching this decision the Supreme Court of Appeals relied on *State ex rel. Cephas v. Boles*, 149 W. Va. 537, 142 S.E.2d 463 (1965), and *State ex rel. Beckett v. Boles*, 149 W. Va. 112, 138 S.E.2d 851 (1964), which held a federal district court decision is final and conclusive in a habeas corpus proceeding in a state court by virtue of the doctrine of *res judicata*, when such decision involved identical parties and determined identical questions. See *Douglas v. California*, 372 U.S. 353 (1963), for a case involving an indigent's right to counsel on appeal, and *Griffin v. Illinois*, 351 U.S. 12 (1956), for a case involving an indigent's right to a trial transcript for appeal purposes. In addition, see Note, *Habeas Corpus in West Virginia* 69 W. VA. L. REV. 293 (1967), for an article on habeas corpus proceedings in West Virginia.

#### **Statutory Construction—Dismissal Hearing Before Board of Education**

By a "Notice of Appointment" from the West Virginia Board of Education, petitioner was notified of his appointment to the position of assistant football coach at a state university for a period of twelve months, beginning July 1, 1969. However, by letter dated August 1, 1969, petitioner was informed that recommendation for termination of his contract was being forwarded to the West Virginia Board of Regents for their approval on the grounds of incompetent performance of duties. Subsequently, by letter signed by the president of the university dated August 28, 1969, the termination was confirmed, effective September 30, 1969. When petitioner sought an appeal of his dismissal, the Board of Regents confirmed the action and dismissed the appeal. Following the dismissal, petitioner sought a writ of mandamus, contending that it was a denial of due process of law to terminate his contract without his being afforded a hearing as provided by W. Va. Code ch. 18A, art. 2, § 8 (Michie 1969). *Held*, writ denied. *State ex rel Kondos v. West Virginia Bd. of Regents*, 175 S.E.2d 165 (W. Va. 1969). The Board of Regents was under no obligation to grant petitioner a hearing prior to his dismissal.