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Criminal Law - Habeas Corpus to Review Completed Sentence

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COMMENTS

CRIMINAL LAW—HABEAS CORPUS TO REVIEW COMPLETED SENTENCE

The case of *Smyth* v. *Holland*[1] presents a result which while legally justified by the facts in the record, appears to deprive the prisoner of his day in court because the lower court issued a writ of *habeas corpus* extending only to a sentence obviously closed to inquiry, and which under existing precedent could not possibly be of benefit to the petitioner.

Holland, the petitioner, had been convicted in two trials in the Corporation Court of the City of Norfolk: the first having been on a count of armed robbery; the second for theft of an automobile. He was also convicted in a third trial by the Corporation Court of the City of Danville, for the theft of a watch. The first two convictions resulted in cumulative sentences of 26 years; the third, six years. All three trials took place within the relatively short span of two months.

After having completed the sentence for the first two convictions, and while serving the six year sentence fixed by the Danville court, petition for *habeas corpus ad subjiciendum* was filed in the Hustings Court of the City of Richmond, Part II. The petitioner alleged that all three judgments were void for lack of due process of law (with specific averments set forth) and further alleged that the Corporation Court of the City of Danville was without jurisdiction in regard to the third conviction, for theft.

A writ of *habeas corpus* was issued by the Hustings Court upon only that portion of the petition alleging that the trial of petitioner in the Norfolk court for armed robbery was void, and subsequently judgment was entered finding the 25 year sentence void. The time served under the void sentence was to be credited as served upon the other sentences, and being greater, the court ordered the petitioner released.

On writ of error before the Supreme Court of Appeals of Virginia, it was held, in accordance with the contentions of re-

[1] 199 Va. 92, 97 S.E.2d 745 (1957).

spondent, that the Hustings Court of the City of Richmond, Part II, had no jurisdiction to credit time served on a prior completed sentence as served on other sentences under which Holland was currently being held. Since the writ of *habeas corpus* issued by the Hustings Court referred only to the validity of the detention under one of the sentences imposed by the Norfolk court, the court properly held that the void sentence was not the basis of Holland's present detention, hence could not be the basis for a writ of *habeas corpus*. The judgment of the lower court was reversed and the writ dismissed.

In the opinion are mentioned two cases, *Stonebreaker* v. *Smyth*[2] and *Fitzgerald* v. *Smyth*,[3] which recognized the power of the judge in a *habeas corpus* proceeding to allow time served under an invalid sentence, by which petitioners were currently being detained, to be credited against time yet to be served under another valid sentence. At the time when the Supreme Court of Appeals found three sentences against Stonebreaker void, there were other indictments pending against him in the same lower court. Custody was transferred to the lower court with directions that should he be "tried and convicted on any one or more of the three indictments pending against him, then he should receive proper credit for time served under any one of the three indictments . . ." [4]

Fitzgerald, too, was distinguished from the instant case on the basis of presently pending indictments in the same lower courts. There the Supreme Court suggested that "the trial court will doubtless take into consideration the fact that the petitioner has, according to the record, been in custody continuously since August 12, 1944, a period of more than eight years, under convictions we hold to be nullities." [5]

On the basis of these cases, it is apparent that Virginia recognizes the rule that *habeas corpus* may be successfully applied to gain release of a prisoner where he will be returned to the custody of the same lower court for application of time served on void sentences to actions presently pending. As related to the

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[2] 187 Va. 250, 46 S.E.2d 406 (1948).

[3] 194 Va. 681, 74 S.E.2d 810 (1953).

[4] Stonebreaker v. Smyth, *supra* at 264.

[5] Fitzgerald v. Smyth, *supra* at 691.

instant case, such crediting is disallowed on the strict rule that *habeas corpus* may only issue to determine the validity of detention under present sentence. It would therefore appear that the lower court has in the instant case precluded the petitioner's successful use of *habeas corpus* by restricting the writ issued to the first sentence alleged to be void in the petition, and by failing to consider the remainder.

S. J. B.

CRIMINAL LAW–LIMITATIONS ON USE OF HABEAS CORPUS IN REGARD TO ALLOWANCE OF CREDIT FOR TIME SERVED UNDER PRIOR CONVICTIONS

The impact of the *Holland*[1] decision on the substantive rights of prisoners who have been sentenced under void convictions has been brought into sharper focus by *Smyth* v. *Midgett*.[2]

Once again the Hustings Court of the City of Richmond, Part II, had ruled in favor of a petitioner on a writ of *habeas corpus* with respect to a prior sentence, and once again the Supreme Court of Appeals overturned the judgment of the lower court on this point.

In the *Midgett* case petitioner had been convicted on six charges of grand larceny and two charges of housebreaking, receiving a two year sentence for each conviction. He had completely served three of the sentences for grand larceny and at the time he petitioned for *habeas corpus* was serving the fourth sentence. His remaining unserved sentences included the two remaining grand larceny convictions and the two housebreaking convictions, plus three subsequently incurred escape convictions of one year each.

Petitioner's writ of *habeas corpus* challenged the validity, on constitutional grounds, of the eight original convictions for grand larceny and housebreaking. The Hustings Court ruled in favor of petitioner, finding all eight convictions void and further or-

[1] See Smyth v. Holland, 199 Va. 92 (1957) and comment therein *supra*, p. 428.

[2] 199 Va. 727 (1958).