

5502

Senator McDonald and Representative Lawlor and members of the Judiciary Committee, I am here to testify in support of Raised Bill No. 5502.

As this committee previously heard in January the Courts are deluged with frivolous habeas corpus appeals with over 1,000 currently pending and are adjudicated typically at a cost of \$4,300 dollars per case or currently at a total of \$4.3 million dollars in total, and this just in the criminal division.

Essentially these frivolous and unsubstantiated appeals clog the system and get in the way of the real day to day workings of the court system and severely hinders its ability to fairly dispense justice. (1)

From the WESTLAW database:

It is clear that issues are not required to be re-litigated in state habeas process when they have been previously heard and reviewed in an appeals court from the conviction or by the writ of error. (2,3,4) "The courts have recognized that some restrictions on successive habeas corpus applications should be imposed to prevent vexatious and harassing repetition of invalid claims already heard and decided, or purposeful withholding of alternative grounds for the writ in the hope of being granted two hearings rather than one."

These restrictions permit a court, in its discretion, to summarily dismiss a subsequent habeas corpus petition on the ground generally referred to as "abuse" of the writ. (5) Judicial authority to dismiss successive applications presenting no new grounds or evidence has been codified in the Civil Practice Law and Rules, which provides that a court is not required to issue a writ of habeas corpus, if: [i] the legality of the detention has been determined by a court of the state on a prior proceeding for a writ of habeas corpus; [ii] the petition presents no ground not previously presented and determined; and [iii] the court is satisfied that the ends of justice will not be served by granting it. (6) As a result, a subsequent writ that contains nothing new will normally be dismissed.

The constitutional provision prohibiting passage of any law suspending the privilege of the writ of habeas corpus does not prohibit further legislation reasonably regulating the issuance of the writ.[7] Consequently, a provision of a federal or state statute requiring a prisoner to pursue his or her motion to vacate or correct a sentence in the sentencing court, does not violate the constitutional provision against the suspension of the writ of habeas corpus, [8] and the same is true of the application of a limitations period. [9]

- (1) In re Sindram, 498 U.S. 177, 111 S. Ct. 596, 112 L. Ed. 2d 599 (1991); Holmes v. State, 669 So. 2d 360 (Fla. Dist. Ct. App. 5th Dist. 1996).
- (2) U.S.--Thomas v. Decker, 434 F.2d 1033 (5th Cir. 1970).
- (3) U.S.--Jordan v. Peyton, 264 F. Supp. 946 (W.D. Va. 1967).
- (4) State ex rel. Sassower on Behalf of Polur v. Cunningham, 112 A.D.2d 119, 492 N.Y.S.2d 608 (1st Dep't 1985) (holding that successive applications for writs of habeas corpus before different justices or courts on identical grounds may not be entertained).
- (5) Wong Doo v. U.S., 265 U.S. 239, 44 S. Ct. 524, 68 L. Ed. 999 (1924).
- (6) N.Y. C.P.L.R. 7003(b).
- (7) Md.--Maryland House of Correction v. Fields, 348 Md. 245, 703 A.2d 167 (1997).
- (8) U.S.--Millan-Diaz v. Parker, 444 F.2d 95 (3d Cir. 1971).

Colo.--People ex rel. Wyse v. District Court in and For Twentieth Judicial Dist., 180 Colo. 88, 503 P.2d 154 (1972).

Ind.--Lash v. Wright, 153 Ind. App. 299, 287 N.E.2d 255 (3d Dist. 1972).

(9)U.S.--Weaver v. U.S., 195 F.3d 123 (2d Cir. 1999).

Three-year statute not a cause of suspension

Miss.--Edmond v. State, 2003 WL 1228086 (Miss. Ct. App. 2003).

Excessive habeas appeals need to be stopped as they continually re-victimize victims and their families and friends and waste precious court time and resources preventing the courts from using these resources on current cases and the review of cases where there have been actual errors. The current excessive use of habeas become a mockery of the legal system that has been tolerated for far too long and need to be changed. We no longer exist in feudal and/or royal times. I urge the judiciary committee to begin to re-level the playing field between convicted criminals and their victims. The balance has swung too far towards those who have been legally accused convicted and who have multiple checks and balances (some would say excessive) in place to protect their rights. The goal of the system should be justice and not a byzantine game where appropriate punishments are delayed and changed due to unsubstantiated and frivolous claims made only to clog the system and delay the outcome.

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