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Federal Habeas Corpus - The Responsibilities of Federal Courts in Post-Conviction Proceedings

FEDERAL HABEAS CORPUS

The Responsibilities of Federal Courts in Post-Conviction Proceedings

Sanders v. *United States*,[1] together with *Townsend* v. *Sain*[2] and *Fay* v. *Noia*,[3] form a trilogy of guideline decisions in which the Supreme Court has undertaken to restate the responsibilities of the federal courts in federal post-conviction proceedings. By this act a dissenting minority believe that a new doctrine of federal habeas corpus has been established. The sole problem which faces the Supreme Court in these cases is that of successive applications for collateral relief.[4] *Sain* and *Noia* relate to federal habeas corpus proceedings arising from state criminal convictions, while *Sanders* involves successive applications arising from a federal conviction.

In *Sanders* v. *United States*,[5] the petitioner had been convicted on a bank robbery charge. The United States District Court, Northern District of California, denied, without a hearing, the petitioner's motions to set aside and vacate conviction. The first motion alleged no facts but only bare conclusions in support of his claim. The second, filed eight months after the first, alleged facts, which, if true, might entitle him to relief. On appeal from the denial of the second motion, the Court of Appeals affirmed. On certiorari, the Supreme Court held that the "similar relief" provision of 28 U.S.C. § 2255,[6] authorizing a motion to

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1 83 S. Ct. 1068 (1963).

2 372 U.S. 293, 83 S. Ct. 745 (1963).

3 372 U.S. 391, 83 S. Ct. 822 (1963).

4 *Supra* note 1 at 1077.

5 *Id.* at 1068.

6 28 U.S.C. § 2255 (1959) provides: "A prisoner in custody under sentence of a court established by Act of Congress 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, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

vacate, set aside, and correct a sentence is the equivalent of 28 U.S.C. § 2244,[7] relating to successive applications for habeas corpus. The sentencing court erred in not granting a hearing on the second motion.

In *Townsend* v. *Sain*,[8] where it could not be ascertained by the district court what standard the trial judge had applied in admitting a confession, an evidentiary hearing was ordered in a federal court. The trial judge had instructed the jurors that they could disregard the defendant's confession if they believed defendant's expert witness who testified concerning a drug injection. The trial court had made no express finding and no implied finding could be reconstructed. Previous habeas corpus petitions had been denied without evidentiary hearings. The Supreme Court declared that a federal court must grant an evidentiary hearing to a *habeas corpus* applicant if (1) the merits of the factual dispute were not resolved in a state hearing; (2) a state factual determination was not fairly supported by the record as a whole; (3) a fact finding procedure in a state court was not adequate to afford a full and fair hearing; (4) there was a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state court hearing; or (6) if for any

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"A motion for such relief may be made at any time.

"The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner. "An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court had denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."

[7] 28 U.S.C. § 2244 (1958) provides: "No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a court of the United States, or of a State, if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus and the petition presents no new ground not theretofore presented and determined, and the judge or court is satisfied that the ends of justice will not be served by such inquiry."

[8] *Supra* note 2.

reason it appeared that the state trier of fact did not afford an application for a full and fair fact hearing.[9]

The petitioner in *Fay* v. *Noia*[10] applied for a writ of habeas corpus on the ground of deprivation of his constitutional rights because of his conviction on the basis of a coerced confession. The Supreme Court held that the petitioner's failure to appeal his conviction of murder was not an intelligent and understanding waiver of his right to appeal and did not justify a withholding of federal *habeas corpus* relief.

The Supreme Court, in each of the three cases, accepts the familiar principle that "res judicata is inapplicable in habeas proceedings,"[11] but specifies in *Sanders* that controlling weight may be given to a denial of a prior application for federal habeas corpus or § 2255 relief only if certain conditions exist.[12] These conditions form the basis for a so-called new doctrine of federal habeas corpus.[13] First, the same ground presented in the subsequent application must have been determined adversely to the applicant on the prior application. Ground means simply a sufficient legal basis for granting the relief sought by the applicant. Identical grounds, however, may often be proved by different factual allegations or be supported by different legal arguments.[14] Should doubt arise whether two grounds of successive application for relief are identical, it should be resolved in favor of the applicant.[15]

Second, the prior denial must have rested on an adjudication on the merits of the ground presented in the subsequent application. If factual issues were raised in the prior application, and it was not denied on the basis

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[9] *Id.* at 757.

[10] *Supra* note 3.

[11] Id. at 423 and 840.

[12] *Supra* note 1 at 1077.

[13] Id. at 1081.

[14] Wilson v. Cook, 327 U.S. 474, 481 (1946).

[15] 28 U.S.C.A. § 2244, 2255 (1958).

that the files and records conclusively resolved these issues, an evidentiary hearing must be held.[16]

Third, even if the same ground was rejected on the merits of a prior application, the applicant may prove that the ends of justice would be served by permitting a redetermination of the ground. If factual issues are involved, the applicant is entitled to a new hearing upon showing that the evidentiary hearing on the prior application was not full and fair.[17]

Fourth, if a petitioner deliberately withholds one of two grounds for federal collateral relief at the time of filing his first application, or deliberately abandons one of his grounds at his first hearing, he may be deemed to have waived his right to a hearing on the second application presenting the withheld ground.[18]

Fifth, the burden is on the Government to plead abuse of the writ. "If the government chooses not to deny the allegation or to question its sufficiency and desires instead to claim that the petitioner has abused the writ of habeas corpus, it rests with the Government to make the claim with clarity and particularity. . .".[19]

Finally, the filing of successive applications for habeas corpus, does not compel the judge to decline to entertain successive applications because the ground asserted was previously heard and decided. It merely permits the judge to do so, and only if he is satisfied that the ends of justice will not be served by inquiring into the merits.[20]

The dissent in *Sanders* makes a strong objection to this new doctrine of habeas corpus. "The over-all effect of this trilogy is to relegate to a back seat. . .the principle that

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16 Motley v. United States, 230 F.2d 110 (5th Cir. 1956).
17 *Supra* note 1 at 1078.
18 *Supra* note 15.
19 Price v. Johnston, 334 U.S. 266, 292 (1948).
20 *Supra* note 15.

there must be some end to litigation."[21] This objection is particularly answered by the court in declaring that conventional notions of finality in criminal litigation cannot be permitted to defeat the manifest federal policy that federal constitutional rights of personal liberty are not to be denied without the fullest opportunity for plenary federal judicial review.[22]

Whether this is a new doctrine of federal habeas corpus or merely a restatement of established principles in federal post-conviction proceedings, the Supreme Court has recognized the need for clarification in this vital area of the law. With any set of new rules or principles, broad or narrow, there are bound to be unintended consequences. Is it better, then, to begin with established rules to determine the legal answer or must each case be adjudicated individually, on a case-by-case basis? Future litigation on federal habeas corpus will provide the answer.

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[21] *Supra* note 1 at 1081.
[22] *Supra* note 3 at 841.